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

FORM 10-K

(MarkOne)

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

For the fiscal year ended December 31, 2021

OR

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

FOR THE TRANSITION PERIOD FROM_____ TO _____

Commission File Number 001-39616

Eargo, Inc.

(Exact name of Registrant as specified in its Charter)

Delaware	**27-3879805**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2665 North First Street, Suite 300 San Jose, California	**95134**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (650) 351-7700

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	**EAR**	**The Nasdaq Stock Market LLC**

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

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES ☐ NO ☒

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, based on the closing price of the shares of common stock on the Nasdaq Global Select Market on June 30, 2021, was $1,069,948,866.

The number of shares of Registrant's Common Stock outstanding as of May 4, 2022 was 39,354,874.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements about us and our industry that involve substantial risks, uncertainties and assumptions. All statements other than statements of historical facts contained in this Annual Report on Form 10-K, including statements regarding our strategy, future financial condition, future operations, projected costs, prospects, plans, objectives of management and expected market growth, are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "aim," "anticipate," "assume," "believe," "contemplate," "continue," "could," "design," "due," "estimate," "expect," "forecast," "goal," "guidance," "intend," "likely," "may," "objective," "plan," "ongoing," "positioned," "possible," "potential," "predict," "project," "seek," "shall," "should," "target," "will," "would" and other similar expressions that are predictions of or indicate future events and future trends, or the negative of these terms or other comparable terminology. These forward-looking statements include, but are not limited to, statements about:

- the impact on our business of the civil settlement agreement with the U.S. government that resolved the investigation by the U.S. Department of Justice (the "DOJ") related to insurance reimbursement claims submitted to various federal employee health plans under the Federal Employee Health Benefits ("FEHB") program, and the extent to which we may be able to validate and establish processes to support the submission of claims for reimbursement to health plans under the FEHB program in the future, if at all, and our ability to obtain, maintain or increase insurance coverage for our hearing aids in the future;
- the timing or results of claims audits and medical records reviews by third-party payors;
- the expense, timing and outcome of the purported securities class action litigation alleging that certain of our disclosures about our business, operations and prospects, including reimbursements from third-party payors, violated the federal securities laws and the purported derivative action alleging that our directors breached their fiduciary duties by failing to implement and maintain an effective system of internal controls;
- our ability to continue to maintain the listing of our securities on The Nasdaq Stock Market LLC ("Nasdaq"), including our ability to execute a plan to regain compliance with the Nasdaq requirements regarding the timely filing of periodic financial reports with the Securities and Exchange Commission (the "SEC");
- estimates of our future revenue and expenses, including the extent of any losses we incur from hearing aids delivered to customers where we have not submitted an insurance claim and may not receive payment;
- estimates of our future capital needs and our ability to raise capital on favorable terms, if at all, including the timing of future capital requirements and the terms or timing of any future financings;
- our expectations with regard to changes in the regulatory landscape for hearing aid devices, including the anticipated implementation of a pending over-the-counter ("OTC") hearing aid regulatory framework and potential Medicare coverage for certain hearing aids, as well as any potential actions insurance providers may take following any regulatory changes;
- our ability to attract and retain customers;
- our expectations concerning additional orders by existing customers;
- our expectations regarding the potential market size and size of the potential consumer populations for our products and any future products, including our ability to obtain, maintain or increase insurance coverage of and reimbursement of insurance claims for Eargo hearing aids, which is substantially dependent on, among other things, the outcomes of our efforts to validate and establish processes to support the submission of claims for reimbursement from various federal health plans, any third-party payor audits and pending regulations;

- our ability to release new hearing aids and the anticipated features of any such hearing aids and our ability to transition our existing customers to new hearing aids, including when older models are discontinued;
- developments and projections relating to our competitors and our industry, including competing products;
- our ability to maintain our competitive technological advantages against new entrants in our industry;
- the pricing of our hearing aids;
- our expectations regarding the availability, supply, cost and inflationary pressures related to the component parts of our hearing aids;
- our expectations regarding the ability to make certain claims related to the performance of our hearing aids relative to competitive products;
- our commercialization and marketing capabilities and expectations;
- our relationships with, and the capabilities of, our component manufacturers, suppliers and freight carriers;
- the implementation of our business model and strategic plans for our business, products and technology;
- the scope of protection we are able to establish and maintain for intellectual property rights covering our products, including the projected terms of patent protection;
- our ability to effectively manage our business in light of the civil settlement agreement with the U.S. government, third-party payor claims audits and medical records reviews, purported securities class action and derivative litigations, and pending regulations;
- our ability to retain existing talent and attract new, highly skilled talent;
- our estimates regarding the COVID-19 pandemic, including but not limited to, its duration and its impact on our business and results of operations; and
- our future financial performance.

We have based these forward-looking statements largely on our current expectations, estimates, forecasts and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. In light of the significant uncertainties in these forward-looking statements, you should not rely upon forward-looking statements as predictions of future events. Although we believe that we have a reasonable basis for each forward-looking statement contained in this Annual Report on Form 10-K, we cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur at all. You should refer to the section titled “Risk Factors” for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. Except as required by law, we undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise.

PART I

Item 1. Business.

Overview

Eargo, Inc. ("Eargo," the "Company," "we," "us" or "our") is a medical device company dedicated to improving the quality of life of people with hearing loss. Our innovative products and go-to-market approach address the major challenges of traditional hearing aid adoption, including social stigma, accessibility and cost.

We believe Eargo hearing aids are the first ever virtually invisible, rechargeable, completely in-the-canal, FDA-regulated, exempt Class I and Class II devices indicated to compensate for mild to moderate hearing loss.

We market and sell our hearing aids primarily in a direct-to-consumer format, with a personalized, consumer-centric approach. Our commercial organization consists of a marketing team with deep experience in consumer-focused brand and performance marketing, a team of inside sales consultants, and a dedicated customer support team which includes audiologists and hearing professionals. Our differentiated, consumer-first approach empowers consumers to take control of their hearing by improving accessibility, with personalized, high-quality telecare-based support from our hearing professionals (with telecare support continuing for as long as a customer owns their Eargo hearing aid).

In an industry that has, in our opinion, historically been associated with limited brand awareness, we have developed a sophisticated brand-building strategy focused on consumer empowerment. We have also developed a robust technology and data-driven marketing platform that utilizes business intelligence, key performance metrics, machine learning and other marketing data to reinforce our growing brand recognition and to identify demographics, behaviors and marketing channels most relevant to our target audience. Eargo's sales consultants leverage our digital marketing platform, which utilizes data-driven insights to iterate our sales tactics and create promotional offers, each with the goal of driving lead generation and increasing inbound lead conversions. We also see opportunity in nurturing long-term relationships with our customers to drive repeat purchases and increase their lifetime value, an objective facilitated by our provision of unlimited telecare access to Eargo's hearing professionals for the life of a customer's Eargo hearing aid.

We have also established a highly capable research and development organization with what we believe is a rare combination of expertise in mechanical engineering, product design, audio processing, clinical and hearing science, consumer electronics and embedded software design. In addition, we employ strategic intellectual property protection in certain key areas. Our technical capabilities and commitment to innovation have allowed us to deliver significant product enhancements on a rapid development timeline, exemplified by our launch of six iterations of the Eargo hearing aid system since 2017 (four of which we are marketing and selling as of the filing date of this Annual Report on Form 10-K).

We believe that our differentiated hearing aids and consumer-centric approach have driven our sales of over 95,000 Eargo hearing aid systems, net of returns, as of December 31, 2021. We believe there is a large, growing and underserved market of people suffering from hearing loss, which we estimate included more than 45 million adults (or approximately one in six adults) in the United States in 2021, only approximately 25% of whom actually owned a hearing aid.

The Eargo Difference

We are passionate about helping people hear better and are on a mission to change the way the world thinks about hearing loss.

Since our inception, our founding principle has been to dramatically improve the consumer experience at every step of the hearing care journey. Our products, customer support and marketing messaging are a direct result of that passion. We believe our direct-to-consumer model can shift the paradigm in the treatment of hearing loss for the ultimate benefit of consumers.

Eargo hearing aids

Eargo hearing aids combine proprietary technology, engineering know-how and scientific and design expertise to offer high-quality performance in an in-the-canal form factor that makes them virtually invisible. As of the filing date of this Annual Report on Form 10-K, we are marketing four versions of our hearing aids—the Eargo Max, the Eargo Neo HiFi, Eargo 5, and Eargo 6—to provide customers with a range of cost and functionality options. Each generation of Eargo hearing aids has been improved with additional features, such as audio performance, enhanced physical fit and/or comfort and greater ease of use.

Our in-the-canal devices feature high-quality audio, are designed to provide up to 16 hours of battery life and feature Eargo's proprietary soft and flexible medical-grade silicon tips. These silicon tips are removable, allowing for simple cleaning, and can be purchased separately in several sizes to accommodate individuals with different size ear canals. Eargo's rechargeable hearing aids are designed for ease of use and maintenance while providing a comfortable fit for a majority of our target market.

The following features are available with Eargo hearing aids and offer advantages relative to traditional hearing aids (for example, the behind-the-ear format, which comprise the majority of hearing aids sold):

- *Virtually invisible*: Unlike the majority of hearing aids which sit behind-the-ear, Eargo hearing aids are designed to fit completely in-the-canal and are virtually invisible, allowing our customers to avoid the stigma that is associated with visible hearing aids.
- *Comfort and performance*: Our proprietary soft and flexible medical-grade silicon tips allow Eargo hearing aids to be suspended in the ear canal and provide a comfortable "open fit" that does not fully block or occlude the ear canal while still providing high-quality audio.
- *Rechargeable*: Eargo hearing aids are rechargeable, eliminating the need for battery replacement. Our hearing aids come with a discreet, portable charger case that easily fits into a purse or pocket.
- *Ease of use*: Eargo hearing aids feature an intuitive design that is similar in quality to many high-end consumer electronics and allows for personalization by users to their unique hearing preferences. Users can cycle through up to four different sound profiles and personalize the settings to their unique preferences for amplification or noise reduction settings to accommodate listening in different environments. All products other than Eargo Max also offer customers a companion mobile application that helps them easily personalize their Eargo hearing aids to fit their needs and allow for remote updates.

We expect to continue refining and improving Eargo hearing aids, and we have the intention of an approximate annual cadence of new product launches. To this end, we are working on the development of a cost-conscious offering as well as the next Eargo hearing aid model with improved functionality.

Our business model and customer journey

We sell our hearing aids primarily on a direct-to-consumer basis, engaging consumers through a mix of digital and traditional marketing as well as select commercial partnership, omni-channel (including retail) and other opportunities that are designed to appeal to prospective customers on a personal level and build our brand.

Eargo provides free educational resources as well as support from our team of sales consultants and hearing professionals, who help educate and guide prospective customers through addressing their hearing loss in a personalized and consultative experience.

While a hearing test is not necessary to purchase Eargo hearing aids, we offer an online, do-it-yourself hearing screening for prospective customers who are interested in learning more about their hearing. This screening is not intended to prevent, diagnose or treat hearing loss or any other disease or condition, but can assist customers in

evaluating whether Eargo hearing aids may be right for them. Prospective customers can also utilize Eargo's telecare support system to receive guidance regarding matters such as use, charging and cleaning of Eargo hearing aids, and real-time audio setting modification for individualized hearing loss.

Through select commercial partnerships and retail relationships, prospective customers may take our hearing screening and learn about our products in brick-and-mortar retail locations as well.

Customers are able to complete purchases over the phone with an Eargo sales consultant or directly on our website. The Eargo purchasing experience is designed to be simple and to improve the accessibility of hearing aids. In addition, we offer a 45-day trial period.

As of December 8, 2021, our products are "cash-pay" only, which includes upfront payment, credit card, third-party financing, and distributor payment. We partner with a third-party monthly financing program to make our products more accessible, and payment types may also be combined. The Eargo hearing aid system is then shipped and arrives on average in approximately three business days.

Once a customer purchases Eargo hearing aids, they are assigned to one of our hearing professionals, who provides complimentary, convenient support by phone, chat or e-mail. Our hearing professionals include audiologists with degrees in audiology and speech-language science, professionals with board certifications in hearing aid science and other professionals.

Once a customer receives their Eargo hearing aids, their assigned hearing professional will schedule a welcome call to assist with proper use, fit and setting modification of the Eargo device. In 2021, more than 80% of our customers completed a welcome call with one of our hearing professionals. Our hearing professionals and customer care team are also available to provide unlimited support for as long as the customer owns an Eargo device. Additionally, we provide short, online training videos and other resources that customers can access online. The combination of these services allows us to deliver telecare-based support in an efficient and streamlined manner.

We believe our business model and consumer-centric focus offer the following advantages relative to traditional sales channels (which are characterized by a business-to-business model in which hearing aid manufacturers rely on a fragmented network of independent audiology clinics to sell their devices to consumers):

- *Simplified, consumer-centric experience*: We have developed a consumer-centric experience by offering free online education, convenient consultation and telecare support, the ability to easily purchase the Eargo system, and fast delivery.
- *Accessible*: We offer all of our customers convenient telecare-based access to a highly trained clinical support team consisting, in part, of hearing professionals. Additionally, our support team is able to wirelessly assist in personalizing Eargo settings for our customers with Eargo Neo HiFi, Eargo 5 and Eargo 6.
- *Affordable*: Our vertically integrated, consumer-first model allows us to eliminate a layer of cost associated with the separation of the manufacturer and consumer in the traditional sales and distribution model. As a result, we believe that we are able to offer Eargo hearing aids at prices that are approximately half the average cost of a pair of hearing aids purchased through traditional channels in the United States. The Eargo model also offers greater pricing transparency, as hearing aid sales via traditional channels commonly bundle the cost of the device, the audiology exam and related services (for example, programming and subsequent adjustments).
- *Decreased COVID-19 exposure*: Over the past two years, our model helped Eargo customers reduce their potential exposure to COVID-19 while conducting an essential activity without the need to physically visit a clinic.

Omni-channel marketing and distribution activities through commercial partnerships

Eargo's self-administered hearing screens are intended to be part of our retail customer experience and are expected to be located in physical retail settings so customers can obtain general information regarding their hearing and see Eargo hearing aids in person. We also have a select number of commercial partnerships to, among other things, facilitate the retail experience, and we intend to continue to pursue additional opportunities for in-person customer engagement. We believe that if the proposed rule by the United States Food and Drug Administration ("FDA") regarding an OTC regulation of hearing aids is finalized in substantially the same form as proposed, the final rule will facilitate negotiation and execution of additional retail opportunities in the future.

DOJ investigation and settlement and claims audits

As previously disclosed, on September 21, 2021, we were informed that we were the target of a criminal investigation by the DOJ related to insurance reimbursement claims we submitted on behalf of our customers covered by various federal employee health plans under the FEHB program. The investigation also pertained to our role in customer reimbursement claim submissions to federal employee health plans (collectively, the "DOJ investigation"). Also as previously disclosed, our largest third-party payor conducted an audit of insurance reimbursement claims ("claims") submitted by us (the "Primary Audit"), which included a review of medical records. We were informed by the third-party payor conducting the Primary Audit that the DOJ was the principal contact related to the subject matter of the Primary Audit. In addition to the Primary Audit, we have been subject to a number of other audits of insurance reimbursement claims submitted to additional third-party payors (collectively with the Primary Audit, the "claims audits"). One of these claims audits does not relate to claims submitted under the FEHB program. On January 4, 2022, the DOJ confirmed to us that the investigation had been referred to the Civil Division of the DOJ and the U.S. Attorney's Office for the Northern District of Texas and the criminal investigation was no longer active.

On April 29, 2022, we entered into a civil settlement agreement with the U.S. government that resolved the previously disclosed DOJ investigation related to our role in customer reimbursement claim submissions to various federal employee health plans under the FEHB program. We cooperated fully with the DOJ investigation. We deny the allegations in the settlement agreement, and the settlement is not an admission of liability by us. The allegations did not pertain to the quality or performance of our product. The settlement agreement provided for our payment of approximately $34.4 million to the U.S. government and resolved allegations that we submitted or caused the submission of claims for payment to the FEHB program using unsupported hearing loss-related diagnostic codes.

The settlement with the U.S. government may not resolve all of the audits of insurance reimbursement claims by the various third-party payors, and additionally we remain subject to a prepayment review of claims by the payor who conducted the Primary Audit. We will need to work with the government (including the OPM) and third-party payors to potentially validate and establish processes to support any future claims that we may submit for reimbursement, and there are no guarantees that we will be able to arrive at any such acceptable processes or submit any future claims. We do not intend to submit any claims through the FEHB program until we are able to align with the OPM on and establish processes for supporting the submission of these claims.

From the time we learned of the DOJ investigation and until December 8, 2021, we continued to process orders for customers with potential insurance benefits (including FEHB program members) but suspended all claims submission activities and offered affected customers (*i.e.*, customers using insurance benefits as a method of direct payment for transactions prior to December 8, 2021) the option to return their hearing aids or purchase their hearing aids without the use of their insurance benefits in case their claim is denied or ultimately not submitted by us to their insurance plan for payment (the "extended right of return").

Beginning on December 8, 2021, we made the decision to stop accepting insurance benefits as a method of direct payment and it is uncertain when, if ever, we will resume accepting insurance benefits as a method of direct payment. While we intend to work with the government and third-party payors at the appropriate time with the objective of validating and establishing processes to support any future claims that we may submit for reimbursement, we may not be able to arrive at acceptable processes or submit any future claims.

Total life-to-date payments we have received from the government through December 31, 2021 in relation to claims submitted under the FEHB program, net of any product returns and associated refunds, were approximately $44 million. As discussed further in Note 6 to the Consolidated Financial Statements included in this Annual Report on Form 10-K, the settlement amount of $34.4 million associated with the DOJ investigation was recorded as a reduction of revenue during the year ended December 31, 2021.

We determined that customer transactions using insurance benefits as a method of direct payment occurring subsequent to learning of the DOJ investigation on September 21, 2021 did not meet the criteria for revenue recognition under ASC 606. As such, we did not recognize revenue for shipments to customers with potential insurance benefits, substantially all of whom were covered under the FEHB program, subsequent to that date.

We estimate that a majority of customers with unsubmitted claims as of December 31, 2021 will choose to return the hearing aid system if their insurance provider denies their claim or the claim is ultimately not submitted by us for payment, resulting in an increase in expected product returns from such transactions that occurred prior to September 21, 2021. As a result, we recorded $13.3 million of estimated sales returns as a reduction in revenue in the third quarter of 2021 related to shipments to customers with potential insurance benefits. This has had a negative impact on the Company's revenues for the year ended December 31, 2021 and resulted in an increase in the Company's sales returns reserve. Of the $13.8 million sales returns reserve recorded as of December 31, 2021, $11.4 million relates to unsubmitted claims that are included in accounts receivable, net. Returns associated with unsubmitted claims will reduce the sales returns reserve, with a corresponding reduction in the related accounts receivable at the time the product is returned.

Further, we also estimate that, in addition to the customers who choose to return their hearing aid systems, a significant number of customers whose claims are denied by insurance providers or not submitted by us for payment may not pay for or return the hearing aid system. The $9.6 million in bad debt expense recorded during the year ended December 31, 2021 is primarily based on this estimate and has had a negative impact on our operating results for the year ended December 31, 2021. Of the $9.6 million recorded to bad debt expense during the year ended December 31, 2021, $5.8 million relates to submitted claims that have been denied or have not been paid and was written off during the year ended December 31, 2021.

Notwithstanding the settlement, we remain subject to prepayment review of claims by our largest third-party payor before any insurance payments are made. We do not intend to submit any claims through the FEHB program until we are able to align with the Office of Personnel Management (the "OPM") on and establish processes for supporting the submission of these claims, and we may be unable to do so.

On January 5, 2022, the U.S. District Court for the Northern District of California consolidated three purported securities class actions brought against the Company (the "Securities Class Action"). While the lead plaintiffs have not yet filed a consolidated amended complaint, the complaints of the individual lawsuits filed prior to the consolidation generally alleged that certain of the Company's disclosures about its business, operations and prospects, including reimbursements from third-party payors, violated federal securities laws. On December 3, 2021, a putative stockholder filed a derivative complaint purportedly on the Company's behalf against members of the Company's Board of Directors and the Company as nominal defendant (the "Derivative Action"), alleging (among other things) that the defendants breached their fiduciary duties by allegedly failing to implement and maintain an effective system of internal controls related to the Company's financial reporting, public disclosures and compliance with laws, rules and regulations governing the business. See Note 6 of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K for more information.

As a result of the uncertainty created by the DOJ investigation and the claims audits, we took certain actions, including, but not limited to:

- We suspended our practice of granting equity awards, except for new restricted stock unit grants that we have the option to settle in cash at the time of vesting, suspended our 2020 Employee Stock Purchase Plan ("ESPP") and deferred the settlement of outstanding restricted stock units ("RSUs"), in each case effective as of November 9, 2021 (collectively, the "employee equity actions").

- Our Board of Directors suspended the non-employee director compensation program with respect to the option awards that would otherwise have been awarded to non-employee directors automatically on the date of our annual meeting of stockholders held on November 9, 2021.
- On December 7, 2021, we announced a plan to reduce our employee workforce to streamline our organization in response to declines in customer orders since we announced the investigation of the Company by the DOJ. We substantially completed the employee workforce reduction during the fourth quarter of 2021, resulting in a reduction of approximately 27% of our employee workforce, or approximately 90 people.

As a result of the DOJ investigation and the various claims audits, we were not able to timely file our Quarterly Report on Form 10-Q for the three months ended September 30, 2021 (our "Q3 10-Q") or this Annual Report on Form 10-K for the year ended December 31, 2021. On November 16, 2021, we filed a Form 12b-25 notifying the SEC that we would be unable to timely file our Q3 10-Q. On November 18, 2021, we were notified by the Nasdaq Stock Market LLC ("Nasdaq") that we were not in compliance with Nasdaq Listing Rule 5250(c)(1) for continued listing as a result of the delay in filing our Q3 10-Q with the SEC. In accordance with Nasdaq Listing Rules, we submitted a plan to regain compliance. Nasdaq granted us an exception of up to 180 calendar days from the Q3 10-Q original filing due date, or until May 16, 2022, to regain compliance. On March 2, 2022, we filed a Form 12b-25 notifying the SEC that we would be unable to timely file this Annual Report on Form 10-K for the year ended December 31, 2021. On March 4, 2022, we were notified again by Nasdaq that we were not in compliance with Nasdaq Listing Rule 5250(c)(1) for continued listing as a result of the delay in filing this Annual Report on Form 10-K. As a result, we submitted to Nasdaq an update to our original plan to regain compliance. Nasdaq's notification dated March 4, 2022 indicated that any additional exception to allow us to regain compliance with all untimely filings will be limited to a maximum of 180 calendar days from the due date of our Q3 10-Q, or May 16, 2022.

On May 11, 2022, we filed a Form 12b-25 notifying the SEC that we would be unable to timely file our Quarterly Report on Form 10-Q for the three months ended March 31, 2022 (our "Q1 2022 10-Q"). On May 12, 2022, we received a letter from Nasdaq notifying us that because we remain delinquent in filing our Q3 10-Q and Annual Report on Form 10-K, and, in addition, because we are delinquent in filing our Q1 2022 10-Q, we had not regained compliance and will not meet the terms of the exception. The letter indicated that our securities would be subject to delisting on May 23, 2022 as a result of our non-compliance, unless on or before May 19, 2022 we request a hearing before the Nasdaq Hearings Panel and request an extended stay of suspension or delisting. We intend to timely request a hearing before the Nasdaq Hearings Panel, at which hearing we will present our plan to regain compliance and request the continued listing of our securities on Nasdaq pending our return to compliance. Such request would automatically stay any suspension or delisting action by Nasdaq for a period of 15 days from the date of our request. The stay could be extended at the option of the Nasdaq Hearings Panel upon our request and support of such extension, and we intend to ask the Nasdaq Hearings Panel for a further stay concurrent with our request for a hearing and pending the ultimate conclusion of the hearing process.

COVID-19

We believe the COVID-19 pandemic has accelerated the pace of consumer awareness of our vertically integrated telecare model and has facilitated customer adoption of the same. Shelter-in-place restrictions and increased reluctance of consumers to conduct in-person activities, particularly among older individuals that comprise a majority of the population needing hearing aids, has resulted in increased knowledge of our business and sales. We cannot be sure this trend will continue as the pandemic-related restrictions lessen and to the extent that customer preferences revert to pre-COVID-19 behaviors.

Because we were deemed to have an essential workforce under the relevant California COVID-19 measures, we were never required to close our facilities and we remained open throughout the COVID-19 pandemic. However, in consideration of our employees, we permitted remote work or hybrid arrangements, where feasible.

For a discussion of the impact of COVID-19 on our supply chain and component and materials sourcing activities, please see "—Manufacturing."

Seasonality

In the past we experienced seasonality in our business, with higher sales volumes in quarters when we launched new products and in the fourth calendar quarter as a result of holiday promotional activity; however, in part due to COVID-19 as well as a decline in gross systems shipped following announcement of the DOJ investigation and our related decision to stop accepting insurance benefits as a method of direct payment (as further discussed in "—DOJ investigation and settlement and claims audits"), seasonal factors did not have a material impact on our results of operations for the year ended December 31, 2021.

Research and development

We are committed to ongoing research and development. Since 2017, we have launched six generations of our hearing aids (four of which we are currently marketing and selling), each adding performance and technical enhancements at different price points.

We are focused on continuing to launch new versions of the Eargo hearing aid with increased functionality and improved sound quality, amplification, noise reduction, fit, comfort, water resistance and ease-of-use, as well as reduced cost of goods and better connectivity. Our development priorities also include expanding and refining our refurbishment capabilities. We believe that the continued introduction of new products is critical to maintaining existing customers, attracting new customers, achieving market acceptance of our products and maintaining or increasing our competitive position in the market.

Manufacturing

The Eargo Max and Eargo Neo HiFi hearing aid systems are currently assembled by Hana Microelectronics Group ("Hana"), a contract manufacturer based in Thailand. A second manufacturer, Pegatron Corporation ("Pegatron"), headquartered in Taiwan and with manufacturing facilities in Suzhou, China, manufactures the Eargo 5 and Eargo 6 hearing aid systems. We rely on several third-party suppliers for the components used in our hearing aids, including semiconductor components, such as integrated circuits, as well as batteries, microphones and receivers.

We believe that these third-party facilities and suppliers will be adequate to meet our current and anticipated manufacturing needs. We do not currently plan to manufacture our hearing aids or any related components ourselves.

Manufacturing facilities that produce medical devices and/or their component parts intended for distribution world-wide are subject to regulation and periodic unannounced inspection by the FDA and other domestic and international regulatory agencies. In the United States, any products we sell are required to be manufactured in compliance with the FDA's Quality System Regulation, which covers the methods used in, and the facilities used for, the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products.

The distribution of our hearing aids is handled directly through a third-party logistics provider. Our finished hearing aids are shipped from Hana and Pegatron to the third-party logistics provider's facility and are distributed from there to customers.

While we have not been directly impacted by any major disruption to our supply chain or access to necessary raw materials and component parts for the manufacture of our products to date that have impacted our ability to service customers, disruptions have occurred across a number of industries and we cannot provide any assurance that future disruptions will not emerge as a result of the ongoing supply chain issues, inflation, the COVID-19 pandemic or other extrinsic factors. To date, increases in our product component pricing have occurred but have not had a material impact on supply continuity or gross margin. We have taken steps to monitor our supply chain and actions to address limited supply and increasing lead times, including outreach to critical suppliers and spot market purchases. For more information, please see the risks described under the caption "We rely on the timely supply of high-quality components, parts and finished products, and our business could suffer if suppliers or manufacturers are unable to procure raw materials or other components of an acceptable quality (or at all) or

otherwise fail to meet their delivery obligations, raise prices or cease to supply us with components, parts or products of acceptable quality" in the "Risk Factors" section of this Annual Report on 10-K. For more information regarding the impacts of COVID-19, please see "—COVID-19."

Intellectual Property

We rely on a combination of patent, copyright, trademark and trade secret laws and confidentiality and invention assignment agreements to protect our intellectual property rights. As of December 31, 2021, we had 24 issued U.S. patents, 22 patents outside the United States, 7 pending U.S. patent applications and 9 pending foreign patent applications. Our patents include utility patents covering technology ranging from remote control of our hearing aids to design patents covering the housing and securing mechanisms for our hearing aids. We have foreign patents in the EU, Australia, Canada, China, Germany, Japan, Singapore and South Korea. We own all of our patents and do not rely on any licenses to utilize the technology covered by these patents. The earliest of our patents is expected to expire in 2025. An issued U.S. patent with claims generally directed to an open ear canal hearing aid comprised of certain electronics and securing portions and an issued U.S. patent with claims generally directed to an adjustable securing mechanism for a space access device are each expected to expire in 2030.

Our pending patent applications may not result in issued patents, and we cannot assure you that any current or subsequently issued patents will protect our intellectual property rights. Third parties may challenge certain patents issued to us as invalid, may independently develop similar or competing technologies or may design around any of our patents. We cannot be certain that any of the steps we have taken will prevent the misappropriation of our intellectual property, particularly in foreign countries where the laws may not protect our proprietary rights in these countries as fully as in the United States.

There is no active patent litigation involving us and we have not received any notices of patent infringement involving any of our products.

As of December 31, 2021, we had 34 trademark registrations and 10 pending trademark applications worldwide.

Competition

We compete in the hearing aid market against manufacturers, clinics and retailers of hearing aids, other direct-to-consumer providers of hearing aids and, to a lesser extent, providers of personal sound amplification products ("PSAPs"). We believe that the primary competitive factors in the market are:

- product quality and performance, including but not limited to, the size, sound quality, comfort, whether the batteries are rechargeable, reliability and connectivity of the hearing aid;
- customer purchasing experience;
- visibility of hearing aid;
- pricing, including access to insurance benefits;
- product support and service;
- effective marketing and education;
- technological innovation, product enhancements and speed of innovation; and
- sales and distribution capabilities.

After a period of industry consolidation, five manufacturers control a vast majority of the global hearing aid industry today. These manufacturers are GN Store Nord, Sonova, Starkey, William Demant and WS Audiology, all of which have established products and substantially greater financial, sales and marketing, manufacturing and development resources than we possess. In addition to these manufacturers, we also compete against hearing clinics and retailers, such as Costco. Costco sells its Kirkland Signature label behind-the-ear hearing aids in store and also sells behind-the-ear, in-the-ear and in-the-canal hearing aids under the Philips, Phonak, ReSound and Rexton

brands, each at various price points. We also compete against other direct-to-consumer hearing aid providers such as Audicus and Lively (which was recently acquired by GN Store Nord), which, similar to our business model, allow consumers to purchase hearing aids without visiting a clinic and provide remote support for their products.

Our competitors may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards or customer requirements, including with respect to changes to the industry landscape potentially arising as a result of the FDA's Proposed Rule creating an OTC category of hearing aids (see "Government Regulation—Regulation by the FDA—Proposed Rule for OTC category for hearing aids" for more information). Creation of a new category of OTC hearing aids by the FDA could materially alter the competitive environment for hearing loss treatment. The FDA and the Biden administration have stated that the intention of the Proposed Rule to establish OTC hearing aids is to reduce barriers to access, foster innovation in hearing aid technology, and promote the wide availability of low-cost hearing aids. We expect the removal of regulatory barriers to entry will facilitate the introduction of new and varied product designs by incumbent and new competitors.

Considering the resources and advantages that our competitors maintain, even if our technology and consumer-first business model and distribution strategy are more effective than the technology and distribution strategy of our competitors, current or potential customers might accept competitor products in lieu of purchasing our products. We anticipate that we will face increased competition in the future, and may also experience intensifying pricing pressures, as existing companies and competitors develop new or improved products and distribution strategies and as new companies enter the market with new technologies and distribution strategies (possibly with increased frequency if and when the FDA finalizes its Proposed Rule, discussed above). We may not be able to compete effectively against these organizations. Our ability to compete successfully and to increase our market share is dependent upon our approach to addressing unmet needs in the hearing aid industry. Increased competition in the future could adversely affect our revenue, revenue growth rate, if any, margins and market share.

Government regulation

We operate in a complex regulatory environment with an extensive and evolving set of federal, state and local governmental laws, regulations, and other requirements. These laws, regulations and other requirements are promulgated and overseen by a number of different legislative, regulatory, administrative and quasi-regulatory bodies, each of which may have varying interpretations, judgments or related guidance. For example, our products and operations are subject to extensive and rigorous regulation by the U.S. Food and Drug Administration (the "FDA"), which regulates, among other things, the research, development, testing, design, manufacturing, approval, labeling, storage, recordkeeping, advertising, promotion and marketing, distribution, post approval monitoring and reporting and import and export of medical devices in the United States to assure the safety and effectiveness of medical products for their intended use. The U.S. Federal Trade Commission (the "FTC") also regulates the advertising of our products in the United States. Further, we are subject to laws directed at preventing fraud and abuse, which subject our sales and marketing, training, and other practices to government scrutiny.

As such, we utilize considerable resources on an ongoing basis to monitor, assess and respond to applicable legislative, regulatory, and administrative requirements, but there is no guarantee that we will be successful in our efforts to adhere to all of these requirements. Additional discussion on certain of these laws, regulations and other requirements is set forth below in this section.

If any of our personnel, representatives or operations are alleged to have violated these or other laws, regulations or requirements, we could suffer severe consequences, including material harm to our reputation, that could have a material adverse effect on our business, results of operations, financial condition and cash flows, among other things.

We expect that our industry will continue to be subject to extensive and complex regulation, the scope and effect of which are difficult to predict. For additional detail on risks related to each of the foregoing, see the Risk Factors titled, "Changes in the regulatory landscape for hearing aid devices could render our direct-to-consumer business model contrary to applicable regulatory requirements, and we may be required to seek additional

clearance or approval for our products," "Our hearing aids are subject to extensive government regulation at the federal and state level, and our failure to comply with applicable requirements could harm our business," and "If we fail to comply with U.S. or foreign federal and state healthcare regulatory laws, we could be subject to penalties, including, but not limited to, administrative, civil and criminal penalties, damages, fines, disgorgement, exclusion from participation in governmental healthcare programs and the curtailment of our operations, any of which could adversely impact our reputation and business operations."

Regulation by the FDA

The FDA classifies hearing aids, including in-the-canal hearing aids such as our products, as medical devices. In the United States, the Federal Food, Drug, and Cosmetic Act (the "FDCA"), as well as FDA regulations and other federal and state statutes and regulations, govern, among other things, medical device design and development, preclinical and clinical testing, device safety, premarket clearance and approval, establishment registration and device listing, manufacturing, labeling, storage, record-keeping, advertising and promotion, sales and distribution, export and import, recalls and field safety corrective actions, and post-market surveillance, including complaint handling and medical device reporting of adverse events. Failure to comply with applicable requirements may subject a company to a variety of administrative or judicial sanctions, such as warning or untitled letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, civil penalties and criminal prosecution. The FDA can also refuse to approve or clear pending product applications.

The FDA classifies medical devices into three classes (Class I, II or III) based on the degree of risk associated with a device and the level of regulatory control deemed necessary to ensure its safety and effectiveness. Class I devices are those for which safety and effectiveness can be assured by adherence to the FDA's general controls for medical devices, which include compliance with the FDA's current good manufacturing practices for devices, as reflected in the Quality System Regulation ("QSR"), establishment registration and device listing, reporting of adverse events, and truthful, non-misleading labeling, advertising and promotional materials. Some Class I devices also require premarket clearance by the FDA through the premarket notification process set forth in Section 510(k) of the FDCA. Class II devices are subject to the FDA's general controls and any other special controls deemed necessary by the FDA to ensure the safety and effectiveness of the device, such as performance standards, product-specific guidance documents, special labeling requirements, patient registries and/or post-market surveillance. Most Class II devices must also comply with the FDA's Section 510(k) premarket notification requirements. Class III devices are those that support or sustain human life, are of substantial importance in preventing impairment of human health, or which present a potential, unreasonable risk of illness or injury. Due to the level of risk associated with Class III devices, general and special controls alone are insufficient to assure their safety and effectiveness. Devices placed in Class III generally require the submission of a premarket approval ("PMA") application demonstrating the safety and effectiveness of the device, which must be approved by the FDA prior to marketing, or the receipt of a 510(k) de novo classification, which provides for the reclassification of the device into Class I or II. The PMA approval process is more stringent, time-consuming and expensive than the 510(k) clearance process; however, the 510(k) clearance process has also become increasingly stringent and expensive.

We currently market our products pursuant to the FDA regulatory framework for air-conduction hearing aids and wireless air-conduction hearing aids, which are classified as Class I and Class II devices, respectively, and are exempt from 510(k) clearance requirements. While applicable FDA regulations establish certain "conditions for sale" of all hearing aids, including that prospective hearing aid users must have a medical evaluation by a licensed physician within the six months prior to the hearing aid dispensation or sign a waiver of medical evaluation, the FDA has stated that it does not intend to enforce these medical evaluation and waiver requirements prior to the dispensing of Class I air-conduction and Class II wireless air-conduction hearing aids to individuals 18 years of age and older. Accordingly, while we are required to comply with other FDA requirements, our products are currently not reviewed by the FDA.

In May 2018, the FDA granted a de novo classification request from Bose for a direct-to-consumer "self-fitting air-conduction hearing aid," which is classified in Class II and subject to 510(k) premarket review. Although our devices are not currently registered or marketed as "self-fitting" hearing aids, and we expect our products to continue to be regulated as Class I or Class II exempt devices, we may in the future seek clearance for one or more of our products as a "self-fitting air-conduction hearing aid," or the FDA may require us to do so, subjecting such device or devices to 510(k) premarket review.

Proposed Rule for OTC category of hearing aids

The FDA Reauthorization Act of 2017 ("FDARA") created a new category of over-the-counter ("OTC") hearing aids that are intended to be available without supervision, prescription, or other order, involvement or intervention of a licensed practitioner. The language in FDARA is not self-implementing, which means that the OTC hearing aid category does not exist until there is effective regulation. On October 20, 2021, the FDA published a notice of proposed rulemaking to establish new regulatory categories for OTC and prescription hearing aids, among other things (the "Proposed Rule"). Under FDARA, the OTC hearing aid controls that are the subject of the rulemaking, if finalized, would preempt any state or local requirement specifically related to hearing products that would restrict or interfere with commercial activity involving OTC hearing aids. The comment period on the Proposed Rule, in which we participated in support of the Proposed Rule, ended on January 18, 2022, after which the FDA will review the comments. It is not clear whether the FDA will publish a final rule (the "Final Rule"), and whether the Final Rule will differ significantly from the Proposed Rule. However, if the FDA publishes a Final Rule, it would become effective 60 days after publication.

Under the Proposed Rule, devices that require 510(k) clearance to be compliant with the rule requirements would need to be cleared by the effective date of the Final Rule in order to continue to be marketed. For all other currently marketed devices, the proposed compliance date is 180 days after the effective date of the Final Rule (240 days after the publication of the Final Rule).

We market the Eargo hearing aid systems as Class I or Class II air-conduction hearing aids under existing regulations at 21 CFR 874.330 and 874.3305, both of which are exempt from 510(k) premarket review. Our hearing aids may be marketed under the current FDA framework during the FDA's rulemaking proceeding. However, we cannot know to what extent the Final Rule may differ from the Proposed Rule. Once the FDA issues a Final Rule, we will assess the Final Rule and intend to take steps as appropriate to ensure that our devices and processes come into compliance with any new applicable requirements in order to market our products in the future.

510(k) clearance

If not exempted from the FDA's 510(k) notification requirement, to obtain 510(k) clearance for a medical device, an applicant must submit a premarket notification to the FDA demonstrating that the device is "substantially equivalent" to a legally marketed device, commonly known as the "predicate device." A legally marketed predicate device may include a device that was legally marketed in the United States prior to May 28, 1976 for which a PMA is not required (commonly known as a "pre-amendments device" based on the date the Medical Device Amendments of 1976 were enacted), a device which the FDA has reclassified from Class III to Class II or I, or a device which has been found substantially equivalent to such a device through the 510(k) process. A device is considered to be substantially equivalent if, with respect to the predicate device, it has the same intended use and has either (i) the same technological characteristics, or (ii) different technological characteristics, but the information provided in the 510(k) submission demonstrates that the device does not raise new questions of safety and effectiveness and is at least as safe and effective as the predicate device. A showing of substantial equivalence may sometimes, but not always, require clinical data. Before the FDA will accept a 510(k) submission for substantive review, the FDA will first assess whether the submission satisfies a minimum threshold of acceptability. If the FDA determines that the 510(k) submission is incomplete, the FDA will issue a "Refuse to Accept" letter which generally outlines the information the FDA believes is necessary to permit a

substantive review and to reach a determination regarding substantial equivalence. An applicant must submit the requested information before the FDA will proceed with additional review of the submission. Once a 510(k) submission is accepted for review, the FDA has 90 days to review and issue a determination. As a practical matter, clearance often takes longer. The FDA may request additional information, including clinical data, to make a determination regarding substantial equivalence, which may significantly prolong the review process. The review period is suspended during the time the additional information request is pending. Unless a specific exemption applies, 510(k) premarket notification submissions are subject to user fees.

Medical devices can be marketed only for the indications for which they are cleared or approved. After a device has received 510(k) clearance for a specific intended use, any change or modification that significantly affects its safety or effectiveness, such as a significant change in the design, materials or method of manufacture, or that would constitute a new or major change in intended use, may require a new 510(k) clearance or PMA approval and payment of an additional FDA user fee. The determination as to whether or not a modification constitutes such a change is initially left to the manufacturer using available FDA guidance; however, the FDA may review this determination to evaluate the regulatory status of the modified product at any time and may require the manufacturer to cease marketing and recall the modified device until new 510(k) clearance or PMA approval is obtained. The manufacturer may also be subject to significant regulatory fines or penalties.

Clinical trials

Clinical trials are sometimes required for 510(k) clearance. Such trials generally require submission of an investigational device exemption ("IDE") application to the FDA for a specified number of patients and study sites, unless the product is deemed to be a non-significant risk device which may be subject to more abbreviated IDE requirements. If an IDE is required, the FDA and the appropriate institutional review boards ("IRBs") at the clinical sites must approve the study before clinical trials may begin. Clinical trials are subject to extensive monitoring, record keeping and reporting requirements. Clinical trials must be conducted under the oversight of IRBs for the relevant clinical trial sites and must comply with FDA regulations, including but not limited to those relating to good clinical practices ("GCPs"), which include the requirement that all research subjects provide their informed consent for participation in each clinical study. The clinical trial sponsor, the FDA or the IRB could suspend or terminate a clinical trial at any time for various reasons, including a belief that the subjects are being exposed to an unacceptable health risk. Even if a trial is completed, the results of clinical testing may not adequately demonstrate the safety and effectiveness of the device or may otherwise not be sufficient to obtain FDA clearance to market the product.

Labeling and sale

All hearing aids commercially distributed in the United States must comply with specific FDA labeling requirements. These requirements address the labeling of the device itself as well as the User Instructional Brochure that must be provided to all potential hearing aid recipients. Hearing aids must be clearly and permanently marked with, among other things, the name of the device manufacturer, the model name or number, and the year of manufacture. In addition, the User Instructional Brochure must contain, among other things, specific instructions for the use of, maintenance and care of, and replacement or recharging of the batteries of the hearing instrument, information regarding known side effects that may warrant a physician consultation, a warning statement specified in FDA regulations, and technical data useful in selecting and fitting a hearing instrument and checking its performance.

In addition, FDA regulations require that the marketing of hearing aids comply with certain "conditions for sale," including, among other things, the requirement that prospective hearing aid users must undergo a medical evaluation (or provide a signed waiver) before a hearing aid may be dispensed, along with certain recordkeeping requirements. In 2016, the FDA issued a guidance document stating that it did not intend to enforce the medical evaluation, waiver, or recordkeeping requirements prior to the dispensing of Class I air-conduction and Class II wireless air-conduction hearing aids to individuals 18 years of age and older. In addition, if the Proposed Rule is

finalized as written, we expect that hearing aids marketed as OTC under the new framework must comply with specified labeling requirements and applicable conditions for sale.

Quality System Regulation

The hearing aids that we commercially distribute in the United States are subject to pervasive and continuing regulation by the FDA and certain state agencies. This includes product listing and establishment registration requirements, which facilitate FDA inspections and other regulatory actions. We are required to adhere to applicable current good manufacturing practice ("cGMP") requirements, as set forth in the QSR, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all phases of the design and manufacturing process. We are also required to verify that our suppliers maintain facilities, procedures and operations that comply with applicable quality and regulatory requirements. The FDA enforces the QSR through periodic announced or unannounced inspections of medical device manufacturing facilities, which may include the facilities of contractors. FDA regulations also require investigation and correction of any deviations from the QSR and impose reporting and documentation requirements upon us and our third-party manufacturers. Noncompliance with these regulations can result in, among other things, fines, injunctions, civil penalties, recalls or seizures of products, total or partial suspension of production, FDA refusal to grant 510(k) clearance or PMA approval to new devices, withdrawal of existing clearances or approvals, and criminal prosecution.

Post-market surveillance

We must also comply with post-market surveillance regulations, including medical device reporting, or MDR, requirements which require that we review and report to the FDA any incident in which our products may have caused or contributed to a death or serious injury, and any incident in which our product has malfunctioned if that malfunction would likely cause or contribute to a death or serious injury if it were to recur. We must also comply with medical device correction and removal reporting regulations, which require manufacturers to report to the FDA corrections and removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health. Although we may undertake recall actions voluntarily, we must submit detailed information on any recall action to the FDA, and the FDA can order a medical device recall in certain circumstances.

In addition to post-market quality and safety actions, labeling and promotional activities are subject to scrutiny by the FDA and, in certain circumstances, by the FTC. Medical devices approved or cleared by the FDA may not be promoted for unapproved or uncleared uses, otherwise known as "off-label" promotion. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability, including substantial monetary penalties and criminal prosecution.

Failure to comply with applicable regulatory requirements, including delays in or failures to report incidents to the FDA as required under the MDR regulations, can result in enforcement action by the FDA, which can include any of the following sanctions:

- warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties;
- customer notifications or repair, replacement, refund, recall, administrative detention or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;
- FDA refusals or delays on requests for 510(k) clearance or PMA approval of new or modified products;
- withdrawal of 510(k) clearances or PMA approvals that have already been granted;

- refusal to grant export approval for products; or
- civil penalties or criminal prosecution.

Other healthcare laws and regulations

The healthcare industry is also subject to federal and state fraud and abuse laws, including anti-kickback, self-referral, false claims and physician payment transparency laws, as well as patient data privacy and security and consumer protection and unfair competition laws and regulations. Our operations are also subject to certain state and local hearing care laws, including those applicable to the licensure and registration of audiologists and other individuals that dispense hearing aids, sales and marketing practices, interactions with consumers, consumer incentive and other promotional programs, and state corporate practice and fee-splitting prohibitions.

Fraud and abuse laws

In addition to the FDA, other broadly applicable federal and state healthcare laws and regulations apply to our operations and business practices. These laws may constrain the business or financial arrangements and relationships through which we conduct our operations, including our direct-to-consumer activities and sales and marketing practices as well as other business practices. Additionally, we are subject to numerous federal healthcare anti-fraud laws, including the federal Anti-Kickback Statute, the Physician Self-Referral Law and the False Claims Act, that are intended to reduce fraud, waste and abuse in the healthcare industry, and analogous state laws that may apply to healthcare items and services paid by all payors, including self-pay patients and private insurers. These laws are broad and subject to evolving interpretations. They prohibit many arrangements and practices that are lawful in industries other than healthcare, including pricing, sales and marketing activities, sales commissions, customer incentive and other promotional programs, and the provision of gifts and business courtesies. We must operate our business within the requirements of these laws. Violations of any of these health regulatory laws may result in potentially significant penalties, including criminal and civil and administrative penalties, damages, fines, disgorgement, imprisonment, exclusion from participation in government healthcare programs, contractual damages, reputational harm, administrative burdens, diminished profits and future earnings, and the curtailment or restructuring of our operations.

In addition, the U.S. Physician Payments Sunshine Act requires manufacturers to report to the Department of Health and Human Services ("HHS") detailed information about financial arrangements with physicians and teaching hospitals and, with reporting requirements going into effect in 2022 for payments made in 2021, financial arrangements with physician assistants, nurse practitioners, and other mid-level practitioners. 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 manufacturers to significant civil monetary penalties.

State licensing, corporate practice and fee-splitting prohibitions

Regulation of the hearing aid industry exists in every state. These laws and regulations are primarily concerned with the licensure and registration of audiologists and other individuals and companies that dispense hearing aids, including procedures involving the fitting and dispensing of hearing aids. In addition, most states require warranty and return policies for consumers allowing for the return of product, and restrict hearing aid advertising and marketing practices. These state laws are subject to change, and states may impose more stringent requirements for dispensers of hearing aids. The FDCA preempts state laws relating to the safety and efficacy of medical devices and state laws that are different from or in addition to federal requirements. Although courts in certain jurisdictions have held that certain state laws relating to the fitting and dispensing of hearing aids are preempted because they relate to the safety and efficacy of medical devices, interpretative legal precedent and regulatory guidance varies by jurisdiction and is often sparse and not fully developed, including which laws and regulations are subject to the federal preemption relating to safety and efficacy of medical devices, complicating

our compliance efforts. Other courts could conclude that similar or identical state laws are not preempted. A determination that we are in violation of applicable laws and regulations in any jurisdiction in which we operate could have a material adverse effect on us, particularly if we are unable to restructure our operations and arrangements to comply with the requirements of that jurisdiction, if we are required to restructure our operations and arrangements at a significant cost, or if we are subject to penalties or other adverse action. Additionally, applicable federal laws and regulations continue to evolve. The FDA is currently engaged in a rulemaking process to publish a final regulation regarding OTC hearing aids. If the Proposed Rule is finalized as currently drafted, any state or local requirement specifically related to hearing products that would restrict or interfere with commercial activity involving OTC hearing aids would be preempted.

Our arrangements with hearing professionals may implicate certain state laws, commonly referred to as the corporate practice of learned professions, including audiology, and fee-splitting laws, which are intended to prevent unlicensed persons from interfering with or influencing the audiologist's or other hearing care specialist's professional judgment. These laws vary from state to state, including those where we do business, and are subject to broad interpretation and enforcement by state regulators. In the event that regulatory authorities or other third parties were to challenge these arrangements, we could be subject to adverse judicial or administrative interpretations, to civil or criminal penalties, our contracts could be found legally invalid and unenforceable or we could be required to restructure our arrangements with our audiologists and other licensed professionals. Audiologists and certain other hearing care specialists are required to maintain valid state licenses to practice and must comply with numerous state and local licensing laws and regulations, and each state defines the scope of practice for audiologists and other hearing care specialists through legislation and their respective state regulatory agencies and boards. Activities that qualify as professional misconduct under state law may subject our personnel to sanctions or may even result in loss of their licensure and could, possibly, subject us to sanctions as well.

Privacy and security

The Health Insurance Portability and Accountability Act of 1996 and its implementing privacy and security regulations, as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH") (collectively referred to as "HIPAA"), imposes privacy, security and breach reporting obligations with respect to individually identifiable health information upon "covered entities" (health care providers, health plans and health care clearinghouses), and their respective business associates, individuals or entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HITECH increased the civil and criminal penalties that may be imposed against covered entities and business associates and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce HIPAA and seek attorneys' fees and costs associated with pursuing federal civil actions. Additionally, HIPAA mandates the reporting of certain breaches of health information to the HHS, affected individuals and, if the breach is large enough, the media.

Even when HIPAA does not apply, according to the FTC, failing to take appropriate steps to keep consumers' personal information secure constitutes unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act. The FTC expects a company's data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities. Individually identifiable health information is considered sensitive data that merits stronger safeguards.

In addition, certain state and non-U.S. laws, such as the General Data Protection Regulation (the "GDPR") govern the privacy and security of health information in certain circumstances, some of which are more stringent than HIPAA and many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. Failure to comply with these laws, where applicable, can result in the imposition of significant civil and/or criminal penalties and private litigation. For example, California enacted the California Consumer Privacy Act (the "CCPA"), which took effect on January 1, 2020. The CCPA, among

other things, creates new data privacy obligations for covered companies and provides new privacy rights to California residents, including the right to opt out of certain disclosures of their information. The CCPA also creates a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach. Although the law includes limited exceptions, including for "protected health information" maintained by a covered entity or business associate, it may regulate or impact our processing of personal information depending on the context. Further, the California Privacy Rights Act (the "CPRA") passed in California. The CPRA will impose additional data protection obligations on covered businesses, including additional consumer rights processes, limitations on data uses, new audit requirements for higher risk data, and opt outs for certain uses of sensitive data. It will also create a new California data protection agency authorized to issue substantive regulations and could result in increased privacy and information security enforcement. The majority of the provisions will go into effect on January 1, 2023, and additional compliance investment and potential business process changes may be required. Similar laws have passed in Virginia, Colorado and Utah, and have been proposed in other states and at the federal level, reflecting a trend toward more stringent privacy legislation in the United States. The enactment of such laws could have potentially conflicting requirements that would make compliance challenging. In the event that we are subject to or affected by HIPAA, the CCPA, the CPRA or other domestic privacy and data protection laws, any liability from failure to comply with the requirements of these laws could adversely affect our financial condition. We may need to invest substantial resources in putting in place policies and procedures to comply with these evolving state laws.

We are subject to the GDPR in Europe, which went into effect in May 2018 and imposes strict requirements for processing the personal data of individuals within the European Union (the "EU") and the European Economic Area (the "EEA"). Companies that must comply with the GDPR face increased compliance obligations and risk, including more robust regulatory enforcement of data protection requirements and potential fines for noncompliance of up to €20 million or 4% of the annual global revenues of the noncompliant company, whichever is greater. Among other requirements, the GDPR regulates transfers of personal data subject to the GDPR to third countries that have not been found to provide adequate protection to such personal data, including the United States, and the efficacy and longevity of current transfer mechanisms between the EU and the United States remains uncertain. For example, in 2016, the EU and United States agreed to a transfer framework for data transferred from the EU to the United States, called the Privacy Shield, but the Privacy Shield was invalidated in July 2020 by the Court of Justice of the European Union. Further, as of January 1, 2021, impacted companies have to comply with the GDPR and the United Kingdom GDPR ("UK GDPR"), which, together with the amended UK Data Protection Act 2018, retains the GDPR in UK national law. The UK GDPR mirrors the fines under the GDPR, *i.e.*, fines up to the greater of €20 million (£17.5 million) or 4% of global turnover. While we continue to address the implications of the recent changes to European data privacy regulations, data privacy remains an evolving landscape at both the domestic and international level, with new regulations coming into effect and continued legal challenges, and our efforts to comply with the evolving data protection rules may be unsuccessful. It is possible that these laws may be interpreted and applied in a manner that is inconsistent with our practices. Accordingly, we must devote significant resources to understanding and complying with this changing landscape.

Foreign Corrupt Practices Act

The U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), prohibits U.S. businesses and their representatives from offering to pay, paying, promising to pay or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision of the foreign official in his or her official capacity or to secure any other improper advantage in order to obtain or retain business. The FCPA also obligates companies whose securities are listed in the United States, like us, to comply with accounting provisions that require us to maintain books and records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the corporation, including international subsidiaries, if any, and to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements. The scope of the FCPA includes interactions with certain healthcare professionals in many countries.

International laws

Globally, other countries have enacted anti-bribery laws and/or regulations similar to the FCPA. Violations of any of these anti-bribery laws, or allegations of such violations, could have a negative impact on our business, results of operations and reputation.

Additionally, as described above, there are also international privacy laws that impose restrictions on the access, use, and disclosure of health information and, as in the United States, there are significant and complex laws and regulations pertaining to our products and business model. To the extent we expand internationally, we will need to expend time and resources evaluating and complying with any such laws and regulations. For more information, see the Risk Factors titled, "Any future international expansion will subject us to additional costs and risks that may have a material adverse effect on our business, financial condition and results of operations" and "We operate in a regulated industry and changes in the regulations or the implementation of existing regulations could affect our operations and prospects for future growth."

Environmental matters

Our operations, properties and products are subject to a variety of U.S. and foreign environmental laws and regulations governing, among other things, air emissions, wastewater discharges, management and disposal of hazardous and non-hazardous materials and waste and remediation of releases of hazardous materials. We believe that we are in material compliance with environmental laws and regulations applicable to us. However, our failure to comply with present and future requirements under these laws and regulations, or environmental contamination or releases of hazardous materials on our leased premises, as well as through disposal of our products, could cause us to incur substantial costs, including clean-up costs, personal injury and property damage claims, fines and penalties, costs to redesign our products or upgrade our facilities and legal costs, or require us to curtail our operations, any of which could seriously harm our business.

Human capital management

Employees

As of December 31, 2021, we had approximately 257 full-time employees worldwide, of which approximately 250 were employed in the United States. None of our employees is represented by a labor union or collective bargaining agreement, and we consider our employee relations to be good.

Talent attraction, development and retention

Our success depends in part on our continued ability to recruit, retain, develop and motivate a diverse population of talented employees at all levels of our organization. To succeed in a competitive industry, our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and additional employees.

In addition to acquiring new talent, we focus on growing and developing our existing talent. We conduct regular individual performance reviews in which managers provide regular feedback and coaching to assist with employee development. We make investments to enhance employees' skill levels and provide professional opportunities for career development and advancement. Our learning and development experiences focus on onboarding new hires as well as offering workshops focused on skills development and compliance training.

Our leadership team focuses on identifying the next generation of leaders to ensure that the organization is prepared to fill critical roles with employees who are prepared to support the strategy of the business and respond to the needs of key stakeholders. Furthermore, although we had a reduction-in-force at the end of 2021, we offered affected employees severance packages. Where possible, we offered opportunities for retraining and reskilling certain employees to reduce the impact of the reduction-in-force on our employees.

Diversity & inclusion

We view diversity as integral to our future success. Diversity in our workforce fosters innovation, while inclusion helps ensure that we have the right culture, processes, policies, and practices to make employees feel valued and included. Developing teams where team members feel heard, respected, and included is one of our core values. As of December 31, 2021, approximately 40% of our total domestic workforce was female and approximately 25% of our employees in domestic managerial roles were female. Minorities (non-White) constituted approximately 35% of our total domestic workforce and approximately 35% of our employees in domestic managerial roles were minorities as of the same date.

Compensation and benefits

We focus on paying employees fairly and competitively. As a medical device company in the healthcare industry, we recognize the importance of compensation and benefits that are designed to support the financial, mental, and physical well-being of our team members and their families. Our compensation packages typically include incentive plans comprised of discretionary stock-based compensation awards and cash-based performance bonus awards, health benefits, including options for medical plans, pharmacy, dental and vision coverage, a 401(k) plan, life and disability insurance, discretionary paid time off, family leave, a technology stipend for remote work, commuter benefit program, and a program for partial education reimbursement. Eligibility for, and the level of, benefits vary depending on team members' full-time or part-time status, work location, compensation level, and tenure.

Health and safety

We remain focused on promoting the total wellness of our employees including resources, programs and services to support their physical, mental and financial wellness. As a result of the COVID-19 pandemic, we have augmented certain historical business practices to ensure that we promote the health and safety of our employees. While we were never required to physically close our offices, we provided, when feasible, opportunities for employees to work remotely. We have established safety policies and protocols, and we regularly update our employees with respect to any changes. We also have adjusted attendance policies to encourage those who may be ill to stay home. To further protect our on-site employees, we have made available personal protective equipment and cleaning supplies. We have also provided general information updates and support for our employees to ensure that they have resources and information to protect their health and that of those around them, including their families and colleagues.

Available information

Our Internet address is www.eargo.com. We routinely post important information for investors on our website in the "Investor Relations" section, which may be accessed from our homepage at www.eargo.com or directly at https://ir.eargo.com/. We use this website as a means of disclosing material, non-public information and for complying with our disclosure obligations under Regulation FD. Accordingly, investors should monitor the Investor Relations section of our website, in addition to following our press releases, SEC filings, public conference calls, presentations and webcasts. Our goal is to maintain the Investor Relations website as a portal through which investors can easily find or navigate to pertinent information about us, free of charge, including:

- our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), as well as our proxy statement, as soon as reasonably practicable after we electronically file that material with or furnish it to the SEC;
- announcements of investor conferences and events at which our executives talk about our products and competitive strategies, as well as archives of these events;
- press releases on quarterly earnings, product announcements, legal developments and other material news that we may post from time to time;

- corporate governance information, including our Corporate Governance Guidelines, Code of Business Conduct and Ethics, information concerning our Board of Directors and its committees, including the charters of the Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee;
- stockholder services information, including ways to contact our transfer agent; and
- opportunities to sign up for email alerts.

The content on our website is not incorporated by reference into, or a part of, this Annual Report on Form 10-K or any other report or document we file with or furnish to the SEC, and any references to our website are intended to be inactive textual references only.

Item 1A. Risk Factors.

Risk factor summary

Below is a summary of the principal factors that make an investment in our common stock speculative or risky. This summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary, and other risks that we face, can be found below under the heading "Risk Factors" and should be carefully considered, together with other information in this Annual Report on Form 10-K and our other filings with the SEC, before making investment decisions regarding our common stock.

- We face considerable uncertainty in our business prospects, as a significant portion of our revenue has historically been dependent upon reimbursement from third-party payors participating in the FEHB program but we have operated on a "cash pay" only basis since December 8, 2021. Following the civil settlement with the U.S. government on April 29, 2022, we may be unsuccessful in validating and establishing processes to support the submission of claims for reimbursement from third-party payors participating in the FEHB program in the future. As a result, we have faced a significant reduction in revenue and any failure to establish processes to support reimbursement from third-party payors in the future may significantly and adversely impact our business and growth prospects and our ability to sell our products.
- Our negative cash flows and current lack of financial resources raise substantial doubt as to our ability to continue as a going concern. If we are unable to raise additional funding to meet our operational needs, we will be forced to limit or cease our operations and/or liquidate our assets.
- Potential opportunities for growth in our business outside of the FEHB program, such as the anticipated implementation of the pending OTC hearing aid regulatory framework and any potential Medicare, or other insurance, coverage for certain hearing aids, may not materialize and, as such, our business and growth prospects and our ability to sell our products may be materially and adversely impacted.
- We are subject to risks from legal proceedings, investigations and inquiries, including a number of recent legal proceedings and investigations, which have had and could continue to have a material adverse effect on our reputation, business, financial condition, cash flows and results of operations, and could result in additional claims and material liabilities.
- We have a limited operating history and have grown significantly in a short period of time. If we are unable to manage our business and anticipated growth effectively, our business and growth prospects could be materially and adversely affected.
- If we fail to attract and retain senior management and key technology personnel, our business may be materially and adversely affected.
- We have a history of net losses, and expect to incur additional substantial losses in the foreseeable future.
- Changes in the regulatory landscape for hearing aid devices could render our direct-to-consumer business model contrary to applicable regulatory requirements, and we may be required to seek additional clearance or approval for our products.

- If we cannot innovate at the pace of our hearing aid manufacturing competitors, we may not be able to develop or exploit new technologies in time to remain competitive.
- We are deploying a new business model in an effort to disrupt a relatively mature industry. In order to successfully challenge incumbent business models and become profitable, we will need to continue to refine our product and strategy.
- We operate in a highly competitive industry, and competitive pressures could have a material adverse effect on our business.
- If we are unable to reduce our return rates or if our return rates continue to increase, our net revenue may continue to decrease, and our business, financial condition and results of operations could be adversely affected.
- We rely on a limited number of manufacturers for the assembly of our hearing aids. If we encounter manufacturing problems or delays, we may be unable to promptly transition to alternative manufacturers and our ability to generate revenue will be limited.
- We rely on the timely supply of high-quality components, parts and finished products, and our business could suffer if suppliers or manufacturers are unable to procure raw materials or other components of an acceptable quality (or at all) or otherwise fail to meet their delivery obligations, raise prices or cease to supply us with components, parts or products or acceptable quality.
- If the quality of our hearing aid products does not meet consumer expectations, or if our products wear out more quickly than expected, then our brand and reputation or our business could be adversely affected.
- There are a variety of hearing aid products and technologies, and consumer confusion about product features and technology could lead consumers to purchase competitive products instead of our products, or to conflate any adverse events or safety issues associated with third-party hearing aid products with our products, which could adversely affect our business, financial condition and results of operations.
- Our success depends in part on our proprietary technology, and if we are unable to obtain, maintain or successfully enforce our intellectual property rights, the commercial value of our products and services will be adversely affected and our competitive position may be harmed.

Risk Factors

Our operating and financial results are subject to various risks and uncertainties. You should carefully consider the risks described below, as well as all of the other information contained in this Annual Report on Form 10-K, including our financial statements and related notes, before investing in our common stock. While we believe that the risks and uncertainties described below are the material risks currently facing us, additional risks that we do not yet know of or that we currently think are immaterial may also arise and materially affect our business.

Risks relating to our industry and business

We face considerable uncertainty in our business prospects, as a significant portion of our revenue has historically been dependent upon reimbursement from third-party payors participating in the FEHB program but we have operated on a "cash pay" only basis since December 8, 2021. Following the civil settlement with the U.S. government on April 29, 2022, we may be unsuccessful in validating and establishing processes to support the submission of claims for reimbursement from third-party payors participating in the FEHB program in the future. As a result, we have faced a significant reduction in revenue and any failure to establish processes to support reimbursement from third-party payors in the future may significantly and adversely impact our business and growth prospects and our ability to sell our products.

A significant portion of our revenue has historically been dependent on payments from third-party payors; for example, in the quarter ended September 30, 2021, 6,243 out of the 13,117 total gross systems shipped were for customers with potential insurance benefits. However, since December 8, 2021, we have not accepted insurance benefits as a method of direct payment.

Third-party payors periodically conduct pre- and post-payment reviews, including audits of previously submitted claims, and we are currently experiencing and may experience such reviews and audits of claims in the future. Historically, we submitted claims to a concentrated number of third-party payors under certain benefit plans, and substantially all such claims related to the FEHB program. We suspended all claims submission activities on September 22, 2021 when we learned of the investigation by the DOJ related to our role in customer reimbursement claim submissions to various federal employee health plans under the FEHB program.

On April 29, 2022, we entered into a civil settlement agreement with the U.S. government that resolved the DOJ investigation. Pursuant to the settlement agreement, we paid approximately $34.4 million to the U.S. government. We cooperated fully with the DOJ investigation. We deny the allegations in the settlement agreement, and the settlement is not an admission of liability by us. While we will need to work with the OPM to align on the process and required documentation for potentially submitting claims through the FEHB program in the future, we may be unable to validate and establish processes to support the submission of claims for reimbursement to health plans under the FEHB program in the future. For example, we do not currently conduct in-person hearing tests as they run counter to our primary direct-to-consumer business and omni-channel models. If a process by which we might be able to obtain reimbursement of claims for our products were to require in-person hearing tests, we may not be able to efficiently or effectively integrate such tests into our operating model.

Following the settlement with the U.S. government, we remain subject to prepayment review of claims by our largest third-party payor, which accounted for approximately 90% of our gross accounts receivable as of December 31, 2021. Further, with respect to such payor, claims submitted since March 1, 2021 have not been paid and have either been denied or have not yet and may never be submitted for reimbursement by us. Two additional payor audits related to claims submitted for customers with FEHB plans are also in process, although one of the payors has continued to process claims during its audit. Additionally, as of December 2021, we are subject to a new audit that does not relate to claims submitted under the FEHB program.

As a result of the change to a “cash-pay” only business model, we have faced a significant reduction in revenue and reduced growth prospects. If we are unable to establish processes to support reimbursement from third-party payors in the future, our business and growth prospects and our ability to sell our products may be significantly and adversely impacted.

Our negative cash flows and current lack of financial resources raise substantial doubt as to our ability to continue as a going concern. If we are unable to raise additional funding to meet our operational needs, we will be forced to limit or cease our operations and/or liquidate our assets.

We believe that, without any future financing, we will not be able to satisfy our obligations as they become due within one year from the date of filing of this Annual Report on Form 10-K. We anticipate our future capital requirements will be substantial and that we will need to raise significant additional capital to fund our operations through equity or debt financing, or some combination thereof. While we are currently exploring fundraising opportunities to meet these capital requirements, additional capital may not be available to us on acceptable terms on a timely basis, or at all. If we are unable to raise additional funding to meet our operational needs, we will be forced to limit or cease our operations and/or liquidate our assets, in which case it is likely that investors would lose part or all of their investment.

Our expected future capital requirements and ability to raise additional capital will depend on many factors, including but not limited to the following:

- investor confidence in our ability to continue as a going concern;
- the timing, receipt and amount of sales from our current and future products;
- the costs involved in resolving third-party claims audits and recoupment of previous claims paid, as well as other legal proceedings (including the shareholder class action and derivative suits discussed in

Note 6 to the Consolidated Financial Statements included in this Annual Report on Form 10-K), and their duration and impact on our business generally (particularly with respect to our ability in future periods to accept insurance as a direct method of payment);

- the availability of insurance coverage for our hearing aid devices, and any costs associated with reimbursement and compliance, including anticipated implementation of a pending OTC regulatory framework (which may lead insurance providers to take actions limiting our ability to access insurance coverage and may also generally result in additional compliance or other regulatory requirements for us), and any resulting changes to our business model, including a potential long-term shift to a model that excludes insurance benefits as a method of direct payment to Eargo, which would likely result in a sustained increased cost of customer acquisition;
- the cost and timing of expanding our sales, marketing and distribution capabilities;
- any expenses, as well as the impact to our business and operating model, as a result of changes in the regulatory landscape for hearing aid devices;
- the cost of manufacturing, either ourselves or through third-party manufacturers, our products;
- the terms, timing and success of any other licensing, partnership, omni-channel, including retail, or other arrangements that we may establish;
- any product liability or other lawsuits related to our current or future products;
- the expenses needed to attract, hire and retain skilled personnel;
- the extent of our spending to support research and development activities and the expansion of our product offerings;
- the costs associated with being a public company;
- the duration and severity of the COVID-19 pandemic and its impact on our business and financial markets generally;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing our intellectual property portfolio; and
- the extent to which we acquire or invest in businesses.

If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences, and privileges superior to those of holders of our common stock. Debt financing, if available, is likely to involve restrictive covenants limiting our flexibility in conducting future business activities. Even if we are able to raise significant additional capital necessary to continue our operations within the next year, if we are unable to obtain additional adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to pursue our business objectives, develop our technology and products, and respond to business opportunities, challenges, unforeseen circumstances, or developments, including the anticipated implementation of a pending OTC hearing aid regulatory framework, could be significantly limited, and our business, financial condition and results of operations could be materially adversely affected.

Potential opportunities for growth in our business outside of the FEHB program, such as the anticipated implementation of the pending OTC hearing aid regulatory framework and any potential Medicare, or other insurance, coverage for certain hearing aids, may not materialize and, as such, our business and growth prospects and our ability to sell our products may be materially and adversely impacted.

Since December 8, 2021, we have not accepted insurance benefits as a method of direct payment. While we will need to work with the OPM to align on the process and required documentation for potentially submitting claims through the FEHB program in the future, we may be unable to validate and establish processes to support the submission of claims for reimbursement to health plans under the FEHB program in the future. As such, our

future growth prospects may be dependent upon other opportunities, such as the pending OTC hearing aid regulatory framework and any potential Medicare, or other insurance, coverage for certain hearing aids that we may be able to access.

We intend to focus on both securing third-party reimbursement and increasing coverage and reimbursement for our current products and any future products we may develop. Our long-term ability to service insurance customers may be dependent on any potential actions insurance providers may take following the anticipated implementation of the pending OTC hearing aid regulatory framework that may limit our ability to access insurance coverage (and which OTC framework may also generally result in additional compliance or other regulatory requirements for Eargo). It may also be dependent on any potential Medicare, or other insurance, coverage for certain hearing aids (which may not include Eargo hearing aids). We may never achieve sufficient additional third-party reimbursement to meaningfully restore or expand our access to insurance coverage.

We cannot predict whether, under what circumstances, or at what payment levels third-party payors will cover and reimburse our products. If we fail to establish and maintain broad adoption of our products or fail to penetrate the insurance and managed care markets for our products, our ability to generate revenue could be harmed and our prospects and our business could suffer. To the extent we sell our products internationally, market acceptance may depend, in part, upon the availability of coverage and reimbursement within prevailing healthcare payment systems. Reimbursement and healthcare payment systems in international markets vary significantly by country and include both government-sponsored healthcare and private insurance. We may not obtain international coverage and reimbursement approvals in a timely manner, if at all. Our failure to receive such approvals would negatively impact market acceptance of our products in the international markets in which those approvals are sought. Please also see the Risk Factor titled, "Changes in the regulatory landscape for hearing aid devices could render our direct-to-consumer business model contrary to applicable regulatory requirements, and we may be required to seek additional clearance or approval for our products."

We are subject to risks from legal proceedings, investigations, and inquiries, including a number of recent legal proceedings and investigations, which have had and could continue to have a material adverse effect on our reputation, business, financial condition, cash flows and results of operations, and could result in additional claims and material liabilities.

We are currently subject to a number of legal proceedings, investigations and inquiries, including: (i) purported securities class action litigation alleging that certain of our disclosures about our business, operations and prospects, including reimbursements from third-party payors, violated federal securities laws; and (ii) purported derivative action alleging the directors breached their fiduciary duties by allegedly failing to implement and maintain an effective system of internal controls related to the Company's financial reporting, public disclosures, and compliance with laws, rules and regulations governing the business. On April 29, 2022, we entered into a civil settlement agreement with the U.S. government that resolved the DOJ investigation and pursuant to which we paid approximately $34.4 million. We remain subject to audit or prepayment review by various third-party payors. In addition, we could face additional legal proceedings, investigations, and inquiries relating to these or similar matters. For more information regarding legal proceedings, see "Item 1. Legal Proceedings."

We are unable to predict how long such legal proceedings, investigations and inquiries will continue, but we have incurred and anticipate that we will continue to incur significant costs in connection with these matters and that these legal proceedings, investigations and inquiries have resulted and will continue to result in substantial distraction of management's time, regardless of the outcome. These legal proceedings, investigations and inquiries may result in damages, fines, penalties, consent orders or other sanctions (including exclusion from government programs and/or a recoupment of previous claims paid) against us and/or certain of our officers or directors, or in changes to our business practices, including the potential long-term shift to a model excluding insurance as a method of payment to Eargo. Furthermore, publicity surrounding these legal proceedings, investigations and inquiries or any enforcement action as a result thereof, even if ultimately resolved favorably for us, coupled with the recent intensified public scrutiny of our Company, could result in additional legal proceedings, investigations and inquiries. As a result, these legal proceedings, investigations and inquiries have

had and could continue to have a material adverse effect on our reputation, business, financial condition, cash flows and results of operations.

These legal proceedings, investigations and inquiries, and the uncertainty stemming from them, could also precipitate or heighten the other Risk Factors that we identify in this Item 1A, any of which could materially adversely impact our business. Further, these legal proceedings, investigations and inquiries may also affect our business and financial results in a manner that is not presently known to us or that we currently do not consider to present significant risks to our operations.

Additionally, we may become subject to other legal disputes and regulatory proceedings in connection with our business activities involving, among other things, product liability, product defects, intellectual property infringement and/or alleged violations of applicable laws in various jurisdictions. Although we maintain liability insurance in amounts we believe to be consistent with industry practice, we may not be fully insured against all potential damages that may arise out of any claims to which we may be party in the ordinary course of our business. A negative outcome of these proceedings may prevent us from pursuing certain activities and/or require us to incur additional costs in order to do so and pay damages.

The outcome of pending or potential future legal and arbitration proceedings is difficult to predict with certainty. In the event of a negative outcome of any material legal or arbitration proceeding, whether based on a judgment or a settlement agreement, we could be obligated to make substantial payments, which could have a material adverse effect on our business, financial condition and results of operations. In addition, the costs related to litigation and arbitration proceedings may be significant, and any legal or arbitration proceedings could have a material adverse effect on our business, financial condition and results of operations.

We have a limited operating history and have grown significantly in a short period of time. If we are unable to manage our business and anticipated growth effectively, our business and growth prospects could be materially and adversely affected.

We were organized in 2010 and began selling hearing aids in 2015. In that time, we have grown significantly, increasing the size of our organization and expanding our business. We have expanded, and any growth that we experience in the future will require us to further expand, our sales, clinical, and research and development personnel (including those with software and hardware expertise), our manufacturing operations and our general and administrative infrastructure. As a public company, we need to support increased managerial, operational, financial and other resources. Rapid expansion in personnel could mean that less experienced people develop, market and sell our products, which could result in inefficiencies and unanticipated costs, reduced quality and disruptions to our operations. In addition, rapid and significant growth may strain our administrative and operational infrastructure.

The challenges we face in managing our business, including our shift to a “cash-pay” only business model, the obstacles to our being able to obtain reimbursement for our products from third-party payors, and the changing regulatory landscape, place significant demands on our management, financial, operational, technological and other resources, and we expect that managing our business will continue to place significant demands on our management and other resources and will require us to continue developing and improving our operational, financial and other internal controls, reporting systems and procedures. In particular, the challenges in managing our business involve a number of areas, including recruiting and retaining sufficient skilled personnel, providing adequate training and supervision to maintain our high-quality product standards and regulatory compliance and preserving our culture and values. We may not be able to address these challenges in a cost-effective manner, or at all. In addition, we completed an employee workforce reduction in the fourth quarter of 2021, which may continue to impact the attraction and retention of employees, as well as employee morale and productivity. We cannot assure you that any increases in scale, related improvements and quality or compliance assurance will be successfully implemented or that appropriate personnel will be available to facilitate the management and growth of our business. Failure to implement necessary procedures, transition to new processes or hire the necessary personnel could result in higher costs or an inability to meet demand. If we do not effectively manage our

business through the various challenges we face, we may not be able to execute on our business plan, respond to competitive pressures, take advantage of market opportunities, satisfy customer requirements or maintain high-quality product offerings, which could have a material adverse effect on our business, financial condition and results of operations.

If we fail to attract and retain senior management and key technology personnel, our business may be materially and adversely affected.

Our success depends in part on our continued ability to attract, retain and motivate highly qualified management, administrative and clinical and scientific personnel, including those with software and hardware expertise. We are highly dependent upon our senior management, particularly our President and Chief Executive Officer, as well as our senior technology personnel and other members of our senior management team. The unplanned loss of the services of any of our members of senior management could adversely affect our business until a suitable replacement can be found.

Competition for qualified personnel in the medical device field in general and the audiology field specifically is intense due to the limited number of individuals who possess the training, skills and experience required by our industry. In addition, our success also depends on our ability to attract, recruit, develop and retain skilled managerial, sales, administration, operating and technical personnel. We will continue to review, and where necessary, strengthen our senior management as the needs of the business develop, including through internal promotion and external hires. However, there may be a limited number of persons with the requisite competencies to serve in these positions and we cannot assure you that we would be able to locate or employ such qualified personnel on terms acceptable to us, or at all. Therefore, the unplanned loss of one or more of our key personnel, or our failure to attract and retain additional key personnel, could have a material adverse effect on our business, financial condition and results of operations. Our ability to attract and retain such qualified personnel has been and may continue to be negatively impacted by the DOJ investigation or shareholder litigation, our recent workforce reduction and suspension of certain of our equity compensation practices, and related negative publicity. In addition, to the extent we hire personnel from competitors, we may be subject to allegations that they have been improperly solicited or that they have divulged proprietary or other confidential information, or that their former employers own their research output.

We may experience difficulties in managing our business, and a deterioration in our relationships with our employees could have an adverse impact on our business.

We expect to rely on our managerial, operational, finance and other resources in order to manage our operations and continue our research and development activities. We may expand our international operations, which would subject us to the legal, political, regulatory and social requirements and economic conditions of these jurisdictions, and create a variety of potential operational challenges due to a variety of international factors, including local labor laws and regulations and managing a geographically dispersed workforce. Our management and personnel, systems and facilities currently in place may not be adequate to support our business. Our need to effectively execute our strategy requires that we:

- manage our commercial operations effectively;
- identify, recruit, retain, incentivize and integrate additional employees;
- manage our internal development and operational efforts effectively while carrying out our contractual obligations to third parties; and
- continue to improve our operational, financial and management controls, reports systems and procedures.

Maintaining good relationships with our employees is crucial to our operations. As a result, any deterioration of the relationships with our employees could have a material adverse effect on our business, financial condition and results of operations. Our ability to attract and retain qualified personnel, and foster positive employee

morale, has been and may continue to be negatively impacted by the DOJ investigation and related negative publicity as well as the suspension of certain of our equity compensation practices. In addition, we completed an employee workforce reduction in the fourth quarter of 2021, which may impact the attraction and retention of employees, as well as employee morale and productivity. Further, many of our key employees receive a total compensation package that includes equity awards. In addition to the aforementioned suspension of certain equity compensation practices, volatility in the stock market, our share price and other factors could diminish the Company's use or the value of the Company's equity awards, putting the Company at a competitive disadvantage.

Additionally, material disruption to our business as a result of strikes, work stoppages or other labor disputes could disrupt our operations, result in a loss of reputation, increased wages and benefits or otherwise have a material adverse effect on our business, financial condition and results of operations.

We have a history of net losses, and we expect to incur additional substantial losses in the foreseeable future.

We have incurred net losses since inception, and we expect to incur additional substantial losses in the foreseeable future. For the years ended December 31, 2021 and 2020, we incurred net losses of $157.8 million and $39.9 million, respectively. As a result of our ongoing losses, as of December 31, 2021, we had an accumulated deficit of $356.8 million. Since inception, we have spent significant funds on organizational and start-up activities, to recruit key managers and employees, to develop our hearing aids, to develop our manufacturing know-how and customer support resources and for research and development. The net losses we incur may fluctuate significantly from quarter to quarter and have and may continue to increase as a result of the costs involved in resolving the DOJ investigation, including the approximately $34.4 million we paid pursuant to the settlement agreement with the U.S. government, and other corrective actions and recoupment of previous claims paid, as well as other legal proceedings, and their duration and impact on our business generally. They may also fluctuate and increase as a result of the anticipated implementation of a pending OTC hearing aid regulatory framework and any potential Medicare coverage for certain hearing aids, neither of which may ultimately be favorable to us.

Our long-term success is dependent upon our ability to successfully develop, commercialize and market our products, earn revenue, obtain additional capital when needed and, ultimately, to achieve profitable operations. The uncertainty regarding the extent to which we are able to validate and establish processes to support the submission of claims for reimbursement to health plans, including those under the FEHB program, if at all, in the future, the anticipated implementation of a pending OTC hearing aid regulatory framework (which may lead insurance providers to take actions limiting our ability to access insurance coverage and may also generally result in additional compliance or other regulatory requirements for Eargo) and potential Medicare coverage for certain hearing aids (which may not include Eargo hearing aids) will require that we evaluate and consider any changes to our business model as new information becomes available, including a potential long-term shift to a model excluding insurance as a method of payment to Eargo, which would likely result in a sustained increased cost of customer acquisition and a reduction in shipments, revenue, gross margin and higher operating expenses, which could have a material negative impact on our ability to achieve profitability and our growth prospects. We will need to generate significant additional revenue and raise significant additional capital to continue our operations and potentially achieve profitability. It is possible that even if we generate significant additional revenue and raise significant additional capital, we will not achieve profitability or that, even if we do achieve profitability, we may not maintain or increase profitability in the future. Without the benefit of customers with insurance coverage and significant additional capital, the future prospects of the Company and our ability to achieve profitability are uncertain.

Changes in the regulatory landscape for hearing aid devices could render our direct-to-consumer business model contrary to applicable regulatory requirements, and we may be required to seek additional clearance or approval for our products.

Hearing aids are considered medical devices subject to regulation by the FDA. We currently market our products pursuant to the FDA regulatory framework for air-conduction hearing aids, which are classified as Class I or

Class II devices exempt from premarket review procedures. In addition, while applicable FDA regulations establish certain "conditions for sale" of all hearing aids, including that prospective hearing aid users must have a medical evaluation by a licensed physician within the six months prior to hearing aid dispensation or sign a waiver of medical evaluation, the FDA has stated that it does not intend to enforce these medical evaluation and waiver requirements prior to the dispensing of Class I air-conduction and Class II wireless air-conduction hearing aids to individuals 18 years of age and older. Accordingly, while we are required to comply with other FDA requirements, including specific hearing aid labeling requirements and provision of a User Instructional Brochure, our products have not been reviewed by the FDA and are not dispensed by licensed physicians. If the FDA were to determine that our products do not properly satisfy the conditions for marketing Class I or Class II air-conduction hearing aid devices, we could be forced to cease distribution of our products until we obtain regulatory clearance or approval, and we could be subject to additional enforcement action by the FDA. In addition, many states have laws regarding the provision of hearing aid devices, and if we are found to be in violation of the laws of any state in which our devices are sold, we could be subject to further sanctions at the state level.

The regulatory landscape for hearing aid devices has been subject to recent changes that may alter or increase our requirements for regulatory compliance. The FDARA set forth a process to create a new category of OTC hearing aids that are intended to be available without supervision, prescription, or other order, involvement or intervention of a licensed practitioner. The language in FDARA is not self-implementing, which means that the OTC hearing aid category does not exist until the effective date of a published final regulation. On October 20, 2021, the FDA published a notice of proposed rulemaking to establish new regulatory categories for OTC and prescription hearing aids ("Proposed Rule"). The Proposed Rule also includes revised requirements for labeling, conditions for sale, performance standards and other provisions applicable to either OTC or prescription hearing aids, or both. Under FDARA, the OTC hearing aid controls that are the subject of the rulemaking, if finalized, would preempt any state or local requirement specifically related to hearing products that would restrict or interfere with commercial activity involving OTC hearing aids. The comment period on the Proposed Rule, in which we participated, ended on January 18, 2022, after which the FDA will review the comments and make any revisions the FDA deems necessary prior to publishing the Final Rule. The Final Rule becomes effective 60 days after the publication of the Final Rule. Under the Proposed Rule, devices that require 510(k) clearance to come into compliance with the new requirements would need to be cleared by the effective date of the Final Rule to continue marketing; for all other currently marketed devices, the proposed compliance date is 180 days after the effective date of the Final Rule (240 days after the publication of the Final Rule).

We market the Eargo system devices as Class I or Class II air-conduction hearing aids under existing regulations at 21 CFR 874.330 and 874.3305, both of which are exempt from 510(k) premarket review. Our hearing aids may be marketed under the current FDA framework during the FDA's rulemaking proceeding. However, we cannot know to what extent the Final Rule may differ from the Proposed Rule. Once the FDA issues a Final Rule, we will need to expend time and resources evaluating the Final Rule and ensuring that our devices and processes come into compliance with the new requirements in order to market our products in line with our primary direct-to-consumer business and omni-channel models in the future. It is possible that a finalized regulatory framework for OTC hearing aids may lead to additional commercial partnership, omni-channel, including retail, or other opportunities, although there are no assurances that it will do so. The Final Rule and the responses thereto by leading insurance providers could also materially impact our efforts to resume submitting claims for customers with potential insurance benefits or have other unforeseen impacts on our business and results of operations.

In addition, in May 2018, the FDA granted a de novo classification request from Bose for a direct-to-consumer "self-fitting air-conduction hearing aid," and effective October 28, 2019, the FDA published 21 CFR 874.3325, establishing the product classification for the self-fitting air conduction hearing aid as a Class II device with special controls subject to 510(k) premarket review. We do not consider our devices to be "self-fitting" hearing aids similar to the cleared Bose device, but the FDA could disagree. In such case, the FDA may require us to remove our devices from the market while we seek FDA clearance. In addition, even if our current products

remain Class I or Class II exempt devices, it is possible that any future products we may develop could fail to meet the requisite criteria for similar regulation and could be subject to more stringent requirements and premarket review, increasing our costs for regulatory compliance.

Finally, in October 2021, the Biden administration outlined its plan to expand government healthcare programs as part of its broader domestic spending bill, which includes, among other things, extending Medicare coverage to include hearing benefits. Congress has considered and is considering legislation that would provide for such coverage, for example, the Build Back Better Act (H.R. 5376), which was passed by the House on November 19, 2021. The bill, as passed by the House, would provide Medicare coverage for certain hearing aids to individuals with specific types of hearing loss, furnished pursuant to a written order of a physician, qualified audiologist or other hearing aid professional, physician assistant, nurse practitioner or clinical nurse specialist. This bill has not yet been passed by the Senate, and we cannot predict the likelihood, nature, or extent to which Medicare or other government healthcare programs will cover hearing aids, if at all, or specifically our hearing aids, which are intended for "mild" or "moderate" hearing loss, or the impact of any such changes on our business, financial condition or results of operations.

If we cannot innovate at the pace of our hearing aid manufacturing competitors, we may not be able to develop or exploit new technologies in time to remain competitive.

The hearing aid industry has in the past experienced rapid shifts to new key technologies, including for example the switch from analog to digital hearing aids in the 1990s, that disrupted existing market patterns and led to a large-scale market realignment among customers and hearing aid manufacturers. For us to remain competitive, it is essential to develop and bring to market new technologies or to find new applications for existing technologies at an increasing speed. If we are unable to meet customer demands for new technology, or if the technologies we introduce are viewed less favorably than our competitors' products, our results of operations and future prospects may be negatively affected. To meet our customers' needs in these areas, we must continuously design new products, update existing products and invest in and develop new technologies. We will also need to anticipate consumer demand with respect to these technologies and which technological advances are most desirable in the hearing aids we sell. This need will result in requiring our employees to continue learning and adapting to new technologies, and our competing for highly skilled talent in a competitive market. Our operating results depend to a significant extent on our ability to anticipate and adapt to technological changes in the hearing aid market, maintain innovation, maintain a strong product pipeline and reduce the costs of producing high-quality new and existing hearing aids. Any inability to do so could have a material adverse effect on our business, financial condition and results of operations.

We are deploying a new business model in an effort to disrupt a relatively mature industry. In order to successfully challenge incumbent business models and become profitable, we will need to continue to refine our product and strategy.

Our direct-to-consumer business model is relatively new to the hearing aid industry. Our products are currently primarily available direct-to-consumer and are therefore generally not sold by channels which consumers would traditionally look to for the treatment of their hearing loss. Because audiologists and hearing clinics do not offer our products, they are unlikely to recommend our products to their patients. If we are unable to reach this population through our online or direct and channel marketing, the estimated market size for our products may be lower than we anticipate.

Delivery of hearing aids via a direct-to-consumer model represents a change from the traditional channel, which requires in-person visits to one or more hearing care professionals, and consumers may be reluctant to accept this model or may not find it preferable to the traditional channel. In addition, consumers may not respond to our direct and channel marketing campaigns or efforts, or we may be unsuccessful in reaching our target audience, particularly if we expand our sales efforts in foreign jurisdictions where our advertising and distribution model may be more heavily regulated. If consumers prove unwilling to adopt our model as rapidly or in the numbers that we anticipate, our business, financial condition and results of operations could be materially harmed.

Historically, the majority of hearing aids sold to customers who used insurance benefits as a method of direct payment to Eargo corresponded to claims for reimbursement to third-party payors under the FEHB program. While we will need to work with the OPM to align on the process and required documentation for potentially submitting claims through the FEHB program in the future, we may be unable to validate and establish processes to support the submission of claims for reimbursement to health plans under the FEHB program in the future. As such, our future growth prospects may be dependent upon other opportunities, such as the pending OTC hearing aid regulatory framework and any potential Medicare coverage for certain hearing aids that we may be able to access.

We operate in a highly competitive industry, and competitive pressures could have a material adverse effect on our business.

The worldwide market for hearing aids is competitive in terms of pricing, product quality, product innovation and time-to-market. We face strong competitors, which have greater resources and stronger financial profiles that may enable them to better exploit changes in our industry on a cost-competitive basis and to be more effective and faster in capturing available market opportunities, which in turn may negatively impact our market share. There are five major traditional manufacturer competitors in the industry—GN Store Nord, Sonova, Starkey, William Demant and WS Audiology—who together control a significant majority of the hearing aid market.

In addition to these manufacturer competitors, Costco sells multiple brands of hearing aids, including those of the traditional manufacturers and Costco's own white-label Kirkland Signature brand of hearing aid, at prices ranging from approximately $1,400 to $2,950 per pair. We estimate that during 2019, Costco dispensed approximately 14% of the hearing aids distributed in the United States, which percentage is expected to increase going forward. The United States Department of Veterans Affairs (the "VA") is also a significant provider of hearing aids and provides hearing aids at no charge to its patients. We estimate that, in 2019, the VA dispensed approximately 19% of the hearing aids distributed in the United States. Our products are not distributed by Costco, or on contract or currently eligible to be distributed by the VA.

We also face competition from companies that introduce new technologies, including consumer electronics companies that sell direct to consumers. For example, in May 2018, the FDA granted marketing clearance to Bose Corporation for a "self-fitting air-conduction hearing aid." The Bose self-fitting hearing aid was cleared under the FDA's de novo premarket review pathway with the intended use to amplify sound for individuals 18 years of age or older with perceived mild to moderate hearing impairment, with no pre-programming or hearing test necessary. We view our consumer-first model as a competitive advantage, and competitors, including Bose or other consumer electronics companies, or any other companies following the anticipated implementation of a pending OTC hearing aid regulatory framework, that sell hearing aids directly to consumers may erode that advantage. Please see the Risk Factor titled, "Changes in the regulatory landscape for hearing aid devices could render our direct-to-consumer business model contrary to applicable regulatory requirements, and we may be required to seek additional clearance or approval for our products."

We also face competition from other direct-to-consumer hearing aid providers. Similar to our business model, these hearing aid companies allow consumers to purchase hearing aids remotely, with no need to visit a clinic and they provide remote clinical support. Given the similarities in our business model to these providers, if potential consumers opt to buy their hearing aids from these direct-to-consumer competitors, our business could be adversely affected.

We may be unable to compete with these or other competitors, and one or more of such competitors may render our technology obsolete or economically unattractive. Please see the Risk Factor titled "If we cannot innovate at the pace of our hearing aid manufacturing competitors, we may not be able to develop or exploit new technologies in time to remain competitive." To the extent we expand internationally, we will face additional competition in geographies outside the United States. If we are unable to compete effectively with existing products or respond effectively to any new products developed by competitors, our business could be materially harmed. Increased competition may result in price reductions, reduced gross margins and loss of market share.

There can be no assurance that we will be able to compete successfully against our current or future competitors or that competitive pressures will not have a material adverse effect on our business, financial condition and results of operations.

We rely on the timely supply of high-quality components, parts and finished products, and our business could suffer if suppliers or manufacturers are unable to procure raw materials or other components of an acceptable quality (or at all) or otherwise fail to meet their delivery obligations, raise prices or cease to supply us with components, parts or products of acceptable quality.

We rely on a limited number of critical suppliers for many of the components that are used in the manufacture of our products, including for semiconductor components, such as integrated circuits, as well as batteries, microphones and receivers. We are dependent on these third-party manufacturers and suppliers to identify and purchase quality raw materials, semi-finished goods and finished goods while seeking to preserve our quality standards. This reliance and dependence on third parties adds additional risks to the manufacturing process that are beyond our control. For example, the occurrence of epidemics or pandemics, such as the COVID-19 pandemic, may cause labor shortages and/or disrupt the supply of various raw materials and components, causing price spikes and/or shortages. As a result, one or more of our suppliers or manufacturers may suspend, close or otherwise reduce the scope of their operations either temporarily or permanently.

In addition, many of these suppliers also provide components and products to our competitors. The industry's reliance on a limited number of key components and product suppliers subjects us to the risk that in the event of an increase in demand or shortage of key materials or components, our suppliers may fail to provide supplies to us in a timely manner while they continue to supply our competitors, many of which have greater purchasing power than us, or seek to supply components to us at a higher cost. Lead times for materials, components and products ordered by us or by our contract manufacturers can vary significantly and depend on factors such as contract terms, demand for a component, and supplier capacity. From time to time, we may experience and have experienced component shortages and extended lead times, as well as increased component costs and increased logistics costs, including on semiconductor components and batteries, and other components used in our products.

While we continue to monitor our supply chain and have taken and are taking actions to address limited supply and increasing lead times, including outreach to critical suppliers and spot market purchases, future disruptions in our supply chain, including the sourcing of certain components and raw materials by us or our suppliers, such as semiconductor and memory chips, as well as increased logistics and inflationary costs, could impact our sales and gross margins as well as launch and shipment of our products. The failure of our suppliers or manufacturers to deliver components or products in a timely fashion could have disruptive effects on our ability to produce our products in a timely manner, or we may be required to find new suppliers or manufacturers at an increased cost, if at all. Shortages or interruptions in the supply of components or subcontracted products, or our inability to procure these components or products from alternate sources at acceptable prices in a timely manner, could delay launch or shipment of our products or increase our production costs, which could adversely affect our business and operating results. The effects of climate change, including extreme weather events, long-term changes in temperature levels and water availability may exacerbate these risks. Such disruption has in the past impacted our costs and could in the future impact costs or interrupt our ability to source certain product components. A severe weather event in countries from which we source components and parts could cause disruptions in the Company's supply chain which could, in turn, cause product shortages, delays in delivery and/or increases in the Company's cost incurred to manufacture its products.

Any shortage, delay or interruption in the availability of our products, or key inputs used in their production, may negatively affect our ability to meet consumer demand. Additionally, our reputation and the quality of our products are in part dependent on the quality of the components that we source from third-party suppliers. If we are unable to control the quality of the components supplied to us or to address known quality problems in a timely manner, our reputation in the market may be damaged and sales of our products may suffer. As a result, we may experience a material adverse effect on our business, financial condition and results of operations.

Certain components needed to manufacture our hearing aids are only available from a limited number of suppliers.

Several of our suppliers provide products for our hearing aids and accessories for which they own the design and/or intellectual property rights. This includes semiconductor components, including integrated circuits, as well as transducers, batteries and various electrical components, some of which are highly customized. Although there may be several potential suppliers for our components, as our components are highly customized, there is a risk that these components may not be readily substituted by similar products of other suppliers or that any substitution may take a lengthy period of time to implement. Even if we do identify new suppliers, we may experience increased costs and product shortages as we transition to alternative suppliers. If any of these limited suppliers cease to supply us with their products, significantly increase their costs, or any of the foregoing events occurs, we could experience a material adverse effect on our business, financial condition and results of operations.

We rely on a limited number of manufacturers for the assembly of our hearing aids. If we encounter manufacturing problems or delays, we may be unable to promptly transition to alternative manufacturers and our ability to generate revenue will be limited.

We have no manufacturing capabilities of our own. We currently rely on a limited number of manufacturers: one headquartered in Taiwan, with manufacturing facilities in Suzhou, China, Pegatron Corporation, for the manufacture of Eargo 5 and Eargo 6, and one located in Thailand, Hana Microelectronics, for the manufacture of all other products currently available for sale. For us to be successful, our contract manufacturers must be able to provide us with products in substantial quantities, in compliance with regulatory requirements, in accordance with agreed upon specifications, at acceptable costs and on a timely basis. While our existing manufacturers have generally met our demand requirements on a timely basis in the past, their ability and willingness to continue to do so going forward may be limited for several reasons, including our relative importance as a customer of the manufacturer or its ability to provide assembly services to manufacture our products, which may be affected by the COVID-19 pandemic. An interruption in our commercial operations could occur if we encounter delays or difficulties in securing these manufactured products if we cannot obtain an acceptable substitute.

Any transition to a new contract manufacturer, or any transition of products between existing manufacturers, could be time-consuming and expensive, may result in interruptions in our operations and product delivery, could affect the performance specifications of our products or could require that we modify the design of our products. If we are required to change either of our contract manufacturers, we will be required to verify that the new manufacturer maintains facilities, procedures and operations that comply with our quality and applicable regulatory requirements, which could further impede our ability to manufacture our products in a timely manner. We cannot assure you that we will be able to identify and engage alternative contract manufacturers on similar terms or without delay. Furthermore, our contract manufacturers could require us to move to a different production facility. The occurrence of any of these events could harm our ability to meet the demand for our products in a timely and cost-effective manner, which could have a material adverse effect on our business, financial condition and results of operations.

The manufacture of our products is complex and requires the integration of a number of components from several sources of supply. Our contract manufacturers must manufacture and assemble these complex products in commercial quantities in compliance with regulatory requirements and at an acceptable cost. Our hearing aids require significant expertise to manufacture, and our contract manufacturers may encounter difficulties in scaling up production of the hearing aids, including problems with quality control and assurance, component supply shortages, including any semiconductor components, increased costs, shortages of qualified personnel, the long lead time required to develop additional facilities for purposes of testing our products and/or difficulties associated with compliance with local, state, federal and foreign regulatory requirements. There can be no assurance that manufacturing or quality control problems will not arise in connection with the scale-up of the manufacture of our products. If we are unable to obtain a sufficient supply of product, maintain control over product quality and cost or otherwise adapt to challenges in managing our business, we may not have the

capability to satisfy market demand, and our business and reputation in the marketplace will suffer. If demand for our products decreases, as it has recently as a result of the DOJ investigation and claims audits (see "Management's Discussion and Analysis of Financial Condition and Results of Operations—DOJ investigation and settlement and claims audits"), we may have excess inventory, which could result in inventory write-offs that may adversely affect our business, financial condition and results of operations. We may also encounter defects in materials and/or workmanship, which could lead to a failure to adhere to regulatory requirements. Any defects could delay operations at our contract manufacturers' facilities, lead to regulatory fines or halt or discontinue manufacturing indefinitely. Any of these outcomes could have a material adverse effect on our business, financial condition and results of operations.

If we are unable to successfully develop and effectively manage the introduction of new products, our business may be adversely affected.

We must successfully manage introductions of new or advanced hearing aid products. Introductions of new or advanced hearing aid products could also adversely impact the sales of our existing products to consumers. For instance, the introduction or announcement of new or advanced hearing aid products may shorten the life cycle of our existing devices or reduce demand, thereby reducing any benefits of successful hearing aid introductions and potentially lead to challenges in managing write-downs or write-offs of inventory of existing products. We may also not have success in transitioning customers from legacy hearing aids to new products. In addition, new hearing aid products may have higher manufacturing costs than legacy products, which could negatively impact our gross margins and operating results. As the technological complexity of our products increases, the infrastructure to support our products, such as our design and manufacturing processes and technical support for our products, may also become more complex. Accordingly, if we fail to effectively manage introductions of new or advanced products, our business may be adversely affected.

We experience challenges managing the inventory of existing hearing aids, which can lead to excess inventory and discounting of our existing devices. Inventory levels in excess of consumer demand may result in inventory write-downs or write-offs and the sale of inventory at discounted prices, which has affected our gross margin and could impair the strength of our brand. Reserves and write-downs for rebates, promotions and excess inventory are recorded based on our forecast of future demand. Actual future demand could be less than our forecast, which may result in additional reserves and write-downs in the future, or actual demand could be stronger than our forecast, which may result in a reduction to previously recorded reserves and write-downs in the future and increase the volatility of our operating results.

If the quality of our hearing aid products does not meet consumer expectations, or if our products wear out more quickly than expected, then our brand and reputation or our business could be adversely affected.

Our products may not perform as well in day-to-day use as we or our customers expect. Although we designed our Eargo hearing aids to provide high quality audio, we have collected limited data comparing our products to competitive devices. In September 2021, we conducted a series of comparative electroacoustic benchmarking tests (the "Bench Study") to compare our Eargo Neo HiFi and Eargo 5 hearing aids with hearing aids from four major manufacturers. While each of the devices tested in the Bench Study, including our Eargo Neo HiFi and Eargo 5 hearing aids, met or exceeded the identified benchmarks for appropriate levels of sound quality and amplification to improve speech audibility, the design, methodology and results of the Bench Study have not been subject to external review and may not be reliable or replicable indicators of the general performance of our Eargo Neo HiFi and Eargo 5 hearing aids or the other manufacturers' hearing aids that were the subject of the Bench Study. Further, the benchmarks for appropriate levels of sound quality and amplification that we identified in the Bench Study may not be appropriate proxies for hearing aid performance or reflect the real-world performance of any tested device. Future studies, including our internal studies or those of our competitors or other third parties, may not yield the results that we expect to obtain and may not demonstrate that our products are superior to, or may demonstrate that our products are inferior to, existing or future products with regard to functional or economic measures. These study results may be published in medical journals or other publications,

or by our competitors and result in adverse publicity for our products. The performance of our Eargo hearing aids may not live up to customer expectations, and our brand, reputation, customer satisfaction, return rates and sales may be adversely affected as a result.

Furthermore, because of our products' limited time in the market, we cannot be certain about the usable life of our products. Due to the design constraints applicable to our rechargeable, in-the-canal form factor, our hearing aids may offer a shorter usable life compared to our competitors' hearing aids. Thus, even though our products may be more affordable than competitive devices, they may need to be replaced more often. Although we believe the advantages of our design justify this tradeoff, customers may expect a longer useful life, and failure to live up to this expectation could result in reduced sales, decreased customer loyalty, higher-than-expected warranty claims and adverse publicity.

Certain components of our hearing aids may also offer reduced performance or wear out over time. For example, the rechargeable technology used in our hearing aids and charging cases has a limited lifespan, and recharging performance will degrade over time. We designed our Eargo Neo HiFi hearing aids to provide up to 20 hours of continuous use between charges when new and up to 16 hours after 1,000 charging cycles, but charging capacity may decrease more quickly than expected. Moreover, certain components of our hearing aids that can be purchased online will require more frequent replacement than the device itself. If the quality, longevity and durability of our products does not meet the expectations of customers, then our brand and reputation and our business, financial condition and results of operations, could be adversely affected.

Customer or third-party complaints or negative reviews or publicity about our company or our hearing aids could harm our reputation and brand.

We are heavily dependent on customers who use our hearing aids to provide good reviews and word-of-mouth recommendations to contribute to our reputation and brand. Customers who are dissatisfied with their experiences with our products or services or their ability to receive reimbursement from their insurance companies may post negative reviews. We have and may continue to be the subject of blog, forum or other media postings that include inaccurate statements and create negative publicity. In addition, traditional hearing aid supply chain participants may express and publish negative views regarding our direct-to-consumer model and products. Any negative reviews or negative publicity, including in relation to the DOJ investigation, the claims audits, and other legal proceedings have harmed and could continue to harm our reputation and brand and severely diminish consumer confidence in our products. Please also see the Risk Factor titled, "We are subject to risks from legal proceedings, investigations, and inquiries, including a number of recent legal proceedings and investigations, which have had and could continue to have a material adverse effect on our reputation, business, financial condition, cash flows and results of operations, and could result in additional claims and material liabilities."

We spend significant amounts on advertising and other marketing campaigns to acquire new customers, which may not be successful or cost effective.

We market our hearing aids through a mix of digital and traditional marketing channels. These include paid search, digital display advertising, email marketing, affiliate and channel marketing, direct response television, national reach television, direct mail and select print and radio advertising. We also leverage our database of prospects and customers to further drive customer acquisition and referrals. We spend significant amounts on advertising and other marketing campaigns to acquire new customers, and we expect to continue to spend significant amounts to acquire new customers and increase awareness of our products. Beginning on December 8, 2021, we do not currently accept insurance benefits as a method of direct payment. As a result, we have reduced sales and marketing resources that were previously focused on insurance customers to prioritize the conversion of cash-pay consumers into satisfied customers. The shift to a cash-pay only model is likely to increase the cost to acquire new customers, based on the historically lower conversion rate for cash-pay customers as compared to customers with potential insurance benefits. While we seek to structure our marketing campaigns in the manner that we believe is most likely to encourage consumers to use our products while lowering our acquisition costs,

we may fail to identify marketing opportunities that satisfy our anticipated return on marketing spend as we scale our investments in marketing, accurately predict customer acquisition or fully understand or estimate the conditions and behaviors that drive consumer behavior. If any of our marketing campaigns prove less successful than anticipated in attracting new customers, we may not be able to recover our marketing spend, and our rate of customer acquisition may fail to meet market expectations, either of which could have a material adverse effect on our business, financial condition and results of operations. There can be no assurance that our marketing efforts will result in increased sales of our products.

In addition, we believe that building a strong brand and developing and achieving broad awareness of our brand is critical to achieving market success. Negative publicity, including in relation to the DOJ investigation, the claims audits, and other legal proceedings has harmed and could continue to harm our reputation and brand and severely diminish consumer confidence in our products. If any of our brand-building activities prove less successful than anticipated, or such activities are inhibited by negative publicity in relation to the DOJ investigation, the claims audits and other legal proceedings, it could materially adversely impact our ability to attract new customers. If this were to occur, we may not be able to recover our brand-building spend, and our rate of customer acquisition may fail to meet market expectations, either of which could have a material adverse effect on our business, financial condition and results of operations. There can be no assurance that our brand-building efforts will result in increased sales of our products. See also the Risk Factors titled, “Customer or third-party complaints or negative reviews or publicity about our company or our hearing aids could harm our reputation and brand” and “We are subject to risks from legal proceedings, investigations, and inquiries, including a number of recent legal proceedings and investigations, which have had and could continue to have a material adverse effect on our reputation, business, financial condition, cash flows and results of operations, and could result in additional claims and material liabilities.”

Our products are complex to design and manufacture and could contain defects. The production and sale of defective products could adversely affect our business, financial condition and results of operations. If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our products.

We make hearing aids that include highly complex electronic components, which are sourced from external third parties, and there is an inherent risk that defects may occur in the production of any of our products. Although we rely on the suppliers’ internal procedures designed to minimize risks that may arise from quality issues, there can be no assurance that we or our suppliers will be able to eliminate or mitigate occurrences of these issues and associated liabilities. Under consumer product legislation in many jurisdictions, we may be forced to recall or repurchase defective products, and more restrictive laws and regulations relating to these matters may be adopted in the future. We also face exposure to product liability claims in the event that any of our devices are alleged to have resulted in personal injury or damage to property, or otherwise to have caused harm. For example, we may be sued if any of our hearing aids allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability and a breach of warranty. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our products. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our current or future products;
- injury to our reputation;
- costs to defend the related litigation;
- a diversion of management’s time and our resources;
- substantial monetary awards to customers;

- regulatory investigations, product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenue; and
- the inability to sell our current or any future products.

Our inability to obtain and maintain sufficient product liability insurance at an acceptable cost and scope of coverage to protect against potential product liability claims could prevent or inhibit the sale of our current or any future products we develop. Although we currently carry product liability insurance, any claim that may be brought against us could result in a court judgment or settlement in an amount that is not covered, in whole or in part, by our insurance or that is in excess of the limits of our insurance coverage. Our insurance policies also have various exclusions and deductibles, and we may be subject to a product liability claim for which we have no coverage. We will have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient funds to pay such amounts. Moreover, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses.

In addition, any product defects, recalls or claims that result in significant adverse publicity could have a negative effect on our reputation, result in loss of market share or failure to achieve market acceptance. For example, our first-generation hearing aid, launched in 2015, had a high incidence of product returns and warranty claims. As a result, we voluntarily withdrew the product from the market. The production and sale of defective products in the future could have a material adverse effect on our business, financial condition and results of operations.

We are subject to consumer protection laws that regulate our marketing practices and prohibit unfair or deceptive acts or practices. Our actual or perceived failure to comply with such obligations could harm our business, and changes in such regulations or laws could require us to modify our products or marketing or advertising efforts.

In connection with the marketing or advertisement of our products, we could be the target of claims relating to false, misleading, deceptive or otherwise noncompliant advertising or marketing practices, including under the auspices of the Federal Trade Commission and state consumer protection statutes. If we rely on third parties to provide any marketing and advertising of our products, we could be liable for, or face reputational harm as a result of, their marketing practices if, for example, they fail to comply with applicable statutory and regulatory requirements.

If we are found to have breached any consumer protection, advertising, unfair competition or other laws or regulations, we may be subject to enforcement actions that require us to change our marketing and business practices in a manner which may negatively impact us. This could also result in litigation, fines, penalties and adverse publicity that could cause reputational harm and loss of customer trust, which could have a material adverse effect on our business, financial condition and results of operations.

There are a variety of hearing aid products and technologies, and consumer confusion about product features and technology could lead consumers to purchase competitive products instead of our products, or to conflate any adverse events or safety issues associated with third-party hearing aid products with our products, which could adversely affect our business, financial condition and results of operations.

We believe that many individuals do not have full information regarding the types of hearing aids and hearing aid features and technologies available in the market, in part due to the lack of consumer education in the traditional hearing industry sales model. Consumers may not have sufficient information about hearing aids generally or how hearing aid products and technologies compare to each other. This confusion may result in consumers purchasing hearing aids from our competitors instead of our products, even if our hearing aids would provide

them with their desired product features. In addition, any adverse events or safety issues relating to competitive hearing aid products and related negative publicity, even if such events are not attributable to our products, could result in reduced purchases of hearing aids by consumers generally. Any of these occurrences could lead to reduced sales of our products and adversely affect our business, financial condition and results of operations.

Our business, financial condition and results of operations may be impacted by the effects of the COVID-19 pandemic.

We are subject to risks related to public health crises such as the global pandemic associated with COVID-19. The COVID-19 pandemic may negatively impact our operations and revenues and overall financial condition by harming the ability or willingness of customers to pay for our products due to macro-economic conditions resulting from the pandemic or the operations of manufacturers, suppliers and other third parties with which we do business. These challenges will likely continue for the duration of the pandemic, which is uncertain, and the macro-economic effects of the pandemic will likely continue far beyond the duration of the pandemic.

Since the start of the pandemic, numerous state and local jurisdictions have imposed, and others in the future may impose, "shelter-in-place" orders, quarantines, orders requiring non-essential businesses to remain closed, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19. The pandemic and such restrictions have resulted in a majority of our employees working remotely, work stoppages, slowdowns and delays, travel restrictions and cancellation of events, among other effects, thereby negatively impacting our operations. Other potential disruptions may include delays in processing registrations or approvals by applicable state or federal regulatory bodies; delays in product development efforts; disruptions to our supply chain, including any impacts from global semiconductor shortages; and additional government requirements or other incremental mitigation efforts that may further impact our capacity to manufacture, sell and support the use of our Eargo systems. Disruptions in supply chain have resulted in industry-wide component supply (such as semiconductors) shortages, and we may not be able to obtain adequate inventory on a timely basis or at all. To date, increases in component pricing have occurred but have not had a material impact on supply continuity or gross margin. We have taken steps to monitor our supply chain and actions to address limited supply and increasing lead times, including outreach to critical suppliers and spot market purchases. Future disruptions in our supply chain, including the sourcing of certain components and raw materials, such as semiconductor and memory chips, as well as increased logistics costs, could impact our sales and gross margins.

The ultimate impact of COVID-19 on our business, financial conditions and results of operations depends on many factors and future developments beyond our control, which are highly uncertain and difficult to predict, including: the duration of the pandemic, a potential resurgence, the impact of variants, new or renewed restrictions, the timing, availability, acceptance and effectiveness of vaccines and treatments against COVID-19 as well as vaccination rates among the population, the pace of recovery when the COVID-19 pandemic subsides, and the severity and duration of the global economic downturn that results from the ongoing pandemic.

While the potential economic impact brought by and the duration of COVID-19 may be difficult to assess or predict, the widespread pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity, including our ability to repay our existing indebtedness. In addition, a recession or market correction resulting from the spread of COVID-19 could materially affect our business and the value of our common stock. The COVID-19 pandemic has also resulted in volatility in the unemployment rate in the United States, which may continue even after the pandemic subsides. The occurrence of any such events may lead to reduced disposable income and access to health insurance which could adversely affect the number of our products sold after the pandemic has subsided. Further, although our sales volume has been positively impacted during the COVID-19 pandemic, this and any other favorable impacts we have experienced in connection with the pandemic may subside, and the ultimate effect of COVID-19 on our sales volume and other results of operations could differ substantially from our expectations and our experience to date.

Repair or replacement costs due to guarantees we provide on our products could have a material adverse effect on our business, financial condition and results of operations.

We provide product guarantees to our customers, both as a result of contractual and legal provisions and for marketing purposes.

We generally allow for the return of products from direct customers within 45 days after the original sale and record estimated sales returns as a reduction of sales in the same period revenue is recognized. We also generally allow customers to return defective or damaged products for a replacement or refund. The term of the warranty provided is typically two years for our latest device and one year for all other devices. Existing and future product guarantees place us at the risk of incurring future repair and/or replacement costs. As of December 31, 2021, we had provisions of approximately $4.0 million relating to warranties. Substantial amounts of product guarantee claims could have a material adverse effect on our business, financial condition and results of operations.

In addition, we reserve for the estimated cost of product warranties when revenue is recognized, and we evaluate our warranty reserves periodically by reviewing our warranty repair experience. While we engage in product quality programs and processes, including monitoring and evaluating the quality of our components sourced from our suppliers and instituting methods to remotely detect and correct defects, our warranty obligation is affected by actual product defect rates, parts and equipment costs and service labor costs incurred in correcting a product defect. Our warranty reserves may be inadequate due to undetected product defects, unanticipated component failures or changes in estimates for material, labor and other costs we may incur to replace projected product defects. As a result, if actual product defect rates, parts and equipment costs or service labor costs exceed our estimates, it could have a material adverse effect on our business, financial condition and results of operations.

Our failure to successfully anticipate sales returns may have a material adverse effect on our business, financial condition and results of operations.

Our reported net revenue and net losses are affected by changes in reserves to account for sales returns and product credits. The reserve for sales returns accounts for customer returns of our products after purchase. We record a reserve for sales returns estimated based on historical return trends together with current product sales performance in each reporting period. If actual returns are greater than those projected and reserved for by management, additional sales returns reserve may be recorded in the future and reported net revenue may be reduced accordingly. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—DOJ investigation and settlement and claims audits” for more information.

We do not currently have the ability to resell all products that are returned. Our refurbishment capabilities include full refurbishment, conversion, and components, and allow us to refurbish and resell or reuse certain returned devices. To the extent we are unable to successfully refurbish devices in the future, we will not be able to resell such devices. Further, the introduction of new products, changes in product mix, changes in consumer confidence or other competitive and general economic conditions may cause actual returns to differ from product return reserves. Any significant increase in product returns that exceeds our reserves could have a material adverse effect on our business, financial condition and results of operations.

If we are unable to reduce our return rates or if our return rates continue to increase, our net revenue may decrease, and our business, financial condition and results of operations could be adversely affected.

Our customer sales returns rate was approximately 32% for the year ended December 31, 2021, which does not include the impact of the $5.1 million of estimated sales returns recorded as a reduction in revenue in the third quarter of 2021 related to transactions that occurred during the first and second quarters of 2021 (see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—DOJ investigation and settlement and claims audits” for more information). Our return policy allows our customers to return hearing aids for any reason within the first 45 days of delivery for a full refund, subject to a handling fee in certain states. Additionally, following learning of the DOJ investigation and prior to shifting to our current

upfront payment requirement, we offered customers with potential insurance benefits the option to return their hearing aids or purchase their hearing aids without use of their insurance benefits if their claim is denied or ultimately not submitted by us to their insurance plan for payment.

We report revenue net of expected returns, which is an estimate informed in part by historical return rates. As such, our return rate impacts our reported net revenue and profitability. Our net revenue and profitability have been and will continue to be negatively impacted by the inability to recognize revenue related to shipments to customers with potential insurance benefits, which customers generally have had a significantly lower rate of return as compared to cash-pay customers. If actual sales returns differ significantly from our estimates, an adjustment to revenue in the current or subsequent period is recorded. Furthermore, if we are unable to reduce our return rates or if they continue to increase, our net revenue may continue to decrease, and our business, financial condition and results of operations could be adversely affected. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Factors affecting our business—Sales returns rate."

Accelerated consolidation and formation of purchasing groups increases the pricing pressure on hearing aids.

Many purchasing groups, such as hearing aid clinics, retailers and hospital systems, are consolidating to create new entities with greater market power. Such groups, such as Costco and the VA, have used and may continue to use their increased purchasing power to negotiate price reductions or other concessions across our industry. This pricing leverage has resulted, and will likely continue to result, in downward pressure on the average selling prices of hearing aid products generally, including our own products. The forthcoming OTC Final Rule could further contribute to the pace of consolidation as well as the introduction of new entrants in the hearing aid market, which would further increase pricing pressure on hearing aid manufacturers. Please see the Risk Factor titled, "Changes in the regulatory landscape for hearing aid devices could render our direct-to-consumer business model contrary to applicable regulatory requirements, and we may be required to seek additional clearance or approval for our products." These factors could have a material adverse effect on our business, financial condition and results of operations.

Alternative technologies or therapies that improve or cure hearing loss could adversely affect our business, financial condition and results of operations.

If medical research were to lead to the discovery of alternative therapies or technologies that improve or cure the various forms of hearing loss as an alternative to the hearing aid, such as by surgical techniques, the use of pharmaceuticals or breakthrough bio-technological innovations or therapies, our profitability could suffer through a reduction in sales. The discovery of a cure for the various forms of hearing loss and the development of other alternatives to hearing aids could result in decreased demand for our products and, accordingly, could have a material adverse effect on our business, financial condition and results of operations.

Adapting our production capacities to evolving patterns of demand is expensive, time-consuming and subject to significant uncertainties. We may not be able to adequately predict consumer trends and may be unable to adjust our production in a timely manner.

We market our products directly to consumers in the United States, where we face the risk of significant changes in the demand for our products. If demand decreases, we will need to implement capacity and cost reduction measures involving restructuring costs. If demand increases, we will be required to make capital expenditures related to increased production and expenditures to hire and train production and sales and product support personnel. Adapting to changes in demand inherently lags behind the actual changes because it takes time to identify the change the market is undergoing and to implement any measures taken as a result. Finally, capacity adjustments are inherently risky because there is imperfect information, and market trends may rapidly intensify, ebb or even reverse. We have in the past not always been, and may in the future not be, able to accurately or timely predict trends in demand and consumer behavior or to take appropriate measures to mitigate risks and exploit opportunities resulting from such trends. Any inability in the future to identify or to adequately and effectively react to changes in demand could have a material adverse effect on our business, financial condition and results of operations.

We are dependent on international manufacturers and suppliers, as well as certain international contractors we engage from time to time with respect to select research and development activities, which exposes us to foreign operational and political risks that may harm our business.

We currently rely on a limited number of manufacturers: one headquartered in Taiwan, with manufacturing capabilities in Suzhou, China, Pegatron Corporation, for the manufacture of Eargo 5 and Eargo 6, and one located in Thailand, Hana Microelectronics, for the manufacture of all other products currently available for sale. In addition, we rely on some third-party suppliers in Europe, Southeast Asia, Japan, China and the United States, who supply, among other things, certain of the technology and raw materials used in the manufacturing of our products. We also engage certain international consultants, contractors and other specialists in connection with our research and development activities.

Our reliance on international operations exposes us to risks and uncertainties, including:

- controlling quality of supplies and finished product;
- trade protection measures, tariffs and other duties, especially in light of trade disputes between the United States and several foreign countries, including China and countries in Europe;
- political, social and economic instability (for example, Russia's invasion of Ukraine in February 2022 and the resultant sanctions and export controls introduced against Russia have created such instability and have and may continue to disrupt business activity both in the immediately affected region and around the world, the full effects of which remain unknown);
- the outbreak of contagious diseases, such as COVID-19;
- laws and business practices that favor local companies;
- interruptions and limitations in telecommunication services;
- product or material delays or disruption, including logistics challenges such as delays or disruptions in shipping;
- import and export license requirements and restrictions;
- difficulties in the protection of intellectual property;
- inflation and/or deflation;
- the threat of nationalization and expropriation;
- exchange controls, currency restrictions and fluctuations in currency values; and
- potential adverse tax consequences.

If any of these risks were to materialize, it could have a material adverse effect on our business, financial condition and results of operations.

We or the third parties upon whom we depend may be adversely affected by disasters, and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster. Any interruption in the operations of our or our suppliers' manufacturing or other facilities may have a material adverse effect on our business, financial condition and results of operations.

Our corporate headquarters are located in the San Francisco Bay Area, which has experienced both severe earthquakes and wildfires. We do not carry earthquake insurance. Our manufacturers and many of our suppliers are located in Asia, which regions have experienced natural disasters such as earthquakes, landslides, flooding, tropical storms and tsunamis, and tornadoes. Our customer support operations are based in Nashville, Tennessee, and our third-party provider's distribution facilities are based in Louisville, Kentucky, both of which have experienced flooding and tornadoes. Severe weather (including any potential effects of climate change), natural disasters and other calamities, such as pandemics (including COVID-19), earthquakes, tsunamis and hurricanes, fires and explosions, accidents, mechanical failures, unscheduled downtimes, civil unrest, strikes, transportation

interruptions, unpermitted discharges or releases of toxic or hazardous substances, other environmental risks, sabotage, geopolitical unrest, political instability, terrorism or acts of war, could severely disrupt our operations, or our third-party manufacturers' and suppliers' operations, and have a material adverse effect on our business, financial condition and results of operations.

If a natural disaster, power outage or other event occurred that prevented us from using all or a significant portion of our headquarters or other facilities, or those of our third-party manufacturers or suppliers, that damaged critical infrastructure, such as our enterprise financial systems or manufacturing resource planning and enterprise quality systems, or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible, for us to continue our business for a substantial period of time. A mechanical failure or disruption affecting any major operating line may result in a disruption to our ability to supply customers, and standby capacity may not be available. The disaster recovery and business continuity plans we have in place currently are limited and are unlikely to prove adequate in the event of a serious disaster or similar event. The potential impact of any disruption would depend on the nature and extent of the damage caused by a disaster. There can be no assurance that alternative production capacity will be available in the future in the event of a major disruption or, if it is available, that it could be obtained on favorable terms. We may incur substantial expenses as a result of the limited nature of our disaster recovery and business continuity plans, which, particularly when taken together with our lack of earthquake insurance, could have a material adverse effect on our business, financial condition and results of operations.

Furthermore, integral parties in our supply chain are similarly vulnerable to natural disasters or other sudden, unforeseen and severe adverse events. If such an event were to affect our supply chain, it could have a material adverse effect on our business, financial condition and results of operations.

We depend on sales of our hearing aids for our revenue. Demand for our hearing aids may not increase due to a variety of factors.

We expect that revenue from sales of our hearing aids will continue to account for our revenue for the foreseeable future. Continued and widespread market acceptance of hearing aids by consumers is critical to our future success. Consumer spending habits are affected by, among other things, prevailing economic conditions, levels of employment, salaries and wage rates, interest rates, inflation rates, consumer confidence and consumer perception of economic conditions, which have been adversely affected by the COVID-19 pandemic and may continue to be materially adversely affected by the COVID-19 pandemic. Hearing aids are often paid for directly by the consumer and, as a result, demand can vary significantly depending on economic conditions. The uncertainty regarding the extent to which we are able to validate and establish processes to support the submission of claims for reimbursement to health plans, including those under the FEHB program, if at all, in the future, the anticipated implementation of a pending OTC hearing aid regulatory framework (which may lead insurance providers to take actions limiting our ability to access insurance coverage and may also generally result in additional compliance or other regulatory requirements for Eargo and may limit our ability to access insurance coverage) and potential Medicare coverage for certain hearing aids (which may not include Eargo hearing aids) will require that we evaluate and consider any changes to our business model as new information becomes available, including a potential long-term shift to a model excluding insurance as a method of payment to Eargo, which would likely result in a sustained increased cost of customer acquisition and a reduction in shipments, revenue, gross margin, and higher operating expenses, which could have a material negative impact on our profitability and growth prospects. Without the benefit of customers with insurance coverage, the future growth prospects and profitability of the Company are uncertain, unless we can identify new sources of profitable growth.

Further, a general slowdown in the U.S. economy and international economies into which we may expand or an uncertain economic outlook could adversely affect consumer spending habits, which may result in, among other things, a reduction in consumer spending on elective or higher value products, or a reduction in demand for

hearing aids generally, each of which would have an adverse effect on our sales and operating results. Weakness in the global economy results in a challenging environment for selling hearing loss technologies. In such circumstances, consumers may opt to purchase less expensive hearing loss technologies. If there is a reduction in consumer demand for hearing aids generally, if consumers choose to use a competitive product rather than our hearing aids or if the average selling price of our hearing aids declines as a result of economic conditions, including employment levels and inflation, competitive pressures or any other reason, these factors could have a material adverse effect on our business, financial condition and results of operations. If we are not successful in adapting our production and cost structure to the market environment, we may experience further adverse effects that may be material to our business, financial condition and results of operations. See also the Risk Factor titled, "We face considerable uncertainty in our business prospects, as a significant portion of our revenue has historically been dependent upon reimbursement from third-party payors participating in the FEHB program but we have operated on a "cash pay" only basis since December 8, 2021. Following the civil settlement with the U.S. government on April 29, 2022, we may be unsuccessful in validating and establishing processes to support the submission of claims for reimbursement from third-party payors participating in the FEHB program in the future. As a result, we have faced a significant reduction in revenue and any failure to establish processes to support reimbursement from third-party payors in the future may significantly and adversely impact our business and growth prospects and our ability to sell our products."

We will be subject to "conflict minerals" reporting obligations.

We will be required to diligence the origin of minerals used in the manufacture our products that have been designated "conflict minerals" under the Dodd-Frank Wall Street Reform and Consumer Protection Act and, beginning in 2023, disclose and report whether or not such minerals originated in the Democratic Republic of the Congo or adjoining countries. These requirements could adversely affect the sourcing, availability and pricing of minerals used in the manufacture of our products. In addition, we will incur additional costs to comply with the disclosure requirements, including costs related to determining the source of the relevant minerals and metals used in our products.

Any future international expansion will subject us to additional costs and risks that may have a material adverse effect on our business, financial condition and results of operations.

Historically, all of our sales have been to customers in the United States. To the extent we enter into international markets in the future, there are significant costs and risks inherent in conducting business in international markets. If we expand, or attempt to expand, into foreign markets, we will be subject to new business risks, in addition to regulatory risks. In addition, expansion into foreign markets imposes additional burdens on our executive and administrative personnel, finance and legal teams, research and marketing teams and general managerial resources.

We have limited experience with regulatory environments and market practices internationally, and we may not be able to penetrate or successfully operate in new markets. We may also encounter difficulty expanding into international markets because of limited brand recognition in certain parts of the world, leading to delayed acceptance of our products by consumers in these international markets. If we are unable to expand internationally and manage the complexity of international operations successfully, it could have a material adverse effect on our business, financial condition and results of operations. If our efforts to introduce our products into foreign markets are not successful, we may have expended significant resources without realizing the expected benefit. Ultimately, the investment required for expansion into foreign markets could exceed the results of operations generated from this expansion.

Our Loan Agreement contains restrictions that limit our flexibility in operating our business.

In June 2018, we entered into a loan agreement, as amended in January 2019, May 2020 and in September 2020, with Silicon Valley Bank (the loan to which such loan agreement, as amended, relates, the "2018 Loan"). We

borrowed $15.0 million upon the closing of the September 2020 amendment, a portion of which was used to repay in full the outstanding principal amount of the previously funded term loan. As of December 31, 2021, $15.4 million in aggregate principal amount was outstanding under the term loan facility. The 2018 Loan has a maturity date of September 1, 2024. The 2018 Loan contains various covenants that limit our ability to engage in specified types of transactions without Silicon Valley Bank's prior consent. These covenants limit our ability to, among other things:

- encumber or license our intellectual property subject to certain exceptions;
- sell, transfer, lease or dispose of our assets subject to certain exclusions;
- create, incur or assume additional indebtedness;
- encumber or permit liens on any of our assets other than certain permitted liens;
- make restricted payments, including paying dividends on, repurchasing or making distributions with respect to any of our capital stock;
- make specified investments (including loans and advances);
- consolidate, merge with, or acquire any other entity, or sell or otherwise dispose of all or substantially all of our assets; and
- enter into certain transactions with our affiliates.

In addition, the 2018 Loan requires us to maintain a certain percentage of our total cash holdings in accounts with Silicon Valley Bank. The covenants in the 2018 Loan limit our ability to take certain actions and, in the event that we breach one or more covenants, Silicon Valley Bank may choose to declare an event of default and require that we immediately repay all amounts outstanding of the aggregate principal amount of term loans funded under the 2018 Loan, plus exit fees, prepayment premiums, penalties and interest, and foreclose on the collateral granted to it to secure such indebtedness. Such repayment could have a material adverse effect on our business, financial condition and results of operations.

We primarily rely on our own direct sales force, and if we are unable to maintain or expand our sales force, it could harm our business. Additionally, our reliance on our direct sales force may result in higher fixed costs than our competitors and may slow our ability to reduce costs in the face of a sudden decline in demand for our products.

We primarily rely on our own direct sales force to market and sell our products. We do not have any long-term employment contracts with the members of our direct sales force. Our operating results are directly dependent upon the sales and marketing efforts of our sales and customer support team. If our employees fail to adequately promote, market and sell our products, our sales could significantly decrease. As we launch new products, expand our product offerings and increase our marketing efforts with respect to existing products, we will need to expand the reach of our marketing and sales networks. Our future success will depend largely on our ability to continue to attract, hire, train, retain and motivate skilled employees with significant technical knowledge in various areas. New hires require training and take time to achieve full productivity.

Additionally, most of our competitors rely predominantly on third-party distributors. A direct sales force may subject us to higher fixed costs than those of competitors that market their products through independent third parties, due to the costs that we will bear associated with employee benefits, training and managing sales personnel. As a result, we could be at a competitive disadvantage. Additionally, these fixed costs may slow our ability to reduce costs in the face of a sudden decline in demand for our products, which could have a material adverse effect on our business, financial condition and results of operations.

We rely on our relationship with a professional employer organization for our human relations function and as a co-employer of our personnel, and if that party failed to perform its responsibilities under that relationship, our relations with our employees could be damaged and we could incur liabilities that could have a material adverse effect on our business.

All of our U.S. personnel, including our executive officers, are co-employees of Eargo and a professional employer organization, Insperity. Under the terms of our arrangement, Insperity is the formal employer of all of our U.S. personnel and is responsible for administering all payroll, including tax withholding, and providing health insurance and other benefits for these individuals, and our employees are governed by the work policies created by Insperity. We reimburse Insperity for these costs and pay Insperity an administrative fee for its services. If Insperity fails to comply with applicable laws or its obligations under this arrangement or creates work policies that are viewed unfavorably by employees, our relationship with our employees could be damaged. We could, under certain circumstances, be held liable for a failure by Insperity to appropriately pay, or withhold and remit required taxes from payments to, our employees. In such a case, our potential liability could be significant and could have a material adverse effect on our business.

We experience seasonality in our business, which may cause fluctuations in our financial results.

Historically, we have experienced and may continue to experience seasonality in our business, with higher sales volumes in quarters when we commercially launch new products and in the fourth calendar quarter as a result of holiday promotional activity. However, since our public disclosure of the DOJ investigation on September 22, 2021 and our related decision to stop accepting insurance benefits as a method of direct payment, we have experienced and may continue to experience a material decline in gross systems shipped. Negative publicity, including in relation to the DOJ investigation, the claims audits, and other legal proceedings has and could continue to harm our reputation and brand and severely diminish consumer confidence in our products. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—DOJ investigation and settlement and claims audits” for more information.

Because of these fluctuations, among other factors, it is possible that in future periods our operating results will fall below the expectations of securities analysts or investors, in which case the market price of our stock would likely decrease. These fluctuations, among other factors, also mean that our operating results in any particular period may not be relied upon as an indication of future performance.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

We do not expect to become profitable in the near future, may never achieve profitability, and have incurred substantial net operating losses (“NOLs”) during our history. Unused NOLs will carry forward to offset a portion of future taxable income, if any, until such unused NOLs expire, if ever. Federal NOLs generated after December 31, 2017 are not subject to expiration, but the yearly utilization of such federal NOLs is limited to 80 percent of taxable income for taxable years beginning after December 31, 2020. In addition, in general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the “Code”), a corporation that undergoes an “ownership change” (within the meaning of Section 382 of the Code) is subject to limitations on its ability to utilize its prechange NOLs or tax credits to offset future taxable income or taxes. For these purposes, an ownership change generally occurs where the aggregate stock ownership of one or more stockholders or groups of stockholders who own at least 5% of a corporation’s stock increases by more than 50 percentage points over the lowest percentage of the corporation’s stock owned by such stockholders within a specified testing period.

We have experienced an ownership change within the meaning of Section 382 of the Code in the past, which has been accounted for in our deferred tax disclosure. We may experience additional ownership changes in the future as a result of shifts in our stock ownership (some of which shifts may be outside our control). While we do not expect any limitation would impact our ability to use our tax attributes before they expire, we may be unable to use a material portion of our NOLs and other tax attributes even if we attain profitability.

Risks relating to intellectual property and legal and regulatory matters

If we fail to comply with U.S. or foreign federal and state healthcare regulatory laws, we could be subject to penalties, including, but not limited to, administrative, civil and criminal penalties, damages, fines, disgorgement, exclusion from participation in governmental healthcare programs and the curtailment of our operations, any of which could adversely impact our reputation and business operations.

We operate in a complex regulatory environment with an extensive and evolving set of federal, state and local governmental laws, regulations, and other requirements. These laws, regulations, and other requirements are promulgated and overseen by a number of different legislative, regulatory, administrative, and quasi-regulatory bodies, each of which may have varying interpretations, judgments, or related guidance. For example, broadly applicable fraud and abuse and other healthcare laws and regulations apply to our operations and business practices. These laws may constrain the business or financial arrangements and relationships through which we conduct our operations, including our sales and marketing practices, consumer incentive and other promotional programs and other business practices.

Such laws include, without limitation:

- the U.S. federal civil and criminal Anti-Kickback Statute, which prohibits, among other things, persons or entities from knowingly and willfully soliciting, offering, receiving or providing any remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, lease, order or recommendation of, any good, facility, item or service, for which payment may be made, in whole or in part, under U.S. federal and state healthcare programs such as Medicare, state Medicaid programs and TRICARE. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;
- the U.S. federal false claims laws, including the False Claims Act, which can be enforced through whistleblower actions, and civil monetary penalties laws, which, among other things, impose criminal and civil penalties against individuals or entities for knowingly presenting, or causing to be presented, to the U.S. federal government, claims for payment or approval that are false or fraudulent, knowingly making, using or causing to be made or used, a false record or statement material to a false or fraudulent claim, or from knowingly making a false statement to avoid, decrease or conceal an obligation to pay money to the U.S. federal government. In addition, the government may assert that a claim including items and services resulting from a violation of the U.S. federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the False Claims Act;
- Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which imposes criminal and civil liability for, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, or knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement, in connection with the delivery of, or payment for, healthcare benefits, items or services. Similar to the U.S. federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;
- state law equivalents of each of the above federal laws, including state anti-kickback, self-referral and false claims laws that apply more broadly to healthcare items or services paid by all payors, including self-pay patients and private insurers, that govern our interactions with consumers or restrict payments that may be made to healthcare providers and other potential referral sources;
- the Federal Trade Commission Act and federal and state consumer protection, advertisement and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers;
- the U.S. Physician Payments Sunshine Act and its implementing regulations, which require certain manufacturers of drugs, devices, biologics and medical supplies that are reimbursable under Medicare,

Medicaid or the Children's Health Insurance Program to report annually to the government information related to certain payments and other transfers of value to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain other healthcare providers (physician assistants, nurse practitioners, clinical nurse specialists, anesthesiologist assistants, certified registered nurse anesthetists and certified nurse midwives) and teaching hospitals, as well as ownership and investment interests held by the physicians described above and their immediate family members;

- the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), and similar regulations in other countries, which prohibit, among other things, companies and their employees and agents from authorizing, promising, offering or providing, directly or indirectly, corrupt or improper payments or anything else of value to foreign government officials, employees of public international organizations and foreign government owned or affiliated entities, candidates for foreign political office and foreign political parties or officials thereof and require companies to keep books and records that accurately and fairly reflect the transactions of the company and to maintain an adequate system of internal accounting controls;
- foreign or U.S. analogous state laws and regulations, which may apply to our business practices, including but not limited to, state laws that require manufacturers to comply with the voluntary compliance guidelines and the relevant compliance guidance promulgated by the U.S. federal government; state laws and regulations that require manufacturers to file reports relating to pricing and marketing information or that require tracking gifts and other remuneration and items of value provided to healthcare professionals and entities; and
- similar healthcare laws and regulations in the EU and other jurisdictions in which we may conduct activities in the future, including reporting requirements detailing interactions with and payments to healthcare providers.

Foreign laws and regulations in this regard may vary greatly from country to country. For example, the advertising and promotion of our products in the European Economic Area (the "EEA") would be subject to EEA Directives concerning misleading and comparative advertising and unfair commercial practices, as well as other EEA Member State legislation governing the advertising and promotion of medical devices. These laws may limit or restrict the advertising and promotion of our products to the general public and may impose limitations on our promotional activities with healthcare professionals. We are also subject to healthcare fraud and abuse regulation and enforcement by the countries in which we conduct our business. These healthcare laws and regulations vary significantly from country to country.

Ensuring that our internal operations and future business arrangements with third parties comply with applicable healthcare laws and regulations will involve substantial costs. We utilize considerable resources on an ongoing basis to monitor, assess and respond to applicable legislative, regulatory, and administrative requirements, but there is no guarantee that we will be successful in our efforts to adhere to all of these requirements. It is possible that governmental authorities will conclude that our business practices do not comply with current or future statutes, regulations, agency guidance or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of the laws described above or any other governmental laws and regulations that may apply to us, we may be subject to significant penalties, including civil, criminal and administrative penalties, damages, fines, exclusion from government-funded healthcare programs, such as state Medicaid programs, TRICARE or similar programs in other countries or jurisdictions, disgorgement, imprisonment, contractual damages, reputational harm, diminished profits and the curtailment or restructuring of our operations. Further, defending against any such actions can be costly and time-consuming and may require significant personnel resources. Even if we are successful in defending against any such actions that may be brought against us, our business may be impaired.

Our hearing aids are subject to extensive government regulation at the federal and state level, and our failure to comply with applicable requirements could harm our business.

Our hearing aids are medical devices that are subject to extensive regulation in the United States, including by the FDA and state agencies. The FDA regulates, among other things, the design, development, research, manufacture, testing, labeling, marketing, promotion, advertising, sale, import and export of hearing aid devices, such as those we market. Applicable medical device regulations are complex and have tended to become more stringent over time. Regulatory changes could result in restrictions on our ability to carry out or expand our operations.

The FDA classifies medical devices into one of three classes (Class I, II, or III) based on the degree of risk associated with a device and the level of regulatory control deemed necessary to ensure its safety and effectiveness. Class I devices are those for which safety and effectiveness can be assured by adherence to the FDA's general controls for medical devices, which include compliance with the FDA's current good manufacturing practices for devices, as reflected in the Quality System Regulation ("QSR"), establishment registration and device listing, reporting of adverse events, and truthful, non-misleading labeling, advertising, and promotional materials. Some Class I devices also require premarket clearance by the FDA through the premarket notification process set forth in Section 510(k) of the Federal Food, Drug and Cosmetic Act ("FDCA").

The FDA has classified air-conduction and wireless air-conduction hearing aids, such as those we market, as Class I and Class II devices, respectively, which are exempt from premarket review procedures; although we comply with applicable Class I and Class II medical device requirements, none of our devices have been reviewed by the FDA. Moreover, because the FDA has stated that it does not intend to enforce the medical evaluation requirements for dispensation of Class I or Class II air-conduction hearing aids to individuals 18 years of age and older, our devices are available directly to consumers without the medical evaluation of a licensed practitioner. If our current or future products become subject to the pending OTC hearing aid framework, are deemed to be Class II "self-fitting air-conduction hearing aids," or are otherwise required to undergo premarket review, for example, to come into compliance with the OTC Final Rule, we may be required to first receive clearance under Section 510(k) of the FDCA or approval of a premarket approval ("PMA") application from the FDA. If this were to occur for our currently marketed devices, the FDA could require us to remove our products from the market until we receive applicable regulatory clearance or approval, which would significantly impact our business.

In the 510(k) clearance process, before a device may be marketed, the FDA must determine that the proposed device is "substantially equivalent" to a legally-marketed "predicate" device, which includes a device that has been previously cleared through the 510(k) process, a device that was legally marketed prior to May 28, 1976 (a "pre-amendments" device), a device that was originally on the U.S. market pursuant to an approved PMA application and later down-classified, or a legally marketed 510(k)-exempt device. To be "substantially equivalent," the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics that do not raise different questions of safety or effectiveness than the predicate device. Clinical data are sometimes required to support substantial equivalence. In the PMA process, the FDA must determine that a proposed device is safe and effective for its intended use based, in part, on extensive data, including, but not limited to, technical, pre-clinical, clinical trial, manufacturing and labeling data. The PMA process is typically required for Class III devices that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices.

Modifications to products that are approved through a PMA application generally require FDA approval. Similarly, certain modifications made to products cleared through a 510(k) may require a new 510(k) clearance. Both the PMA approval and the 510(k) clearance process can be expensive, lengthy and uncertain. The FDA's 510(k) clearance process usually takes from 3 to 12 months, but can last longer. The process of obtaining a PMA is much more costly and uncertain and generally takes from one to three years, or even longer, from the time the application is filed with the FDA. In addition, a PMA generally requires the performance of one or more clinical

trials. Despite the time, effort and cost, we cannot assure you that any particular device will be approved or cleared by the FDA.

Any delay or failure to obtain necessary regulatory clearances or approvals if required in the future could harm our business.

The FDA can delay, limit or deny clearance or approval of a device for many reasons, including:

- inability to demonstrate to the FDA's satisfaction that the product or modification is substantially equivalent to the proposed predicate device or safe and effective for its intended use, as applicable;
- the data from pre-clinical studies and clinical trials may be insufficient to support clearance or approval, where required; and
- the manufacturing process or facilities do not meet applicable requirements.

In addition, the FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions, which may prevent or delay our ability to introduce new products or modify our current products on a timely basis. For example, in November 2018, FDA officials announced forthcoming steps that the agency intends to take to modernize the 510(k) premarket notification pathway, and in September 2019, the FDA finalized guidance to describe an optional "safety and performance based" premarket review pathway for manufacturers of certain "well-understood device types," which would allow manufacturers to demonstrate substantial equivalence by meeting objective safety and performance criteria established by the FDA, obviating the need for manufacturers to compare the safety and performance of their medical devices to specific predicate devices in the clearance process. As another example, in the FDA's OTC Proposed Rule, the FDA states they are "undertaking other separate efforts to minimize regulatory burdens for manufacturers by proposing the harmonization of part 820 with an international consensus standard." If we are required to seek premarket review of our devices in the future or if the FDA proposes modifications to quality system requirements, these proposals and reforms could impose additional regulatory requirements on us and increase the costs of compliance.

We operate in a regulated industry and changes in the regulations or the implementation of existing regulations could affect our operations and prospects for future growth globally.

Our products and our business activities are subject to rigorous regulation in any jurisdictions in which we operate, now or in the future. In particular, these laws generally govern: (i) coverage and reimbursement by the national health services or by private health insurance services for the purchase of hearing aids; (ii) the supply of hearing aids to the public and, more specifically, the training and qualifications required to practice the profession of hearing aid fitting specialist; and (iii) the development, testing, manufacturing, labeling, premarket clearance or approval and marketing, advertising, promotion, export and import of our hearing aids. Accordingly, our business may be affected by changes in any such laws and regulations and, in particular, by changes to the conditions for coverage, the way in which reimbursement is calculated, the ability to obtain national health insurance coverage or the role of the ear, nose and throat specialists.

While the FDA is the primary regulatory body affecting our business, which is currently based in the United States, there are numerous other regulatory schemes at the international, national and sub-national levels to which we are subject and, to the extent we expand internationally, we could become subject to international agencies and regulatory bodies such as the various agencies that enforce the European Union ("EU") Medical Device Directive, the Japanese Ministry of Health, Labor and Welfare, and sub-national regulatory schemes in such jurisdictions. These regulations can be burdensome and subject to change on short notice, exposing us to the risk of increased costs and business disruption, and regulatory premarket clearance or approval requirements may affect or delay our ability to market our new products. We cannot guarantee that we will be able to obtain marketing clearance or approval for our new products, or enhancements or modifications to existing products. If

we do, such clearance or approval may take a significant amount of time and require the expenditure of substantial resources. Further, such clearance or approval may involve stringent testing procedures, modifications, repairs or replacements of our products and could result in limitations on the proposed uses of our products. Regulatory authorities and legislators have been recently increasing their scrutiny of the healthcare industry, and there are ongoing regulatory efforts to reduce healthcare costs that may intensify in the future. Our business is also sensitive to any changes in tort and product liability laws.

Regulations pertaining to our products have become increasingly stringent and more common, particularly in developing countries whose regulations approach standards previously attained only by some Organisation for Economic Co-operation and Development countries, and we may become subject to more rigorous regulation by governmental authorities in the future. Conversely, however, the regulation of hearing aids as medical devices provides a barrier to entry for new competitors. For example, if certain of our products were made subject to less stringent regulation by the FDA in the United States, for example, in connection with the FDA's promulgation of a regulatory framework for OTC hearing aids, then products similar to ours may be marketed and sold more freely, and our products may become commoditized. If the markets in which we operate become less regulated, those barriers to entry may be eliminated or reduced, which could have a material adverse effect on our business, financial condition and results of operations.

Both before and after a product is commercially released, we have ongoing responsibilities under various laws and regulations. If a regulatory authority were to conclude that we are not in compliance with applicable laws or regulations, or that any of our hearing aids are ineffective or pose an unreasonable risk for the end-user, the authority may ban such hearing aids, detain or seize adulterated or misbranded hearing aids, order a recall, repair, replacement or refund of such instruments, and require us to notify health professionals and others that the devices present unreasonable risks of substantial harm to the public health. A regulatory authority may also impose operating restrictions, enjoin and restrain certain violations of applicable law pertaining to medical devices, and assess civil or criminal penalties against our officers, employees or us. The regulatory authority may also recommend prosecution by law enforcement agencies. Any governmental law or regulation, existing or imposed in the future, or enforcement action taken may have a material adverse effect on our business, financial condition and results of operations. Please also see the Risk Factor titled, "Changes in the regulatory landscape for hearing aid devices could render our direct-to-consumer business model contrary to applicable regulatory requirements, and we may be required to seek additional clearance or approval for our products."

Disruptions at the FDA and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire, retain or deploy key leadership and other personnel, or otherwise delay or prevent necessary regulatory clearances or approvals, which could negatively impact our business.

The ability of the FDA to review and clear or approve new products can be affected by a variety of factors, including government budget and funding levels, statutory, regulatory and policy changes, the FDA's ability to hire and retain key personnel and accept the payment of user fees, and other events that may otherwise affect the FDA's ability to perform routine functions. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of other government agencies that fund research and development activities is subject to the political process, which is inherently fluid and unpredictable. Disruptions at the FDA and other agencies may also slow the time necessary for new medical devices or modifications to be cleared or approved by government agencies, which would adversely affect our business. For example, over the last several years, including for 35 days beginning on December 22, 2018, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough critical FDA employees and stop critical activities.

Separately, in response to the COVID-19 pandemic, on March 10, 2020, the FDA announced its intention to postpone most inspections of foreign manufacturing facilities, and on March 18, 2020, the FDA temporarily postponed routine surveillance inspections of domestic manufacturing facilities. Subsequently, in July 2020, the FDA resumed certain on-site inspections of domestic manufacturing facilities subject to a risk-based

prioritization system, which it utilized to assist in determining when and where it was safest to conduct prioritized domestic inspections. In May 2021, the FDA outlined a detailed plan to move toward a more consistent state of inspectional operations, and in July 2021, the FDA resumed standard inspectional operations of domestic facilities and was continuing to maintain this level of operation as of September 2021. More recently, the FDA has continued to monitor and implement changes to its inspectional activities to ensure the safety of its employees and those of the firms it regulates as it adapts to the evolving COVID-19 pandemic. Regulatory authorities outside the United States may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic. If a prolonged government shutdown occurs, or if global health concerns continue to prevent the FDA or other regulatory authorities from conducting their regular inspections, reviews or other regulatory activities, it could significantly impact the ability of the FDA or other regulatory authorities to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

Legislative or regulatory healthcare reforms may make it more difficult and costly to produce, market and distribute our products or to do so profitably.

Recent political, economic and regulatory influences are subjecting the healthcare industry to fundamental changes. Both the federal and state governments in the United States and foreign governments continue to propose and pass new legislation and regulations designed to contain or reduce the cost of healthcare, improve quality of care and expand access to healthcare, among other purposes. For example, the implementation of the Affordable Care Act has changed healthcare financing and delivery by both governmental and private insurers substantially and has affected medical device manufacturers significantly. Other legislative changes have also been proposed and adopted since the Affordable Care Act was enacted, which included, among other things, reductions to Medicare payments to providers of 2% per fiscal year. These reductions went into effect in April 2013 and, due to subsequent legislative amendments to the statute, will remain in effect through 2030, with the exception of a temporary suspension from May 1, 2020 through March 31, 2022, unless additional action is taken by Congress. In addition, on January 2, 2013, the American Taxpayer Relief Act of 2012 was signed into law which, among other things, further reduced Medicare payments to certain providers, including hospitals. The Medicare Access and CHIP Reauthorization Act of 2015 (“MACRA”), enacted on April 16, 2015, repealed the formula by which Medicare made annual payment adjustments to physicians and replaced the former formula with fixed annual updates and a new system of incentive payments which began in 2019 that are based on various performance measures and physicians’ participation in alternative payment models such as accountable care organizations. Future legislation and regulatory changes, including, for example, the pending OTC regulatory framework, may result in, directly or indirectly, decreased coverage and reimbursement for medical devices, which may further exacerbate industry-wide pressure to reduce the prices charged and market demand for medical devices. This could harm our ability to market and generate sales from our products.

Our hearing aids may cause or contribute to adverse medical events that we are required to report to the FDA, and if we fail to do so, we would be subject to sanctions that could harm our reputation, business, financial condition and results of operations. The discovery of serious safety issues with our products, or a recall of our products either voluntarily or at the direction of the FDA or another governmental authority, could have a negative impact on us.

We are subject to the FDA’s medical device reporting regulations and similar foreign regulations, which require us to report to the FDA when we receive or become aware of information that reasonably suggests that one or more of our hearing aids may have caused or contributed to a death or serious injury or malfunctioned in a way that, if the malfunction were to recur, it could cause or contribute to a death or serious injury. The timing of our obligation to report is triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events of which we become aware within the prescribed timeframe. We may also fail to recognize that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the initial use of the hearing aid device. If we fail to comply with our reporting obligations, the FDA could take action, including warning letters, untitled letters,

administrative actions, criminal prosecution, imposition of civil monetary penalties, seizure of our products or, if premarket review is required in the future, delay in clearance of future products.

The FDA and foreign regulatory bodies have the authority to require the recall of commercialized medical device products in the event of material deficiencies or defects in design or manufacture of a product or in the event that a product poses an unacceptable risk to health. The FDA's authority to require a recall must be based on a finding that there is reasonable probability that the device could cause serious injury or death. We may also choose to voluntarily recall a product if any material deficiency is found. A government-mandated or voluntary recall by us could occur as a result of an unacceptable risk to health, component failures, malfunctions, manufacturing defects, labeling or design deficiencies, packaging defects or other deficiencies or failures to comply with applicable regulations. We cannot assure you that product defects or other errors will not occur in the future. Recalls involving our hearing aids could have a material adverse effect on our business, financial condition and results of operations.

Medical device manufacturers are required to maintain certain records of recalls and corrections, even if they are not reportable to the FDA. We may initiate voluntary withdrawals or corrections for our hearing aid devices in the future that we determine do not require notification of the FDA. If the FDA disagrees with our determinations, it could require us to report those actions as recalls and we may be subject to enforcement action. A future recall announcement could harm our reputation with customers, potentially lead to product liability claims against us and negatively affect our sales.

We must manufacture our products in accordance with federal and state regulations, and we could be forced to recall our products or terminate production if we fail to comply with these regulations.

The methods used in, and the facilities used for, the manufacture of our hearing aid devices must comply with the FDA's QSR, which is a complex regulatory scheme that covers the procedures and documentation of the design, testing, production, process controls, quality assurance, labeling, packaging, handling, storage, distribution, servicing and shipping of medical devices. Furthermore, we are required to verify that our suppliers maintain facilities, procedures and operations that comply with our quality and applicable regulatory requirements. The FDA enforces the QSR through periodic announced or unannounced inspections of medical device manufacturing facilities, which may include the facilities of subcontractors, and such inspections can result in warning letters, untitled letters and other regulatory communications and adverse publicity. Our hearing aid devices are also subject to similar state regulations and various laws and regulations of foreign countries governing manufacturing.

We cannot guarantee that we or any subcontractors will take the necessary steps to comply with applicable regulations, which could cause delays in the manufacture and delivery of our products. In addition, failure to comply with applicable FDA requirements or later discovery of previously unknown problems with our products or manufacturing processes could result in, among other things:

- fines, injunctions or civil penalties;
- suspension or withdrawal of future clearances or approvals;
- refusal to clear or approve pending applications;
- seizures or recalls of our products;
- total or partial suspension of production or distribution;
- administrative or judicially imposed sanctions;
- refusal to permit the import or export of our products; and
- criminal prosecution.

Any of these actions could significantly and negatively impact supply of our products. If any of these events occurs, our reputation could be harmed, we could be exposed to product liability claims and we could lose customers and suffer reduced revenue and increased costs.

We are subject to numerous state and local hearing aid and licensure laws and regulations as well as state laws regulating the corporate practice of audiology or fee splitting, and non-compliance with these laws and regulations may expose us to significant costs or liabilities and negatively impact our business, financial condition and ability to operate in those states.

We are subject to numerous state and local hearing aid laws and regulations relating to, among other matters, licensure and registration of audiologists and other individuals we employ or contract with to provide services and dispense hearing aids. Many states also have laws that regulate the corporate practice of audiology, including exercising control, interfering with or influencing an audiologist or other hearing care specialist's professional judgment and entering into certain financial arrangements, such as splitting professional fees with audiologists. Other state and local laws and regulations require us to maintain warranty and return policies for consumers allowing for the return of product and restrict advertising and marketing practices. These state and local laws and regulations are complex, change frequently and have tended to become more stringent over time; additionally, these laws and their interpretations vary from state to state and are enforced by state courts and regulatory authorities, each with broad discretion.

The FDCA preempts state laws relating to the safety and efficacy of medical devices and state laws that are different from or in addition to federal requirements; some state laws relating to licensure, business registration, or administrative requirements may not be considered to be related to the safety and efficacy of medical devices and therefore may not be preempted. In Missouri Board of Examiners for Hearing Instrument Specialists v. Hearing Help Express, Inc. and METX, LLC v. Wal-Mart Stores Texas, LLC, the Eighth Circuit Court of Appeals and the U.S. District Court for the Eastern District of Texas, respectively, have held that certain state laws relating to the fitting and dispensing of hearing aids are preempted because they relate to the safety and efficacy of medical devices. Interpretative legal precedent and regulatory guidance vary by jurisdiction and are often sparse and not fully developed, including which laws and regulations are preempted, complicating our compliance efforts. Accordingly, we cannot be certain that our interpretation of laws and regulations applicable to our operations is correct, and regulatory authorities or other third parties may challenge our existing organization. If such a claim were successful, we could be subject to adverse judicial or administrative interpretations and to civil or criminal penalties. Our ability to operate profitably will depend, in part, on our ability to obtain and maintain any necessary licenses and other approvals and operate in compliance with applicable state laws and regulations. A determination that we are in violation of applicable laws and regulations in any jurisdiction in which we operate could have a material adverse effect on us, particularly if we are unable to restructure our operations and arrangements to comply with the requirements of that jurisdiction, if we are required to restructure our operations and arrangements, including those with our audiologists and other licensed professionals, at a significant cost, or if we are subject to penalties or other adverse action.

Additionally, applicable federal laws and regulations continue to evolve. For example, the FDARA set forth a process to create a category of OTC hearing aids that are intended to be available without supervision, prescription, or other order, involvement or intervention of a licensed practitioner. The FDA is currently engaged in a rulemaking process to publish a final regulation regarding OTC hearing aids. Under FDARA, the OTC hearing aid controls that are the subject of the rulemaking, if finalized, would preempt any state or local requirement specifically related to hearing products that would restrict or interfere with commercial activity involving OTC hearing aids. Additionally, the Biden Executive Order July 9, 2021 instructed the FTC to review overly restrictive occupational licensing requirements that may impede the ability for licensed individuals to move between states. We cannot predict the impact on our business of new or amended laws or regulations or any changes in the way existing and future laws and regulations are interpreted or enforced, nor can we ensure we will be able to obtain or maintain any required licenses or permits. See the Risk Factor titled, "Changes in the

regulatory landscape for hearing aid devices could render our direct-to-consumer business model contrary to applicable regulatory requirements, and we may be required to seek additional clearance or approval for our products."

We may face risks related to any future international sales, including the need to obtain necessary foreign regulatory clearance or approvals.

Sales of our products outside the United States will subject us to foreign regulatory requirements that vary widely from country to country. The time required to obtain clearances or approvals required by other countries may be longer than that required for FDA clearance or approval, and requirements for such approvals may differ from FDA requirements. We may be unable to obtain regulatory approvals and may also incur significant costs in attempting to obtain foreign regulatory approvals. If we experience delays in receipt of approvals to market our products in new jurisdictions, or if we fail to receive these approvals, we may be unable to market our products in international markets in a timely manner, if at all, which could materially impact our international expansion and adversely affect our business as a whole. Some international regulations may also limit the availability of our hearing aids to customers in certain jurisdictions without our first obtaining a license or engaging a third party to provide such financing, or limit the financing options we can offer our customers. If any of these risks were to materialize, they could limit our expected international expansion opportunities, which could have a material adverse effect on our business, financial condition and results of operations.

Regulations in certain foreign countries may challenge our direct-to-consumer sales model.

Our business may also be affected by actions of domestic and foreign governments to restrict the activities of direct-to-consumer companies for various reasons, including a limitation on the ability of direct-to-consumer companies to operate without the involvement of a traditional retail channel. To the extent that we begin to offer our products in international markets, foreign governments may also introduce other forms of protectionist legislation, such as limitations or requirements on where the products can or must be produced or requirements that non-domestic companies doing or seeking to do business place a certain percentage of ownership of legal entities in the hands of local nationals to protect the commercial interests of its citizens. Customs laws, tariffs, import duties, export and import quotas and restrictions on repatriation of foreign earnings and/or other methods of accessing cash generated internationally, may negatively affect our local or corporate operations. Additionally, the U.S. government may impose restrictions on our ability to engage in business in other countries in connection with the foreign policy of the United States. Any such restrictions on our direct-to-consumer sales model in international jurisdictions could limit our ability to grow internationally, which could have a material adverse effect on our business, financial condition and results of operations.

Our success depends in part on our proprietary technology, and if we are unable to obtain, maintain or successfully enforce our intellectual property rights, the commercial value of our products and services will be adversely affected and our competitive position may be harmed.

Our success and ability to compete depend in part on our ability to maintain and enforce existing intellectual property and to obtain, maintain and enforce further intellectual property protection for our products and services, both in the United States and in other countries. We attempt to protect our intellectual property rights through a combination of patent, trademark, copyright and trade secret laws, as well as licensing agreements and third-party confidentiality and assignment agreements. Our inability to do so could harm our competitive position. As of December 31, 2021, we had 23 issued U.S. patents, 18 patents outside the United States, 7 pending U.S. patent applications and 10 pending foreign patent applications.

We rely on our portfolio of issued and pending patent applications in the United States and other countries to protect our intellectual property and our competitive position. However, the patent positions of medical device companies, including our patent position, may involve complex legal and factual questions, and, therefore, the scope, validity and enforceability of any patent claims that we may obtain cannot be predicted with certainty. Accordingly, we cannot provide any assurances that any of our issued patents have, or that any of our currently

pending or future patent applications that mature into issued patents will include, claims with a scope sufficient to protect our products and services. Our pending and future patent applications may not result in the issuance of patents or, if issued, may not issue in a form that will be advantageous to us. While we generally apply for patents in those countries where we intend to make, have made, use or sell patented products, we may not accurately predict all of the countries where patent protection will ultimately be desirable. If we fail to timely file for a patent, we may be precluded from doing so at a later date. Additionally, any patents issued to us may be challenged, narrowed, invalidated, held unenforceable or circumvented, or may not be sufficiently broad to prevent third parties from producing competing products similar in design to our products.

Changes in either patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property or narrow the scope of our patent protection, which in turn could diminish the commercial value of our products and services. In addition, any protection afforded by foreign patents may be more limited than that provided under U.S. patent and intellectual property laws. There can be no assurance that any of our patents, any patents licensed to us or any patents which we may be issued in the future will provide us with a competitive advantage or afford us protection against infringement by others, or that the patents will not be successfully challenged or circumvented by third parties, including our competitors. Further, there can be no assurance that we will have adequate resources to enforce our patents.

In addition, from time to time we engage international consultants, contractors and other specialists to assist in our research and development activities. Certain of these third parties may operate in jurisdictions where it is difficult or impossible for us to assert our intellectual property rights in case of infringement or theft, either as a statutory or practical matter. We have engaged in, and may in the future engage in, various contractual relationships with third parties outside the United States in connection with the development of our products, which may expose our technology and intellectual property to a heightened risk of unauthorized use or theft.

Any of the foregoing risks, individually or in the aggregate, could have a material adverse effect on our competitive position, business, financial condition, results of operations, and prospects.

If our trademarks and trade names are not adequately protected, we may not be able to build name recognition in our markets of interest and our competitive position may be harmed.

We rely on our trademarks, trade names and brand names to distinguish our products from the products of our competitors, and have registered or applied to register many of these trademarks. There can be no assurance that our trademark applications will be approved. Third parties may also oppose our trademark applications or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition, and could require us to devote resources to advertising and marketing new brands. Further, there can be no assurance that competitors will not infringe our trademarks or that we will have adequate resources to enforce our trademarks. We also license third parties to use our trademarks. In an effort to preserve our trademark rights, we enter into license agreements with these third parties, which govern the use of our trademarks and require our licensees to abide by quality control standards with respect to the goods and services that they provide under our trademarks. Although we make efforts to monitor the use of our trademarks by our licensees, there can be no assurance that these efforts will be sufficient to ensure that our licensees abide by the terms of their licenses. In the event that our licensees fail to do so, our trademark rights could be diluted. Any of the foregoing could have a material adverse effect on our competitive position, business, financial condition, results of operations, and prospects.

We may become involved in lawsuits to protect or enforce our intellectual property, which could be expensive, time-consuming and unsuccessful.

Third parties, including our competitors, could be infringing, misappropriating or otherwise violating our intellectual property rights. While we are not aware of any unauthorized use of our intellectual property, we do not regularly conduct monitoring for unauthorized use at this time. In the future, we may from time to time, seek

to analyze our competitors' products and services, or seek to enforce our rights against potential infringement, misappropriation or violation of our intellectual property. However, the steps we have taken to protect our proprietary rights may not be adequate to enforce our rights as against such infringement, misappropriation or violation of our intellectual property. We may not be able to detect unauthorized use of, or take appropriate steps to enforce, our intellectual property rights. Any inability to meaningfully enforce our intellectual property rights could harm our ability to compete and reduce demand for our products and services.

We may in the future become involved in lawsuits to protect or enforce our intellectual property rights. An adverse result in any litigation proceeding could harm our business. In any lawsuit we bring to enforce our intellectual property rights, a court may refuse to stop the other party from using the technology at issue on grounds that our intellectual property rights do not cover the technology in question. If we initiate legal proceedings against a third party to enforce a patent covering a product, the defendant could counterclaim that such patent is invalid or unenforceable. In patent litigation in the United States, defendant counterclaims alleging invalidity or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness, or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the United States Patent and Trademark Office ("USPTO") or made a misleading statement, during prosecution. Mechanisms for such challenges include re-examination, post-grant review, inter partes review, interference proceedings, derivation proceedings, and equivalent proceedings in foreign jurisdictions (*e.g.*, opposition proceedings). Such proceedings could result in the revocation of, cancellation of, or amendment to our patents in such a way that they no longer cover our products, or any future products that we may develop.

The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we and the patent examiner were unaware during prosecution. If a third party were to prevail on a legal assertion of invalidity or unenforceability, we would lose at least part, and perhaps all, of the patent protection on our products. Such a loss of patent protection would have a material adverse impact on our business, financial condition, results of operations, and prospects.

Because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation. There could also be public announcements of the results of hearing, motions, or other interim developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of shares of our common stock. Even if we ultimately prevail, a court may decide not to grant an injunction against further infringing activity and instead award only monetary damages, which may not be an adequate remedy. Furthermore, the monetary cost of such litigation and the diversion of the attention of our management could outweigh any benefit we receive as a result of the proceedings. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our business.

If we infringe, misappropriate or otherwise violate the intellectual property rights of third parties or are subject to an intellectual property infringement or misappropriation claim, our ability to grow our business may be severely limited and our business could be adversely affected.

We may in the future be the subject of patent or other litigation. Our products and services may infringe, or third parties may claim that they infringe, intellectual property rights covered by patents or patent applications under which we do not hold licenses or other rights. Third parties may own or control these patents and patent applications in the United States and abroad. These third parties could bring claims against us that would cause us to incur substantial expenses and, if successfully asserted against us, could cause us to pay substantial damages. Further, if a patent infringement or other intellectual property-related lawsuit were brought against us, we could be forced to stop or delay production or sales of the product that is the subject of the suit. From time to time, we have received and may in the future receive letters from third parties drawing our attention to their

patent rights. While we take steps to ensure that we do not infringe upon, misappropriate or otherwise violate the rights of others, there may be other more pertinent rights of which we are presently unaware. The defense and prosecution of intellectual property lawsuits could result in substantial expense to us and significant diversion of effort by our technical and management personnel. An adverse determination of any litigation or interference proceeding to which we may become a party could subject us to significant liabilities. As a result of patent infringement claims, or in order to avoid potential claims, we may choose or be required to seek a license from the third party and be required to pay significant license fees, royalties or both. Licenses may not be available on commercially reasonable terms, or at all, in which event our business would be materially and adversely affected. Even if we were able to obtain a license, the rights may be nonexclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, if we are unable to obtain such licenses, we could be forced to cease some aspect of our business operations, which could harm our business significantly.

Changes in U.S. patent laws may limit our ability to obtain, defend and/or enforce our patents.

Any patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. For example, the Leahy-Smith America Invents Act (the "Leahy-Smith Act") included a number of significant changes to U.S. patent law. These include provisions that affected the way patent applications are prosecuted and also affect patent litigation. The USPTO developed regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first to file provisions, which became effective on March 16, 2013. The first to file provisions limit the rights of an inventor to patent an invention if not the first to file an application for patenting that invention, even if such invention was the first invention. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business.

However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the enforcement and defense of our issued patents. For example, the Leahy-Smith Act provides that an administrative tribunal known as the Patent Trial and Appeals Board ("PTAB") provides a venue for challenging the validity of patents at a cost that is much lower than district court litigation and on timelines that are much faster. Although it is not clear what, if any, long-term impact the PTAB proceedings will have on the operation of our business, the initial results of patent challenge proceedings before the PTAB since its inception in 2013 have resulted in the invalidation of many U.S. patent claims. The availability of the PTAB as a lower-cost, faster and potentially more potent tribunal for challenging patents could increase the likelihood that our own patents will be challenged, thereby increasing the uncertainties and costs of maintaining and enforcing them.

We may be subject to claims that we or our employees have misappropriated the intellectual property of a third party, including trade secrets or know-how, or are in breach of non-competition or non-solicitation agreements with our competitors and third parties may claim an ownership interest in intellectual property we regard as our own.

Many of our employees and consultants were previously employed at or engaged by other medical device companies, including our competitors or potential competitors. Some of these employees, consultants and contractors may have executed proprietary rights, non-disclosure and non-competition agreements in connection with such previous employment. Although we try to ensure that our employees and consultants do not use the intellectual property, proprietary information, know-how or trade secrets of others in their work for us, we may be subject to claims that we or these individuals have, inadvertently or otherwise, misappropriated the intellectual property or disclosed the alleged trade secrets or other proprietary information, of these former employers, competitors or other third parties. Additionally, we may be subject to claims from third parties challenging our ownership interest in or inventorship of intellectual property we regard as our own, based on claims that our agreements with employees or consultants obligating them to assign intellectual property to us are ineffective or in conflict with prior or competing contractual obligations to assign inventions to another employer, to a former employer, or to another person or entity. Litigation may be necessary to defend against claims, and it may be

necessary or we may desire to enter into a license to settle any such claim; however, there can be no assurance that we would be able to obtain a license on commercially reasonable terms, if at all. If our defense to those claims fails, in addition to paying monetary damages or a settlement payment, a court could prohibit us from using technologies, features or other intellectual property that are essential to our products, if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of the former employers. An inability to incorporate technologies, features or other intellectual property that are important or essential to our products could have a material adverse effect on our business and competitive position, and may prevent us from selling our products. In addition, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction to management. Any litigation or the threat thereof may adversely affect our ability to hire employees or contract with independent sales representatives. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products, which could materially and adversely affect our business, financial condition, operating results, cash flows and prospects.

If we are unable to continue to drive consumers to our website, it could cause our revenue to decrease.

Many consumers find our website by searching for hearing aid information through internet search engines or from word-of-mouth and personal recommendations. A critical factor in attracting visitors to our website is how prominently we are displayed in response to search queries. Accordingly, we use search engine marketing as a means to provide a significant portion of our customer acquisition. Search engine marketing includes both paid website visitor acquisition on a cost-per-click basis and visitor acquisition on an unpaid basis, often referred to as organic or algorithmic search.

One method we employ to acquire visitors via organic search is commonly known as search engine optimization ("SEO"). SEO involves developing our website in a way that enables the website to rank high for search queries for which our website's content may be relevant. We also rely heavily on favorable recommendations from our existing customers to help drive traffic to our website. If our website is listed less prominently or fails to appear in search result listings for any reason, it is likely that we will attract fewer visitors to our website, which could adversely affect our revenue.

Risks relating to our common stock

If we fail to meet continued listing standards of the Nasdaq Stock Market LLC, our common stock may be delisted, which would have a material adverse effect on the price of our common stock.

Our common stock is currently traded on the Nasdaq under the symbol "EAR." In order for our securities to be eligible for continued listing on Nasdaq, we must remain in compliance with certain Nasdaq continued listing standards. We were notified by Nasdaq on November 18, 2021 that we were not in compliance with Nasdaq Listing Rule 5250(c)(1) for continued listing as a result of the delay in filing our Form 10-Q for the period ended September 30, 2021 with the SEC. In accordance with Nasdaq Listing Rules, we have submitted a plan to regain compliance. Nasdaq has granted us an exception of up to 180 days from the Form 10-Q original filing due date, or until May 16, 2022, to regain compliance. On March 2, 2022, we filed a Form 12b-25 notifying the SEC that we would be unable to timely file our annual report on Form 10-K for the year ended December 31, 2021. One March 4, 2022, we were notified again by Nasdaq that we were not in compliance with Nasdaq Listing Rule 5250(c)(1) for continued listing as a result of the delay in filing this Annual Report on Form 10-K. As a result, we submitted to Nasdaq an update to our original plan to regain compliance. Nasdaq's notification dated March 4, 2022 indicated that any exception to allow us to regain compliance with all untimely filings will be limited to a maximum of 180 calendar days from the due date of our Q3 10-Q, or May 16, 2022.

On May 11, 2022, we filed a Form 12b-25 notifying the SEC that we would be unable to timely file our Quarterly Report on Form 10-Q for the three months ended March 31, 2022 (our "Q1 2022 10-Q"). On May 12, 2022, we received a letter from Nasdaq notifying us that because we remain delinquent in filing our Q3 10-Q and Annual Report on Form 10-K, and, in addition, because we are delinquent in filing our Q1 2022 10-Q, we had not regained compliance and will not meet the terms of the exception. The letter indicated that our securities would be subject to

delisting on May 23, 2022 as a result of our non-compliance, unless on or before May 19, 2022 we request a hearing before the Nasdaq Hearings Panel and request an extended stay of suspension or delisting. We intend to timely request a hearing before the Nasdaq Hearings Panel, at which hearing we will present our plan to regain compliance and request the continued listing of our securities on Nasdaq pending our return to compliance. Such request would automatically stay any suspension or delisting action by Nasdaq for a period of 15 days from the date of our request. The stay could be extended at the option of the Nasdaq Hearings Panel upon our request and support of such extension, and we intend to ask the Nasdaq Hearings Panel for a further stay concurrent with our request for a hearing and pending the ultimate conclusion of the hearing process.

If Nasdaq should delist our common stock for any reason and we are unable to obtain listing on another reputable national securities exchange, a reduction in some or all of the following may occur, each of which could materially and adversely affect our stockholders:

- the liquidity of our common stock;
- the market price of our common stock;
- our ability to raise additional capital;
- the number of institutional and general investors that will consider investing in our common stock;
- the number of market makers in our common stock;
- the availability of information concerning the trading prices and volume of our common stock; and
- the number of broker-dealers willing to execute trades in shares of our common stock.

We have identified material weaknesses in our internal control over financial reporting and entity level controls. If our remediation of the material weaknesses is not effective, or if we experience additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls in the future, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect investor confidence in us and, as a result, the value of our common stock.

In connection with the preparation of our financial statements at the time of our IPO and through the current financial reporting period ended December 31, 2021, we identified material weaknesses in our internal control over financial reporting and our entity level controls. A material weakness is a deficiency, or combination of deficiencies, in internal controls such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis.

With respect to the material weakness related to internal control over financial reporting, we have implemented and are in the process of implementing additional measures designed to improve our internal control over financial reporting to remediate this material weakness, including the hiring of additional qualified supervisory resources, the engagement of additional technical accounting consulting resources and plans to hire additional finance department employees.

With respect to the material weakness related to entity level controls related to a lack of sufficient qualified healthcare industry compliance and risk management resources, including those necessary to provide appropriate oversight, monitor compliance, and to identify and mitigate risks with respect to the financial reporting and disclosures of our operations, we intend to enhance our compliance and risk management processes with respect to our operations in the healthcare industry to remediate this material weakness, including the hiring of additional qualified personnel, and the engagement of additional specialized consulting resources.

We cannot assure you that the measures we intend to take will be sufficient to remediate the material weaknesses we have identified or avoid potential future material weaknesses. While we believe that our efforts will enhance our internal control, remediation of the material weaknesses will require further validation and testing of the design and operating effectiveness of internal controls over a sustained period of financial reporting cycles, and we cannot assure you that we have identified all, or that we will not in the future have additional, material weaknesses.

Raising additional capital may cause dilution to our stockholders, restrict our operations or require us to relinquish rights to our technologies or products.

Since our inception, our operations have been financed primarily by net proceeds from the sale of our convertible preferred stock and common stock, indebtedness and revenue from the sales of our products. We anticipate our future capital requirements will be substantial and that we will need to raise significant additional capital to fund our operations through equity or debt financing, or some combination thereof. We are currently exploring fundraising opportunities to meet these capital requirements. If we are unable to raise additional funding to meet our operational needs, we will be forced to limit or cease our operations.

In addition to our current capital needs, we regularly consider fundraising opportunities and may decide, from time to time, to raise capital based on various factors, including market conditions and our plans of operation. We may seek funds through borrowings or through additional rounds of financing, including private or public equity or debt offerings. Additional capital may not be available to us on acceptable terms on a timely basis, or at all. If adequate funds are not available, or if the terms of potential funding sources are unfavorable, our business and our ability to develop our technology and our products would be harmed. If we raise additional funds by issuing equity securities, our stockholders may suffer dilution and the terms of any financing may adversely affect the rights of our stockholders. In addition, as a condition to providing additional funds to us, future investors may demand, and may be granted, rights superior to those of existing stockholders. Debt financing, if available, is likely to involve restrictive covenants limiting our flexibility in conducting future business activities, and, in the event of insolvency, debt holders would be repaid before holders of our equity securities receive any distribution of our corporate assets. We also could be required to seek funds through arrangements with partners or others that may require us to relinquish rights or jointly own some aspects of our technologies or products that we would otherwise pursue on our own.

If we are unable to implement and maintain effective internal control over financial reporting in the future, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock may decline.

As a public company, we are required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. In addition, beginning with our annual report on Form 10-K for the year ended December 31, 2021, we will be required to furnish a report by management on the effectiveness of our internal control over financial reporting, pursuant to Section 404 of the Sarbanes-Oxley Act. The process of designing, implementing and testing the internal control over financial reporting required to comply with this obligation is time-consuming, costly and complicated. If we fail to remediate identified material weaknesses or identity additional material weaknesses in our internal control over financial reporting, if we are unable to comply with the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner, or if we are unable to assert that our internal control over financial reporting is effective, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could decline, and we could also become subject to investigations by the stock exchange on which our common stock is listed, the SEC or other regulatory authorities, which could require additional financial and management resources.

As of December 31, 2021, we no longer qualify as an "emerging growth company," and as a result, we will have to comply with increased disclosure and compliance requirements.

As of December 31, 2021, based on the market value of our common stock on the relevant measurement date exceeding $700 million, we no longer qualify as an emerging growth company and instead are deemed a "large accelerated filer" within the meaning of applicable SEC rules.

As a large accelerated filer, we are now (as of December 31, 2021) subject to certain disclosure and compliance requirements that apply to other public companies but did not previously apply to us due to our status as an emerging growth company. We expect that the loss of emerging growth company status and compliance with the additional requirements of being a large accelerated filer will increase our legal and financial compliance costs and cause management and other personnel to divert attention from operational and other business matters to devote substantial time to public company reporting requirements. In addition, if we are not able to comply with

changing requirements in a timely manner, the market price of our stock could decline and we could be subject to sanctions or investigations by the stock exchange on which our common stock is listed, the SEC, or other regulatory authorities, which would require additional financial and management resources.

We incur significantly increased costs and are subject to additional regulations and requirements as a result of becoming a public company, which could lower our profits or make it more difficult to run our business.

As a public company, we incur significant legal, accounting and other expenses that we did not incur as a private company, including costs associated with public company reporting requirements. We also have incurred and will continue to incur costs associated with the Sarbanes-Oxley Act, and related rules implemented by the SEC and the exchange our securities are listed on. The expenses generally incurred by public companies for reporting and corporate governance purposes have been increasing. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly, although we are currently unable to estimate these costs with any degree of certainty. These laws and regulations also could make it more difficult or costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. These laws and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, on our board committees or as our executive officers. Furthermore, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of our common stock, fines, sanctions, other regulatory action and potentially civil litigation.

If our operating and financial performance in any given period does not meet any guidance that we provide to the public, the market price of our common stock may decline.

Any public guidance we provided regarding our expected operating and financial results for future periods is comprised of forward-looking statements subject to the risks and uncertainties described in this Annual Report on Form 10-K and in our other public filings and public statements. Our actual results may not always be in line with or exceed any guidance we provide, especially in times of economic uncertainty. If our operating or financial results for a particular period do not meet any guidance we provide or the expectations of investment analysts, or if we reduce our guidance for future periods, the market price of our common stock may decline. In September 2021, we withdrew our financial guidance for the fiscal year ended December 31, 2021 as a result of uncertainties arising with respect to the DOJ investigation and claims audits (see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—DOJ investigation and settlement and claims audits” for more information). While we have since provided some limited financial guidance, we cannot be certain if or when we will resume providing more fulsome financial guidance.

Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.

As of December 31, 2021, based on public filings, our current executive officers, directors, holders of 5% or more of our capital stock and their respective affiliates held approximately 36.7% of our outstanding voting stock. Therefore, these stockholders will have the ability to influence us through this ownership position. Depending on the involvement and action of other stockholders, these principal stockholders and management may be able to determine all matters requiring stockholder approval. For example, these stockholders may be able to control elections of directors, amendments of our organizational documents, or approval of any merger, sale of assets, or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders.

We have no current plans to pay cash dividends on our common stock; as a result, you may not receive any return on investment unless you sell your common stock for a price greater than that which you paid for it.

We have never declared or paid cash dividends on our common stock, and we do not currently intend to pay any cash dividends on our common stock in the foreseeable future. We currently intend to retain all available funds

and any future earnings to fund the development and expansion of our business. Any future determination related to dividend policy will be made at the discretion of our board of directors, subject to applicable laws, and will depend upon, among other factors, our results of operations, financial condition, contractual restrictions and capital requirements. Also, unless waived, the terms of our 2018 Loan with Silicon Valley Bank generally prohibit us from declaring or paying any cash dividends and other distributions. Additionally, our ability to pay cash dividends on our common stock may be limited by the terms of any future debt or preferred securities we issue or any future credit facilities we enter into. As a result, you may not receive any return on an investment in our common stock unless you sell your common stock for a price greater than that which you paid for it.

Sales of a substantial number of shares of our common stock in the public market could cause our stock price to fall.

If our existing stockholders sell, or indicate an intention to sell, substantial amounts of our common stock in the public market, the trading price of our common stock could decline. We had a total of 39,307,093 shares of common stock outstanding as of December 31, 2021.

The holders of approximately 8.7 million shares of our common stock, or approximately 22% of our total outstanding common stock as of December 31, 2021, are entitled to rights with respect to the registration of their shares under the Securities Act. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares purchased by affiliates. Any sales of securities by these stockholders could have a material adverse effect on the trading price of our common stock.

Provisions in our charter documents and under Delaware law could discourage a takeover that stockholders may consider favorable and may lead to entrenchment of management.

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could delay or prevent changes in control or changes in our management without the consent of our board of directors. These provisions include:

- a classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- the ability of our board of directors to authorize the issuance of shares of preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquiror;
- the ability of our board of directors to alter our amended and restated bylaws without obtaining stockholder approval;
- the required approval of at least 66⅔% of the shares entitled to vote at an election of directors to adopt, amend or repeal our amended and restated bylaws or to repeal certain provisions of our amended and restated certificate of incorporation;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- the requirement that a special meeting of stockholders may be called only by our board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors; and

- advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of us.

We are also subject to the anti-takeover provisions contained in Section 203 of the Delaware General Corporation Law. Under Section 203, a corporation may not, in general, engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other exceptions, the board of directors has approved the transaction.

Claims for indemnification by our directors, officers and other employees or agents may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.

Our amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law.

In addition, as permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws and our indemnification agreements that we have entered into with our directors, officers and certain other employees provide that:

- We will indemnify our directors and officers for serving us in those capacities or for serving other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.
- We may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- We are required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- We will not be obligated pursuant to our amended and restated bylaws to indemnify a person with respect to proceedings initiated by that person against us or our other indemnitees, except with respect to proceedings authorized by our board of directors or brought to enforce a right to indemnification.
- The rights conferred in our amended and restated bylaws are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons.
- We may not retroactively amend our amended and restated bylaw provisions to reduce our indemnification obligations to directors, officers, employees and agents.

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

Our amended and restated certificate of incorporation and amended and restated bylaws provide that the Court of Chancery of the State of Delaware (or, in the event that the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) is the exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a claim of breach of fiduciary duty, any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine; provided that, the exclusive forum provision

will not apply to suits brought to enforce any liability or duty created by the Exchange Act, or any other claim for which the federal courts have exclusive jurisdiction; and provided further that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware. Our amended and restated certificate of incorporation and amended and restated bylaws also provide that the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action against us or any of our directors, officers, employees or agents and arising under the Securities Act. Nothing in our amended and restated certificate of incorporation or amended and restated bylaws precludes stockholders that assert claims under the Exchange Act from bringing such claims in state or federal court, subject to applicable law.

We believe these provisions may benefit us by providing increased consistency in the application of Delaware law and federal securities laws by chancellors and judges, as applicable, particularly experienced in resolving corporate disputes, efficient administration of cases on a more expedited schedule relative to other forums and protection against the burdens of multi-forum litigation. However, this choice of 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, although our stockholders will not be deemed to have waived our compliance with federal securities laws and the rules and regulations thereunder. Furthermore, the enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions, and there can be no assurance that such provisions will be enforced by a court in those other jurisdictions. If a court were to find the choice of forum provision that will be contained in our amended and restated certificate of incorporation and amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could adversely affect our business and financial condition.

If securities analysts publish negative evaluations of our stock or stop publishing research or reports about our business, the price of our stock could decline.

The trading market for our common stock relies in part on the research and reports that industry or financial analysts publish about us or our business. We currently have research coverage by several financial analysts. If one or more of these analysts should drop research coverage of us or if one or more of the analysts covering our business downgrade their evaluations of our stock, the price of our stock could decline. For example, certain of our analysts downgraded our common stock following our announcement of the DOJ investigation and claims audits (see "Management's Discussion and Analysis of Financial Condition and Results of Operations— DOJ investigation and settlement and claims audits"), which may have contributed to a significant decline in the price of our common stock. If one or more of these analysts cease to cover our stock, we could lose visibility in the market for our stock, which in turn could cause our stock price to decline.

General risk factors

Engaging in acquisitions or strategic partnerships may increase our capital requirements, dilute our stockholders, cause us to incur debt or assume contingent liabilities and subject us to other risks.

As part of our business strategy, we may acquire companies or businesses, enter into strategic partnerships and joint ventures and make investments to further our business. Risks associated with these transactions include the following, any of which could adversely affect our revenue, gross margin, profitability, cash flows and financial condition:

- increased operating expenses and cash requirements;
- the assumption of additional indebtedness or contingent liabilities;

- assimilation of operations, intellectual property and products of an acquired company, including difficulties associated with integrating new personnel;
- the diversion of our management's attention from our existing product programs and initiatives in pursuing such a strategic merger or acquisition;
- loss of key personnel, and uncertainties in our ability to maintain key business relationships;
- uncertainties associated with the other party to such a transaction, including the prospects of that party and their existing products or product candidates and regulatory approvals;
- our inability to generate revenue from acquired technology and/or products sufficient to meet our objectives in undertaking the acquisition or even to offset the associated acquisition and maintenance costs; and
- causing us to become subject to additional laws and regulations.

In addition, in connection with these acquisitions or strategic partnerships, we may issue dilutive securities, assume or incur debt obligations, incur large one-time expenses and acquire intangible assets that could result in significant future amortization expense. Moreover, we may not be able to locate suitable acquisition or partnership opportunities, and even if we do locate such opportunities we may not be able to successfully bid for or obtain them due to competitive factors or lack of sufficient resources. This inability could impair our ability to grow or obtain access to technology or products that may be important to the development of our business.

Our effective tax rate may vary significantly from period to period.

Various internal and external factors may have favorable or unfavorable effects on our future effective tax rate. These factors include, but are not limited to, changes in tax laws both within and outside the United States, regulations and/or rates, structural changes in our business, new or changes to accounting pronouncements, non-deductible goodwill impairments, changing interpretations of existing tax laws or regulations, changes in the relative proportions of revenue and income before taxes in the various jurisdictions in which we operate that have differing statutory tax rates, the future levels of tax benefits of equity-based compensation, changes in overall levels of pretax earnings or changes in the valuation of our deferred tax assets and liabilities. Additionally, we could be challenged by state and local tax authorities as to the propriety of our sales tax compliance, and our results could be materially impacted by these compliance determinations.

In addition, our effective tax rate may vary significantly depending on our stock price. The tax effects of the accounting for share-based compensation may significantly impact our effective tax rate from period to period. In periods in which our stock price is higher than the grant price of the share-based compensation vesting in that period, we will recognize excess tax benefits that will decrease our effective tax rate. In future periods in which our stock price is lower than the grant price of the share-based compensation vesting in that period, our effective tax rate may increase. The amount and value of share-based compensation issued relative to our earnings in a particular period will also affect the magnitude of the impact of share-based compensation on our effective tax rate. These tax effects are dependent on our stock price, which we do not control, and a decline in our stock price could significantly increase our effective tax rate and adversely affect our financial results.

If we fail to execute invention assignment agreements with our employees and contractors involved in the development of intellectual property or are unable to protect the confidentiality of our trade secrets, the value of our products and our business and competitive position could be harmed.

In addition to patent protection, we also rely on protection of copyright, trade secrets, know-how and confidential and proprietary information. We generally enter into confidentiality and invention assignment agreements with our employees, consultants and third parties upon their commencement of a relationship with us. However, we may not enter into such agreements with all employees, consultants and third parties who have been involved in

the development of our intellectual property. In addition, these agreements may not provide meaningful protection against the unauthorized use or disclosure of our trade secrets or other confidential information, and adequate remedies may not exist if unauthorized use or disclosure were to occur. The exposure of our trade secrets and other proprietary information would impair our competitive advantages and could have a material adverse effect on our business, financial condition and results of operations. In particular, a failure to protect our proprietary rights may allow competitors to copy our technology, which could adversely affect our pricing and market share. Further, other parties may independently develop substantially equivalent know-how and technology.

In addition to contractual measures, we try to protect the confidential nature of our proprietary information using commonly accepted physical and technological security measures. Such measures may not, for example, in the case of misappropriation of a trade secret by an employee or third party with authorized access, provide adequate protection for our proprietary information. Our security measures may not prevent an employee or consultant from misappropriating our trade secrets and providing them to a competitor, and recourse we take against such misconduct may not provide an adequate remedy to protect our interests fully. Unauthorized parties may also attempt to copy or reverse engineer certain aspects of our products that we consider proprietary. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret can be difficult, expensive and time-consuming, and the outcome is unpredictable. Even though we use commonly accepted security measures, trade secret violations are often a matter of state law, and the criteria for protection of trade secrets can vary among different jurisdictions. In addition, trade secrets may be independently developed by others in a manner that could prevent legal recourse by us. We also have agreements with our employees, consultants and third parties that obligate them to assign their inventions to us; however, these agreements may not be self-executing, not all employees or consultants may enter into such agreements, or employees or consultants may breach or violate the terms of these agreements, and we may not have adequate remedies for any such breach or violation. If any of our intellectual property or confidential or proprietary information, such as our trade secrets, were to be disclosed or misappropriated, or if any such information was independently developed by a competitor, it could have a material adverse effect on our competitive position, business, financial condition, results of operations, and prospects.

We may be unable to enforce our intellectual property rights throughout the world.

The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. This could make it difficult for us to stop infringement of our foreign patents, if obtained, or the misappropriation of our other intellectual property rights. For example, some foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third parties. In addition, some countries limit the enforceability of patents against third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit. Patent protection must ultimately be sought on a country-by-country basis, which is an expensive and time-consuming process with uncertain outcomes. Accordingly, we may choose not to seek patent protection in certain countries, and we will not have the benefit of patent protection in such countries.

Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate. In addition, changes in the law and legal decisions by courts in the United States and foreign countries may affect our ability to obtain adequate protection for our technology and the enforcement of our intellectual property.

Actual or perceived failures to comply with applicable data privacy and security laws, regulations, policies, standards, contractual obligations and other requirements related to data privacy and security and changes to such laws, regulations, standards, policies and contractual obligations could adversely affect our business, financial condition and results of operations.

The global data protection landscape is rapidly evolving, and there has been an increasing focus on privacy and data protection issues with the potential to affect our business. We are or may become subject to numerous state, federal and foreign laws, requirements and regulations governing the collection, transmission, use, disclosure, storage, retention and security of personal and personally-identifying information, such as information that we may collect in connection with conducting our business in the United States and abroad. Implementation standards and enforcement practices are likely to remain uncertain for the foreseeable future, and we cannot yet determine the impact future laws, regulations, standards or perception of their requirements may have on our business. This evolution may create uncertainty in our business, affect our ability to operate in certain jurisdictions or to collect, store, transfer use and share personal information, necessitate the acceptance of more onerous obligations in our contracts, result in liability or impose additional costs on us. The cost of compliance with these laws, regulations and standards is high and is likely to increase in the future. Any failure or perceived failure by us to comply with federal, state or foreign laws or regulation, our internal policies and procedures or our contracts governing our processing of personal information could result in negative publicity, government investigations and enforcement actions, fines, imprisonment of company officials and public censure, claims by third parties, damage to our reputation and loss of goodwill, any of which could have a material adverse effect on our business, financial condition and results of operations.

In the ordinary course of our business, we collect and store sensitive data, including protected health information ("PHI"), personally identifiable information ("PII"), intellectual property and proprietary business information owned or controlled by ourselves or our customers, third-party payors and other parties. We also collect and store sensitive data of our employees and contractors. We manage and maintain our applications and data utilizing cloud-based data centers for PII. We utilize external security and infrastructure vendors to manage parts of our data centers.

As our operations and business grow, we are and may become subject to or affected by new or additional data protection laws and regulations and face increased scrutiny or attention from regulatory authorities. In the United States, HIPAA establishes, among other things, privacy and security standards that limit the use and disclosure of PHI, and imposes certain obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of PHI by covered entities, such as health plans, healthcare clearinghouses and healthcare providers, as well as their business associates that perform certain services involving the use or disclosure of PHI, and their covered subcontractors. HIPAA requires covered entities and their business associates to develop and maintain certain policies and procedures with respect to PHI that is used or disclosed. Further, in the event of a breach of unsecured protected health information, HIPAA requires covered entities to notify each individual whose PHI is breached as well as federal regulators and, in some cases, the media. Certain states have also adopted comparable privacy and security laws and regulations, some of which may be more stringent than HIPAA. Such laws and regulations will be subject to interpretation by various courts and other governmental authorities, thus creating potentially complex compliance issues for us and our future customers and strategic partners. Determining whether protected health information has been handled in compliance with applicable privacy standards and our contractual obligations can be complex and may be subject to changing interpretation. If we are unable to properly protect the privacy and security of PHI, we could be found to have breached our contracts. Further, if we fail to comply with applicable privacy laws, including applicable privacy and security standards, we could face civil and criminal penalties. The U.S. Department of Health and Human Services ("HHS"), has the discretion to impose penalties without attempting to resolve violations through informal means. HHS enforcement activity can result in financial liability and reputational harm, and responses to such enforcement activity can consume significant internal resources, each of which could have a material adverse effect on our business financial condition, results of operations or prospects.

In addition, the California Consumer Privacy Act ("CCPA"), which took effect on January 1, 2020, creates individual privacy rights for California consumers and increases the privacy and security obligations of entities handling certain personal information. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. The CCPA may increase our compliance costs and potential liability, and many similar laws have been proposed at the federal level and in other states. Further, the CPRA recently passed in California, which will impose additional data protection obligations on covered businesses, including additional consumer rights processes, limitations on data uses, new audit requirements for higher risk data, and opt outs for certain uses of sensitive data. It will also create a new California data protection agency authorized to issue substantive regulations and could result in increased privacy and information security enforcement. The majority of the provisions will go into effect on January 1, 2023, and additional compliance investment and potential business process changes may be required. In the event that we are subject to or affected by HIPAA, the CCPA, the CPRA or other domestic privacy and data protection laws, any liability from failure to comply with the requirements of these laws could adversely affect our financial condition. Similar laws have passed in Virginia, Colorado and Utah, and have been proposed in other states and at the federal level, reflecting a trend toward more stringent privacy legislation in the United States. The enactment of such laws could have potentially conflicting requirements that would make compliance challenging. We may need to invest substantial resources in putting in place policies and procedures to comply with these evolving state laws.

In addition, state attorneys general are authorized to bring civil actions seeking either injunctions or damages in response to violations that threaten the privacy of state residents. We cannot be sure how these regulations will be interpreted, enforced or applied to our operations. In addition to the risks associated with enforcement activities and potential contractual liabilities, our ongoing efforts to comply with evolving laws and regulations at the federal and state level may be costly and require ongoing modifications to our policies, procedures and systems.

Data protection laws are evolving globally and may add additional compliance costs and legal risks to our operations. We are subject to the GDPR, which went into effect in May 2018 and which imposes obligations on companies that operate in our industry with respect to the processing of personal data and the cross-border transfer of such data. The GDPR imposes onerous accountability obligations requiring data controllers and processors to maintain a record of their data processing and policies. If our or our partners' or service providers' privacy or data security measures fail to comply with the GDPR requirements, we may be subject to litigation, regulatory investigations, enforcement notices requiring us to change the way we use personal data and/or fines of up to 20 million Euros or up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher, as well as compensation claims by affected individuals, negative publicity, reputational harm and a potential loss of business and goodwill. Further, as of January 1, 2021, impacted companies have to comply with the GDPR and the UK GDPR, which, together with the amended UK Data Protection Act 2018, retains the GDPR in UK national law, the latter regime having the ability to separately fine up to the greater of £17.5 million or 4% of global turnover. While we continue to address the implications of the recent changes to European data privacy regulations, data privacy remains an evolving landscape at both the domestic and international level, with new regulations coming into effect and continued legal challenges, and our efforts to comply with the evolving data protection rules may be unsuccessful. It is possible that these laws may be interpreted and applied in a manner that is inconsistent with our practices. Accordingly, we must devote significant resources to understanding and complying with this changing landscape.

Although we work to comply with applicable laws, regulations and standards, our contractual obligations and other legal obligations, these requirements are evolving and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another or other legal obligations with which we must comply. Any failure or perceived failure by us or our employees, representatives, contractors, consultants or other third parties to comply with such requirements or adequately address privacy and security concerns, even if unfounded, could result in additional cost and liability to us, damage our

reputation, negative publicity, loss of goodwill and materially adversely affect our business, financial condition and results of operations or prospects.

We are subject to a number of risks related to the credit card and debit card payments we accept.

We accept payments through credit and debit card transactions. For credit and debit card payments, we pay interchange and other fees, which may increase over time. An increase in those fees may require us to increase the prices we charge and would increase our operating expenses, either of which may adversely affect our business, financial condition and results of operations.

If we or our processing vendors fail to maintain adequate systems for the authorization and processing of credit and debit card transactions, it could cause one or more of the major credit card companies to disallow our continued use of their payment products. In addition, if these systems fail to work properly and, as a result, we do not charge our customers' credit or debit cards on a timely basis, or at all, it could adversely affect our business, financial condition and results of operations.

The payment methods that we offer also subject us to potential fraud and theft by criminals, who are becoming increasingly more sophisticated in exploiting weaknesses that may exist in the payment systems. If we fail to comply with applicable rules or requirements for the payment methods we accept, or if payment-related data is compromised due to a breach, we may be liable for significant costs incurred by payment card issuing banks and other third parties or subject to fines and higher transaction fees, or our ability to accept or facilitate certain types of payments may be impaired. In addition, our customers could lose confidence in certain payment types, which may result in a shift to other payment types or potential changes to our payment systems that may result in higher costs. If we fail to adequately control fraudulent credit card transactions, we may face civil liability, diminished public perception of our security measures and significantly higher card-related costs, each of which could have a material adverse effect on our business, financial condition and results of operations.

We are also subject to payment card association operating rules, certification requirements and rules governing electronic funds transfers, which could change or be reinterpreted to make it more difficult for us to comply. We are required to comply with payment card industry security standards. Failing to comply with those standards may violate payment card association operating rules, federal and state laws and regulations and the terms of our contracts with payment processors. Any failure to comply fully also may subject us to fines, penalties, damages and civil liability, and may result in the loss of our ability to accept credit and debit card payments. Further, there is no guarantee that such compliance will prevent illegal or improper use of our payment systems or the theft, loss or misuse of data pertaining to credit and debit cards, card holders and transactions.

If we are unable to maintain our chargeback rate or refund rates at acceptable levels, our processing vendor may increase our transaction fees or terminate its relationship with us. Any increases in our credit and debit card fees could harm our results of operations, particularly if we elect not to raise our rates for our products to offset the increase. The termination of our ability to process payments on any major credit or debit card would significantly impair our ability to operate our business.

Failure to comply with the U.S. Foreign Corrupt Practices Act, economic and trade sanctions regulations and similar laws could subject us to penalties and other adverse consequences.

We are subject to the FCPA and similar regulations in other countries, as well as other laws in the United States and elsewhere that prohibit improper payments or offers of payments to foreign governments and their officials and political parties for the purpose of obtaining or retaining business. Certain suppliers of our product components are located in countries known to experience corruption. Business activities in these countries create the risk of unauthorized payments or offers of payments by one of our employees, contractors or agents that could be in violation of various laws, including the FCPA and anti-bribery laws in these countries, even though these parties are not always subject to our control. While we have implemented policies and procedures designed

to discourage these practices by our employees, consultants and agents and to identify and address potentially impermissible transactions under such laws and regulations, we cannot assure you that all of our employees, consultants and agents will not take actions in violation of our policies, for which we may be ultimately responsible.

We are also subject to certain economic and trade sanctions programs that are administered by the Department of Treasury's Office of Foreign Assets Control which prohibit or restrict transactions to or from or dealings with specified countries, their governments and in certain circumstances, their nationals, and with individuals and entities that are specially designated nationals of those countries, narcotics traffickers and terrorists or terrorist organizations.

Failure to comply with any of these laws and regulations or changes in this regulatory environment, including changing interpretations and the implementation of new or varying regulatory requirements by the government, may result in significant financial penalties or reputational harm, which could adversely affect our business, financial condition and results of operations.

Our information technology systems or those used by our third-party service providers, vendors, strategic partners or other contractors or consultants, may fail or suffer security breaches and other disruptions, which could result in a material disruption of our products and services development programs, compromise sensitive information related to our business or prevent us from accessing critical information, potentially exposing us to liability or otherwise adversely affecting our business, financial condition and results of operations.

We collect and maintain information in digital form that is necessary to conduct our business, and we are increasingly dependent on information technology systems and infrastructure to operate our business, including our cloud-based infrastructure, mobile and web-based applications, our e-commerce platform and our enterprise software. In the ordinary course of our business, we collect, store and transmit large amounts of confidential information, including intellectual property, proprietary business information and personal information of customers and our employees and contractors. It is critical that we do so in a secure manner to maintain the confidentiality and integrity of such confidential information. We have also outsourced elements of our information technology infrastructure, and as a result a number of third-party vendors may or could have access to our confidential information. We do not conduct audits or formal evaluations of our third-party vendors' information technology systems and cannot be sure that our third-party vendors have sufficient measures in place to ensure the security and integrity of their information technology systems and our confidential and proprietary information. If our third-party vendors fail to protect their information technology systems and our confidential and proprietary information, we may be vulnerable to disruptions in service and unauthorized access to our confidential or proprietary information and we could incur liability and reputational damage. Our internal information technology systems and those of our third-party service providers, vendors, strategic partners and other contractors or consultants are vulnerable to attack and damage or interruption from computer viruses and malware (e.g., ransomware), natural disasters, terrorism, war, telecommunication and electrical failures, hacking, cyberattacks, phishing attacks and other social engineering schemes, malicious code, employee theft or misuse, denial or degradation of service attacks, sophisticated nation-state and nation-state-supported actors or unauthorized access or use by persons inside our organization, or persons with access to systems inside our organization. The risk of a security breach or disruption, particularly through cyberattacks or cyber intrusion, including by computer hackers, foreign governments and cyber terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. Russia's invasion of Ukraine or another war of international dispute may cause a general increase in the number and severity of such malicious incidents. The costs to us to investigate and mitigate network security problems, bugs, viruses, worms, malicious software programs, ransomware, and security vulnerabilities could be significant, and while we have implemented security measures to protect our data security and information technology systems from system failure, accident and security breach, our efforts to address these problems may not be successful, and these problems could result in unexpected interruptions, delays, disruption of our development programs and

our business operations, cessation of service, negative publicity and other harm to our business and our competitive position, whether due to a loss of our trade secrets or other proprietary information or other disruptions. If we were to experience a significant cybersecurity breach of our information systems or data, the costs associated with the investigation, remediation and potential notification of the breach to counterparties and data subjects could be material. In addition, our remediation efforts may not be successful. If we do not allocate and effectively manage the resources necessary to build and sustain the proper technology and cybersecurity infrastructure, we could suffer significant business disruption, including transaction errors, supply chain or manufacturing interruptions, processing inefficiencies, data loss or the loss of or damage to intellectual property or other proprietary information. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our development programs and our business operations, whether due to a loss, corruption or unauthorized disclosure of our trade secrets, personal information or other proprietary or sensitive information or other similar disruptions.

If a security breach or other incident were to result in the unauthorized access to or unauthorized use, disclosure, release or other processing of personal information, it may be necessary to notify individuals, governmental authorities, supervisory bodies, the media and other parties pursuant to applicable privacy and security laws. For example, the Company retains data that is subject to HIPAA, which contain specific security and notification requirements to which we must adhere. Any security compromise affecting us, our service providers, vendors, strategic partners, other contractors, consultants, or our industry, whether real or perceived, could harm our reputation, erode confidence in the effectiveness of our security measures and lead to regulatory scrutiny. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or systems, or inappropriate disclosure of confidential or proprietary or personal information, we could incur liability, including litigation exposure, penalties and fines, we could become the subject of regulatory action or investigation, our competitive position could be harmed and the further development and commercialization of our products and services could be delayed. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our business. Furthermore, federal, state and international laws and regulations can expose us to enforcement actions and investigations by regulatory authorities, and potentially result in regulatory penalties, fines and significant legal liability, if our information technology security efforts fail. We would also be exposed to a risk of loss or litigation and potential liability, which could materially and adversely affect our business, financial condition and results of operations or prospects. Further, any losses, costs or liabilities may not be covered by, or may exceed the coverage limits of, any applicable insurance policies.

International trade disputes could result in tariffs and other protectionist measures that could have a material adverse effect on our business, financial condition and results of operations.

Tariffs could increase the cost of our products and the raw materials that go into making them. These increased costs could adversely impact the gross margin that we earn on our products. Tariffs could also make our products more expensive for customers, which could make our products less competitive and reduce consumer demand. Countries may also adopt other protectionist measures that could limit our ability to offer our products. Political uncertainty surrounding international trade disputes and protectionist measures (including as a result of the escalating conflict between Russia and Ukraine and the various sanctions and export controls being implemented by the international community against Russia) could also have a negative effect on consumer confidence and spending, which could have a material adverse effect on our business, financial condition and results of operations.

Disruptions in internet access could adversely affect our business, financial condition and results of operations.

As an online business, we are dependent on the internet and maintaining connectivity between ourselves and consumers and sources of internet traffic, such as Google. As consumers increasingly turn to mobile devices, we also become dependent on consumers' access to the internet through mobile carriers and their systems. Disruptions in internet access, whether generally, in a specific market or otherwise, especially if widespread or

prolonged, could adversely affect our business, financial condition and results of operations. For example, the "denial-of-service" attack against Dyn in October 2016 resulted in a service outage for several major internet companies. It is possible that we could experience an interruption in our business, and we do not carry business interruption insurance sufficient to compensate us for all losses that may occur.

Changes in the regulation of the internet could adversely affect our business.

Laws, rules and regulations governing internet communications, advertising and e-commerce are dynamic, and the extent of future government regulation is uncertain. Federal and state regulations govern various aspects of our online business, including intellectual property ownership and infringement, trade secrets, the distribution of electronic communications, marketing and advertising, user privacy and data security, search engines and internet tracking technologies. Future taxation on the use of the internet or e-commerce transactions could also be imposed. Existing or future regulation or taxation could increase our operating expenses and expose us to significant liabilities. To the extent any such regulations require us to take actions that negatively impact us, they could have a material adverse effect on our business, financial condition and results of operations.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our corporate headquarters are located in San Jose, California. We leased approximately 30,000 square feet of office and laboratory space pursuant to a lease agreement which was effective as of July 30, 2018 and expired on February 28, 2022. We entered into a new lease agreement in September 2021 for approximately 30,000 square feet of office and laboratory space, which we began using as our headquarters starting in February 2022. This lease expires on June 30, 2029 and we may renew the lease term for two additional 60-month periods.

We also lease approximately 9,327 square feet of office space, which is primarily used for our customer support operations, in Nashville, Tennessee, pursuant to a lease that expires on March 31, 2023. We believe that our existing facilities are adequate to meet our business requirements for the near-term, and that additional space will be available on commercially reasonable terms, if required.

Item 3. Legal Proceedings.

The information required to be set forth under this Item 3 is incorporated by reference to Note 6 of the Notes to Consolidated Financial Statements included in Part II of this Annual Report on Form 10-K.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market information for common stock

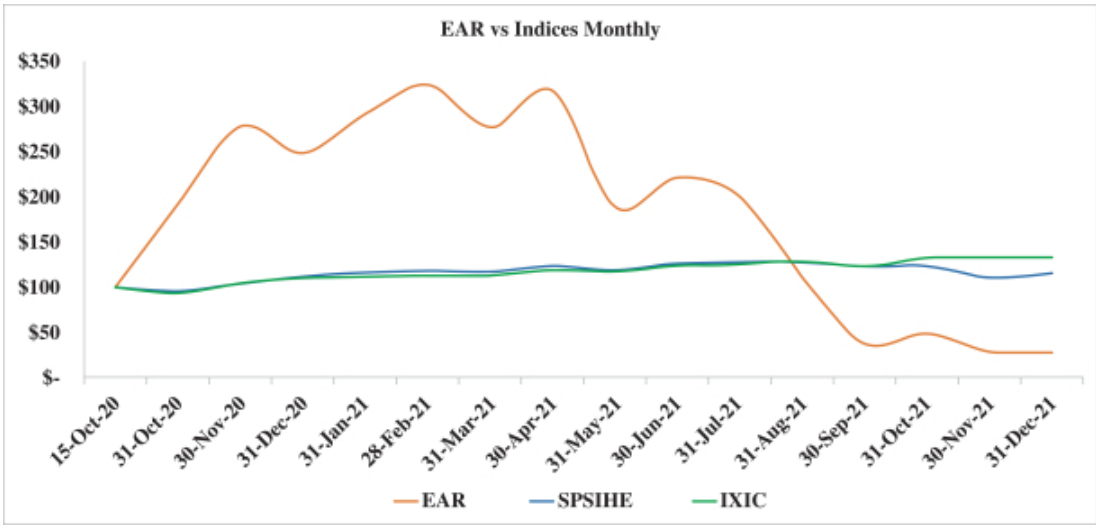
Our common stock is traded on the Nasdaq Global Select Market under the symbol "EAR". Public trading of our common stock began on October 16, 2020. Prior to that, there was no public market for our common stock.

Stockholders

As of May 4, 2022, there were 75 holders of record of our common stock. The actual number of stockholders is greater than this number of record holders, and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

Stock performance graph

The graph below shows the cumulative total stockholder return from October 16, 2020 (the date that our common stock commenced trading) through December 31, 2021, assuming the investment of $100 and the reinvestment of any dividends in each of our common stock, the S&P Healthcare Equipment Index (SPSIHE) and the NASDAQ Composite Index (IXIC). The comparisons in the graph below are based on historical data and are not indicative of, or intended to forecast, future performance of our common stock.



Dividend policy

We have never declared or paid, and do not anticipate declaring or paying in the foreseeable future, any cash dividends on our common stock. Any future determination as to the declaration and payment of dividends, if any, will be at the discretion of our board of directors, subject to applicable laws and will depend on then existing conditions, including our financial condition, operating results, contractual restrictions, capital requirements, business prospects, and other factors our board of directors may deem relevant.

Securities authorized for issuance under equity compensation plans

See the section titled "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" for information regarding securities authorized for issuance.

Use of proceeds from public offering of common stock

On October 20, 2020, we completed our initial public offering (the "IPO") and issued 9,029,629 shares of our common stock, which includes an additional 1,177,777 shares of common stock purchased by the underwriters pursuant to their option to purchase additional shares, at an initial offering price of $18.00 per share less underwriting discounts and commissions. We received net proceeds from the IPO of approximately $148.5 million, after deducting underwriting discounts and commissions of $11.4 million and offering costs of $2.6 million. None of the expenses associated with the IPO were paid to directors, officers, persons owning 10% or more of any class of equity securities, or to their associates. J.P. Morgan Securities LLC and BofA Securities, Inc. acted as book-running managers for the IPO.

Shares of our common stock began trading on the Nasdaq Global Select Market on October 16, 2020. The offer and sale of the shares were registered under the Securities Act on a registration statement on Form S-1 (Registration No. 333-249075), which was declared effective on October 15, 2020.

There has been no material change in the planned use of proceeds from our IPO as described in the related prospectus filed with the SEC pursuant to Rule 424(b)(4) under the Securities Act. We invested the funds received in cash equivalents and other marketable securities in accordance with our investment policy.

Sales of unregistered securities

None.

Issuer purchases of equity securities

None.

Item 6. [Reserved].

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion and analysis of our financial condition and results of operations together with our *consolidated financial statements and the related notes included in Part II, Item 8 of this Annual Report on Form 10-K.*

The following discussion and analysis of our financial condition and results of operations contains forward-looking statements about us and our industry that involve substantial risks, uncertainties and assumptions. All statements other than statements of historical facts contained in this item, including statements regarding factors affecting our business, trends and uncertainties, are forward-looking statements. As a result of many factors, including those factors set forth in the "Risk Factors" section of this Annual Report on Form 10-K, our actual results could differ materially from the results described in or implied by these forward-looking statements. You should carefully read the "Risk Factors" to gain an understanding of the important factors that could cause actual results to differ materially from our forward-looking statements.

Overview

We are a medical device company dedicated to improving the quality of life of people with hearing loss. We developed the Eargo solution to create a hearing aid that consumers actually want to use. Our innovative product and go-to-market approach address the major challenges of traditional hearing aid adoption, including social stigma, accessibility and cost.

We believe our Eargo hearing aids are the first ever virtually invisible, rechargeable, completely-in-canal, United States Food and Drug Administration ("FDA") regulated, exempt Class I or Class II devices indicated to compensate for mild to moderate hearing loss. Our rapid pace of innovation is enabled by our deep industry and technical expertise across mechanical engineering, product design, audio processing, clinical and hearing science, consumer electronics and embedded software design, and is supported by our strategic intellectual property portfolio.

We market and sell our hearing aids direct to consumers with a personalized, consumer-centric approach. Our commercial organization consists of a talented marketing team with deep experience in consumer-focused brand and performance marketing, a team of inside sales consultants, and a dedicated customer support team that includes audiologists and hearing professionals. We generate revenue from orders processed primarily through our website and over the phone by our sales consultants.

We believe that our differentiated hearing aids, consumer-oriented approach and strong brand have fueled the rapid adoption of our hearing aids and high customer satisfaction, as evidenced by over 95 thousand Eargo hearing aid systems sold, net of returns, as of December 31, 2021.

For the year ended December 31, 2021, we generated net revenue of $32.1 million, a decrease of $37.0 million from the year ended December 31, 2020. The revenue decline relates to matters discussed in detail below under "—DOJ investigation and settlement and claims audits." We have sold our products on a "cash-pay" basis only since December 8, 2021. We previously accepted insurance as a method of direct payment, but suspended all claims submission activities on September 22, 2021 when we learned of the investigation by the DOJ related to our role in customer reimbursement claim submissions to various federal employee health plans under the FEHB program. To date, all our revenue has been generated from customers in the United States.

Our net losses were $157.8 million, $39.9 million and $44.5 million for the years ended December 31, 2021, 2020 and 2019, respectively. As of December 31, 2021 and 2020, we had an accumulated deficit of $356.8 million and $199.1 million, respectively. We expect to continue to incur losses for the foreseeable future.

DOJ investigation and settlement and claims audits

As previously disclosed, on September 21, 2021, we were informed that we were the target of a criminal investigation by the U.S. Department of Justice (the "DOJ") related to insurance reimbursement claims we submitted on behalf of our customers covered by various federal employee health plans under the Federal Employee Health Benefits ("FEHB") program. The investigation also pertained to our role in customer reimbursement claim submissions to federal employee health plans (collectively, the "DOJ investigation"). Also as previously disclosed, our largest third-party payor conducted an audit of insurance reimbursement claims ("claims") submitted by us (the "Primary Audit"), which included a review of medical records. We were informed by the third-party payor conducting the Primary Audit that the DOJ was the principal contact related to the subject matter of the Primary Audit. In addition to the Primary Audit, we have been subject to a number of other audits of insurance reimbursement claims submitted to additional third-party payors (collectively with the Primary Audit, the "claims audits"). One of these claims audits does not relate to claims submitted under the FEHB program. On January 4, 2022, the DOJ confirmed to us that the investigation had been referred to the Civil Division of the DOJ and the U.S. Attorney's Office for the Northern District of Texas and the criminal investigation was no longer active.

On April 29, 2022, we entered into a civil settlement agreement with the U.S. government that resolved the previously disclosed DOJ investigation related to our role in customer reimbursement claim submissions to various federal employee health plans under the FEHB program. We cooperated fully with the DOJ investigation. We deny the allegations in the settlement agreement, and the settlement is not an admission of liability by us. The allegations did not pertain to the quality or performance of our product. The settlement agreement provided for our payment of approximately $34.4 million to the U.S. government and resolved allegations that we submitted or caused the submission of claims for payment to the FEHB program using unsupported hearing loss-related diagnostic codes.

The settlement with the U.S. government may not resolve all of the audits of insurance reimbursement claims by the various third-party payors, and additionally we remain subject to a prepayment review of claims by the payor who conducted the Primary Audit. We will need to work with the government (including the OPM) and third-party payors to potentially validate and establish processes to support any future claims that we may submit for reimbursement, and there are no guarantees that we will be able to arrive at any such acceptable processes or submit any future claims. We do not intend to submit any claims through the FEHB program until we are able to align with the OPM on and establish processes for supporting the submission of these claims.

From the time we learned of the DOJ investigation and until December 8, 2021, we continued to process orders for customers with potential insurance benefits (including FEHB program members) but suspended all claims submission activities and offered affected customers (*i.e.*, customers using insurance benefits as a method of direct payment for transactions prior to December 8, 2021) the option to return their hearing aids or purchase their hearing aids without the use of their insurance benefits in case their claim is denied or ultimately not submitted by us to their insurance plan for payment (the "extended right of return").

Beginning on December 8, 2021, we made the decision to stop accepting insurance benefits as a method of direct payment and it is uncertain when, if ever, we will resume accepting insurance benefits as a method of direct payment. While we intend to work with the government and third-party payors at the appropriate time with the objective of validating and establishing processes to support any future claims that we may submit for reimbursement, we may not be able to arrive at acceptable processes or submit any future claims.

During the year ended December 31, 2021, we shipped 45,136 gross hearing aid systems, approximately 44% of which were to customers with potential insurance coverage. Total life-to-date payments we have received through December 31, 2021 from the government in relation to claims submitted under the FEHB program, net of any product returns and associated refunds, were approximately $44 million. As discussed further in Note 6 to the Consolidated Financial Statements included in this Annual Report on Form 10-K, the settlement amount of $34.4 million was recorded as a reduction in revenue during the year ended December 31, 2021.

We determined that customer transactions using insurance benefits as a method of direct payment occurring subsequent to learning of the DOJ investigation on September 21, 2021 did not meet the criteria for revenue recognition under ASC 606. As such, we did not recognize revenue for shipments to customers with potential insurance benefits, substantially all of whom were covered under the FEHB program, subsequent to that date.

We estimate that a majority of customers with unsubmitted claims as of December 31, 2021 will choose to return the hearing aid system if their insurance provider denies their claim or the claim is ultimately not submitted by us for payment, resulting in an increase in expected product returns from such transactions that occurred prior to September 21, 2021. As a result, we recorded $13.3 million of estimated sales returns as a reduction in revenue in the third quarter of 2021 related to shipments to customers with potential insurance benefits. This has had a negative impact on our revenues for the year ended December 31, 2021 and resulted in an increase in our sales returns reserve. Of the $13.8 million sales returns reserve recorded as of December 31, 2021, $11.4 million relates to unsubmitted claims that are included in accounts receivable, net. Returns associated with unsubmitted claims will reduce the sales returns reserve, with a corresponding reduction in the related accounts receivable at the time the product is returned.

Further, we also estimate that, in addition to the customers who choose to return their hearing aid systems, a significant number of customers whose claims are denied by insurance providers or not submitted by us for payment may not pay for or return the hearing aid system. The $9.6 million in bad debt expense recorded during the year ended December 31, 2021 is primarily based on this estimate and has had a negative impact on our operating results for the year ended December 31, 2021. Of the $9.6 million recorded to bad debt expense during the year ended December 31, 2021, $5.8 million relates to submitted claims that have been denied or have not been paid and was written off during the year ended December 31, 2021.

Notwithstanding the settlement, we remain subject to prepayment review of claims by our largest third-party payor before any insurance payments are made. We do not intend to submit any claims through the FEHB program until we are able to align with the Office of Personnel Management (the "OPM") on and establish processes for supporting the submission of these claims, and we may be unable to do so.

On January 5, 2022, the U.S. District Court for the Northern District of California consolidated three purported securities class actions brought against the Company (the "Securities Class Action"). While the lead plaintiffs have not yet filed a consolidated amended complaint, the complaints of the individual lawsuits filed prior to the consolidation generally alleged that certain of the Company's disclosures about its business, operations and prospects, including reimbursements from third-party payors, violated federal securities laws. On December 3, 2021, a putative stockholder filed a derivative complaint purportedly on the Company's behalf against members of the Company's Board of Directors and the Company as nominal defendant (the "Derivative Action"), alleging (among other things) that the defendants breached their fiduciary duties by allegedly failing to implement and maintain an effective system of internal controls related to the Company's financial reporting, public disclosures, and compliance with laws, rules, and regulations governing the business. See Note 6 of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K for more information.

As a result of the uncertainty created by the DOJ investigation and the claims audits, we took certain actions including, but not limited to:

- We suspended our practice of granting equity awards, except for new restricted stock unit grants that we have the option to settle in cash at the time of vesting, suspended our 2020 Employee Stock Purchase Plan ("ESPP") and deferred the settlement of outstanding restricted stock units ("RSUs"), in each case effective as of November 9, 2021 (collectively, the "employee equity actions").
- Our Board of Directors suspended the non-employee director compensation program with respect to the option awards that would otherwise have been awarded to non-employee directors automatically on the date of our annual meeting of stockholders held on November 9, 2021.

- On December 7, 2021, we announced a plan to reduce our employee workforce to streamline our organization in response to declines in customer orders since we announced the investigation of the Company by the DOJ. We substantially completed the employee workforce reduction during the fourth quarter of 2021, resulting in a reduction of approximately 27% of our employee workforce, or approximately 90 people.

As a result of the DOJ investigation and the various claims audits, we were not able to timely file our Quarterly Report on Form 10-Q for the three months ended September 30, 2021 (our "Q3 10-Q") or this Annual Report on Form 10-K for the year ended December 31, 2021. On November 16, 2021, we filed a Form 12b-25 notifying the SEC that we would be unable to timely file our Q3 10-Q. On November 18, 2021, we were notified by the Nasdaq Stock Market LLC ("Nasdaq") that we were not in compliance with Nasdaq Listing Rule 5250(c)(1) for continued listing as a result of the delay in filing our Q3 10-Q with the SEC. In accordance with Nasdaq Listing Rules, we submitted a plan to regain compliance. Nasdaq granted us an exception of up to 180 calendar days from the Q3 10-Q original filing due date, or until May 16, 2022, to regain compliance. On March 2, 2022, we filed a Form 12b-25 notifying the SEC that we would be unable to timely file this Annual Report on Form 10-K for the year ended December 31, 2021. On March 4, 2022, we were notified again by Nasdaq that we were not in compliance with Nasdaq Listing Rule 5250(c)(1) for continued listing as a result of the delay in filing this Annual Report on Form 10-K. As a result, we submitted to Nasdaq an update to our original plan to regain compliance. Nasdaq's notification dated March 4, 2022 indicated that any additional exception to allow us to regain compliance with all untimely filings will be limited to a maximum of 180 calendar days from the due date of our Q3 10-Q, or May 16, 2022.

On May 11, 2022, we filed a Form 12b-25 notifying the SEC that we would be unable to timely file our Quarterly Report on Form 10-Q for the three months ended March 31, 2022 (our "Q1 2022 10-Q"). On May 12, 2022, we received a letter from Nasdaq notifying us that because we remain delinquent in filing our Q3 10-Q and Annual Report on Form 10-K, and, in addition, because we are delinquent in filing our Q1 2022 10-Q, we had not regained compliance and will not meet the terms of the exception. The letter indicated that our securities would be subject to delisting on May 23, 2022 as a result of our non-compliance, unless on or before May 19, 2022 we request a hearing before the Nasdaq Hearings Panel and request an extended stay of suspension or delisting. We intend to timely request a hearing before the Nasdaq Hearings Panel, at which hearing we will present our plan to regain compliance and request the continued listing of our securities on Nasdaq pending our return to compliance. Such request would automatically stay any suspension or delisting action by Nasdaq for a period of 15 days from the date of our request. The stay could be extended at the option of the Nasdaq Hearings Panel upon our request and support of such extension, and we intend to ask the Nasdaq Hearings Panel for a further stay concurrent with our request for a hearing and pending the ultimate conclusion of the hearing process.

Factors affecting our business

We believe that our future performance will depend on many factors, including those described below and in the section titled "Risk Factors" included elsewhere in this Annual Report on Form 10-K.

Efficient acquisition of new customers

We have spent significant amounts on sales and marketing designed to build a strong brand, achieve broad awareness of our Eargo system, acquire new customers and convert sales leads. Since our public disclosure of the DOJ investigation on September 22, 2021 and our related decision to stop accepting insurance benefits as a method of direct payment, we have experienced and may continue to experience a material decline in gross systems shipped.

Beginning on December 8, 2021, as a result of the DOJ investigation and claims audits (as further described in "—DOJ investigation and settlement and claims audits") we do not currently accept insurance as a direct method of payment, and all sales from such date are considered by us to be "cash-pay," which includes upfront payment, credit card, third-party financing, and distributor payment. We have refocused our sales and marketing efforts and related spend to prioritize conversion of cash-pay consumer leads into satisfied customers. While we intend

to work with the government and third-party payors at the appropriate time with the objective of validating and establishing the process to support any future claims that we may submit for reimbursement, we may not be able to arrive at an acceptable process or submit any future claims. The shift to a model that excludes insurance as a direct method of payment will likely result in a sustained increased cost of customer acquisition and require significant sales and marketing investments, based on the historically lower conversion rate for cash-pay customers as compared to customers with potential insurance benefits. Further, the exclusion of insurance as a direct payment method may also necessitate identifying commercial partnerships, omni-channel, including retail, or other opportunities, as well as the potential implementation of cost-savings measures, in order to drive cost-efficient cash-pay customer acquisition and offset the significantly higher return rates as well as the related negative impact on revenue and gross margin historically applicable to cash-pay customers.

Changes to the regulatory landscape

Hearing aids are considered medical devices subject to regulation by the FDA. We currently market our products pursuant to the FDA regulatory framework for air-conduction hearing aids, which are classified as Class I or Class II devices exempt from premarket review procedures. In addition, while applicable FDA regulations establish certain "conditions for sale" of all hearing aids, including that prospective hearing aid users must have a medical evaluation by a licensed physician within the six months prior to hearing aid dispensation or sign a waiver of medical evaluation, the FDA has stated that it does not intend to enforce these medical evaluation and waiver requirements prior to the dispensing of Class I air-conduction and Class II wireless air-conduction hearing aids to individuals 18 years of age and older. Accordingly, while we are required to comply with other FDA requirements, including specific hearing aid labeling requirements and provision of a User Instructional Brochure, our products have not been reviewed by the FDA and are not dispensed by licensed physicians.

The regulatory landscape for hearing aid devices has been subject to recent changes that may alter or increase our requirements for regulatory compliance. The FDA Reauthorization Act of 2017 ("FDARA") set forth a process to create a new category of OTC hearing aids that are intended to be available without supervision, prescription, or other order, involvement or intervention of a licensed practitioner. The language in FDARA is not self-implementing, and on October 20, 2021, the FDA published the Proposed Rule to establish new regulatory categories for OTC and prescription hearing aids.

The Proposed Rule also includes revised requirements for labeling, conditions for sale, performance standards and other provisions applicable to either OTC or prescription hearing aids, or both. Under the Proposed Rule, devices that require 510(k) clearance to come into compliance with the new requirements would need to be cleared by the effective date of the Final Rule to continue marketing. For all other currently marketed devices, the proposed compliance date is 180 days after the effective date of the Final Rule (240 days after the publication of the Final Rule).

We market the Eargo system devices as Class I air-conduction hearing aids or Class II wireless air-conduction hearing aids, both of which are exempt from 510(k) premarket review. Our hearing aids may be marketed under the current FDA framework during the FDA's rulemaking proceeding. However, we cannot know to what extent the Final Rule may differ from the Proposed Rule. Once the FDA issues a Final Rule, we will need to expend time and resources evaluating the Final Rule and ensuring that our devices and processes come into compliance with the new requirements in order to market our products in line with our primary direct-to-consumer business and omni-channel models in the future. It is possible that a finalized regulatory framework for OTC hearing aids may lead to additional commercial partnership, omni-channel, including retail, or other opportunities, although there are no assurances that it will do so. The Final Rule and the responses thereto by leading insurance providers could also materially impact our efforts to resume submitting claims for customers with potential insurance benefits or have other unforeseen impacts on our business and results of operations.

Please see the Risk Factor titled, "Changes in the regulatory landscape for hearing aid devices could render our direct-to-consumer business model contrary to applicable regulatory requirements, and we may be required to seek additional clearance or approval for our products" for more information.

Third-party payors

A significant portion of our revenue has historically been dependent on payments from third-party payors; for example, in the year ended December 31, 2021, 44% of total gross systems shipped were to customers with potential insurance coverage. Historically, we submitted claims on behalf of our customers to a concentrated number of third-party payors under certain benefit plans, and substantially all such claims related to the FEHB program.

As described in Note 2 of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K, approximately 93% and 74% of our gross accounts receivable as of December 31, 2021 and 2020, respectively, were for customers with potential insurance benefits, substantially all of whom were covered under the FEHB program. Furthermore, approximately 90% and 45% of our gross accounts receivable as of December 31, 2021 and 2020, respectively, were related to shipments of Eargo hearing aids to customers insured under a single insurance plan whose claims are processed through our largest third-party payor, which conducted the Primary Audit. The increase in gross accounts receivable as of December 31, 2021 was primarily due to the Primary Audit, during which certain claims with a service date after March 1, 2021 have not yet and may never be submitted by us for reimbursement. We remain subject to a prepayment review of claims by the payor who conducted the Primary Audit. Additionally, we are subject to a number of other ongoing audits of insurance reimbursement claims. One of these claims audits does not relate to claims submitted under the FEHB program. During the claims audits, the third-party payors (including our largest third-party payor) conducting such claims audits have generally suspended payments for, and in some cases denied, claims we submitted on behalf of customers, other than one third-party payor that has continued to process claims for payment throughout its ongoing audit.

We recorded a sales returns reserve of $13.8 million as of December 31, 2021, largely related to our estimate that a majority of customers with unsubmitted claims will choose to return the hearing aid system if their insurance provider denies their claim or the claim is ultimately not submitted by us for payment. We recorded an allowance for credit losses of $4.8 million as of December 31, 2021, primarily related to insurance claims receivable due from third-party payors and end-users as we estimate that, in addition to the customers who choose to return their hearing aid systems, a significant number of customers with an extended right of return and claims that have not yet and may never be submitted by us for payment may not pay for or return the hearing aid system.

While we intend to work with the government and third-party payors at the appropriate time with the objective of validating and establishing processes to support any future claims that we may submit for reimbursement, we may not be able to arrive at acceptable processes or submit any future claims. For example, we do not currently conduct in-person hearing tests, as they run counter to our primary direct-to-consumer business and omni-channel models. If such processes were to require in-person hearing tests, we may not be able to efficiently or effectively integrate such tests into our operating model. In light of the DOJ investigations, claims audits and pending OTC hearing aids regulatory framework, we may need to make significant changes to our business and operating model, including a potential long-term shift to a model that excludes insurance as a direct method of payment, which would likely result in a sustained increased cost of customer acquisition and require identification of commercial partnership, omni-channel, including retail, or other opportunities, to drive cost efficient acquisition of cash-pay customers.

See “—DOJ investigation and settlement and claims audits” for more information. Please see the Risk Factors titled, “We are subject to risks from legal proceedings, investigations, and inquiries, including a number of recent legal proceedings and investigations, which have had and could continue to have a material adverse effect on our reputation, business, financial condition, cash flows and results of operations, and could result in additional claims and material liabilities,” and “We face considerable uncertainty in our business prospects, as a significant portion of our revenue has historically been dependent upon reimbursement from third-party payors participating in the FEHB program but we have operated on a “cash pay” only basis since December 8, 2021. Following the civil settlement with the U.S. government on April 29, 2022, we may be unsuccessful in validating and establishing processes to support the submission of claims for reimbursement from third-party payors participating in the FEHB program in

the future. As a result, we have faced a significant reduction in revenue and any failure to establish processes to support reimbursement from third-party payors in the future may significantly and adversely impact our business and growth prospects and our ability to sell our products."

Sales returns rate

Our return policy generally allows our customers to return hearing aids for any reason within the first 45 days of delivery for a full refund, subject to a handling fee in certain states, and can be extended under certain circumstances, including the extended right of return offered for shipments involving insurance payors. Historically, the most commonly cited reason for returning our hearing aids is unsatisfactory fit, which we believe is a byproduct of our direct-to-consumer model and online distribution that results in nearly all of our customers ordering our product without trying it first. In addition to unsatisfactory fit, the next most cited reason for returns is that our hearing aids do not provide sufficient audio amplification.

We report revenue net of expected returns, which is an estimate informed in part by historical return rates. As such, our returns rate impacts our reported net revenue and gross profit. Sales returns rates, as defined under "—Key business metrics," increased from 26% for the year ended December 31, 2020 to 32% for the year ended December 31, 2021, primarily due to our sales returns rate of 46% in the third quarter of 2021, which was driven by our estimate that a majority of customers with unsubmitted claims related to products shipped during the third quarter of 2021 will choose to return the hearing aid system if their insurer denies their claim or the claim is ultimately not submitted by us for payment.

New product introductions

Our technical capabilities and commitment to innovation have allowed us to deliver product enhancements on a rapid development timeline and support a compelling new product roadmap that we believe will continue to differentiate our competitive position over the next several years. With the full commercial launch of the Eargo 5 in July 2021 and the launch of Eargo 6 in January 2022, we have now launched six generations of our hearing aids since 2017, with each iteration having increased functionality and improved sound quality, amplification, noise reduction, physical fit, comfort, water resistance and ease-of-use, as well as reduced costs of goods and better connectivity. We are focused on continuing to launch new versions of the Eargo hearing aid devices that further improve these attributes. We believe that the continued introduction of new products is critical to maintaining existing customers, attracting new customers, achieving market acceptance of our products and maintaining or increasing our competitive position in the market.

We expect to continue refining and improving Eargo hearing aids, and we have the intention of an approximate annual cadence of new product launches. To this end, we are working on the development of a cost-conscious offering as well as the next Eargo hearing aid model with improved functionality. Accordingly, we expect to continue to invest in research and development to support new product introductions. In connection with our product innovation and iteration, we also need to successfully manage our product transitions to avoid delays in customer purchases, excess or obsolete inventory and increased returns as customers wait for our new products to become available. Our development priorities are focused, in part, on expanding refurbishment capability for returned hearing aids. Our refurbishment capabilities include full refurbishment, conversion, and components, and allow us to refurbish and resell or reuse certain returned devices.

Recruitment and retention of personnel

Our success depends in part upon our continued ability to recruit, retain and motivate high-quality employees, including management, administrative, our clinical and scientific personnel and our direct sales force (among others), and competition for qualified personnel can be intense due to the limited number of individuals possessing the requisite training, skill and experience we require. As a result of uncertainty created by the DOJ investigation and the claims audits, we suspended our practice of granting equity awards (except for new

restricted stock unit grants that the Company has the option to settle in cash at the time of vesting), suspended our employee stock purchase plan and deferred the settlement of outstanding restricted stock units, in each case effective as of November 9, 2021. In addition, on December 7, 2021, we announced a plan to reduce our employee workforce to streamline our organization in response to declines in customer orders since we announced the DOJ investigation. We substantially completed the employee workforce reduction during the fourth quarter of 2021, resulting in a reduction of approximately 27% of our employee workforce, or approximately 90 people. Both the suspension of equity awards and reduction in workforce, in addition to any negative perceptions of employment with us as a result of the DOJ investigation, the settlement with the U.S. government, and the claims audits, could continue to adversely affect employee morale and have a material adverse impact on our ability to recruit, retain and motivate the high-quality employees critical to our operations, which in turn could have a material adverse effect on our business, results of operations and financial condition.

COVID-19 pandemic

We believe the COVID-19 pandemic has accelerated the pace of consumer awareness of our vertically integrated telecare model and has facilitated customer adoption of the same. Shelter-in-place restrictions and increased reluctance of consumers to conduct in-person activities, particularly among older individuals that comprise a majority of the population needing hearing aids has resulted in increased knowledge of our business and sales. We cannot be sure this trend will continue.

Although we believe the COVID-19 pandemic has largely resulted in favorable trends for our business, we have experienced business disruptions, particularly at our California headquarters, where a majority of our employees have been working remotely (which we permitted as an accommodation to our employees despite the fact that we were never required to close our facilities because we were deemed to have an essential workforce under the relevant California COVID-19 measures). Moreover, travel restrictions, factory closures and disruptions in global supply chains have resulted in industry-wide component supply shortages (such as in semiconductors), and we may not be able to obtain adequate inventory on a timely basis or at all. To date, increases in component pricing have occurred but have not had a material impact on supply continuity. We have taken steps to monitor our supply chain and actions to address limited supply and increasing lead times, including outreach to critical suppliers and spot market purchases. While we have not been impacted by any disruptions to our supply chain that have impacted our ability to service customers or access to necessary raw materials and component parts for the manufacture of our products to date, disruptions have occurred across a number of industries and we cannot provide any assurance that future disruptions will not emerge as a result of the ongoing supply chain issues, inflation, the COVID-19 pandemic or other extrinsic factors. Future disruptions in our supply chain, including the sourcing of certain components and raw materials, such as semiconductor and memory chips, as well as increased logistics costs, could impact our sales and gross margins.

Key business metrics

To analyze our business performance, determine financial forecasts and help develop long-term strategic plans, we review the following key business metrics, each of which is an important measure that represents the state of our business:

- *Gross systems shipped*. We define our gross systems shipped as the number of hearing aid systems shipped during the period. However, we have not recorded revenue and related sales returns reserve for approximately 670 shipments of Eargo hearing aid systems to customers with potential insurance benefits during the three months ended September 30, 2021 but subsequent to learning of the DOJ investigation, and approximately 1,560 of such shipments during the three months ended December 31, 2021. Since our public disclosure of the DOJ investigation on September 22, 2021 and our related decision to stop accepting insurance benefits as a method of direct payment, we have experienced and may continue to experience a material decline in gross systems shipped. Continued negative publicity, including in relation to the DOJ investigation, the claims audits, and other legal proceedings could

further harm our reputation and lead to a further decline in gross systems shipped. See "—DOJ investigation and settlement and claims audits" and "—Factors affecting our business."

- *Sales returns rates*. Sales returns rates are determined by management at the end of each reporting period to estimate the percentage of products for which we have recorded revenue during that period that are expected to be returned. This determination is informed in part by historical actual return rates. Sales returns rates do not represent actual returns during a period as customers may return the product for a period of time that can extend beyond the period end, which can result in a hearing aid being returned after the period in which the revenue from its sale was recognized. If actual returns differ from the sales returns rate determined at period end or new factors arise, indicating a rate of return that is different from the original estimated sales returns rate, revenue is adjusted in subsequent periods to reflect the actual returns made. Such an adjustment to revenue is not included in the sales returns rates disclosed in the table below. The sales returns rate of 46% for the three months ended September 30, 2021 and the sales returns rate of 32% for the year ended December 31, 2021 do not include the impact of the $5.1 million of estimated sales returns recorded as a reduction in revenue in the third quarter of 2021 with respect to unsubmitted claims from transactions that occurred during the first and second quarters of 2021. See "—DOJ investigation and settlement and claims audits" and "—Factors affecting our business" and "—Critical accounting estimates—Revenue recognition—sales returns rate."

The following table details the number of gross systems shipped and sales returns rates for the periods presented below:

	Three months ended							
	March 31, 2020	June 30, 2020	September 30, 2020	December 31, 2020	March 31, 2021	June 30, 2021	September 30, 2021	December 31, 2021
Gross systems shipped	7,030	9,040	10,077	12,096	11,704	12,548	13,117	7,767
Sales returns rate	28.2%	27.1%	25.2%	24.3%	23.2%	24.1%	46.4%	34.0%

During the three and twelve months ended December 31, 2021, the Company shipped 7,767 and 45,136 gross hearing aid systems, respectively, approximately 20% and 44% of which, respectively, were to customers with potential insurance coverage.

We believe these key business metrics provide useful information to help investors understand and evaluate our business performance. Gross systems shipped is a key measure of sales volume, which drives potential revenue, while sales returns rates are an indicator of expected reductions to revenue and an indicator of change in customer mix and factors affecting the returns rates by customer type. However, as discussed elsewhere in this report, our sales volume, sales returns rate and revenue during the current year were not consistent with the prior year as a result of the DOJ investigation and settlement and claims audits. See "—DOJ investigation and settlement and claims audits."

Due to the historically higher return rate for cash-pay customers as compared to insurance customers, we expect that revenue, gross profit and gross margin may remain depressed as compared to prior periods for so long as we are unable to accept insurance benefits as a direct method of payment.

Components of our results of operations

See the discussion under "—DOJ investigation and settlement and claims audits," which describes a variety of circumstances currently affecting our business and results of operations, and which require that we continually evaluate and adapt our business model and expenditures as new information becomes available.

Revenue, net

We generate revenue from the sale of Eargo hearing aid systems, accessories and, to a lesser extent, sales of extended warranties, with the majority of our revenue coming from sales of our Eargo hearing aid systems.

Following the launch of Eargo 6 in January 2022, we currently offer four versions of our hearing aid systems, the Eargo Max, the Eargo Neo HiFi, the Eargo 5, and the Eargo 6, each at different price points, and we periodically offer discounts and promotions, including holiday promotions. For product sales, control is transferred upon shipment to the customer. We report revenue net of consideration payable to customers and expected returns, which is an estimate informed in part by historical return rates.

As described in more detail in "—DOJ investigation and settlement and claims audits," we did not recognize revenue for shipments after September 21, 2021 for customers with potential insurance benefits, substantially all of whom were covered under the FEHB program. Further, we estimated that a majority of customers with unsubmitted claims will choose to return the hearing aid system if their insurance provider denies their claim or the claim is ultimately not submitted by us for payment, resulting in a higher sales returns rate in the current year than in the prior year and an increase in expected returns with respect to unsubmitted claims from such transactions occurring during the first and second quarters of 2021. The $34.4 million settlement amount associated with the DOJ investigation was recorded as a reduction of revenue during the year ended December 31, 2021.

Since learning of the DOJ investigation, we have suspended all insurance claims submissions and, beginning on December 8, 2021, do not currently accept insurance as a direct method of payment. Instead, we are currently focused on "cash-pay" customers, which includes upfront payment, credit card, third-party financing and distributor payment. Historically, cash-pay customers have had significantly higher return rates than customers with potential insurance benefits, and therefore the current shift to cash-pay only sales may adversely impact revenue, net.

Cost of revenue and gross margin

Cost of revenue consists of expenses associated with the cost of finished goods, freight, personnel costs, consumables, product warranty costs, transaction fees, reserves for excess and obsolete inventory, depreciation and amortization, and related overhead.

Our gross margin has been and will continue to be affected by a variety of factors, including sales volumes, product mix, channel mix, pricing strategies, sales returns rates, costs of finished goods, product warranty claim rates and refurbishment strategies, and our ability to service insurance customers in the future and any potential actions insurance providers may take following the anticipated implementation of a pending OTC hearing aid regulatory framework that may limit our ability to access insurance coverage (which OTC framework may also generally result in additional compliance or other regulatory requirements for Eargo).

Our gross margin has been negatively impacted by the $34.4 million settlement amount associated with the DOJ investigation. Our gross margin was also negatively impacted by an expected increase in sales returns from insurance customers with unsubmitted claims, which customers have historically had a significantly lower rate of return than cash-pay customers. Additionally, we incurred costs associated with shipments subsequent to September 21, 2021 and through December 8, 2021 to customers with potential insurance benefits for which there was no revenue recognition in the third and fourth quarters of 2021 (see "—DOJ investigation and settlement and claims audits"). We expect our gross margin to remain depressed for so long as we are unable to accept insurance benefits as a direct method of payment unless we can successfully target and convert new customers with a similarly low rate of return.

Research and development expenses

Research and development ("R&D") expenses, consist primarily of engineering and product development costs to develop and support our products, regulatory expenses, non-recurring engineering and other costs associated with products and technologies that are in development, as well as related overhead costs. These expenses include personnel-related costs, including salaries and stock-based compensation, supplies, consulting fees,

prototyping, testing, materials, travel expenses, depreciation and allocated facility overhead costs. Additionally, R&D expenses include internal and external costs associated with our regulatory compliance and quality assurance functions, and related overhead costs. The uncertainty regarding the anticipated implementation of a pending OTC hearing aid regulatory framework will require that we evaluate our R&D expenses as new information becomes available.

Sales and marketing expenses

Our sales and marketing expenses are the largest component of our operating expenses and consist primarily of personnel-related costs, including salaries and stock-based compensation, direct and channel marketing, advertising and promotional expenses, consulting fees, public relations costs and allocated facility overhead costs. Sales and marketing personnel include our inside sales consultants, hearing professionals, marketing professionals and related support personnel. We expect our sales and marketing expenses to fluctuate over time as a percentage of revenue. In response to the factors discussed in "—DOJ investigation and settlement and claims audits," we have reduced sales and marketing resources that were previously focused on insurance customers to prioritize the conversion of cash-pay consumers into satisfied customers, including as part of the reduction in force announced on December 8, 2021.

General and administrative expenses

Our general and administrative expenses consist primarily of compensation for executive, finance, legal, information technology and administrative personnel, including stock-based compensation. Other significant expenses include professional fees for legal and accounting services, consulting fees, recruiting fees, information technology costs, corporate insurance, bad debt expense, general corporate expenses and allocated facility overhead costs.

Excluding the costs associated with the DOJ investigation, we expect our general and administrative expenses will increase in absolute dollars in future periods as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the SEC, and those of the Nasdaq Stock Market, additional insurance costs, investor relations activities and other administrative and professional services, as well as professional service and legal fees and expenses related to shareholder litigation that has been filed and that may be filed in the future.

Interest income

Interest income consists of interest earned on cash and cash equivalents.

Interest expense

Interest expense consists of interest related to borrowings under our debt obligations and our convertible promissory notes prior to their redemption in July 2020.

Other income (expense), net

Other income (expense), net consists primarily of adjustments to the fair value of embedded derivatives associated with certain redemption features of our convertible promissory notes prior to their redemption in July 2020 and adjustments to the fair value of our convertible preferred stock warrant liabilities prior to their reclassification to additional paid-in capital upon the closing of our IPO in October 2020.

Loss on extinguishment of debt

The loss on extinguishment of debt arose on the redemption of our convertible promissory notes ("2020 Notes") into shares of our Series E convertible preferred stock in July 2020.

Income tax provision

We use the asset and liability method to account for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between the financial statement carrying amounts of existing assets and liabilities and their tax bases. Deferred tax assets and liabilities are measured using enacted tax rates applied to taxable income in the years in which those temporary differences are expected to be recovered or settled. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized. Due to our historical operating performance and our recorded cumulative net losses in prior fiscal periods, our net deferred tax assets have been fully offset by a valuation allowance.

Financial statement effects of uncertain tax positions are recognized when it is more-likely-than-not, based on the technical merits of the position, that it will be sustained upon examination. Interest and penalties related to unrecognized tax benefits are included within the provision for income tax.

Results of operations

Comparison of the years ended December 31, 2021 and 2020

In 2021, we made significant investments in R&D, sales and marketing and general and administrative functions of the business. However, as discussed further in the description of these functions above, as a result of the DOJ investigation and claims audits (as further described in "—DOJ investigations and settlement and claims audits"), we shifted to limit our costs, conducted a reduction in force and took other precautionary measures to preserve capital and liquidity. As a result, the following comparison of the 2021 and 2020 fiscal years reflect a trend of increasing expenditures to drive growth in our business; however, in response to the uncertainties arising in connection with the DOJ investigation and settlement and claims audits, the trend of rising expenditures began to moderate during the latter portion of our fourth quarter due to the implementation of capital and liquidity preservation measures.

	Year ended December 31,		Change	
(dollars in thousands)	2021	2020	Amount	%
Revenue, net	$ 32,122	$ 69,154	$ (37,032)	(53.6)%
Cost of revenue	27,956	21,873	6,083	27.8
Gross profit	4,166	47,281	(43,115)	(91.2)
Operating expenses:				
Research and development	25,232	12,045	13,187	109.5
Sales and marketing	85,759	49,525	36,234	73.2
General and administrative	49,882	20,582	29,300	142.4
Total operating expenses	160,873	82,152	78,721	95.8
Loss from operations	(156,707)	(34,871)	(121,836)	349.4
Other income (expense), net:				
Interest income	21	37	(16)	(43.2)
Interest expense	(1,068)	(1,920)	852	(44.4)
Other income (expense), net	—	(1,474)	1,474	(100.0)
Loss on extinguishment of debt	—	(1,627)	1,627	(100.0)
Total other income (expense), net	(1,047)	(4,984)	3,937	(79.0)
Loss before income taxes	(157,754)	(39,855)	(117,899)	295.8
Income tax provision	—	—	—	—
Net loss and comprehensive loss	$(157,754)	$(39,855)	$(117,899)	295.8%

Revenue, net

(dollars in thousands)	Year ended December 31, 2021	2020	Change Amount	%
Revenue, net	$32,122	$69,154	$(37,032)	(53.6)%

Our gross systems shipped during 2021 were 45,136, compared to 38,243 in 2020. The increase in shipment volume was largely driven by a continued expansion in national marketing efforts and customer adoption of our telecare model. However, revenue, which is reported net of consideration payable to customers and expected returns, decreased by $37.0 million, or 53.6%, from $69.2 million during the year ended December 31, 2020 to $32.1 million during the year ended December 31, 2021.

The $34.4 million settlement amount associated with the DOJ investigation was recorded as a reduction in revenue during the year ended December 31, 2021. Additionally, we estimated that a majority of customers with unsubmitted claims will choose to return the hearing aid system if their insurance provider denies their claim or the claim is ultimately not submitted by us for payment, resulting in an increase in expected product returns from such transactions that occurred prior to September 21, 2021. As a result, we recorded $13.3 million of estimated sales returns as a reduction in revenue in the third quarter of 2021 related to shipments to customers with potential insurance benefits.

Further, we did not recognize revenue and related sales returns reserve on approximately 2,230 Eargo hearing aid systems shipped during third and fourth quarters of 2021 subsequent to learning of the DOJ investigation, as these transactions did not meet the criteria for revenue recognition under ASC 606. We recognized revenue on approximately 42,910 Eargo hearing aid systems shipped to customers during 2021, a 12.2% increase compared to the 38,243 Eargo hearing aid systems for which revenue was recognized during 2020. The impact on revenue from an increase in the volume of shipments was offset by the $34.4 million settlement amount, the increase in expected returns from customers with potential insurance benefits and with unsubmitted claims as of December 31, 2021, and by the hearing aid systems shipped for which we did not recognize revenue.

Cost of revenue, gross profit, and gross margin

(dollars in thousands)	Year ended December 31, 2021	2020	Change Amount	%
Cost of revenue	$27,956	$21,873	$ 6,083	27.8%
Gross profit	4,166	47,281	(43,115)	(91.2)%
Gross margin	13.0%	68.4%		

Cost of revenue increased by $6.1 million, or 27.8%, from $21.9 million during 2020 to $28.0 million during 2021. The change was primarily due to the increase in the volume of Eargo hearing aid systems shipped, product mix shift towards Eargo 5 which has a higher average product cost, and higher depreciation and software amortization related to the Eargo 5 commercial launch in July 2021.

Gross margin decreased to 13.0% during 2021, compared to 68.4% during 2020. The decrease in gross margins is primarily due to the $34.4 million settlement amount associated with the DOJ investigation, the expected increase in product returns from customers with unsubmitted claims, the approximately 2,230 Eargo hearing aid systems shipped during the third and fourth quarters of 2021 for which we did not recognize related revenue, and a product mix shift towards Eargo 5, which has a higher cost of goods per product sold.

Estimated sales returns are recorded as a reduction in revenue. The $37.7 million of estimated sales returns recorded during 2021 is an increase of $15.0 million from the $22.7 million of estimated sales returns recorded

during 2020. This change is primarily due to $13.3 million of estimated sales returns recorded during the third quarter of 2021 related to the expected increase in product returns from shipments to customers with potential insurance benefits.

We continued to process orders for customers with potential insurance benefits from September 21, 2021, the date we learned of the DOJ investigation, through December 8, 2021. We expect our gross margin to remain depressed for so long as we are unable to accept insurance benefits as a direct method of payment unless we can successfully target and convert new customers with a similarly low rate of return. See "—DOJ investigation and settlement and claims audits" for more information.

Research and development (R&D)

	Year ended December 31,		Change	
(dollars in thousands)	2021	2020	Amount	%
Research and development	$25,232	$12,045	$13,187	109.5%

R&D expenses increased by $13.2 million, or 109.5%, from $12.0 million during 2020 to $25.2 million during 2021. The change was primarily due to a net increase of $10.6 million in personnel and personnel-related costs, which includes the impact of increased headcount and an increase in stock-based compensation of $6.1 million, and a net increase of $1.8 million in third-party costs related to current and future product development initiatives.

Sales and marketing

	Year ended December 31,		Change	
(dollars in thousands)	2021	2020	Amount	%
Sales and marketing	$85,759	$49,525	$36,234	73.2%

Sales and marketing expenses increased by $36.2 million, or 73.2%, from $49.5 million during 2020 to $85.8 million during 2021. The change was primarily due to increases in direct marketing, advertising and promotional expenses of $18.9 million, partially driven by increased rates due to decreased cable TV viewership in our core demographic, and an increase in personnel and personnel-related costs of $17.3 million, which includes the impact of increased headcount (a trend that was reversed in the fourth quarter of 2021 as further described in the introductory paragraph to this "—Results of operations" and "—DOJ investigation and settlement and claims audits"), higher commissions from increased sales and an increase in stock-based compensation of $9.6 million.

General and administrative

	Year ended December 31,		Change	
(dollars in thousands)	2021	2020	Amount	%
General and administrative	$49,882	$20,582	$29,300	142.4%

General and administrative expenses increased by $29.3 million, or 142.4%, from $20.6 million during 2020 to $49.9 million during 2021. This change was primarily due to an increase in general corporate costs of $14.3 million, an increase in personnel and personnel-related costs of $9.7 million, and a net increase in bad debt expense of $7.3 million.

The change in general corporate costs includes $8.4 million in legal and other professional fees as a result of the DOJ investigation as well as increased costs as a result of operating as a public company. The change in

personnel and personnel-related costs includes compensation-related costs as a result of increased headcount as well as an increase in stock-based compensation of $6.3 million. The $7.3 million net increase in bad debt expense is primarily based on our estimate that, in addition to the customers who choose to return their hearing aid systems, a significant number of customers whose claims are denied by insurance providers or not submitted by us for payment may not pay for or return the hearing aid system.

Interest expense

(dollars in thousands)	Year ended December 31, 2021	2020	Change Amount	%
Interest expense	$(1,068)	$(1,920)	$ 852	(44.4)%

Interest expense decreased by $0.9 million, or 44.4%, from $1.9 million during 2020 to $1.1 million during 2021. The decrease in interest expense was primarily attributable to lower long-term debt balance outstanding and lower related interest rate during 2021 as compared 2020.

Other income (expense), net

(dollars in thousands)	Year ended December 31, 2021	2020	Change Amount	%
Other income (expense), net	$—	$(1,474)	$1,474	(100.0)%

Other income (expense), net during 2020 consisted primarily of adjustments to the fair value of our convertible preferred stock warrant liabilities prior to their reclassification to additional paid-in capital upon the closing of our IPO in October 2020. There was no similar expense in the comparable period.

Comparison of the years ended December 31, 2020 and 2019

(dollars in thousands)	Year ended December 31, 2020	2019	Change Amount	%
Revenue, net	$ 69,154	$ 32,790	$36,364	110.9%
Cost of revenue	21,873	15,790	6,083	38.5
Gross profit	47,281	17,000	30,281	178.1
Operating expenses:				
Research and development	12,045	12,841	(796)	(6.2)
Sales and marketing	49,525	35,725	13,800	38.6
General and administrative	20,582	12,470	8,112	65.1
Total operating expenses	82,152	61,036	21,116	34.6
Loss from operations	(34,871)	(44,036)	9,165	(20.8)
Other income (expense), net:				
Interest income	37	627	(590)	(94.1)
Interest expense	(1,920)	(711)	(1,209)	170.0
Other income (expense), net	(1,474)	(366)	(1,108)	302.7
Loss on extinguishment of debt	(1,627)	—	(1,627)	*
Total other income (expense), net	(4,984)	(450)	(4,534)	1,008
Loss before income taxes	(39,855)	(44,486)	4,631	(10.4)
Income tax provision	—	—	—	—
Net loss and comprehensive loss	$(39,855)	$(44,486)	$ 4,631	(10.4)%

* *Not meaningful*

Revenue, net

(dollars in thousands)	Year ended December 31, 2020	2019	Change Amount	%
Revenue, net	$69,154	$32,790	$36,364	110.9%

Revenue increased by $36.4 million, or 110.9%, from $32.8 million in 2019 to $69.2 million in 2020, primarily due to an increase in the volume of Eargo hearing aid systems shipped, the majority of which were Eargo Neo HiFi systems, which began shipping in January 2020. The increase in revenue was also attributable to a higher average selling price due to introduction of the Neo HiFi systems and a decrease in sales returns as a percentage of systems shipped, the latter of which was partially due to growth in sales to customers with health insurance coverage as such customers generally have lower return rates. Gross systems shipped during 2020 were 38,243, a 68% increase compared to the 22,787 gross systems shipped during 2019. The increase in volume was largely driven by expanded national marketing efforts in conjunction with the launch of Eargo Neo HiFi, growth in customers with health insurance coverage for hearing aids and increased customer adoption of our telecare model due to the COVID-19 pandemic.

Cost of revenue, gross profit, and gross margin

(dollars in thousands)	Year ended December 31, 2020	2019	Change Amount	%
Cost of revenue	$21,873	$15,790	$ 6,083	38.5%
Gross profit	47,281	17,000	30,281	178.1%
Gross margin	68.4%	51.8%		

Cost of revenue increased by $6.1 million, or 38.5%, from $15.8 million in 2019 to $21.9 million in 2020. The change was primarily due to an increase in the volume of Eargo hearing aid systems shipped during the period. In addition, product warranty costs increased from $1.6 million in 2019 to $3.2 million in 2020 as a result of increased sales volume and the new two-year warranty coverage term associated with Neo HiFi, compared to one-year warranty coverage for prior generations of Eargo hearing aid systems.

Gross margin increased to 68.4% in 2020, compared to 51.8% in 2019. The change in gross margin percentage was primarily due to an increase in the average selling price of systems shipped and a decrease in sales returns as a percentage of systems shipped.

Research and development (R&D)

(dollars in thousands)	Year ended December 31, 2020	2019	Change Amount	%
Research and development	$12,045	$12,841	$ (796)	(6.2)%

R&D expenses decreased by $0.8 million, or 6.2%, from $12.8 million in 2019 to $12.0 million in 2020. The change was primarily due to a net decrease of $0.8 million in personnel and personnel-related costs resulting from increased capitalized costs associated with the development of internal use software and a decrease in travel costs due to the COVID-19 pandemic. We capitalized $2.1 million of personnel and personnel-related internal use software costs in 2020 compared to $1.1 million in 2019.

Sales and marketing

(dollars in thousands)	Year ended December 31, 2020	2019	Change Amount	%
Sales and marketing	$49,525	$35,725	$13,800	38.6%

Sales and marketing expenses increased by $13.8 million, or 38.6%, from $35.7 million in 2019 to $49.5 million in 2020. The change was primarily due to increases in personnel and personnel-related costs of $7.2 million and increases in direct marketing, advertising and promotional expenses of $6.6 million. The change in personnel and personnel-related costs was primarily due to increased commissions from increased sales and a net increase in salary-related costs, including an increase of $1.4 million in stock-based compensation.

General and administrative

(dollars in thousands)	Year ended December 31, 2020	2019	Change Amount	%
General and administrative	$20,582	$12,470	$8,112	65.1%

General and administrative expenses increased by $8.1 million, or 65.1%, from $12.5 million in 2019 to $20.6 million in 2020. This change was primarily due to an increase in general corporate, personnel and personnel-related costs of $5.0 million, an increase in bad debt expense of $2.0 million directly related to the growth in our insurance payment channel and terminated IPO costs of $1.6 million, which were partially offset by a decrease in non-capitalizable IPO readiness costs of $0.5 million. The change in personnel and personnel-related costs includes an increase of $1.7 million in stock-based compensation.

Terminated IPO costs consist of deferred offering costs expensed upon termination of our previously planned IPO in March 2020. The offering was terminated primarily because of the uncertainty in the public markets during the onset of the COVID-19 pandemic.

Interest income

	Year ended December 31,		Change	
(dollars in thousands)	2020	2019	Amount	%
Interest income	$ 37	$ 627	$ (590)	(94.1)%

Interest income decreased by $0.6 million, or 94.1%, from $0.6 million in 2019 to less than $0.1 million in 2020. The decrease in interest income was due to a lower average interest rate in 2020 compared to 2019.

Interest expense

	Year ended December 31,		Change	
(dollars in thousands)	2020	2019	Amount	%
Interest expense	$(1,920)	$(711)	$(1,209)	170.0%

Interest expense increased by $1.2 million, or 170.0%, from $0.7 million during the year ended December 31, 2019 to $1.9 million during the year ended December 31, 2020. This increase was primarily attributable to interest expense on the 2020 Notes in 2020, for which there was no similar expense in 2019.

Other income (expense), net

	Year ended December 31,		Change	
(dollars in thousands)	2020	2019	Amount	%
Other income (expense), net	$(1,474)	$(366)	$(1,108)	302.7%

Other expense increased by $1.1 million, or 302.7%, from $0.4 million during the year ended December 31, 2019 to $1.5 million during the year ended December 31, 2020. The expense recorded in each period is primarily related to the change in fair value of our convertible preferred stock warrant liability, which is based in part on the fair value of our common stock. Upon the closing of our IPO in October 2020, the convertible preferred stock warrants were converted into warrants to purchase common stock and the warrant liabilities were reclassified to additional paid-in capital.

Liquidity and capital resources

Sources of liquidity and operating capital requirements

Since our inception, we have incurred net losses and negative cash flows from operations. We have funded our operations primarily from the net proceeds received from the sale of our equity securities, indebtedness and revenue from the sale of our products.

In connection with our IPO, we sold an aggregate of 9,029,629 shares of our common stock at a price of $18.00 per share, resulting in net proceeds of $148.5 million after deducting underwriting discounts, commissions and offering expenses.

As of December 31, 2021, we had $15.0 million in principal outstanding under the 2018 Loan, which matures in September 2024 with interest-only payments until July 2022. Interest on the 2018 Loan accrues at a per annum rate equal to the Wall Street Journal prime rate plus 1.0%, or 4.25% as of December 31, 2021.

As of December 31, 2021, we had cash and cash equivalents of $110.5 million, which are available to fund operations, and an accumulated deficit of $356.8 million.

We expect to incur additional substantial losses in the foreseeable future. We believe that without any future financing, our current resources are insufficient to satisfy our obligations as they become due within one year after the date that the financial statements are issued. Our negative cash flows and current lack of financial resources raise substantial doubt as to our ability to continue as a going concern.

We anticipate our future operating requirements will be substantial and that we will need to raise significant additional resources to fund our operations through equity or debt financing, or some combination thereof. We are currently exploring fundraising opportunities to meet these capital requirements. If we are unable to raise additional funding to meet our operational needs, we will be forced to limit or cease our operations.

In addition to our current capital needs, we regularly consider fundraising opportunities and may decide, from time to time, to raise capital based on various factors, including market conditions and our plans of operation. We may seek funds through borrowings or through additional rounds of financing, including private or public equity or debt offerings. Additional capital may not be available to us on acceptable terms on a timely basis, or at all. If adequate funds are not available, or if the terms of potential funding sources are unfavorable, our business and our ability to develop our technology and our products would be harmed. Furthermore, any new equity or convertible debt securities we issue may result in the dilution of our stockholders, and any debt financing may include covenants that restrict our business.

Our longer term future capital requirements and ability to raise additional capital will depend on many forward-looking factors and are not limited to the following:

- investor confidence in our ability to continue as a going concern;
- the timing, receipt and amount of sales from our current and future products;
- the costs involved in resolving the third-party claims audits and potential recoupment of previous claims paid, as well as other legal proceedings (including the shareholder class action and derivative suits discussed in Note 6 to the Consolidated Financial Statements included in this Annual Report on Form 10-K), and their duration and impact on our business generally (particularly with respect to our ability in future periods to accept insurance as a direct method of payment);
- the availability of insurance coverage for our hearing aid devices, and any costs associated with reimbursement and compliance, including the anticipated implementation of a pending OTC regulatory framework (which may lead insurance providers to take actions limiting our ability to access insurance coverage and may also generally result in additional compliance or other regulatory requirements for us), and any resulting changes to our business model, including a potential long-term shift to a model that excludes insurance benefits as a method of direct payment to Eargo, which would likely result in a sustained increased cost of customer acquisition;
- the cost and timing of expanding our sales, marketing and distribution capabilities and our continued success in reducing our customer acquisition costs;
- any expenses, as well as the impact to our business and operating model, as a result of changes in the regulatory landscape for hearing aid devices;

- the cost of manufacturing, either ourselves or through third-party manufacturers, our products;
- the terms, timing and success of any other licensing, partnership, omni-channel, including retail, or other arrangements that we may establish;
- any product liability or other lawsuits related to our current or future products;
- the expenses needed to attract, hire and retain skilled personnel;
- the extent of our spending to support research and development activities and the expansion of our product offerings;
- the costs associated with being a public company;
- the duration and severity of the COVID-19 pandemic and its impact on our business and financial markets generally;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing our intellectual property portfolio; and
- the extent to which we acquire or invest in businesses.

Our liquidity is subject to various risks, including the risks identified in the section titled "Risk Factors" in Item 1A of Part I. While the extent to which we are able to validate and establish processes to support the submission of claims for reimbursement to health plans, including those under the FEHB program, if at all, in the future, and the future impacts of the anticipated implementation of a pending OTC hearing aid regulatory framework (which may lead insurance providers to take actions limiting our ability to access insurance coverage and may also generally result in additional compliance or other regulatory requirements for Eargo) are difficult to assess or predict at this time, since the announcement of the DOJ investigation and our related decision to stop accepting
insurance benefits as a method of direct payment, there has been and may continue to be a significant reduction in shipments, revenue and gross margin which could in the future negatively impact our liquidity and working capital, including by impacting our ability to access any additional capital.

Contractual obligations and commitments

The following table summarizes our contractual obligations and commitments as of December 31, 2021:

	Payments due by period				
(in thousands)	**Total**	**Less than 1 year**	**1-3 years**	**3-5 years**	**More than 5 years**
Operating lease obligations	$ 9,832	$ 1,327	$ 2,195	$2,703	$ 3,607
Debt, principal and interest[(1)]	17,016	3,950	13,066	—	—
Total	$26,848	$ 5,277	$15,261	$2,703	$ 3,607

(1) We borrowed $15.0 million pursuant to a term loan under the 2018 Loan. Principal payments associated with the 2018 Loan are included in the above table. Interest expense is included in the above table based on obligations outstanding and rates effective as of December 31, 2021, including a final one-time payment of $0.9 million in September 2024.

Cash flows

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

(in thousands)	Year ended December 31, 2021	2020
Net cash used in operating activities	$ (98,456)	$ (26,041)
Net cash used in investing activities	(7,587)	(5,079)
Net cash provided by financing activities	4,358	229,921
Net increase (decrease) in cash	$(101,685)	$198,801

Operating activities

In 2021, cash used in operating activities was $98.5 million, attributable to a net loss of $157.8 million, partially offset by non-cash charges of $43.2 million and a net change in our net operating assets and liabilities of $16.1 million. Non-cash charges primarily consisted of $27.7 million in stock-based compensation that includes the amounts recorded upon the suspension of the ESPP in the fourth quarter of 2021, $9.6 million in bad debt expense, $4.2 million in depreciation and amortization expense, and $1.1 million in non-cash operating lease expense. The change in our net operating assets and liabilities was primarily due to the $34.4 million settlement liability associated with the DOJ investigation, a $9.5 million increase in sales returns reserve, and a $3.1 million increase in accounts payable. These changes were partially offset by a $18.4 million increase in accounts receivable, a $7.4 million increase in prepaid expenses and other current and noncurrent assets and a $3.0 million increase in inventories.

The increase in our accounts receivable, net during the year ended December 31, 2021, was primarily due to the Primary Audit, during which certain claims with a service date after March 1, 2021 have not yet and may never be submitted by us for reimbursement. The increase in our sales returns reserve during the year ended December 31, 2021, was primarily due to our estimate that a majority of customers with unsubmitted claims will choose to return the hearing aid system if their insurance provider denies their claim or the claim is ultimately not submitted by us for payment. Of the $13.8 million sales returns reserve recorded as of December 31, 2021, $11.4 million relates to unsubmitted claims that are included in accounts receivable, net. Returns associated with unsubmitted claims will reduce the sales returns reserve along with a corresponding reduction in the related accounts receivable at the time the product is returned.

In 2020, cash used in operating activities was $26.0 million, attributable to a net loss of $39.9 million and a net change in our net operating assets and liabilities of $1.9 million, partially offset by non-cash charges of $15.7 million. Non-cash charges primarily consisted of $5.1 million in stock-based compensation, $2.5 million in depreciation and amortization, $2.4 million in bad debt expense related to our insurance payment channel, $1.6 million in loss on extinguishment of debt, $1.5 million in non-cash interest expense and amortization of debt discount, $1.5 million from the change in fair value of financial instruments primarily due to the change in fair value of our warrant liability and $1.1 million in non-cash operating lease expense. The change in our net operating assets and liabilities was primarily due to a $4.1 million increase in accounts receivable related to an increase sales volume and growth in customers with health insurance coverage, a $1.6 million increase in prepaid expenses and other current and noncurrent assets primarily related to an increase in prepaid insurance, and a $1.2 million decrease in lease liabilities. These changes were partially offset by a $3.9 million increase in accrued expenses primarily related to an increase in accrued compensation, a $0.6 million increase in sales returns reserve, a $0.2 million increase in other current and noncurrent liabilities and a $0.2 million increase in accounts payable.

Investing activities

In 2021, cash used in investing activities was $7.6 million, which consisted of $3.8 million in capitalized costs related to the development of internal use software, $2.9 million in cash paid for acquisition of a business, and $0.9 million related to the purchase of property and equipment.

In 2020, cash used in investing activities was $5.1 million, which consisted of $3.5 million in capitalized costs related to the development of internal use software and $1.6 million related to the purchase of property and equipment.

Financing activities

In 2021, cash provided by financing activities was $4.4 million. This was primarily attributable to $2.7 million from employee stock purchase plan purchases and $1.7 million from the exercise of stock options.

In 2020, cash provided by financing activities was $229.9 million, attributable to $148.5 million in net proceeds received in our IPO, $67.9 million in net proceeds from the issuance of our Series E convertible preferred stock, $19.6 million in borrowings under our term loan and PPP loan, $10.1 million in proceeds from the issuance of convertible notes, and $1.2 million from the exercise of stock options, partially offset by $17.3 million in debt repayments, which includes repayment of our PPP loan.

Critical accounting estimates

Management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. Our significant accounting policies and methods used in the preparation of our consolidated financial statements are described in Note 2 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

The preparation of these consolidated financial statements requires us to make estimates and assumptions regarding the reported amounts of assets, liabilities, revenue, expenses and related disclosures. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. The estimates, assumptions and judgments described below involve a substantial level of estimation uncertainty and as a result have had or are reasonably likely to have a material impact on our consolidated financial statements, results of operations and financial condition. Actual results may differ from these estimates under different assumptions or conditions and any such differences may be material.

Revenue recognition—sales returns reserve

Revenue is recorded net of expected returns, which are estimated based on analysis of various factors including historical returns, current economic trends, and changes in customer demand.

As of December 31, 2021 and 2020, we recorded a sales returns reserve of $13.8 million and $4.3 million, respectively, in the consolidated balance sheets. We recorded $37.7 million of estimated sales returns as a reduction in revenue during 2021 based on our estimated returns of products sold during the year, which includes $13.3 million recorded during the third quarter of 2021 primarily based on our estimate that a majority of customers with unsubmitted claims will choose to return the hearing aid system if their insurance provider denies their claim or the claim is ultimately not submitted by us for payment (as further described in "—DOJ investigation and settlement and claims audits"). See also the caption "Sales returns reserve" under Note 4 of the Notes to the Consolidated Financial Statements included in this Annual Report on Form 10-K. The estimated sales returns recorded during the third quarter of 2021 included $5.1 million related to transactions that occurred during the first and second quarters of 2021. These estimates are inherently subject to estimation uncertainty because they assume the potential actions that a substantial number of our insurance pay customers may take as a result of the unavailability of insurance benefits as a direct payment method, which increases the probability of higher returns. If actual returns differ from our estimates or new factors arise indicating a rate of return that is different from our original estimate, an adjustment to revenue in a subsequent period will be recorded, which could have a material impact on our results of operations.

Accounts receivable—estimated credit losses

Accounts receivable is recorded net of an allowance for expected credit losses, which is based on our historical collection experience, current and future economic market conditions and a review of the current aging status and financial condition of our customers.

As of December 31, 2021 and 2020, we recorded an allowance for credit losses of $4.8 million and $1.9 million, respectively, in the consolidated balance sheets. We recorded $9.6 million in bad debt expense during the year ended December 31, 2021 primarily based on our estimate that, in addition to the customers who choose to return their hearing aid systems, a significant number of customers with an extended right of return whose claims are denied by insurance providers or are not submitted by us for payment may not pay for or return the hearing aid system. Of the $9.6 million recorded to bad debt expense during the year ended December 31, 2021, $5.8 million relates to submitted claims that have been denied or have not been paid and was written off during 2021. See the caption "Allowance for credit losses" under Note 4 of the Notes to the Consolidated Financial Statements included in this Annual Report on Form 10-K. As similarly described in "—sales returns reserve" above, estimates with respect to the actions of our customers, in this case relating to non-payment, are subject to estimation uncertainty, particularly because any attempt to predict the behavior of individual customers can be affected by a variety of external factors. If actual credit losses differ from our estimates or new factors arise indicating credit losses that are different from our original estimate, it could have a material impact on our future operating expenses and results of operations.

Loss contingencies

We are subject to various loss contingencies arising in the ordinary course of business. An estimated loss contingency is accrued when it is probable that an asset has been impaired or a liability has been incurred and the amount of loss can be reasonably estimated. If some amount within a range of probable loss appears to be a better estimate than any other amount within the range, we accrue that amount. Alternatively, when no amount within a range of probable loss appears to be a better estimate than any other amount, we accrue the lowest amount in the range. If we determine that a loss is reasonably possible and the range of the loss is estimable, then we disclose the range of the possible loss if the upper end of the range is material. If we cannot estimate the range of loss, we will disclose the reason why we cannot estimate the range of loss and if there is a reasonable possibility that the amount of loss may be material. We regularly evaluate current information available to it to determine whether an accrual is required, an accrual should be adjusted and if a range of possible loss should be disclosed. Estimated accruals for contingencies are made based on the best information reasonably available, which can be highly subjective and result in estimation uncertainty. Our accruals for contingencies may fluctuate from period to period as a result of new information becoming available, which can occur sporadically and without forewarning.

See also our significant legal proceedings as discussed in Note 6 to the Consolidated Financial Statements included in this Annual Report on Form 10-K.

Stock-based compensation—valuation of equity awards

The valuation model used for calculating the estimated fair value of stock options and purchase rights granted under the employee stock purchase plan is the Black-Scholes option-pricing model. The Black-Scholes model requires us to make assumptions and judgments about the variables used in the calculations, including the expected term (weighted-average period of time that the stock-based awards are expected to be outstanding), the expected volatility of our common stock, the related risk-free interest rate and the expected dividend. We have elected to recognize forfeitures of stock options as they occur.

The Black-Scholes option-pricing model requires the use of highly subjective assumptions which determine the fair value of stock-based awards. These assumptions include:

- *Fair value of common stock*. For grants prior to our IPO in October 2020, the fair value of our common stock underlying share-based awards was estimated on each grant date by our board of directors. In

order to determine the fair value of our common stock underlying option grants, our board of directors considered, among other things, valuations of our common stock prepared by an unrelated third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Guide, Valuation of Privately-Held-Company Equity Securities Issued as Compensation. For all grants subsequent to our IPO in October 2020, the fair value of common stock was determined by using the closing price per share of common stock as reported on the Nasdaq Global Select Market.

- *Expected term*. The expected term represents the period that share-based awards are expected to be outstanding. The expected term for option grants is determined using the simplified method. The simplified method deems the term to be the average of the time-to-vesting and the contractual life of the share-based awards.
- *Expected volatility*. Since we had been privately held and did not have any trading history for our common stock and subsequent to our IPO have limited trading history for our common stock, the expected volatility was estimated based on the average volatility for comparable publicly traded companies over a period equal to the expected term of the stock option grants. The comparable companies were chosen based on their similar size, stage in the life cycle or area of specialty.
- *Risk-free interest rate*. The risk-free interest rate is based on the U.S. Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of option.
- *Expected dividend*. We have never paid dividends on our common stock and have no plans to pay dividends on our common stock. Therefore, we used an expected dividend yield of zero.

Recent accounting pronouncements

See Note 2 to our consolidated financial statements appearing under Part II, Item 8 for more information about recent accounting pronouncements, the timing of their adoption, and our assessment.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Interest rate risk

Our cash and cash equivalents as of December 31, 2021 consists of $110.5 million in bank deposits and money market funds. Such interest-earning instruments carry a degree of interest rate risk. The goals of our investment policy are liquidity and capital preservation; we do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate exposure. We believe that we do not have any material exposure to changes in the fair value of these assets as a result of changes in interest rates due to the short-term nature of our cash and cash equivalents.

As of December 31, 2021 we had $15.0 million in variable rate debt outstanding. The 2018 Loan matures in September 2024 and has interest-only payments until July 2022. The 2018 Loan accrues interest at a floating per annum rate equal to the Wall Street Journal prime rate plus 1.00% with a floor of 0.00% (4.25% as of December 31, 2021). A hypothetical increase or decrease of 100 basis points in the aforementioned prime rate would not have a material impact on our financial position or results of operations.

Item 8. Financial Statements and Supplementary Data.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of Eargo, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Eargo, Inc. and subsidiaries (the "Company") as of December 31, 2021 and 2020, the related consolidated statements of operations and comprehensive loss, convertible preferred stock and shareholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated May 13, 2022, expressed an adverse opinion on the Company's internal control over financial reporting because of material weaknesses.

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's losses, negative cash flows and current lack of financial resources raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also 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 PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence 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.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Description of Business and other matters – Insurance matters related to revenue recognition, sales returns reserve, and allowance for credit losses – Refer to Notes 1, 2, and 4 to the financial statements

Critical Audit Matter Description

The Company determined that customer transactions for product shipments with potential insurance coverage under certain insurance plans did not meet the criteria for revenue recognition under Accounting Standard Codification Topic 606, *Revenue from Contracts with Customers* ("ASC 606") after September 21, 2021. The Company recorded a sales returns reserve as a result of an offer to customers with potential insurance coverage the option to return their hearing aids. The Company recorded an allowance for credit losses related to all outstanding insurance claims receivable as of December 31, 2021, as a result of the uncertainty pertaining to insurance claims reimbursement.

We identified management's accounting evaluation and conclusions around revenue recognition, sales returns reserve, and allowance for credit losses associated with product shipments with potential insurance coverage as a critical audit matter due to the significant judgments required by management to appropriately account for these transactions. This required a high degree of auditor judgment and an increased extent of effort, including the involvement of professionals in our firm having expertise in revenue recognition and receivables when performing audit procedures to evaluate the accounting conclusions and amounts recorded.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the accounting evaluation and conclusions around revenue recognition, sales returns reserve, and allowance for credit losses related to product shipments with potential insurance coverage included the following, among others:

- With the assistance of professionals in our firm having expertise in revenue recognition and receivables, we evaluated the Company's accounting considerations and conclusions to account for product shipments with potential insurance coverage during the current period through consideration of possible alternatives under accounting principles generally accepted in the United States of America.
- We tested the methodology and assumptions used by management to calculate its sales returns reserve and allowance for credit losses related to product shipments with potential insurance coverage by:
    - Testing the mathematical accuracy of management's calculations and the completeness and accuracy of the underlying source information.
    - Evaluating the estimated sales returns rate for customers with unpaid claims used in management's calculation of the sales returns reserve by performing a retrospective review of historical returns and by evaluating the appropriateness of the internal and external factors used by management to determine the sales returns rate.
    - Reviewing recent return activity including after the most recent balance sheet date.
- We developed an independent expectation of the sales returns reserve and compared it to the recorded balance.
- We developed an independent expectation of the allowance for credit losses for unpaid insurance claims recorded in accounts receivable and compared it to the recorded balance.

/s/ Deloitte & Touche LLP

San Jose, California
May 13, 2022

We have served as the Company's auditor since 2018.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of Eargo, Inc.

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Eargo, Inc. and subsidiaries (the "Company") as of December 31, 2021, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, because of the effect of the material weaknesses identified below on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2021, of the Company and our report dated May 13, 2022, expressed an unqualified opinion on those financial statements.

Basis for Opinion

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

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

Definition and Limitations of Internal Control over Financial Reporting

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

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

Material Weaknesses

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weaknesses have been identified and included in management's assessment:

Sufficiency of qualified supervisory accounting resources

There is a lack of qualified supervisory accounting resources, including those necessary to account for and disclose certain complex transactions and for which the Company lacked the technical expertise to identify, analyze and appropriately record those transactions.

Sufficiency of qualified healthcare industry compliance and risk management resources

There is a lack of sufficient qualified healthcare industry compliance and risk management resources, including those necessary to provide appropriate oversight, monitor compliance, and to identify and mitigate risks with respect to the financial reporting and disclosures of the Company's operations.

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the consolidated financial statements as of and for the year ended December 31, 2021, of the Company, and this report does not affect our report on such financial statements.

/s/ Deloitte & Touche LLP

San Jose, California
May 13, 2022

Eargo, Inc.
Consolidated Balance Sheets
(*In thousands, except share and per share amounts*)

	December 31, 2021	December 31, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	$ 110,500	$ 212,185
Accounts receivable, net	12,547	3,793
Inventories	5,712	2,739
Prepaid expenses and other current assets	10,873	3,740
Total current assets	139,632	222,457
Operating lease right-of-use assets	7,165	1,079
Property and equipment, net	9,551	8,034
Intangible assets, net	1,681	—
Goodwill	873	—
Other assets	1,209	1,062
Total assets	$ 160,111	$ 232,632
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 9,053	$ 6,020
Accrued expenses	9,235	9,583
Sales returns reserve	13,827	4,326
Settlement liability	34,372	—
Long-term debt, current portion	3,333	—
Other current liabilities	1,813	2,448
Deferred revenue, current portion	—	311
Lease liability, current portion	750	1,030
Total current liabilities	72,383	23,718
Lease liability, noncurrent portion	6,640	166
Long-term debt, noncurrent portion	11,924	14,837
Total liabilities	90,947	38,721
Commitments and contingencies (Note 6)		
Stockholders' equity:		
Preferred stock, $0.0001 par value per share; 5,000,000 shares authorized as of December 31, 2021 and 2020, respectively; zero shares issued and outstanding as of December 31, 2021 and 2020, respectively	—	—
Common stock; $0.0001 par value; 110,000,000 shares authorized as of December 31, 2021 and 2020, respectively; 39,307,093 and 38,246,601 shares issued and outstanding as of December 31, 2021 and 2020, respectively	4	4
Additional paid-in capital	425,972	392,965
Accumulated deficit	(356,812)	(199,058)
Total stockholders' equity	69,164	193,911
Total liabilities and stockholders' equity	$ 160,111	$ 232,632

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

Eargo, Inc.
Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except share and per share amounts)

	Year ended December 31,		
	2021	2020	2019
Revenue, net	$ 32,122	$ 69,154	$ 32,790
Cost of revenue	27,956	21,873	15,790
Gross profit	4,166	47,281	17,000
Operating expenses:			
Research and development	25,232	12,045	12,841
Sales and marketing	85,759	49,525	35,725
General and administrative	49,882	20,582	12,470
Total operating expenses	160,873	82,152	61,036
Loss from operations	(156,707)	(34,871)	(44,036)
Other income (expense), net:			
Interest income	21	37	627
Interest expense	(1,068)	(1,920)	(711)
Other income (expense), net	—	(1,474)	(366)
Loss on extinguishment of debt	—	(1,627)	—
Total other income (expense), net	(1,047)	(4,984)	(450)
Loss before income taxes	(157,754)	(39,855)	(44,486)
Income tax provision	—	—	—
Net loss and comprehensive loss	$ (157,754)	$ (39,855)	$ (44,486)
Net loss attributable to common stockholders, basic and diluted	$ (157,754)	$ (30,015)	$ (44,486)
Net loss per share attributable to common stockholders, basic and diluted	$ (4.06)	$ (3.80)	$ (173.47)
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	38,899,457	7,890,375	256,452

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

Eargo, Inc.
Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit)
(*In thousands, except share amounts*)

	Convertible preferred stock		Common stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity (deficit)
	Shares	Amount	Shares	Amount			
Balance December 31, 2018	11,761,159	$ 152,015	231,831	$ —	$ 1,718	$ (114,717)	$ (112,999)
Issuance of Series D convertible preferred stock, net of issuance costs of $0	64,653	865	—	—	—	—	—
Stock-based compensation	—	—	—	—	1,339	—	1,339
Exercise of stock options	—	—	34,112	—	43	—	43
Net loss and comprehensive loss	—	—	—	—	—	(44,486)	(44,486)
Balance December 31, 2019	11,825,812	152,880	265,943	—	3,100	(159,203)	(156,103)
Issuance of Series E convertible preferred stock, net of issuance costs of $4,056	10,513,921	67,267	—	—	—	—	—
Issuance of Series E convertible preferred stock, upon extinguishment of convertible notes	1,889,548	12,818	—	—	—	—	—
Gain on extinguishment of Series C and Series C-1 convertible preferred stock	—	(9,840)	—	—	9,840	—	9,840
Conversion of convertible preferred stock to common stock upon initial public offering	(24,229,281)	(223,125)	28,196,388	3	223,122	—	223,125
Conversion of convertible preferred stock warrants to common stock warrants upon initial public offering	—	—	—	—	1,931	—	1,931
Issuance of common stock upon initial public offering, net of underwriting discounts and commissions and other offering costs of $14,031	—	—	9,029,629	1	148,501	—	148,502
Exercise of common stock warrants	—	—	107,790	—	—	—	—
Stock-based compensation	—	—	—	—	5,292	—	5,292
Exercise of stock options	—	—	646,851	—	1,179	—	1,179
Net loss and comprehensive loss	—	—	—	—	—	(39,855)	(39,855)
Balance December 31, 2020	—	—	38,246,601	4	392,965	(199,058)	193,911
Stock-based compensation	—	—	—	—	28,609	—	28,609
Exercise of stock options and release of restricted stock units	—	—	885,749	—	1,724	—	1,724
Issuance of common stock in connection with employee stock purchase plan	—	—	174,743	—	2,674	—	2,674
Net loss and comprehensive loss	—	—	—	—	—	(157,754)	(157,754)
Balance December 31, 2021	—	$ —	39,307,093	$ 4	$425,972	$ (356,812)	$ 69,164

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

Eargo, Inc.
Consolidated Statements of Cash Flows
(*In thousands*)

	Year ended December 31,		
	2021	2020	2019
Operating activities:			
Net loss	$ (157,754)	$ (39,855)	$ (44,486)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	4,202	2,525	1,528
Stock-based compensation	27,731	5,089	1,339
Non-cash interest expense and amortization of debt discount	420	1,513	297
Non-cash operating lease expense	1,063	1,128	—
Bad debt expense	9,615	2,352	313
Loss on disposal of property and equipment	155	—	24
Loss on extinguishment of debt	—	1,627	—
Change in fair value of financial instruments	—	1,471	274
Changes in operating assets and liabilities:			
Accounts receivable	(18,369)	(4,094)	(1,399)
Inventories	(2,973)	141	(720)
Prepaid expenses and other current and noncurrent assets	(7,383)	(1,636)	(641)
Accounts payable	3,130	187	163
Accrued expenses	(368)	3,900	2,692
Sales returns reserve	9,501	567	1,046
Settlement liability	34,372	—	—
Other current and noncurrent liabilities	(946)	240	462
Operating lease liabilities	(852)	(1,196)	—
Net cash used in operating activities	(98,456)	(26,041)	(39,108)
Investing activities:			
Purchases of property and equipment	(882)	(1,624)	(2,167)
Capitalized software development costs	(3,842)	(3,455)	(1,692)
Cash paid for acquisition of business	(2,863)	—	—
Net cash used in investing activities	(7,587)	(5,079)	(3,859)
Financing activities:			
Proceeds from stock options exercised	1,724	1,179	43
Proceeds from employee stock purchase plan purchases	2,674	—	—
Proceeds from issuance of common stock upon initial public offering, net of underwriting discounts and commissions	—	151,156	—
Payments of other offering costs related to the initial public offering	(40)	(2,614)	(758)
Proceeds from convertible preferred stock issuance, net of issuance costs	—	67,867	865
Proceeds from issuance of convertible notes, net of issuance costs	—	10,053	—
Proceeds from debt financing	—	15,000	5,000
Debt repayments	—	(12,720)	—
Proceeds from PPP loan	—	4,574	—
Repayment of PPP loan	—	(4,574)	—
Net cash provided by financing activities	4,358	229,921	5,150
Net increase (decrease) in cash and cash equivalents and restricted cash	(101,685)	198,801	(37,817)
Cash and cash equivalents and restricted cash at beginning of period	212,185	13,384	51,201
Cash and cash equivalents and restricted cash at end of period	$ 110,500	$ 212,185	$ 13,384
Supplemental disclosure of cash flow information:			
Cash paid for taxes	$ 107	$ 63	$ —
Cash paid for interest	$ 646	$ 398	$ 395
Non-cash operating activities:			
Lease liability obtained in exchange for right-of-use asset	$ 7,046	$ 2,392	$ —
Non-cash investing and financing activities:			
Property and equipment and capitalized software costs in accounts payable and accrued liabilities	$ 357	$ 393	$ 515
Stock-based compensation included in capitalized software costs	$ 878	$ 203	$ —
Convertible preferred stock issuance costs included in accounts payable	$ 600	$ 600	$ —
Common stock issued on conversion of convertible preferred stock upon initial public offering	$ —	$ 223,125	$ —
Conversion of convertible preferred stock warrants to common stock warrants and related reclassification of convertible preferred stock warrant liability to additional paid-in capital	$ —	$ 1,931	$ —
Offering costs in accounts payable and accrued liabilities	$ —	$ 40	$ 424
Issuance of Series E convertible preferred stock upon extinguishment of convertible notes	$ —	$ 12,818	$ —

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

Eargo, Inc.
Notes to Consolidated Financial Statements

Note 1. Description of business and other matters

The Company is a medical device company dedicated to improving the quality of life of people with hearing loss. The Company's innovative product and go-to-market approach address the major challenges of traditional hearing aid adoption, including social stigma, accessibility and cost.

DOJ investigation and settlement and claims audits

On September 21, 2021, Eargo, Inc. (the "Company") was informed that it was the target of a criminal investigation by the U.S. Department of Justice (the "DOJ") related to insurance reimbursement claims the Company submitted on behalf of its customers covered by various federal employee health plans under the Federal Employee Health Benefits ("FEHB") program. The investigation also pertained to Eargo's role in customer reimbursement claim submissions to federal employee health plans (collectively, the "DOJ investigation"). Additionally, the Company's largest third-party payor conducted an audit of insurance reimbursement claims ("claims") submitted by the Company (the "Primary Audit"), which included a review of medical records. The Company was informed by the third-party payor conducting the Primary Audit that the DOJ was the principal contact related to the subject matter of the Primary Audit. On January 4, 2022, the DOJ confirmed to the Company that the investigation had been referred to the Civil Division of the DOJ and the U.S. Attorney's Office for the Northern District of Texas and the criminal investigation was no longer active.

On April 29, 2022, the Company entered into a civil settlement agreement with the U.S. government that resolved the DOJ investigation related to the Company's role in customer reimbursement claim submissions to various federal employee health plans under the FEHB program. The settlement agreement provided for the Company's payment of approximately $34.4 million to the U.S. government and resolved allegations that the Company submitted or caused the submission of claims for payment to the FEHB program using unsupported hearing loss-related diagnostic codes.

From the time the Company learned of the DOJ investigation and until December 8, 2021, the Company continued to process orders for customers with potential insurance benefits (including FEHB program members) but suspended all claims submission activities and has offered affected customers (*i.e.*, customers using insurance benefits as a method of direct payment for transactions prior to December 8, 2021) the option to return their hearing aids or purchase their hearing aids without the use of their insurance benefits in case their claim is denied or ultimately not submitted by the Company to their insurance plan for payment (the "extended right of return").

Beginning on December 8, 2021, the Company made the decision to stop accepting insurance benefits as a method of direct payment and it is uncertain when, if ever, the Company will resume accepting insurance benefits as a method of direct payment. While the Company intends to work with the government and third-party payors at the appropriate time with the objective of validating and establishing processes to support any future claims that it may submit for reimbursement, the Company may not be able to arrive at acceptable processes or submit any future claims.

Total life-to-date payments the Company has received through December 31, 2021 from the government in relation to claims submitted under the FEHB program, net of any product returns and associated refunds, were approximately $44 million. As discussed further in Note 6, based on the settlement agreement with the U.S. government, the Company has recorded a settlement liability of $34.4 million as of December 31, 2021. The settlement amount was treated as consideration payable to a customer and was recorded as a reduction of revenue in the consolidated statements of operations and comprehensive loss during the year ended December 31, 2021.

The Company determined that customer transactions using insurance benefits as a method of direct payment occurring subsequent to learning of the DOJ investigation on September 21, 2021 did not meet the criteria for

revenue recognition under Accounting Standards Codification ("ASC") 606. As such, the Company did not recognize revenue for shipments to customers with potential insurance benefits, substantially all of whom were covered under the FEHB program, subsequent to that date.

The Company estimates that a majority of customers with unsubmitted claims as of December 31, 2021 will choose to return the hearing aid system if their insurance provider denies their claim or the claim is ultimately not submitted by the Company for payment, resulting in an increase in expected product returns from such transactions that occurred prior to September 21, 2021. As a result, the Company recorded $13.3 million of estimated sales returns as a reduction in revenue in the third quarter of 2021 related to shipments to customers with potential insurance benefits. Of the $13.8 million sales returns reserve recorded as of December 31, 2021, $11.4 million relates to unsubmitted claims that are included in accounts receivable, net. Returns associated with unsubmitted claims will reduce the sales returns reserve, with a corresponding reduction in the related accounts receivable at the time the product is returned.

Further, the Company also estimates that, in addition to the customers who choose to return their hearing aid systems, a significant number of customers whose claims are denied by insurance providers or not submitted by the Company for payment may not pay for or return the hearing aid system. The $9.6 million in bad debt expense recorded during the year ended December 31, 2021 is primarily based on this estimate. Of the $9.6 million recorded to bad debt expense during the year ended December 31, 2021, $5.8 million relates to submitted claims that have been denied or have not been paid and was written off during the year ended December 31, 2021.

Notwithstanding the settlement, the Company remains subject to prepayment review of claims by its largest third-party payor before any insurance payments are made. The Company does not intend to submit any claims through the FEHB program until it is able to align with the Office of Personnel Management (the "OPM") on and establish processes for supporting the submission of these claims, and the Company may be unable to do so.

Liquidity and going concern

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America applicable to a going concern, which contemplates the realization of assets and the satisfaction of liabilities during the normal course of business. The Company has incurred losses and negative cash flows from operations since its inception and management expects to incur additional substantial losses in the foreseeable future. As of December 31, 2021, the Company had cash and cash equivalents of $110.5 million and an accumulated deficit of $356.8 million.

The Company believes that without any future financing, its current resources are insufficient to satisfy its obligations as they become due within one year after the date that the financial statements are issued. The negative cash flows and current lack of financial resources of the Company raise substantial doubt as to the Company's ability to continue as a going concern.

The Company's future operating requirements will be substantial and it will need to raise significant additional resources to fund its operations through equity or debt financing, or some variation thereof. The Company is currently exploring fundraising opportunities to meet these capital requirements. If the Company is unable to raise additional funding to meet its operational needs, it will be forced to limit or cease its operations.

The consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of the uncertainty.

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While the extent to which the Company is able to validate and establish processes to support the submission of claims for reimbursement to health plans, including those under the FEHB program, if at all, in the future, and the future impacts of the anticipated implementation of a pending over-the-counter ("OTC") hearing aid regulatory framework (which may lead insurance providers to take actions limiting the Company's ability to access insurance coverage and may also generally result in additional compliance or other regulatory requirements for the Company) difficult to assess or predict at this time, since the announcement of the DOJ investigation, there has been and may continue to be a significant reduction in shipments, revenue and gross margin, which could negatively impact the Company's liquidity and working capital, including by impacting its ability to increase its existing credit facility or access any additional capital.

Note 2. Summary of significant accounting policies

Basis of presentation and principles of consolidation

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The consolidated financial statements include the accounts of Eargo, Inc. and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated.

Use of estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates, assumptions, and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates and assumptions made in the accompanying consolidated financial statements include, but are not limited to, the sales returns reserve, the present value of lease liabilities, the fair value of equity securities, the fair value of financial instruments, the allowance for credit losses, the net realizable value of inventory, the fair value of assets acquired in a business combination, the useful lives of long-lived assets, accrued product warranty reserve, legal and other contingencies, certain other accruals and recoverability of the Company's net deferred tax assets and the related valuation allowance. Management periodically evaluates its estimates, which are based on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from those estimates.

Cash and cash equivalents

Cash equivalents consist of short-term, highly liquid investments with original maturities of three months or less from the purchase date. Cash equivalents consist primarily of amounts invested in money market accounts.

Concentration of credit risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist of demand deposit accounts, money market accounts and accounts receivable, including credit card receivables. The Company maintains its cash and cash equivalents, which may, at times, exceed federally insured limits, with financial institutions of high credit standing. As of December 31, 2021, the Company has not experienced any losses on its deposit accounts and money market accounts. As of December 31, 2021, the Company does not believe there is significant financial risk from nonperformance by the issuers of the Company's deposit accounts and money market accounts.

Approximately 93% and 74% of the Company's gross accounts receivable as of December 31, 2021 and 2020, respectively, were for customers with insurance benefits, substantially all of whom were covered under the

FEHB program. Furthermore, approximately 90% and 45% of the Company's gross accounts receivable as of December 31, 2021 and 2020, respectively, were related to shipments of Eargo hearing aids to customers insured under a single insurance plan whose claims are processed through the Company's largest third-party payor, which conducted the Primary Audit. The increase in gross accounts receivable as of December 31, 2021 was primarily due to the Primary Audit, during which certain claims with a service date after March 1, 2021 have not yet and may never be submitted for reimbursement. We remain subject to a prepayment review of claims by the payor who conducted the Primary Audit.

Please see caption "DOJ investigation and settlement and claims audits" in Note 1 for more information regarding the DOJ investigation and settlement and claims audits.

Fair value measurement

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability, or an exit price, in the principal or most advantageous market for that asset or liability in an orderly transaction between market participants on the measurement date.

The Company measures fair value based on a three-level hierarchy of inputs, of which the first two are considered observable and the last unobservable. Unobservable inputs reflect the Company's own assumptions about current market conditions. The Company maximizes the use of observable inputs, where available, and minimizes the use of unobservable inputs when measuring fair value. The three-level hierarchy of inputs is as follows:

Level 1—Observable inputs such as unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date;

Level 2—Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities; and

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

To the extent that the valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by the Company in determining fair value is greatest for instruments categorized in Level 3. A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

The carrying amounts reflected in the consolidated balance sheets for cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate their fair values due to their short-term nature. The fair value of the Company's outstanding term loan is estimated using the net present value of the payments, discounted at an interest rate that is consistent with a market interest rate, which is a Level 2 input. The fair value of the outstanding term loan approximates the carrying amount as the term loan bears a floating rate that approximates the market interest rate. Refer to Note 3 for discussion of certain other financial instruments.

Accounts receivable, net

Accounts receivable represents amounts due from third-party institutions for credit card and debit card transactions and trade accounts receivable. Trade accounts receivable are primarily insurance claims receivable amounts due from customers, which includes third-party payors and end-users. The Company adopted Accounting Standards Codification ("ASC") Topic 326, *Financial Instruments—Credit Losses* ("ASC 326")

effective January 1, 2021 using the modified retrospective method. Prior to the adoption of ASC 326, accounts receivable was recorded at invoiced amounts, net of an allowance for doubtful accounts based on the Company's assessment of the collectibility of accounts. Under ASC 326, accounts receivable is recorded net of an allowance for expected credit losses. The Company's expected loss allowance for receivables is based on its historical collection experience, current and future economic market conditions and a review of the current aging status and financial condition of its customers. Specific allowance amounts are established to record the appropriate allowance for customers that have an identified risk of default. General allowance amounts are established based upon an assessment of expected credit losses for receivables by aging category. Accounts receivable balances are written off when they are determined to be uncollectible.

Inventories

Inventories are stated at the lower of standard cost (which approximates actual cost on a first-in, first-out basis) or net realizable value. Inventory consists of purchased components for producing hearing aid products and accessories and finished goods. Provisions for slow-moving, excess or obsolete inventories are recorded when required to reduce inventory values to their estimated net realizable values based on product life cycle, development plans or quality issues.

Property and equipment, net

Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation and amortization on property and equipment is calculated using the straight-line method over the estimated useful lives of the assets, generally three to five years. Leasehold improvements are

amortized using the straight-line method over the shorter of the lease term or the estimated useful life of the asset. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation and amortization are removed from the consolidated balance sheets and any resulting gain or loss is reflected in operations in the period realized. Repairs and maintenance are expensed as incurred.

Capitalized software development costs

The Company capitalizes software purchased for internal use and qualified costs incurred in connection with the development of internal use software. Purchased software consists of software products and licenses, which are amortized over the lesser of their estimated useful life or the contractual term. Internally developed software costs incurred in the preliminary stages of development are expensed as incurred. Once an application has reached the development stage, internal and external direct costs of the development are capitalized until the software is substantially complete and ready for its intended use. The Company also capitalizes costs related to specific upgrades and enhancements when it is probable that the expenditure will result in additional functionality. Internal use software is amortized on a straight-line basis over its estimated useful life, generally three years. Post-implementation activities including training and maintenance are expensed as incurred. Capitalized costs less accumulated amortization are recorded as a component of property and equipment, net on the consolidated balance sheets.

Goodwill, finite-lived acquired intangible assets, and impairment

Goodwill represents the excess of the purchase price paid over the fair value of tangible and identifiable intangible net assets acquired in business combinations. In November of each fiscal year, or more frequently if indicators of impairment exist, management performs a review to determine if the carrying value of goodwill is impaired. Impairment testing is performed at the reporting unit level.

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The Company's intangible assets consist of intangible assets acquired in a business combination. These assets are amortized using the straight-line method over their estimated useful lives ranging from one to four years reflecting the period in which the economic benefits of the assets are expected to be realized.

The Company evaluates its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets or group of assets may not be fully recoverable. Recoverability is measured by comparing the carrying amount to the future net undiscounted cash flows which the assets are expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the projected discounted future net cash flows arising from the asset.

Leases

The Company adopted ASC Topic 842, *Leases* ("ASC 842") on January 1, 2020. Results for reporting periods beginning on or after January 1, 2020 are presented under ASC 842. Prior period amounts have not been adjusted and continue to be reported in accordance with the Company's historical accounting under previous lease guidance, ASC Topic 840, *Leases*. Under ASC 842, the Company determines if an arrangement is a lease at inception. Operating leases are included in operating lease right-of-use ("ROU") assets and the current and noncurrent portions of the operating lease liability are included as operating lease liabilities in the Company's consolidated balance sheets.

ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized based on the present value of lease payments over the lease term at the commencement date of the lease. ROU assets also include any initial direct costs incurred and any lease payments made at or before the lease commencement date, less any lease incentive received. As the Company's leases do not provide an implicit interest rate, the Company uses its incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. The Company's lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Operating lease expense is recognized on a straight-line basis over the lease term.

Product warranty

The Company provides a one-year or two-year limited warranty on its hearing aid products and accrues for the estimated future costs of repair or replacement upon shipment of the original product based upon current and historical information for the cost to repair or replace the product. Product warranty reserve is recorded as a component of accrued expenses in the consolidated balance sheets and the related expense is recorded as a component of cost of revenue in the consolidated statements of operations and comprehensive loss.

Convertible preferred stock warrant liability

The Company accounts for its convertible preferred stock warrants issued in connection with its various financing transactions based upon the characteristics and provisions of the instrument. Convertible preferred stock warrants classified as liabilities are recorded on the consolidated balance sheets at their fair value on the date of issuance and remeasured to fair value at each reporting period, with the changes in fair value recognized as other income (expense), net in the consolidated statements of operations and comprehensive loss. The Company adjusted the liability for changes in the fair value of these warrants until the earlier of the exercise of the warrants, the expiration of the warrants, or until such time as the warrants were no longer considered liability

instruments. Upon the closing of the IPO in October 2020, the convertible preferred stock warrants were converted into warrants to purchase common stock and the warrant liabilities were reclassified to additional paid-in capital.

Derivative liability

The Company's convertible notes issued in 2020 (the "2020 Notes") contain certain features that meet the definition of embedded derivatives requiring bifurcation from the 2020 Notes as a separate compound financial instrument. The derivative liability is initially measured at fair value on issuance and is subject to remeasurement at each reporting period with changes in fair value recognized in other income (expense), net in the consolidated statements of operations and comprehensive loss. In July 2020, the derivative liability was settled upon the extinguishment of the 2020 Notes. Refer to Note 3 and Note 8 for further discussion.

Revenue recognition

The Company's revenue is generated from the sale of products (hearing aid systems and related accessories) and services (extended warranties). These products and services are primarily sold directly to customers through the Eargo website and the Company's sales representatives.

Under ASC 606, revenue is recognized when promised goods or services are transferred to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services by following a five step process: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation.

Identify the contract with a customer. The Company generally considers completion of an Eargo sales order (which requires customer acceptance of the Company's click-through terms and conditions for website sales and authorization of payment through credit card or another form of payment for sales made over the phone) as a customer contract provided that collection is considered probable. For payments that are not made upfront by credit card, the Company assesses insurance eligibility or customer creditworthiness based on credit checks, payment history, and/or other circumstances. For orders involving insurance payors, the Company validates customer eligibility and potential reimbursement amounts prior to shipping the product. If the criteria to establish a contract with a customer is not met, revenue is not recognized in accordance with ASC 606.

Identify the performance obligations in the contract. Product performance obligations include hearing aid systems and related accessories and service performance obligations include extended warranty coverage. The Company also offers customers a one-time replacement of certain components of the hearing aid system for a fee (*i.e.*, "loss and damage policy"), which represents an option with material right. However, as the historical redemption rate under the policy has been low, the option is not accounted for as a separate performance obligation. The Company does not assess whether promised goods or services are performance obligations if they are immaterial in the context of the contract with the customer.

The Company has elected to treat shipping and handling activities performed after a customer obtains control of products as a fulfillment activity.

Determine the transaction price and allocation to performance obligations. The transaction price in the Company's customer contracts consists of both fixed and variable consideration. Fixed consideration includes amounts to be contractually billed to the customer while variable consideration includes the 45-day right of return that applies to all products and the extended right of return offered for certain shipments involving insurance payors prior to December 8, 2021 (at which time the Company ceased accepting insurance benefits as a

method of direct payment). Please see caption "DOJ investigation and settlement and claims audits" in Note 1 for more information regarding the extended right of return. To estimate product returns, the Company analyzes various factors, including historical return levels, current economic trends, and insurance coverage. Based on this information, the Company reserves a percentage of product sale revenue and accounts for the estimated impact as a reduction in the transaction price. Consideration paid or payable to a customer that is not for a distinct good or service is accounted for as a reduction of the transaction price and recorded as a reduction in revenue in the period it becomes payable.

Allocate the transaction price to the performance obligations in the contract. For contracts that contain multiple performance obligations, the Company allocates the transaction price to the performance obligations on a relative standalone selling price basis. Standalone selling prices are based on multiple factors including, but not limited to, historical discounting trends for products and services, gross margin objectives, internal costs, competitor pricing strategies, and industry technology lifecycles.

Recognize revenue when or as the Company satisfies a performance obligation. Revenue for products (hearing aid systems and related accessories) is recognized at a point in time, which is generally upon shipment, provided all other revenue recognition criteria have been met. Revenue for services (extended warranty) is recognized over time on a ratable basis over the warranty period. The Company does not have material contract liabilities related to unsatisfied performance obligations as of December 31, 2021 and 2020.

Contract costs

The Company applies the practical expedient to recognize the incremental costs of obtaining a contract as expense when incurred if the amortization period would be one year or less. These incremental costs include processing fees paid to third-party financing vendors, who provide the Company's customers with the option to finance their purchases. If a customer elects to utilize this service, the Company receives a non-recourse upfront payment for the product sold, less processing fee withheld by the financing vendor. These processing fees are recognized in cost of revenue in the consolidated statements of operations and comprehensive loss as incurred.

Cost of revenue

Cost of revenue consists of expenses relating to the cost of finished goods, freight, personnel costs, consumables, product warranty costs, transaction fees including processing fees paid to third-party financing vendors, transaction fees, reserves for excess and obsolete inventory, depreciation and amortization, and related overhead.

Research and development

Research and development expenses consist of personnel costs, travel expenses, tools, prototype materials and product certification and are charged to expense as incurred.

Sales and marketing

Sales and marketing expenses consist of personnel costs, travel expenses, consulting fees, public relations costs, direct marketing, advertising and promotional expenses and allocated facility overhead costs. The Company recorded advertising costs, which are expensed as incurred, of $41.9 million, $23.6 million and $18.6 million for the years ended December 31, 2021, 2020 and 2019, respectively.

Stock-based compensation

The Company accounts for stock-based awards at fair value. The fair value of restricted stock units ("RSUs") is equal to the closing price of the Company's common stock on the grant date. The fair value of stock options and purchase rights under an employee stock purchase plan are estimated on the date of grant using the Black-Scholes option-pricing model. The fair value of the underlying common stock is the closing price of the

Company's common stock for grants subsequent to the Company's IPO. The expected volatility is derived from the historical stock volatilities of comparable peer public companies within the Company's industry that are considered to be comparable to the Company's business over a period equivalent to the expected term of the awards due to limited trading history of the Company's common stock. The expected term for employee option grants is determined using the simplified method due to a lack of sufficient data points. The risk-free interest rate is determined by reference to the U.S. Treasury yield curve in effect at the time of grant of the award for time periods approximately equal to the expected term of the award. The expected dividend yield is zero as the Company has not paid nor does it anticipate paying any dividends on its common stock in the foreseeable future.

For stock-based awards that vest subject to the satisfaction of a service requirement, the fair value measurement date is the date of grant and the expense is recognized on a straight-line basis over the requisite service period. For stock-based awards with performance-based vesting conditions, the expense is recognized over the vesting period using the accelerated attribution method. The Company accounts for forfeitures as they occur.

Income taxes

The Company uses the asset and liability method to account for income taxes. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial statement carrying amounts of existing assets and liabilities and their tax bases. Deferred tax assets and liabilities are measured using enacted tax rates applied to taxable income in the years in which those temporary differences are expected to be recovered or settled. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized. Financial statement effects of uncertain tax positions are recognized when it is more-likely-than-not that the position will be sustained upon examination. Interest and penalties related to unrecognized tax benefits are included within the provision for income tax.

Segments

Operating segments are defined as components of an entity for which separate financial information is available and that is regularly reviewed by the Chief Operating Decision Maker ("CODM") in deciding how to allocate resources to an individual segment and in assessing performance. The Company's CODM is its Chief Executive Officer. To date, the Company has viewed its operations and manages its business as one operating and reportable segment, with all operations in the United States.

Employee benefit plan

The Company sponsors a qualified 401(k) defined contribution plan covering eligible employees. Participants may contribute a portion of their annual compensation limited to a maximum annual amount set by the Internal Revenue Service. There have been no employer contributions under this plan to date.

Net loss per share attributable to common stockholders

The Company follows the two-class method when computing net loss per share in periods in which shares that meet the definition of participating securities are outstanding. The two-class method determines net loss per share for each class of common and participating securities according to dividends declared or accumulated and participation rights in undistributed earnings. The two-class method requires income available to common stockholders for the period to be allocated between common and participating securities based upon their respective rights to receive dividends as if all income for the period had been distributed.

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding for the period,

without consideration for potential dilutive securities. Diluted net loss attributable to common stockholders is computed by adjusting net loss attributable to common stockholders to reallocate undistributed earnings based on the potential impact of dilutive securities. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of common shares and common share equivalents of potentially dilutive securities outstanding for the period. Potentially dilutive securities are not assumed to have been issued if their effect is anti-dilutive.

Emerging growth company status

The Company ceased to be an emerging growth company ("EGC") on December 31, 2021 because the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates as of June 30, 2021, the most recently completed second fiscal quarter, was greater than $700 million. The Company is no longer able to use the exemptions from certain reporting requirements available to EGCs.

Recently adopted accounting pronouncements

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which replaces the existing incurred loss impairment model with an expected credit loss model and requires a financial asset measured at amortized cost to be presented at the net amount expected to be collected. Since the Company ceased to be an emerging growth company as of December 31, 2021, the Company adopted the standard during the fourth quarter of 2021 effective as of January 1, 2021, using the modified retrospective method. ASC 326 provides new guidance related to the measurement of expected credit losses on the Company's allowance for bad debt for accounts receivable, which is estimated upon assessment of various factors including historical collection experience, current and future economic market conditions and a review of the current aging status and financial condition of the Company's customers. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

Recent accounting pronouncements not yet adopted

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which is intended to simplify the accounting for income taxes. This standard removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing standards to improve consistent application. This new standard is effective for the Company in the fiscal year beginning January 1, 2022. An entity that elects early adoption must adopt all the amendments in the same period. The Company does not expect the adoption of this standard to have a material impact on its consolidated financial statements.

In August 2020, the FASB issued ASU No. 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)*, which is intended to simplify the accounting for convertible debt instruments and convertible preferred stock. This standard removes the existing guidance in ASC 470-20 that requires companies to account for cash conversion features and beneficial conversion features in equity, separately from the host convertible debt or preferred stock. This new standard is effective for the Company beginning January 1, 2022. The Company does not expect the adoption of this standard to have a material impact on its consolidated financial statements.

Note 3. Fair value measurements

There were no financial assets and liabilities outstanding that were remeasured at fair value on a recurring basis as of December 31, 2021 or December 31, 2020.

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Convertible preferred stock warrant liability

The Company estimates the fair value of its convertible preferred stock warrant liability using the Black-Scholes option-pricing model, assumptions that are based on the individual characteristics of the warrants on the valuation date, and assumptions related to the fair value of the underlying stock, expected volatility, expected life, dividends, and risk-free interest rate. Due to the nature of these inputs, the warrants are considered a Level 3 liability.

Upon the closing of the IPO in October 2020, the convertible preferred stock warrants were converted into warrants to purchase common stock and the warrant liabilities were reclassified to additional paid-in capital.

The following table provides a summary of the change in the estimated fair value of the Company's convertible preferred stock warrant liability:

	Total (in thousands)
Balance—December 31, 2019	396
Fair value of convertible preferred stock warrants issued in connection with debt financing	270
Change in fair value of warrant liability	1,265
Conversion of preferred stock warrants to common stock warrants upon the closing of the IPO	(1,931)
Balance—December 31, 2020	$ —

The fair value of the convertible preferred stock warrants, which were converted to common stock warrants upon the closing of the IPO in October 2020, was determined using the following assumptions:

Valuation assumptions:	December 31, 2020
Expected volatility	67%-71%
Expected term	2.17-9.9 years
Risk-free interest rate	0.15%-0.75%
Dividend yield	—

Derivative liability

The 2020 Notes contain embedded derivatives requiring bifurcation as a single compound derivative instrument. The Company estimated the fair value of the derivative liability on issuance using a "with-and-without" method. The "with-and-without" methodology involves valuing the whole instrument on an as-is basis and then valuing the instrument without the individual embedded derivative. The difference between the entire instrument with the embedded derivative compared to the instrument without the embedded derivative was the fair value of the derivative liability on issuance. The estimated probability and timing of underlying events triggering the redemption features, conversion feature or put option contained within the 2020 Notes are inputs used to determine the estimated fair value of the entire instrument with the embedded derivative.

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The following table provides a summary of the change in the estimated fair value of the Company's derivative liability:

	Total (in thousands)
Balance—December 31, 2019	$ —
Initial fair value of derivative liability	2,879
Change in fair value of derivative liability	206
Extinguishment of derivative liability	(3,085)
Balance—December 31, 2020	$ —

In July 2020, the embedded derivative liability was settled upon the extinguishment of the 2020 Notes. Refer to Note 8 for further discussion.

Note 4. Balance sheet components

Inventories

Inventories consist primarily of raw materials related to component parts and finished goods. The following is a summary of the Company's inventories by category:

	December 31,	
	2021	2020
	(in thousands)	
Raw materials	$1,905	$ 853
Finished goods	3,807	1,886
Total inventories	$5,712	$2,739

Prepaid expenses and other current assets

Prepaid expenses and other current assets consist of the following:

	December 31,	
	2021	2020
	(in thousands)	
Advanced payroll deposits	$ 3,889	$ —
Prepaid insurance fees	2,945	1,931
Prepaid marketing costs	1,948	245
Prepaid software subscription	1,468	995
Other	623	569
Total prepaid expenses and other current assets	$10,873	$3,740

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Property and equipment, net

Property and equipment, net, consists of the following:

	December 31,	
	2021	2020
	(in thousands)	
Capitalized software	$11,569	$ 6,744
Tools and lab equipment	4,712	4,426
Furniture and fixtures	906	906
Leasehold improvements	861	757
Computer and equipment	401	288
	18,449	13,121
Less accumulated depreciation and amortization	(8,898)	(5,087)
Total property and equipment, net	$ 9,551	$ 8,034

Depreciation and amortization expense for the years ended December 31, 2021, 2020 and 2019 amounted to $4.2 million, $2.5 million and $1.5 million, respectively, which includes amortization of capitalized software costs of $2.1 million, $0.8 million and $0.3 million, respectively.

Accrued expenses

Accrued expenses consist of the following:

	December 31,	
	2021	2020
	(in thousands)	
Accrued compensation	$ 4,845	$5,861
Accrued warranty reserve	4,014	2,390
Refunds due to customers	376	581
Accrued vendor costs	—	751
Total accrued expenses	$ 9,235	$9,583

Sales returns reserve

The sales returns reserve consists of the following activity:

	Year ended December 31,		
	2021	2020	2019
		(in thousands)	
Sales returns reserve, beginning balance	$ 4,326	$ 3,759	$ 2,713
Reduction of revenue	37,674	22,676	17,739
Utilization of sales returns reserve	(28,172)	(22,109)	(16,693)
Sales returns reserve, ending balance	$ 13,828	$ 4,326	$ 3,759

The $37.7 million of estimated sales returns recorded as a reduction in revenue during the year ended December 31, 2021 includes $13.3 million recorded during the third quarter of 2021 primarily based on the Company's estimate that a majority of customers with unsubmitted claims will choose to return the hearing aid system if their insurance provider denies their claim or the claim is ultimately not submitted by the Company for payment.

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Of the $13.8 million sales returns reserve recorded as of December 31, 2021, $11.4 million relates to unsubmitted claims that are included in accounts receivable, net. Returns associated with unsubmitted claims will reduce the sales returns reserve, with a corresponding reduction in the related accounts receivable at the time the product is returned.

Allowance for credit losses

The allowance for credit losses consists of the following activity:

	Year ended December 31,		
	2021	2020	2019
	(in thousands)		
Allowance for credit losses, beginning balance	$ 1,868	$ 225	$—
Charged to expense	9,615	2,352	225
Accounts written off, net of recoveries	(6,645)	(709)	—
Allowance for credit losses, ending balance	$ 4,838	$1,868	$225

The $9.6 million in bad debt expense recorded during the year ended December 31, 2021 is primarily based on the Company's estimate that a significant number of customers with an extended right of return and whose claims are denied by insurance providers or not submitted by the Company for payment may not pay for or return the hearing aid system. Of the $9.6 million recorded to bad debt expense during the year ended December 31, 2021, $5.8 million relates to submitted claims that have been denied or have not been paid and was written off during the year ended December 31, 2021.

Accrued warranty reserve

The accrued warranty reserve consists of the following activity:

	Year ended December 31,		
	2021	2020	2019
	(in thousands)		
Accrued warranty reserve, beginning balance	$ 2,390	$ 450	$ 53
Charged to cost of revenue	3,229	3,178	1,589
Utilization of accrued warranty reserve	(1,605)	(1,238)	(1,192)
Accrued warranty reserve, ending balance	$ 4,014	$ 2,390	$ 450

Note 5. Acquisitions

In June 2021, the Company completed the purchase of certain web-based hearing screening technology assets ("Clementine") for $2.9 million in cash, all of which has been paid as of December 31, 2021. This purchase was accounted for as a business combination. Clementine offers remote audiology solutions and self-administered hearing screen technology to consumers across digital and in-person settings with an online tool. The Company believes that integrating this technology with the Company's telecare infrastructure has the potential to further advance its core mission of making it easier for consumers to assess their hearing, consult with hearing professionals, and purchase Eargo hearing devices more conveniently.

The table below presents the purchase price allocation:

	(in thousands)
Goodwill	$ 873
Intangible assets	1,990
Total fair value of consideration	$ 2,863

The intangible assets acquired in the Clementine acquisition are comprised primarily of developed technologies and have a weighted-average amortization period of 3.6 years as of the date of the acquisition.

Note 6. Commitments and contingencies

Operating leases

The Company has entered into non-cancelable operating leases for its offices. These leases generally contain scheduled rent increases and renewal options, which are not included in the determination of lease term unless the Company is reasonably certain that the renewal option would be exercised.

New San Jose lease

In September 2021, the Company entered into a lease agreement, as amended, for approximately 30,000 square feet of office and laboratory space located in San Jose, California, which the Company plans to use as its headquarters starting in early 2022. The lease commenced in September 2021 and has a 93-month term with two 60-month renewal options. The Company recorded a ROU asset of $6.9 million and lease liability of $6.8 million as of commencement of the lease.

Nashville lease

In February 2021, the Company amended the operating lease for its Nashville, Tennessee office to extend the term of the initial lease through March 2023 and reduce the size of office space leased. This extension was accounted for as a lease modification and the Company recorded an increase to the ROU asset and lease liability of $0.4 million at the time of the amendment.

As of December 31, 2021, the Company recorded an aggregate ROU asset of $7.2 million and an aggregate lease liability of $7.4 million in the accompanying consolidated balance sheet. The ROU asset and corresponding lease liability were estimated using a weighted-average incremental borrowing rate of 7.7%. The weighted-average remaining lease term is 7.1 years.

For the years ended December 31, 2021 and 2020, the Company incurred $1.5 million and $1.3 million of operating lease costs. Variable lease payments for operating expenses and costs related to short-term leases were immaterial for the years ended December 31, 2021 and 2020. For the years ended December 31, 2021 and 2020, cash paid for amounts included in the measurement of operating lease liabilities was $1.4 million and $1.2 million, respectively.

As of December 31, 2021, undiscounted future minimum lease payments due under the non-cancelable operating leases are as follows:

	Operating leases (in thousands)
2022	$ 1,327
2023	1,114
2024	1,081
2025	1,331
2026	1,372
Thereafter	3,607
Total minimum future lease payments	9,832
Present value adjustment for minimum lease commitments	(2,442)
Total lease liability	$ 7,390

Legal and other contingencies

The Company is involved in legal proceedings in the ordinary course of its business and may become involved in additional legal proceedings. Other than those listed below, the Company does not believe that any lawsuits or claims currently pending against it, individually or in the aggregate, are material or will have a material adverse effect on its financial condition, results of operations or cash flows. The Company may enter into settlement discussions, and may enter into settlement agreements, if it believes settlement is in the best interest of the Company and its shareholders. Unless stated otherwise, the matters discussed below, if decided adversely or settled by the Company, individually or in the aggregate, may result in a liability material to the Company's financial condition, results of operations or cash flows.

The Company is also subject to review from federal and state taxing authorities in order to validate the amounts of income, sales and/or use taxes which have been claimed and remitted. The Company has estimated exposure and established reserves for its estimated sales tax audit liability.

In the normal course of business, the Company may agree to indemnify third parties with whom it enters into contractual relationships, including customers, lessors, and parties to other transactions with the Company, with respect to certain matters. The Company has agreed, under certain conditions, to hold these third parties harmless against specified losses, such as those arising from a breach of representations or covenants, other third-party claims that the Company's products, when used for their intended purposes, infringe the intellectual property rights of such other third parties, or other claims made against certain parties. It is not possible to determine the maximum potential amount of liability under these indemnification obligations due to the Company's limited history of prior indemnification claims and the unique facts and circumstances that are likely to be involved in any particular claim.

DOJ Investigation and Settlement. On September 21, 2021, the Company was informed that it was the target of a criminal investigation by the DOJ related to insurance reimbursement claims the Company submitted on behalf of its customers covered by various federal employee health plans under the FEHB program. The investigation also pertained to the Company's role in customer reimbursement claim submissions to federal employee health plans. Additionally, the Company was the subject of an ongoing claims audit by an insurance company that is the Company's largest third-party payor and was informed by such insurance company that the DOJ was the

principal contact related to the subject matter of the audit. In addition to such audit, the Company has been subject to a number of other audits of insurance reimbursement claims submitted to additional third-party payors. One of these claims audits does not relate to claims submitted under the FEHB program. On January 4, 2022, the DOJ confirmed to the Company that the investigation had been referred to the Civil Division of the DOJ and the U.S. Attorney's Office for the Northern District of Texas and the criminal investigation was no longer active.

On April 29, 2022, the Company entered into a civil settlement agreement with the U.S. government that resolved the DOJ investigation, including allegations that the Company violated the False Claims Act by knowingly submitting or causing the submission of false claims for payment under the FEHB program during the period from February 1, 2021 through September 22, 2021. The settlement agreement provided for the payment by the Company of approximately $34.4 million to the U.S. government and resolved allegations that the Company submitted or caused the submission of claims for payment to the FEHB program using unsupported hearing loss-related diagnostic codes. The Company recorded a $34.4 million settlement liability in the consolidated balance sheets as of December 31, 2021 in connection with the settlement. The settlement amount was treated as consideration payable to a customer and was recorded as a reduction in revenue in the consolidated statements of operations and comprehensive loss during the year ended December 31, 2021.

The settlement of the investigation may not resolve all of the audits of insurance reimbursement claims by additional third-party payors, and additionally the Company remains subject to a prepayment review of claims by the payor who conducted the Primary Audit. The Company will need to work with the government (including the OPM) and third-party payors to potentially validate and establish processes to support any future claims that it may submit for reimbursement, and there are no guarantees that the Company will be able to arrive at any such acceptable processes or submit any future claims. The Company does not intend to submit any claims through the FEHB program until it is able to align with the OPM on and establish processes for supporting the submission of these claims.

Securities Class Action. *Fazio v. Eargo, Inc., Christian Gormsen, & Adam Laponis.*, No. 21-cv-07848 (N.D. Cal. Oct. 6, 2021); *Chung v. Eargo, Inc., Christian Gormsen, & Adam Laponis.*, No. 21-cv-08597 (N.D. Cal. Nov. 4, 2021); *IBEW Local 353 Pension Plan v. Eargo, Inc., Christian Gormsen, Adam Laponis, Josh Makower, Juliet Bakker, Peter Tuxen Bisgaard, Doug Hughes, Geoff Pardo, Nina Richardson, A. Brooke Seawell, David Wu, J.P. Morgan Securities LLC, BofA Securities, Inc., Wells Fargo Securities, LLC, & William Blair & Company, L.L.C.*, No. 21-cv-08747 (N.D. Cal. Nov. 10, 2021). On October 6, 2021, putative shareholder Joseph Fazio filed a purported securities class action against the Company and certain of its officers (the "Fazio action"). Plaintiff alleges that certain of the Company's disclosures about its business, operations, and prospects, including reimbursements from third-party payors, violated federal securities laws. Fazio voluntarily dismissed his complaint on December 6, 2021. On November 4, 2021, putative shareholder Alden Chung filed a substantially similar purported class action lawsuit (the "Chung action"). On November 10, 2021, putative shareholder IBEW Local 353 Pension Plan filed a similar purported class action, and also asserted claims under the federal securities laws against current and former members of the Company's Board of Directors (the "Board of Directors") and the underwriters of the Company's October 15, 2020 initial public offering of common stock (the "IBEW action"). These class actions, which seek damages and other relief, were filed in the U.S. District Court for the Northern District of California. The Fazio and Chung actions were brought purportedly on behalf of a class of investors who purchased or otherwise acquired Eargo securities between February 25, 2021 and September 22, 2021. The IBEW Local 353 action was brought purportedly on behalf of a class of investors who purchased or otherwise acquired: (i) Eargo shares in or traceable to the Company's October 15, 2020 initial public offering of common stock; and/or (ii) shares of Eargo common stock between October 15, 2020 and September 22, 2021. On January 5, 2022, the court consolidated the foregoing class actions (as consolidated, the "Securities Class Action") under the caption *In re Eargo, Inc. Securities Litigation*, No. 21-cv-08597-CRB, and appointed IBEW Local 353 Pension Plan and Xiaobin Cai as Lead Plaintiffs and Bernstein Litowitz Berger & Grossmann LLP and Block & Leviton LLP as Lead Counsel. Lead Plaintiffs have not yet filed a consolidated amended complaint.

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The Company intends to vigorously defend the Securities Class Action and cannot reasonably estimate any loss or range of loss that may arise from the litigation. Accordingly, the Company can provide no assurance as to the scope and outcome of this matter and no assurance as to whether its business, financial position, results of operations or cash flows will not be materially adversely affected.

Derivative Action. *Wolfson v. Christian Gormsen, Joshua Makower, Douglas J. Hughes, Nina Louise Richardson, Katie J. Bayne, Peter Tuxen Bisgaard, A. Brooke Seawell, David Wu, and Eargo, Inc.*, No. 21-cv-09342 (N.D. Cal. Dec. 3, 2021). On December 3, 2021, putative shareholder Barbara Wolfson filed a derivative complaint purportedly on Eargo's behalf against members of the Board of Directors and the Company as nominal defendant (the "Derivative Action"). Plaintiff asserts, among other things, that the defendants breached their fiduciary duties by allegedly failing to implement and maintain an effective system of internal controls related to the Company's financial reporting, public disclosures, and compliance with laws, rules, and regulations governing the business. Plaintiff purports to assert derivative claims on the Company's behalf for alleged violations of Section 14(a) of the Securities Exchange Act of 1934, as amended, breach of fiduciary duty, waste of corporate assets, and aiding and abetting. On March 1, 2022, the court entered the parties' stipulation staying the Derivative Action until the anticipated motion to dismiss in the Securities Class Action is decided.

The defendants intend to vigorously defend the Derivative Action and cannot reasonably estimate any loss or range of loss that may arise from the litigation. Accordingly, the Company can provide no assurance as to the scope and outcome of this matter and no assurance as to whether its business, financial position, results of operations or cash flows will not be materially adversely affected.

Note 7. Goodwill and intangible assets

Goodwill

The changes in the carrying amount of goodwill are as follows:

	Total
	(in thousands)
Balance December 31, 2020	$ —
Addition due to business acquisition	873
Balance December 31, 2021	$ 873

There was no impairment of goodwill during the year ended December 31, 2021.

Intangible assets, net

Intangible assets, net consist of the following as of December 31, 2021:

	Gross carrying value	Accumulated amortization	Net carrying value
		(in thousands)	
Developed technologies	$ 1,700	$ 212	$ 1,488
Other	290	97	193
Total intangible assets, net	$ 1,990	$ 309	$ 1,681

Amortization expense was $0.3 million for the year ended December 31, 2021. The Company did not record any impairments of intangible assets during the year ended December 31, 2021.

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The following table summarizes estimated future amortization expense of finite-lived intangible assets, net as of December 31, 2021:

	Amount (in thousands)
2022	$ 618
2023	425
2024	425
2025	213
Total	$ 1,681

Note 8. Debt obligations

2018 Loan Agreement

In June 2018, the Company entered into a Loan and Security Agreement (the "2018 Loan Agreement") with Silicon Valley Bank. Under the terms of the 2018 Loan Agreement, Silicon Valley Bank made available to the Company term loans in an aggregate principal amount of $12.5 million and the Company borrowed $7.0 million in 2018. The Company's existing subsidiaries are, and any additional future domestic subsidiaries of the Company are required to be, co-borrowers jointly and severally liable under the 2018 Loan Agreement.

In connection with the execution of the 2018 Loan Agreement, the Company issued warrants to purchase 30,173 shares of Series C convertible preferred stock. The estimated fair value of the warrants at issuance was recorded as a discount on the loan and is amortized to interest expense over the term of the agreement using the effective interest method.

Amendments to the 2018 Loan Agreement

In January 2019, the Company executed the First Amendment to the Loan and Security Agreement, which extended the interest-only period for all borrowings under the agreement until January 2020. No other terms were amended. In June 2019, the Company borrowed an additional $5.0 million to increase the total principal balance to $12.0 million. In connection with the June 2019 borrowing, the Company issued Silicon Valley Bank warrants to purchase 14,999 shares of Series C convertible preferred stock.

In May 2020, the Company executed the Second Amendment to its Loan and Security Agreement, which deferred the principal payments due between May 2020 and July 2020 such that the deferred amounts will be repaid in equal monthly payments that started in August 2020 through the scheduled maturity of the loan in June 2022. The amendment was accounted for as a modification.

In September 2020, the Company executed the Third Amendment to the Loan and Security Agreement (the "Third Amendment"), under which Silicon Valley Bank made available to the Company additional term loans in an aggregate principal amount of $20.0 million through December 31, 2020. The Company borrowed $15.0 million in September 2020 and used $10.2 million of the proceeds to repay the outstanding balance of $9.5 million and final payment fee of $0.7 million, or 6.0% of the original aggregate principal amount, on the existing term loan. The Company's ability to borrow any additional principal under the Third Amendment expired unused on December 31, 2020.

The term loan under the Third Amendment matures in September 2024 with interest-only monthly payments until January 2022, which was extended to July 2022 upon the completion of the Company's IPO in October

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2020. The term loan accrues interest at a per annum rate equal to the Wall Street Journal prime rate plus 1.0% (4.25% as of December 31, 2021) and includes a final payment fee equal to 6.25% of the original aggregate principal amount. In connection with the execution of the Third Amendment, the Company issued Silicon Valley Bank a warrant to purchase 53,487 shares of Series E convertible preferred stock. The amendment was accounted for as a modification.

Borrowings under the Third Amendment are collateralized by substantially all the assets of the Company, excluding intellectual property (but including rights to payment and proceeds thereof). The Third Amendment contains customary affirmative and restrictive covenants, including with respect to the Company's ability to enter into fundamental transactions, incur additional indebtedness, grant liens, pay any dividend or make any distributions to its holders, make investments, merge or consolidate with any other person or engage in transactions with the Company's affiliates, but do not include any financial covenants. The Company was in compliance with all of the covenants as of December 31, 2021.

During the years ended December 31, 2021, 2020 and 2019, the Company recognized interest expense related to the term loans of $1.1 million, $1.0 million and $0.7 million, respectively, which is inclusive of amortization of debt discount. The effective interest rate was 7.12% as of December 31, 2021.

The balance of the term loans is as follows:

	December 31,	
	2021	2020
	(in thousands)	
Principal value of long-term debt	$15,000	$15,000
Net of debt discount and accretion of final payment	257	(163)
Long-term debt, current and noncurrent	15,257	14,837
Less: Long-term debt, current portion	(3,333)	—
Long-term debt, noncurrent portion	$11,924	$14,837

Future minimum payments of principal and estimated payments of interest on the Company's outstanding variable rate borrowings as of December 31, 2021 are as follows:

	Total
	(in thousands)
2022	$ 3,950
2023	7,038
2024	6,028
Total future payments	17,016
Less amounts representing interest	(1,078)
Less final payment	(938)
Total principal amount of term loan payments	$ 15,000

Paycheck Protection Program loan

On May 3, 2020, the Company executed a promissory note with MidFirst Bank, which provided for an unsecured loan in an aggregate principal amount of $4.6 million pursuant to the Paycheck Protection Program under the Coronavirus Aid, Relief and Economic Security Act signed into law on March 27, 2020 (the "PPP Loan").

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In August 2020, the Company repaid the PPP Loan in full in the amount of $4.6 million and terminated the related promissory note. During the year ended December 31, 2020, the Company recognized interest expense related to the PPP Loan of less than $0.1 million.

2020 Convertible Promissory Notes

The Company issued an aggregate of $8.9 million in convertible promissory notes in March 2020 and an additional aggregate of $1.2 million in April 2020 in a subsequent closing (the "2020 Notes"). The 2020 Notes accrued interest at a rate of 6.0% per annum.

The 2020 Notes contained a redemption feature such that in the event of a qualified sale of preferred stock or other equity securities resulting in aggregate gross proceeds to the Company of at least $15.0 million, all principal and accrued and unpaid interest under the 2020 Notes will automatically convert into the preferred stock issued in such a financing at a price per share equal to 80% of the lowest price per share of the preferred stock sold in the financing. This redemption feature and other features contained in the 2020 Notes were determined to be embedded derivatives requiring bifurcation and were separately accounted for as a single compound derivative instrument.

Upon the issuances of the 2020 Notes, the Company recorded the fair value of the derivative liability of $2.9 million as a debt discount on the 2020 Notes and as a single compound derivative instrument. The debt discount was being amortized to interest expense using the effective interest method over the term of the 2020 Notes. During the year ended December 31, 2020, the Company recognized interest expense related to the 2020 Notes of $0.9 million, which is inclusive of amortization of debt discount.

In July 2020, the 2020 Notes were redeemed whereby the outstanding principal balance of $10.1 million and accrued interest of $0.2 million was converted into shares of Series E convertible preferred stock at a price equal to 80% of the amount per share paid by the investors in the Series E preferred stock financing. The redemption of the 2020 Notes was accounted for as a debt extinguishment, which resulted in a loss of $1.6 million that was recognized in other income (expense) in the consolidated statement of operations and comprehensive loss. The loss on extinguishment was calculated as the difference between (i) the fair value of the shares of Series E convertible preferred stock issued to settle the 2020 Notes and (ii) the carrying value of the 2020 Notes, net of the unamortized debt discount, plus the fair value of the derivative liability associated with the 2020 Notes at the time of extinguishment.

Note 9. Convertible preferred stock

In July and August 2020, the Company issued an aggregate of 10,513,921 shares of Series E convertible preferred stock at a purchase price of $6.7836 per share in exchange for net proceeds of approximately $67.3 million.

Contemporaneous with the initial closing of the Series E convertible preferred stock financing, the 2020 Notes (see Note 8) were redeemed whereby all of the outstanding principal and accrued interest amounting to $10.3 million was converted into 1,889,548 shares of Series E convertible preferred stock.

In connection with the Series E convertible preferred stock financing, the Company amended and restated its certificate of incorporation. The amended and restated certificate of incorporation amended the liquidation right held by holders of Series C and Series C-1 convertible preferred stock under which such holders were entitled to an aggregate liquidation amount per share from up to two times the original issue price to one times the original issuance price for the related series upon the event of a liquidation, dissolution, or winding up of the Company.

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This amendment of the liquidation right was determined to be significant using the qualitative approach. As such, the Company accounted for the amendment as an extinguishment of the outstanding Series C and Series C-1 convertible preferred stock and recorded a gain on extinguishment of $9.8 million on the date of the filing of the charter. The gain on the extinguishment of Series C and Series C-1 convertible preferred stock was calculated by taking the difference between the net carrying value of $59.7 million of Series C and Series C-1 convertible preferred stock immediately prior to the amendment of the liquidation right and the fair value of $49.9 million of the new of Series C and Series C-1 convertible preferred stock that for accounting purposes was deemed to be issued in connection with the amended and restated certificate of incorporation filed in connection with the Series E convertible preferred stock financing. The gain on extinguishment was recorded as a deemed contribution in equity and was recorded as a decrease to the net loss attributable to common stockholders for the year ended December 31, 2020 and as an increase to additional paid-in capital.

In October 2020, immediately prior to the completion of the IPO, all of the then-outstanding shares of convertible preferred stock automatically converted into 28,196,388 shares of common stock at the applicable conversion ratio then in effect.

Note 10. Stock-based compensation

Total stock-based compensation is as follows:

	Year ended December 31,		
	2021	2020	2019
	(in thousands)		
Cost of revenue	$ 738	$ 60	$ 16
Research and development	6,939	822	232
Sales and marketing	11,213	1,629	188
General and administrative	8,841	2,578	903
Total stock-based compensation	$27,731	$5,089	$1,339

Stock-based compensation costs capitalized as part of capitalized software costs was $0.9 million and $0.2 million during the years ended December 31, 2021 and 2020. No such costs were capitalized during the years ended December 31, 2019.

Equity incentive plans

In November 2010, the Company adopted the 2010 Equity Incentive Plan (the “2010 Plan”) under which the Board had the authority to issue stock options to employees, directors and consultants.

In October 2020, the Company’s board of directors and stockholders adopted and approved the 2020 Incentive Award Plan, (the “2020 Plan”) and 2020 Employee Stock Purchase Plan (the “ESPP”). The Company’s 2010 Plan was terminated in connection with the IPO and no further grants will be made under the 2010 Plan from the date that the 2020 Plan became effective.

As of December 31, 2021, 5,106,223 shares of common stock are issuable upon the exercise of outstanding awards under the 2010 Plan. As of December 31, 2021, the Company had reserved 6,991,055 shares of common stock for issuance under the 2020 Plan, of which 6,244,669 are available for issuance in connection with grants of future awards.

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As a result of the uncertainty created by the DOJ investigation and the claims audits, the Company suspended its practice of granting equity awards to new hires, except for new restricted stock unit grants that the Company has the option to settle in cash at the time of vesting, suspended its ESPP and deferred the settlement of outstanding RSUs, each effective as of November 9, 2021.

The Board of Directors also determined to suspend the non-employee director compensation program with respect to the option awards that would otherwise have been awarded to non-employee directors automatically on the date of the Company's annual meeting of stockholders held on November 9, 2021. All equity awards that are currently outstanding continue to vest in accordance with their existing vesting schedules.

Stock options

Stock option activity for the year ended December 31, 2021 is set forth below:

	Number of shares	Weighted average exercise price	Weighted average remaining contractual term (in years)	Aggregate intrinsic value (in thousands)
Balance December 31, 2020	6,468,844	$ 2.78	8.77	$ 271,944
Grants	323,105	46.97		
Exercises	(859,200)	2.01		
Cancelled/forfeited	(525,934)	9.68		
Balance December 31, 2021	5,406,815	$ 4.87	7.88	$ 12,860
Vested and exercisable at December 31, 2021	2,377,275	$ 3.21	7.18	$ 6,585

The weighted-average grant-date fair value of options granted during the years ended December 31, 2021, 2020 and 2019 were $24.72, $3.22 and $2.85 per share, respectively.

The aggregate intrinsic values of options outstanding and vested and exercisable were calculated as the difference between the exercise price of the options and the fair value of the Company's common stock. The intrinsic value of options exercised during the years ended December 31, 2021 and 2020 was $32.4 million and $5.0 million, respectively, and was immaterial during the year ended December 31, 2019.

As of December 31, 2021, total unrecognized stock-based compensation related to outstanding unvested stock options was $13.2 million, which the Company expects to recognize over a remaining weighted-average period of 2.4 years.

The estimated grant-date fair value of the Company's stock options was calculated using the Black-Scholes option pricing model, based on the following assumptions:

	Year ended December 31,		
Valuation assumptions:	2021	2020	2019
Expected volatility	53%-57%	60%-71%	58%-60%
Expected term	5.8-6.7 years	5.1-7.0 years	5.0-10.0 years
Risk-free interest rate	0.62%-1.11%	0.23%-1.20%	1.46%-2.51%
Dividend yield	—	—	—

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Restricted stock units

Restricted stock units ("RSUs") granted under the 2020 Plan are share awards that generally entitle the holder to receive freely tradable shares of the Company's common stock upon vesting. However, the Company has deferred the settlement of outstanding RSUs effective November 9, 2021. The RSUs cannot be transferred and the awards are subject to forfeiture if the holder's service to the Company terminates prior to the release of the vesting restrictions.

RSU activity for the year ended December 31, 2021 is set forth below:

	Number of shares	Weighted average grant date fair value per share
Unvested as of December 31, 2020	8,270	$ 50.70
RSUs granted	509,860	43.40
RSUs vested	(43,859)	52.34
RSUs forfeited	(125,820)	41.36
Unvested as of December 31, 2021	348,451	$ 43.19

As of December 31, 2021, there were 17,310 RSUs outstanding that had vested but not settled, which were subsequently settled for $0.1 million in cash in March 2022. As of December 31, 2021, there was $13.9 million of total unrecognized compensation cost related to the RSUs that is expected to be recognized over a weighted-average period of 3.4 years.

Performance-based restricted stock units

In June 2021, the Company granted 80,000 RSUs with performance-based vesting conditions primarily related to sales targets that must be met by December 31, 2022 for the awards to vest. The vesting conditions were deemed probable as of December 31, 2021. The grant date fair value of the awards was $3.0 million. None of these awards have vested or were forfeited as of December 31, 2021.

Employee stock purchase plan

As of December 31, 2021, the Company reserved 1,109,239 shares of common stock for issuance under the ESPP, of which 934,496 are available for future issuance. The ESPP provides for consecutive, overlapping 24-month offering periods, which are generally divided into four purchase periods of approximately six months. The offering periods are scheduled to start on the first trading day on or after May 16 and November 16 of each year, with exception of the first offering period which commenced on October 16, 2020, the first trading day after the effective date of the Company's registration statement. Contributions under the ESPP are generally limited to a maximum of 15% of an employee's eligible compensation.

Each offering period consists of four six-month purchase periods. On each purchase date, which falls on the last date of each purchase period, ESPP participants will purchase shares of common stock at a price per share equal to 85% of the lesser of (1) the fair market value per share of the common stock at the start of the offering period or (2) the fair market value of the common stock on the purchase date.

Subsequent to the suspension of the ESPP on November 9, 2021, all outstanding participant contribution amounts of $2.2 million were refunded to participants during the fourth quarter of 2021 and all future purchases under the

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current offering periods were cancelled. The Company accounted for the suspension of the ESPP as a cancellation of the ESPP and recognized $9.0 million of stock-based compensation in the fourth quarter of 2021 primarily as a result of the suspension.

The Company recorded an aggregate of $17.4 million of stock-based compensation related to the ESPP for the year ended December 31, 2021, which includes the amounts recorded upon the suspension of the ESPP. The fair value of the ESPP shares is estimated using the Black-Scholes option pricing model, based on the following assumptions for the offering period that started in May 2021:

Valuation assumptions:	Year ended December 31, 2021
Expected volatility	44%-57%
Expected term	0.5-2.0 years
Risk-free interest rate	0.04%-0.16%
Dividend yield	—

Note 11. Income taxes

The Company has not recorded an income tax provision for the years ended December 31, 2021, 2020 and 2019 due to its history of operating losses. All loss before income taxes was generated in the United States for the years ended December 31, 2021, 2020 and 2019.

Reconciliation of the statutory federal income tax to the Company's effective tax is as follows:

	December 31,		
	2021	2020	2019
		(in thousands)	
Income tax provision at statutory rate	$(33,128)	$(8,370)	$(9,342)
State income taxes, net of federal benefit	(3,104)	(826)	(2,350)
Change in valuation allowance	37,792	8,720	3,064
Stock-based compensation	(716)	(621)	190
Section 382 limitation on net operating loss and credit carryforwards	—	—	9,956
Research and development tax credits	(1,210)	(1,442)	(1,306)
Change in fair value of warrants	21	326	79
Derivative liability and extinguishment of debt	—	545	—
Return-to-provision adjustments	308	1,261	(413)
Other	37	407	122
Total current income tax provision	$ —	$ —	$ —

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The tax effects of temporary differences and carryforwards that give rise to significant portions of deferred tax assets are as follows:

	December 31,		
	2021	2020	2019
		(in thousands)	
Deferred tax assets:			
Net operating loss carryforwards	$ 62,322	$ 35,943	$ 29,684
Depreciation and amortization	—	—	—
Research and development credits	5,120	3,910	2,468
Accruals and reserves	13,597	2,986	1,667
Lease liability	1,690	—	—
Stock-based compensation	565	589	345
Total deferred tax assets	83,294	43,428	34,164
Valuation allowance	(80,226)	(42,435)	(33,714)
Deferred tax assets after valuation allowance	3,068	993	450
Deferred tax liabilities:			
Depreciation and amortization	(1,429)	(993)	(450)
Right-of-use asset	(1,639)	—	—
Total deferred tax liabilities	(3,068)	(993)	(450)
Net deferred tax assets	$ —	$ —	$ —

Due to the uncertainties surrounding the realization of deferred assets through future income, the Company has established a full valuation allowance against its deferred tax assets and, therefore, no benefit has been recognized for the net operating loss and other deferred tax assets. The valuation allowance increased by $37.8 million, $8.7 million and $3.1 million during the years ending December 31, 2021, 2020 and 2019.

As of December 31, 2021, the Company had federal net operating loss carryforwards of approximately $252.6 million, of which $32.6 million begin to expire in the year 2030 and $220.0 million will carry over indefinitely. The Company also has state net operating loss carryovers of approximately $112.6 million available to reduce future taxable income, if any. The state carryforwards begin to expire beginning in the year 2030.

As of December 31, 2021, the Company had research and development credits carryovers for federal income tax purposes of approximately $3.6 million which expire beginning in the year 2031. The Company also has state research and development credit carryforwards of approximately $3.8 million as of December 31, 2021, which do not expire.

Utilization of the net operating loss and credit carryforwards will be subject to an annual limitation due to the ownership percentage change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. The annual limitation may result in the expiration of the net operating loss carryforwards before utilization. In the event the Company has had a change of ownership, utilization of the carryforwards could be restricted. The Company's net operating loss deferred tax asset was reduced from the prior year as a result of limitation on the utilization of net operating loss carryforwards subject to the Internal Revenue Code Section 382.

Eargo, Inc.
Notes to Consolidated Financial Statements

Uncertain tax positions

A reconciliation of the beginning and ending amounts of unrecognized tax benefits is as follows:

	December 31,		
	2021	2020	2019
	(in thousands)		
Beginning balance	$1,676	$1,058	$ 576
Increases related to current year tax positions	518	618	482
Ending balance	$2,194	$1,676	$1,058

If recognized, gross unrecognized tax benefits would not have an impact on the Company's effective tax rate due to the Company's full valuation allowance position. While it is often difficult to predict the final outcome of any particular uncertain tax position, the Company does not believe that the amount of gross unrecognized tax benefits will change significantly in the next twelve months.

The Company's income tax returns for all tax years remain open to examination by federal and state taxing authorities due to the taxing authorities' ability to adjust operating loss carryforwards.

The Company has elected to recognize interest and penalties related to uncertain tax positions as a component of the income tax provision. No such expenses were incurred in the years ended December 31, 2021, 2020 and 2019. The Company has not made any accruals for payment of interest related to unrecognized tax benefits.

Note 12. Net loss per share attributable to common stockholders

The following outstanding potentially dilutive common stock equivalents have been excluded from the computation of diluted net loss per share for the periods presented due to their anti-dilutive effect:

	Year ended December 31,		
	2021	2020	2019
Convertible preferred stock	—	—	13,710,242
Common stock options issued and outstanding	5,406,815	6,468,844	3,474,052
Restricted stock units	428,451	8,270	—
Shares issuable pursuant to ESPP	—	17,865	—
Convertible preferred stock warrants	—	—	73,913
Total	5,835,266	6,494,979	17,258,207

Eargo, Inc.
Notes to Consolidated Financial Statements

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders:

	Year ended December 31,		
	2021	2020	2019
	(in thousands, except share and per share amounts)		
Numerator:			
Net loss	$ (157,754)	$ (39,855)	$ (44,486)
Gain on extinguishment of Series C and Series C-1 convertible preferred stock	—	9,840	—
Net loss attributable to common stockholders, basic and diluted	$ (157,754)	$ (30,015)	$ (44,486)
Denominator:			
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	38,899,457	7,890,375	256,452
Net loss per share attributable to common stockholders, basic and diluted	$ (4.06)	$ (3.80)	$ (173.47)

Note 13. Subsequent events

Settlement of DOJ investigation

On April 29, 2022, the Company entered into a civil settlement agreement with the U.S. government that resolved the DOJ investigation related to the Company's role in customer reimbursement claim submissions to various federal employee health plans under the FEHB program. As of December 31, 2021, the Company recorded a $34.4 million settlement liability in connection with the settlement. On May 2, 2022, the Company paid the settlement amount.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of disclosure controls and procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our periodic and current reports that we file under the Exchange Act of 1934, as amended, with the U.S. Securities and Exchange Commission ("SEC"), is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer, principal financial officer and principal accounting officer, as appropriate, to allow timely decisions regarding required disclosure.

As of December 31, 2021, our management, with the participation and supervision of our principal executive officer, our principal financial officer, and our principal accounting officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive, principal financial, and principal accounting officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost benefit relationship of possible controls and procedures.

Based on this evaluation, our principal executive officer, our principal financial officer and our principal accounting officer concluded that solely as a result of the material weaknesses in our internal control over financial reporting and entity level controls described below, our disclosure controls and procedures were not effective as of December 31, 2021 to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer, our principal financial officer and our principal accounting officer, as appropriate, to allow timely decisions regarding required disclosure.

Newly reported material weakness

In connection with the preparation of our financial statements for the financial reporting periods ended September 30, 2021 and December 31, 2021, we identified a material weakness in our entity level controls. A material weakness is a deficiency, or combination of deficiencies, in internal controls such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis.

The material weakness is related to a lack of sufficient qualified healthcare industry compliance and risk management resources, including those necessary to provide appropriate oversight, monitor compliance, and to identify and mitigate risks with respect to the financial reporting and disclosures of our operations. We intend to enhance our compliance and risk management processes with respect to our operations in the healthcare industry to remediate this material weakness, including the hiring of additional qualified personnel, and the engagement of additional specialized consulting resources.

We cannot assure you that the measures we intend to take will be sufficient to remediate the material weakness we have identified or avoid potential future material weaknesses. While we believe that our efforts will enhance our internal control, remediation of the material weakness will require further validation and testing of the design and operating effectiveness of internal controls over a sustained period of financial reporting cycles, and we cannot assure you that we have identified all, or that we will not in the future have additional, material weaknesses.

Remediation efforts on previously reported material weakness

In connection with the preparation of our financial statements in connection with our IPO and through the current reporting period, we identified a material weakness in our internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis. The material weakness related to a lack of qualified supervisory accounting resources, including those necessary to account for and disclose certain complex transactions and for which we lacked the technical expertise to identify, analyze and appropriately record those transactions.

We have implemented and are in the process of implementing additional measures designed to improve our internal control over financial reporting to remediate this material weakness, including the hiring of additional qualified supervisory resources, the engagement of additional technical accounting consulting resources and plans to hire additional finance department employees.

We cannot assure you that the measures we have taken to date, and are continuing to implement, will be sufficient to remediate the material weakness we have identified or avoid potential future material weaknesses. While we believe that our efforts have improved our internal control over financial reporting, remediation of the material weaknesses will require further validation and testing of the design and operating effectiveness of internal controls over a sustained period of financial reporting cycles, and we cannot assure you that we have identified all, or that we will not in the future have additional, material weaknesses.

Changes in internal control over financial reporting

Other than the changes intended to remediate the previously reported material weakness and the newly reported material weakness noted above, there were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the period covered by this Annual Report on Form 10-K that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Management's report on internal control over financial reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Exchange Act Rules 13a-15(f). Our internal control over financial reporting is a process designed under the supervision of our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of our financial statements for external purposes in accordance with U.S. generally accepted accounting principles.

As of December 31, 2021, we assessed the effectiveness of our internal control over financial reporting based on the criteria for effective internal control over financial reporting under the 2013 "Internal Control—Integrated Framework," issued by the Committee of Sponsoring Organizations, or COSO, of the Treadway Commission, under the supervision of, and with the participation of our management, including our Chief Executive Officer, Chief Financial Officer, and Chief Accounting Officer. We identified the following material weaknesses related to 1) a lack of qualified supervisory accounting resources, including those necessary to account for and disclose certain complex transactions and for which we lacked the technical experti se to identify, analyze and appropriately record

those transactions, and 2) a lack of sufficient qualified healthcare industry compliance and risk management resources, including those necessary to provide appropriate oversight, monitor compliance, and to identify and mitigate risks with respect to the financial reporting and disclosures of our operations. Based on that assessment, our management concluded that our internal control over financial reporting as of December 31, 2021 were ineffective due to the existence of material weaknesses.

Deloitte & Touche LLP, an independent registered public accounting firm, audited the effectiveness of our internal control over financial reporting as of December 31, 2021, as stated in their attestation report, which is included elsewhere herein.

Item 9B. Other Information.

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The following table sets forth the name, age, and position of each of our executive officers and directors. There are no family relationships among any of our directors or executive officers.

Name	Age	Position(s)
Executive Officers		
Christian Gormsen	45	President, Chief Executive Officer and Director
William Brownie	55	Chief Operating Officer
Adam Laponis	45	Chief Financial Officer
Non-Employee Directors		
Josh Makower, M.D.[(2)(3)]	58	Chair and Director
Katie Bayne[(3)]	55	Director
Peter Tuxen Bisgaard[(2)(3)]	48	Director
Doug Hughes[(1)]	60	Director
Nina Richardson[(2)]	63	Director
A. Brooke Seawell[(1)]	74	Director
David Wu[(1)]	53	Director

(1) Member of our audit committee.
(2) Member of our compensation committee.
(3) Member of our nominating and corporate governance committee.

Executive officers

Christian Gormsen has served as a member of our Board since November 2014 and as our President and Chief Executive Officer since June 2016. From June 2014 to June 2016, Mr. Gormsen served as Commercial Director, EMEA, of ISS A/S, a global facility services company. Prior to that, he spent a decade at GN Group, a global leader in intelligent audio solutions including hearing aids, in roles of increasing responsibility until he became the Senior Vice President of Operations, Europe and Strategic Accounts. Mr. Gormsen started his career in investment banking before transitioning to McKinsey & Company, a management consulting firm. Mr. Gormsen received a B.S. in economics and his M.S. in economics and business administration from the Copenhagen Business School.

We believe that Mr. Gormsen is qualified to serve on our Board due to the valuable expertise and perspective he brings in his capacity as our President and Chief Executive Officer and because of his extensive experience and knowledge of our industry.

William Brownie has served as our Chief Operating Officer since April 2019. From August 2016 through March 2019, Mr. Brownie served as our Chief Customer Operations Officer. In addition, from January 2017 to June 2019 he served as our Chief Financial Officer. From June 2015 to August 2016, Mr. Brownie served as an independent consultant to various companies. From January 2012 to June 2015, Mr. Brownie served as the Managing Director at Sonova e-Hearing Care, a group company of Sonova AG, a provider of hearing care products. Prior to that, from August 2001 to December 2011, Mr. Brownie served as Chief Financial Officer and then President and Chief Executive Officer of HearingPlanet Inc., which was purchased by Sonova AG. Mr. Brownie received a B.S. in business administration from San Diego State University-California State University.

Adam Laponis has served as our Chief Financial Officer since June 2019. From November 2018 to March 2019, Mr. Laponis served as Vice President of Financial Planning and Analysis for Tesla, an automotive and energy

company, where he previously served as Senior Director of Finance from April 2017 to November 2018. Prior to that, he served as the Vice President and Chief Financial Officer of Cardiovascular Care of Cardinal Health, a healthcare services and products company, from October 2015 to April 2017. Prior to that, he served in various financial roles at Johnson & Johnson, a healthcare company, from August 2004 to October 2015. Mr. Laponis received a B.S. in chemical engineering from the University of California, Berkeley and his M.B.A. from the University of Southern California.

Non-employee directors

Josh Makower, M.D. has served as the non-executive Chair of our Board since December 2018 and as a member of our Board since November 2015. Since May 2015, Dr. Makower was a General Partner at New Enterprise Associates, a venture capital firm; as of August 2021, Dr. Makower is a Special Partner. In addition to his role at New Enterprise Associates, Dr. Makower serves as a Professor of Medicine at Stanford University Medical School and is Co-Founder of Stanford University's Biodesign Innovation Program. Dr. Makower is also the Founder and Executive Chairman of ExploraMed, a medical device incubator. He received a B.S. in mechanical engineering from Massachusetts Institute of Technology, his M.D. from New York University School of Medicine and his M.B.A. from Columbia University.

We believe that Dr. Makower is qualified to serve on our Board due to the valuable expertise and perspective he brings with his medical and financial backgrounds and his extensive investment experience in the technology and healthcare industries.

Katie J. Bayne has served as a member of our Board since June 2021. Since February 2019, Ms. Bayne has served as a Senior Advisor with Guggenheim Securities, LLC, the investment banking and capital markets division of Guggenheim Partners. Since March 2018, Ms. Bayne has also served as founder and President of Bayne Advisors, a strategic and advisory firm. Prior to serving in her current roles, from 1989 to 2018, Ms. Bayne served in numerous roles at The Coca-Cola Company focused on general management, strategy, retail and consumer marketing in the United States, Australia and globally, including President, North America Brands and Chief Marketing Officer, North America. Ms. Bayne previously served as a member of the board of directors for Ascena Retail Group, Inc., Ann Inc. and Beazer Homes USA. Ms. Bayne currently serves as a member of the board of directors of the following publicly traded companies: Acreage Holdings, Inc. and The Honest Company, Inc. Ms. Bayne is also a member of the board of trustees of the Fuqua School of Business at Duke University and is on the executive board of the Cox School of Business at Southern Methodist University. Ms. Bayne holds a B.A. in Psychology from Duke University and an M.B.A. from Duke University's Fuqua School of Business.

We believe that Ms. Bayne is qualified to serve on our Board due to her strong background in consumer strategy, retail and consumer marketing and brand management.

Peter Tuxen Bisgaard has served as a member of our Board since October 2017. Since September 2017, Mr. Bisgaard has been Managing Director of Nan Fung Life Sciences, a global life sciences investment platform, and a Managing Partner at Pivotal Bioventure Partners LLC, a healthcare venture capital fund. Prior to this, he was a Senior Partner at Novo Ventures, a healthcare-focused venture investment firm, from 2009 to September 2017. Prior to Novo Ventures he was with McKinsey and Co. He has previously served on the board of directors of the following publicly held companies: Ra Pharmaceuticals, Inc., a clinical stage biopharmaceutical company; Nevro Corp, a commercial stage medical device company; HTG Molecular Diagnostics, Inc., a commercial stage RNA-platform based life sciences tools company; Otonomy, Inc., a biopharmaceutical company developing therapeutics for treating hearing disorders; and Alder Biopharmaceuticals, Inc., a late stage drug development company focusing on migraine therapeutics. In addition, Mr. Bisgaard is serving, and has served, on numerous boards of privately held biotechnology and medical technology companies. Mr. Bisgaard received an M.Sc. in engineering from Technical University of Denmark and a post graduate degree in mathematical modeling in economics by the European Consortium for Mathematics in the Industry.

We believe that Mr. Bisgaard is qualified to serve on our Board due to the valuable expertise and perspective he brings with his investment experience.

Doug Hughes has served as a member of our Board since September 2020. Since October 2019, Mr. Hughes has served as Chief Financial Officer of Calyxo, Inc., a urology medical device company. From 2011 until April 2018, Mr. Hughes was Chief Financial Officer of NeoTract, Inc., a urology company. He served as Chief Financial Officer and Chief Operating Officer for Nellix, Inc., an endovascular graft company from 2010 until 2011. Before joining Nellix, Inc., Mr. Hughes served as Chief Financial Officer for Evalve Inc., a cardiovascular company, from 2009 until 2010. Prior to 2009, Mr. Hughes held a variety of senior finance management positions at Boston Scientific, Guidant Corporation and The Clorox Company. Mr. Hughes is currently a member of the board of directors of Immunovant, Inc., a publicly held biopharmaceutical company. Mr. Hughes received a B.S. in finance from San Francisco State University and his M.B.A. from University of Chicago.

We believe that Mr. Hughes is qualified to serve on our Board due to his experience in successfully leading high-growth companies.

Nina Richardson has served as a member of our Board since September 2020. From May 2016 to April 2017, Ms. Richardson served as a consultant to the Company. From February 2013 through February 2015, Ms. Richardson served as the Chief Operating Officer at GoPro, a publicly held technology company. Previously, Ms. Richardson was an operations and management consultant for companies including Tesla, Solaria and TouchTunes Interactive Networks. Ms. Richardson also held executive positions at Flextronics, including Vice President and General Manager. Ms. Richardson's early career included positions at Hughes Aircraft Ground Systems Group and Metcal. Ms. Richardson is currently a Managing Director of Three Rivers Energy, an energy services company she co-founded in 2004. Ms. Richardson serves on the board of directors of the following publicly held companies: Resideo Technologies, Inc., a global provider of comfort and security solutions, Silicon Laboratories Inc., a global technology company, and Cohu, Inc., a back-end semiconductor equipment and services company. She previously served as a director to the following publicly held companies: Silicon Graphics International Corp., a computer systems company, Callidus Software, Inc., an enterprise software company, and Zayo Group Holdings, Inc, which became a private company in March 2020. Ms. Richardson received a B.S. in Industrial engineering from Purdue University and her Executive M.B.A. from Pepperdine University.

We believe that Ms. Richardson is qualified to serve on our Board due to her experience as an executive and member of the board of directors of companies that span multiple industries.

A. Brooke Seawell has served as a member of our Board since September 2020. Since 2005, Mr. Seawell has been a Venture Partner at New Enterprise Associates. He was a Partner from 2000 to 2005 at Technology Crossover Ventures, a venture capital firm. From 1997 to 1998, he was Executive Vice President at NetDynamics, Inc., an application server software company, which was acquired by Sun Microsystems, Inc. From 1991 to 1997, he was Senior Vice President and Chief Financial Officer of Synopsys, Inc., an electronic design automation software company. Mr. Seawell serves on the boards of the following publicly held companies: NVIDIA Corporation, a visual computing company, where he serves on the audit committee, and Tenable Holdings, Inc., a cyber-security solutions company, where he serves on the audit committee. Mr. Seawell previously served on the board of directors of the following publicly held companies: Tableau Software, Inc., a business intelligence software company; Informatica Corp., a data integration software company; and Glu Mobile, Inc., a publisher of mobile games. Mr. Seawell previously served on the Stanford University Athletic Board and the Management Board of the Stanford Graduate School of Business. Mr. Seawell received a B.A. degree in economics and his M.B.A. in Finance from Stanford University.

We believe that Mr. Seawell is qualified to serve on our Board due to his investment experience and executive leadership and board roles.

David Wu has served as a member of our Board since July 2014. Since 2012, Mr. Wu has been a Partner at Maveron LLC, a venture capital firm, where his primary focus is emerging consumer Internet companies.

Mr. Wu leads Maveron's investments in Illumix, inkbox, Booster, Wave, PlutoXR and Eargo, and serves on each company's board of directors. Mr. Wu received a B.S. electrical engineering and a B.A. in quantitative economics from Stanford University.

We believe that Mr. Wu is qualified to serve on our Board due to the valuable expertise and perspective he brings with his experience investing in consumer-facing companies.

Board composition

Classified board of directors

Our Board is divided into three classes. Each class consists, as nearly equal as possible, of one-third of the total number of directors, and each class has a staggered, three-year term. As a result, approximately one-third of the board of directors will be elected each year at the annual general meeting of stockholders, with the successors to directors whose terms then expire elected to serve from the time of election and qualification until the third annual meeting following election. Unless the Board determines that vacancies (including vacancies created by increases in the number of directors) shall be filled by the stockholders, and except as otherwise provided by law, vacancies on the Board may be filled only by the affirmative vote of a majority of the remaining directors. A director elected by the Board to fill a vacancy (including a vacancy created by an increase in the number of directors) shall serve for the remainder of the full term of the class of directors in which the vacancy occurred and until such director's successor is elected and qualified.

The Board currently consists of eight directors, divided into the three following classes:

- *Class I directors:* Christian Gormsen, Doug Hughes and David Wu, whose current terms will expire at the annual meeting of stockholders to be held in 2024;
- *Class II directors:* Nina Richardson and A. Brooke Seawell, whose current terms will expire at the annual meeting of stockholders to held be in 2022; and
- *Class III directors:* Josh Makower, M.D., Katie Bayne and Peter Tuxen Bisgaard, whose current terms will expire at the annual meeting of stockholders to be held in 2023.

The division of our Board into three classes with staggered three-year terms may delay or prevent a change of our management or a change in control.

Leadership structure of the Board

Our Amended and Restated Bylaws and Corporate Governance Guidelines provide our Board with flexibility to combine or separate the positions of Chair of the Board and Chief Executive Officer and to implement a lead director in accordance with its determination regarding which structure would be in the best interests of our company. Currently, our Chief Executive Officer and Chair positions are separate. Our Board has separated the roles of Chief Executive Officer and Chair on the basis that such separation promotes independent and effective oversight of management, particularly on key issues such as long-term strategic planning and risk management. Furthermore, this separation provides for focused engagement between these two roles in their respective areas of responsibility, while still providing for collaborative participation.

Our Board has concluded that our current leadership structure is appropriate at this time. However, our Board will continue to periodically review our leadership structure and may make such changes in the future as it deems appropriate.

Role of board in risk oversight process

Risk assessment and oversight are an integral part of our governance and management processes. Our Board encourages management to promote a culture that incorporates risk management into our corporate strategy and

day-to-day business operations. Management discusses strategic and operational risks at regular management meetings and conducts specific strategic planning and review sessions during the year that include a focused discussion and analysis of the risks facing us. Throughout the year, senior management reviews these risks with the Board at regular Board meetings as part of management presentations that focus on particular business functions, operations or strategies, and presents the steps taken by management to mitigate or eliminate such risks.

Our Board administers this oversight function directly through our Board as a whole, as well as through various standing committees of our Board that address risks inherent in their respective areas of oversight. While our Board is responsible for monitoring and assessing strategic risk exposure, our Audit Committee is responsible for overseeing our major financial risk exposures and the steps our management has taken to monitor and control these exposures. The Audit Committee also approves or disapproves any related person transactions. Our Nominating and Corporate Governance Committee monitors the effectiveness of our Corporate Governance Guidelines. Our Compensation Committee assesses and monitors whether any of our compensation policies and programs has the potential to encourage excessive risk-taking.

Board committees

Our Board has established an Audit Committee, a Compensation Committee, and a Nominating and Corporate Governance Committee. Our Board may establish other committees to facilitate the management of our business. The composition and functions of each committee are described below. Members serve on these committees until their resignation or until otherwise determined by our Board. Each of these committees operates under a written charter that satisfies the applicable rules and regulations of the SEC and Listing Rules, and that has been approved by our Board. These written charters are available in the Investor Relations section of our website at https://ir.eargo.com/. Website addresses are provided as inactive textual references only. The information provided on or accessible through any website referenced in this Annual Report on Form 10-K is not a part of, and is not incorporated by any reference into, this Annual Report on Form 10-K.

Audit committee

Our Audit Committee oversees our corporate accounting and financial reporting process. Among other matters, the Audit Committee:

- appoints our independent registered public accounting firm;
- evaluates the independent registered public accounting firm’s qualifications, independence and performance;
- determines the engagement of the independent registered public accounting firm;
- reviews and approves the scope of the annual audit and pre-approves the audit and non-audit fees and services;
- reviews and approves all related party transactions on an ongoing basis;
- establishes procedures for the receipt, retention and treatment of any complaints received by the Company regarding accounting, internal accounting controls or auditing matters;
- discusses with management and the independent registered public accounting firm the results of the annual audit and the review of our quarterly financial statements;
- approves the retention of the independent registered public accounting firm to perform any proposed permissible non-audit services;
- discusses on a periodic basis, or as appropriate, with management the Company’s policies and procedures with respect to risk assessment and risk management;

- is responsible for reviewing our financial statements and our management's discussion and analysis of financial condition and results of operations to be included in our annual and quarterly reports to be filed with the SEC;
- investigates any reports received through the ethics helpline and reports to the Board periodically with respect to any information received through the ethics helpline and any related investigations; and
- reviews the Audit Committee Charter and the Audit Committee's performance on an annual basis.

Our Audit Committee consists of Doug Hughes, A. Brooke Seawell and David Wu. Our Board has determined that all members are independent under the Listing Rules and Rule 10A-3(b)(1) of the Exchange Act. The chair of our Audit Committee is A. Brooke Seawell. Our Board has determined that each of Mr. Hughes, Mr. Seawell and Mr. Wu is an "audit committee financial expert" as such term is currently defined in Item 407(d)(5) of Regulation S-K. Our Board has also determined that each member of our Audit Committee can read and understand fundamental financial statements, in accordance with the Listing Rules.

Compensation Committee

Our Compensation Committee oversees policies relating to compensation and benefits of our officers and employees. The Compensation Committee reviews and approves or recommends corporate goals and objectives relevant to compensation of our executive officers (other than our Chief Executive Officer), evaluates the performance of these officers in light of those goals and objectives, and approves the compensation of these officers based on such evaluations. The Compensation Committee also reviews and approves or makes recommendations to our Board regarding the issuance of stock options and other awards under our stock plans to our executive officers (other than our Chief Executive Officer). The Compensation Committee reviews the performance of our Chief Executive Officer and makes recommendations to our Board with respect to his compensation, and our Board retains the authority to make compensation decisions relative to our Chief Executive Officer. The Compensation Committee reviews and evaluates, on an annual basis, the Compensation Committee charter and the Compensation Committee's performance. Our Compensation Committee consists of Peter Tuxen Bisgaard, Josh Makower and Nina Richardson. No member of the Compensation Committee is, or was in 2021, an executive officer of the Company, and our Board has determined that each of the members qualified as independent under the Listing Rules. The chair of our Compensation Committee is Josh Makower.

Nominating and Corporate Governance Committee

The Nominating and Corporate Governance Committee is responsible for making recommendations to our Board regarding candidates for directorships and the size and composition of our Board. With the goal of developing a diverse, independent and highly qualified Board, the Nominating and Corporate Governance Committee evaluates candidates in accordance with the qualification standards and selection criteria set forth in our Corporate Governance Guidelines. Evaluations of candidates generally involve a review of background materials, internal discussions and interviews with selected identified candidates, as appropriate. Candidates for the Board are generally selected based on desired skills and experience in the context of the existing composition of the Board and needs of the Board and its committees at that time, including the requirements of applicable SEC rules and the Listing Rules. When considering candidates for nomination, the Nominating and Corporate Governance Committee may take into consideration many factors, including, among other things, a candidate's experience with corporate management, public company board membership, professional and academic experience, leadership skills, finance and accounting and/or executive compensation experience, and ability to devote adequate time and effort to responsibilities of the Board in the context of its existing composition. We believe it is important to have a diverse Board and, as such, our Corporate Governance Guidelines provides for the consideration of candidates' background, gender, age and ethnicity. Our Nominating and Corporate Governance Committee considers these and other factors as it oversees Board and committee evaluations. After completing its review and evaluation of director candidates, our Nominating and Corporate Governance Committee recommends nominees to our full Board for election. The Nominating and Corporate Governance

Committee is also responsible for overseeing our corporate governance policies and making recommendations to our Board concerning governance matters, including assisting the Board in its assessment of the independence of our directors. Our Nominating and Corporate Governance committee consists of Katie Bayne, Peter Tuxen Bisgaard and Josh Makower. Our Board has determined that all members are independent under the Listing Rules. The chair of our Nominating and Corporate Governance Committee is Peter Tuxen Bisgaard.

Corporate Governance

Code of Business Conduct and Ethics

Our Board has adopted a written code of business conduct and ethics that applies to all of our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer and consultants. The statement contains general guidelines for conducting our business consistent with the highest standards of business ethics. The full text of our code of business conduct and ethics is available in the Investor Relations section of our website at https://ir.eargo.com/. The Nominating and Corporate Governance Committee of our Board is responsible for overseeing our code of business conduct and ethics and any waivers applicable to any director, executive officer or employee. We intend to disclose any future amendments to certain provisions of our code of business conduct and ethics, or waivers of such provisions applicable to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, and agents and representatives, on our website identified above.

Corporate Governance Guidelines

We believe in sound corporate governance practices and have adopted formal Corporate Governance Guidelines to enhance our effectiveness. Our Board adopted these Corporate Governance Guidelines in order to ensure that it has the necessary practices in place to review and evaluate our business operations as needed and to make decisions that are independent of our management. The Corporate Governance Guidelines are also intended to align the interests of directors with those of our stockholders. The Corporate Governance Guidelines set forth the practices our Board follows with respect to Board and committee composition and selection, Board meetings, and succession planning. The Corporate Governance Guidelines include the Board's standards used in nominating director candidates, which include candidates who have a high level of personal and professional integrity, strong ethics and values and the ability to make mature business judgments. A copy of our Corporate Governance Guidelines is available in the Investor Relations section of our website at https://ir.eargo.com/.

Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires the Company's directors and executive officers, and persons who own more than 10% of a registered class of the Company's equity securities, to file with the SEC initial reports of ownership and reports of changes in ownership of common stock and other equity securities of the Company. Officers, directors and greater than 10% stockholders are required by SEC regulations to furnish the Company with copies of all Section 16(a) forms they file.

To the Company's knowledge, based solely on a review of the filings of such reports with the SEC and written representations that no Form 5 was required to be filed, the Company believes that all Section 16(a) filing requirements applicable to our officers, directors and greater than 10% beneficial owners were complied with during the year ended December 31, 2021, except as follows:

- One Form 4 report was inadvertently filed late for one of our executive officers, William Brownie, with respect to one transaction.
- One Form 4 report was inadvertently filed late for one of our executive officers, Adam Laponis, with respect to one transaction.

Item 11. Executive Compensation.

Introduction

This Compensation Discussion and Analysis ("CD&A") describes our executive compensation program for our named executive officers ("NEOs") for our fiscal year ended December 31, 2021 and is intended to place in perspective the information contained in the executive compensation tables that follow this discussion. In 2021, all of our executive officers were NEOs, as set forth below:

- Christian Gormsen, our President and Chief Executive Officer;
- William Brownie, our Chief Operating Officer; and
- Adam Laponis, our Chief Financial Officer.

The Compensation Committee approves, or recommends to the full Board, the compensation of each NEO (other than our Chief Executive Officer, whose compensation is approved by the full Board). Compensation is reviewed annually, and, in setting executive base salaries and bonuses and granting equity incentive awards, our Compensation Committee and Board, as applicable, considered compensation for comparable positions in the market, the historical compensation levels of our executives, individual performance as compared to our expectations and objectives, our desire to motivate our employees to achieve short- and long-term results in the best interests of our stockholders and long-term commitment to our Company. The Compensation Committee reviews the performance of our Chief Executive Officer and makes recommendations to our Board with respect to his compensation, and our Board retains the authority to make compensation decisions relative to our Chief Executive Officer. Additionally, our Board has delegated to the Compensation Committee the authority and responsibility for overseeing the general administration of our compensation policies, and administering the compensation plans and programs for the Company.

General Compensation Philosophy and Objectives

We are a medical device company dedicated to improving the quality of life of people with hearing loss. Our innovative product and go-to-market approach address the major challenges of traditional hearing aid adoption, including social stigma, accessibility, and cost. At Eargo, we believe in putting the consumer first: our approach to our products, their delivery, and personalized customer support process are all designed with the consumer in mind. We seek empathetic, smart, hard-working and mission-oriented individuals to accomplish these goals. Our compensation philosophy supports this goal by attracting the best people to join Eargo and incentivizing them to innovate, create, and drive long-term results.

The following objectives were considered in setting the compensation components for our NEOs:

- **Attraction and Retention:** we seek to recruit and retain the most talented people in a competitive market. This consists of employees and executives responsible not only for growth and innovation but also for ensuring proper corporate governance while carrying out the goals and plans of the Company;
- **Paying for Performance:** we seek to reward success when both our Company and the individual succeed. By making a significant portion of our compensation program include variable incentive compensation linked to the achievement of corporate goals such as financial, operational, and stock price performance, we help to ensure that compensation earned by our NEOs reflects our performance; and
- **Stockholder Alignment:** we seek to align employee and stockholder interests to share in long-term success. By providing a balance of short-term and long-term incentive opportunities in the form of equity that vests over a multi-year period, we help to promote an ownership culture among our NEOs.

Compensation Setting Process

Compensation Committee's Role

The Compensation Committee has overall responsibility for determining or recommending to the full Board the compensation of our senior officers (including our NEOs), except in the case of our Chief Executive Officer. The Compensation Committee reviews the performance of our Chief Executive Officer and makes recommendations to our Board with respect to his compensation, and our Board retains the authority to make compensation decisions relative to our Chief Executive Officer.

Compensation Consultant's Role

The Compensation Committee has the authority to engage the services of outside consultants. For fiscal year 2021, the Compensation Committee retained Aon's Human Capital Solutions practice, a division of Aon plc ("Aon"), formerly known as Radford, a national compensation consulting firm, as its independent compensation consultant. Services provided by the independent compensation consultant during this period included:

- Reviewing the compensation and stock performance of peer companies and recommending changes to our peer group, as necessary;
- Reviewing executive and senior officer compensation based on an analysis of market-based compensation data; and
- Assisting our Compensation Committee in analyzing the effectiveness of our executive compensation program and recommending changes, as necessary.

To facilitate the delivery of these services to the Compensation Committee, Aon interfaces with our management, primarily with our Chief Financial Officer, Chief Legal Officer and Vice President of People Operations and Talent.

In April 2022, our Compensation Committee reviewed Aon's independence under applicable SEC and Listing Rules. Our Compensation Committee concluded that Aon is independent within the meaning of such rules and that its engagement did not present any conflict of interest.

Management's Role

Management makes recommendations to the Compensation Committee regarding our compensation programs and policies, and implements the programs and policies approved by the Compensation Committee. Our Chief Executive Officer makes recommendations to the Compensation Committee with respect to compensation for our senior officers (including our NEOs), other than himself. The Compensation Committee considers our Chief Executive Officer's recommendations when determining or recommending the compensation for our senior officers (including our NEOs), including the types of award and specific amounts. All such determinations by our Compensation Committee are discretionary.

No NEO participates directly in the final deliberations or determinations regarding his own compensation package or is present during such determinations.

The Compensation Committee meets regularly in executive session. Our Chief Executive Officer and any other members of management are not present during Compensation Committee deliberations or votes on their compensation. Our Chief Executive Officer also recuses himself from sessions of our Board where they act on his compensation.

Compensation Peer Group

In its review of our executive compensation program, our Compensation Committee analyzed market data for executive compensation periodically using the Radford Global Life Sciences Survey, information available from

public filings, and input from our compensation consultants. The compensation peer group for 2021 was approved by the Compensation Committee in December 2020 based on criteria regarding similarity in market capitalization, annual revenues, industry, countries of operation, total number of employees and public company history. Our peer group for 2021 consisted of the following companies:

2021 Compensation Peer Group

AxoGen	Axonics Modulation Technologies
Glaukos	Health Catalyst
Inari Medical	Inspire Medical Systems
Intersect ENT	NanoString Technologies
Outset Medical	Phreesia
Pulmonx	ShockWave Medical
SI-BONE	Silk Road Medical
Tactile Systems Technology	VapoTherm
ViewRay	

Our Compensation Committee uses the peer group as a general reference point from which to evaluate competitive pay practices and does not target a specific percentile for our executive compensation programs. When determining compensation for our executive officers, the Compensation Committee considers, among other factors, the executive's individual performance, experience and level and scope of responsibilities, as well as overall company performance and economic conditions, as described in more detail below.

Compensation Risk Assessment

Management has conducted a risk assessment of our compensation plans and practices and concluded that our compensation programs do not create risks that are reasonably likely to have a material adverse effect on the Company. The objective of the assessment was to identify any compensation plans or practices that may encourage employees to take unnecessary risk that could threaten the company. No such plans or practices were identified. The Compensation Committee of our Board has reviewed and agrees with management's conclusion.

Elements of Executive Compensation

Our current executive compensation program generally consists of the following components:

- base salary;
- annual cash performance-based compensation;
- equity-based incentive awards; and
- other benefits as may be determined from time to time.

We combine these elements to formulate compensation packages that provide competitive pay, reward achievement of financial, operational, and strategic objectives, and align the interests of our executive officers with those of our stockholders. The overall use and weight of each compensation element is based on our Compensation Committee's subjective determination of the importance of each element in meeting our overall objectives, including motivating executive officers with an owner's mentality.

Base Salary

Base salaries for our NEOs are initially established through arm's-length negotiations at the time of the NEO's hiring, taking into account such NEO's qualifications, experience, the scope of his responsibilities and competitive market compensation paid by other companies for similar positions within the industry and geography. Base salaries are reviewed periodically, typically in connection with our Compensation Committee's annual performance review process, and adjusted from time to time to realign salaries with market levels after taking into account individual responsibilities, performance and experience.

In April 2020, our Compensation Committee reduced the base salaries of our executive officers by 20% as part of the Company's response to economic challenges due to the COVID-19 pandemic. Full salaries were reinstated effective January 2021, and in the first quarter of 2021, after its review of peer group information, the Compensation Committee increased the base salary of Messrs. Brownie and Laponis by 30% to better align the NEOs' base salaries with similarly situated executives at our peer group of companies. The Compensation Committee and Board also adjusted Mr. Gormsen's base salary by combining his prior base salary and housing allowance and increasing the sum by 10%, which better aligned Mr. Gormsen's base salary with the base salaries of chief executive officers at our peer group of companies. In connection with Mr. Gormsen's base salary increase, his housing allowance was discontinued. The table below sets forth the annual base salary for each of our NEOs after the first quarter increase.

Name	2021 base salary
Christian Gormsen	$ 550,000
William Brownie	390,000
Adam Laponis	390,000

Annual Performance-Based Compensation

Annual bonus opportunities are intended to motivate our executives to achieve short-term performance goals, which the Compensation Committee believes ultimately serves to advance our overall long-term strategic objectives and creation of stockholder value. In the first quarter of 2021, the Compensation Committee and the Board approved annual target bonus amounts for each of Mr. Gormsen, Mr. Brownie and Mr. Laponis at 80%, 60% and 50%, of their respective salary levels. These amounts represented increases of target bonus amounts as compared to the prior year (50% for Mr. Gormsen and 35% for each of Messrs. Brownie and Laponis in 2020) in order to bring levels closer to market median of the Company's peer group following the Company's IPO and in recognition of individual tenure, expertise and contributions.

Actual bonuses are paid to our executive officers based on achievement of pre-established corporate performance goals approved by the Compensation Committee and Board at the beginning of the fiscal year. For 2021, the Compensation Committee and Board approved performance goals after considering a combination of factors, including alignment with the Company's financial strategy and strategic innovation initiatives as well as investor expectations, including company guidance, and the NEO's ability to impact outcomes. The performance goals for fiscal year 2021 were measured across four metrics: (i) total revenue; (ii) the percentage of total revenue generated by the Company's sales and marketing efforts; (iii) operating income as a percentage of total revenue; and (iv) the initial launch of Eargo 6 by January 31, 2022. The following table sets forth details at to the weighting and performance goals for each of the performance metrics:

Performance Metric	Weighting	Threshold (50% payout)	Target (100% payout)	Maximum (150% payout)
Net Revenue (in millions)	25%	$ 85.0	$ 94.0	$ 103.5
Non-GAAP Sales and Marketing Expenses (as % of Net Revenue)[1]	25%	66%	63%	61%
Non-GAAP Operating Loss (as % of Net Revenue)[2]	25%	(37)%	(34)%	(31)%
Launch of Eargo 6	25%		Initial launch by January 31, 2022	

(1) Non-GAAP Sales and Marketing expense is determined as GAAP sales and marketing expense, less the impact of stock-based compensation for the relevant period.

(2) Non-GAAP Operating Loss is determined as GAAP operating loss, less the impact of stock-based compensation for the relevant period.

For the financial performance goals, no payment was available for achievement below threshold levels, threshold performance would result in payment of 50% of target, and payments could reach a maximum of 150% of target for each goal in the event of achievement of maximum levels. If performance fell between the designated achievement levels, payouts would be calculated based on linear interpolation. There was no threshold or maximum achievement level applicable to the launch of Eargo 6. The Compensation Committee and Board have the ability, in their sole discretion, to accelerate or reduce payments under the annual bonus program.

In April 2022, our Board determined that none of the financial metrics had been met at the threshold level but that the launch of the Eargo 6 had occurred prior to the target date of January 31, 2022. Therefore, each NEO earned 25% of the NEO's target annual bonus opportunity, which was $110,000, $58,500 and $48,750 for Mr. Gormsen, Mr. Brownie and Mr. Laponis, respectively.

Long-Term Incentive Compensation—Equity-based Incentive Awards

Long-term equity incentive grants are a meaningful retentive component of our compensation program. Our equity incentives are also intended to promote an ownership culture while aligning the long-term interests of our executive officers with those of our stockholders. For 2021, NEOs were granted equity awards with a mix of 50% stock options and 50% restricted stock units (RSUs) with respect to the total number of underlying shares.

The size of equity grants to our NEOs is not determined based on a specific formula, but rather through the exercise of the judgment of the Compensation Committee and Board after evaluation of various factors, including compensation provided to other executives with similar responsibilities in our peer group and within our Company, the current unvested equity held by such NEO, the perceived retentive value of the proposed awards, and for new hires, amounts forfeited when joining the Company. We also consider each NEO's individual performance, including the results and contributions delivered during the year and how they align with our short-term and long-term goals, the executive's leadership of his team, the cash compensation received by the NEO, and feedback received from the NEO's peers and team.

Based on these considerations, the Compensation Committee and/or Board approved annual equity awards to each of our NEOs in the first quarter of 2021, as set forth below:

Name	Number of shares underlying stock options (#)	Number of RSUs (#)	Grant date fair value
Christian Gormsen	50,800	50,800	$4,891,697
William Brownie	16,500	16,500	$1,326,180
Adam Laponis	16,500	16,500	$1,325,469

Stock options are granted with an exercise price based on the closing price of the Company's common stock on the date of grant (as quoted on the Nasdaq). The stock option and RSU grants vest generally over a four-year period, subject to continued service and accelerated vesting terms in the event of certain qualifying terminations of employment, including in connection with a change in control of the Company. The value of these awards that may be realized by our NEOs will vary depending on the price of our common stock and may differ from the amounts reported above and in the Summary Compensation Table below.

Other Benefits

Like other employees, our NEOs are eligible to participate in the benefit plans made generally available to our employees on the same terms and conditions as our employees, including comprehensive medical, dental and vision insurance, life and disability insurance, commuter benefit program and 401(k) plan. We have not made any matching contributions under our 401(k) plan. We generally do not provide our NEOs with additional retirement benefits, pensions, perquisites, or other personal benefits, except that Mr. Gormsen was previously provided an annual housing allowance of $150,000, which was provided to Mr. Gormsen pursuant to the terms of his offer letter as a result of arms' length negotiations and was discontinued on February 28, 2021 in connection

with Mr. Gormsen's base salary increase for 2021. In the future, we may provide perquisites or other personal benefits in limited circumstances, such as where we believe it is appropriate to assist an individual executive in the performance of his or her duties, to make our executive team more efficient and effective, and for recruitment, motivation, or retention purposes. All future practices with respect to perquisites or other personal benefits for executives will be subject to review and approval by the Compensation Committee or Board.

Severance and Change in Control Benefits

The employment agreements of our NEOs provide for certain severance payments and benefits in the event of a qualifying termination, including in connection with change in control of the Company. Pursuant to the terms of these agreements, in the event the NEO is terminated without Cause or resigns for Good Reason (each, as defined in the employment agreements), in each case, other than during the period that is on or 12 months following a change in control of the Company, the NEO will be eligible to receive: (i) a lump sum cash payment equal to 1x, in the case of our Chief Executive Officer, or 0.75x, in the case of our other NEOs, the sum of the executive's annual base salary and target annual bonus; and (ii) payment or reimbursement of COBRA premiums for 12 months, in the case of our Chief Executive Officer, or nine months, in the case of our other NEOs.

In addition, in the event the NEO is terminated without Cause or resigns for Good Reason, in each case, during the 12-month period commencing on a change in control of the Company, the NEO will be eligible to receive: (i) a lump sum cash payment equal to 2x, in the case of our Chief Executive Officer, or 1x, in the case of our other NEOs, the sum of the executive's annual base salary and target annual bonus; (ii) payment or reimbursement of COBRA premiums for up to 24 months, in the case of our Chief Executive Officer, or up to 12 months, in the case of our other NEOs; and (iii) full accelerated vesting of all equity awards.

All severance payments and benefits under the employment agreements are subject to the NEO's timely execution of a release of claims against us.

For quantification of the change in control and severance benefits described above, please see the section titled, "—Potential Payments Upon Termination or Change in Control."

Tax and Accounting Considerations

Accounting Treatment and Tax Deductibility of Compensation Expense

We account for stock-based compensation in accordance with the authoritative guidance set forth in Accounting Standards Codification Topic 718, or ASC Topic 718, which requires companies to measure and recognize the compensation expense for all share-based awards made to employees and directors, including RSUs and stock options, over the period during which the award recipient is required to perform services in exchange for the award.

Section 162(m) of the Internal Revenue Code generally places a $1 million limit on the amount of compensation a publicly held company can deduct in any tax year on compensation paid to each "covered employee," which includes our NEOs. While the Compensation Committee considers tax deductibility as one of many factors in determining executive compensation, the Compensation Committee will award or modify compensation that it determines to be consistent with the goals of our executive compensation program even if such compensation is not tax deductible by the Company.

Hedging and Pledging Policy

Our Insider Trading Policy prohibits officers, directors, employees and designated consultants of the Company and its subsidiaries from purchasing our securities on margin, pledging the Company's securities as collateral to secure loans, holding our securities in margin accounts, hedging or monetization transactions, including through

the use of financial instruments such as zero-cost collars and forward sale contracts, trading in puts, calls or other derivative securities involving the Company's equity securities, on an exchange or in any other organized market, or engaging in short selling of our securities.

Rule 10b5-1 Sales Plans

Our NEOs and members of our Board may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of our capital stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades under parameters established by the individual when entering into the plan, without further direction from them. The director or officer may amend a Rule 10b5-1 plan in some circumstances and may terminate a plan at any time, so long as such termination was made in good faith.

Compensation Committee Report

The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis included in this Annual Report on Form 10-K with management and, based on such review and discussions, the Compensation Committee recommended to the Board of Directors that such Compensation Discussion and Analysis be included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

Respectfully Submitted,

The Compensation Committee of the Board of Directors

Josh Makower, M.D., Chair
Peter Tuxen Bisgaard
Nina Richardson

Summary Compensation Table

The following table provides information regarding the compensation awarded to, earned by, or paid to our NEOs for services rendered in all capacities during the years ended December 31, 2021, December 31, 2020, and December 31, 2019.

Name and principal position	Year	Salary ($)[1]	Bonus ($)	Stock awards ($)[2]	Option awards ($)[2]	Non-equity incentive plan compensation ($)[3]	Total ($)
Christian Gormsen	2021	$538,301	$ —	$3,201,416	$1,690,280	$ 110,000	$5,539,997
President and Chief Executive Officer	2020	452,279	61,982	—	3,149,564	147,911	3,811,736
	2019	502,170	—	—	1,022,911	—	1,525,081
William Brownie	2021	369,950	—	867,570	458,610	58,500	1,754,630
Chief Operating Officer	2020	257,500	52,800	—	891,393	88,200	1,289,893
	2019	300,000	—	—	230,826	—	530,826
Adam Laponis	2021	369,950	—	867,570	457,898	48,750	1,744,168
Chief Financial Officer	2020	257,500	52,800	—	998,198	88,200	1,396,698
	2019	161,539	—	—	490,510	—	652,049

(1) The amount reported for Mr. Gormsen includes a housing allowance of $25,000 that does not require substantiation and is indistinguishable from base salary. The housing allowance was discontinued on February 28, 2021.

(2) In accordance with SEC rules, these columns reflect the aggregate grant date fair value of the stock awards and stock options granted during fiscal year 2021, computed in accordance with ASC 718 for stock-based compensation transactions. These amounts do not reflect the actual economic value realized by our NEOs.

For a discussion of the valuation of the equity awards, including the assumptions used, see Notes 2 and 10 to our audited consolidated financial statements included in this Annual Report on Form 10-K for a discussion of these awards.

(3) The amounts reported represent the annual bonus earned by each NEO based on the timely launch of the Eargo 6.

Grants of Plan-Based Awards

The following table provides information regarding grants of plan-based awards made to each of our NEOs during 2021:

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards[1]			All Other Stock Awards: Number of Shares of Stock or Units (#)[2]	All Other Option Awards: Number of Securities Underlying Options (#)[2]	Exercise or Base Price of Option Awards ($/Share)	Grant Date Fair Value of Stock and Option Awards ($)
		Threshold ($)	Target ($)	Maximum ($)				
Christian Gormsen		55,000	440,000	605,000				
	2/3/2021					50,800	63.02	1,690,280
	2/3/2021				50,800			3,201,416
William Brownie		29,250	234,000	321,750				
	1/29/2021					16,500	52.58	458,610
	1/29/2021				16,500			867,570
Adam Laponis		24,375	195,000	268,125				
	1/29/2021					16,500	52.58	457,898
	1/29/2021				16,500			867,570

(1) Threshold amounts determined by assuming achievement of one performance goal at threshold. Maximum amounts determined by assuming achievement of each performance goal at maximum, other than the Eargo 6 performance goal, which was only payable at target.

(2) Options and RSUs granted during 2021 vest in 16 quarterly installments commencing on February 15, 2021, subject to continued service. Vesting accelerates in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period commencing on a change in control.

(3) In accordance with SEC rules, this column reflects the aggregate grant date fair value of the stock awards and option awards granted during fiscal year 2021, computed in accordance with ASC 718 for stock-based compensation transactions. These amounts do not reflect the actual economic value realized by our NEOs. For a discussion of the valuation of the equity awards, including the assumptions used, see Notes 2 and 10 to our audited consolidated financial statements included in this Annual Report on Form 10-K for a discussion of these awards.

Outstanding equity awards at fiscal year-end

The following table provides information regarding the outstanding equity awards held by our NEOs as of December 31, 2021.

Name and principal position	Grant date[1]	Vesting commencement date	Number of securities underlying unexercised options (#) (exercisable)	Number of securities underlying unexercised options (#) (unexercisable)	Equity incentive plan awards: number of securities underlying unexercised unearned options (#)[2]	Option exercise price ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares or units of stock that have not vested ($)[3]
Christian Gormsen	4/22/2014		1,100	—	—	$ 1.29	4/22/2024		
President	11/20/2014		11,000	—	—	1.29	11/20/2024		
and Chief	9/1/2016		37,148	—	—	1.29	9/1/2026		
Executive Officer	10/11/2016		37,148	—	—	1.29	10/11/2026		
	7/12/2017	7/12/2017	—	—	18,574	1.29	7/11/2027		
	11/29/2017	11/29/2017[4]	437,907	—	—	1.29	11/28/2027		
	11/3/2018	4/24/2019[5]	43,333	—	—	1.41	11/2/2028		
	4/24/2019	4/24/2019[6]	229,737	—	—	2.55[7]	4/23/2029		
	4/24/2019	2/26/2020[8]	59,167	—	—	2.55[7]	4/23/2029		
	8/3/2020	8/3/2020[9]	147,548	295,090	—	2.55	8/2/2030		
	8/20/2020	8/20/2020[9]	168,408	336,816	—	2.55	8/19/2030		
	2/3/2021	2/15/2021[11]	9,525	41,275	—	63.02	2/2/2031		
	2/3/2021	2/15/2021[12]						41,275	210,503
William Brownie	9/1/2016		387	—	—	1.29	9/1/2026		
Chief Operating	2/14/2017	2/14/2017[4]	290	—	—	1.29	2/13/2027		
Officer	7/12/2017		145	—	—	1.29	7/11/2027		
	7/12/2017	7/12/2017	—	—	9,287	1.29	7/11/2027		
	11/29/2017	11/29/2017[6]	59,522	—	—	1.29	11/28/2027		
	11/3/2018	4/24/2019[5]	7,637	—	—	1.41	11/2/2028		
	4/24/2019	4/24/2019[6]	32,166	—	—	2.55[7]	4/23/2029		
	4/24/2019	2/26/2020[8]	10,400	—	—	2.55[7]	4/23/2029		
	8/3/2020	8/3/2020[9]	45,454	90,901	—	2.55	8/2/2030		
	8/20/2020	8/20/2020[9]	52,380	104,765	—	2.55	8/19/2030		
	1/29/2021	2/15/2021[11]	3,093	13,407	—	52.58	1/28/2031		
	1/29/2021	2/15/2021[12]						13,407	68,376
Adam Laponis	6/19/2019	7/3/2019[10]	67,308	66,384	—	2.55[7]	6/18/2029		
Chief Financial	8/3/2020	8/3/2020[9]	27,736	55,466	—	2.55	8/2/2030		
Officer	8/20/2020	8/20/2020[9]	43,743	87,480	—	2.55	8/19/2030		
	1/29/2021	2/15/2021[11]	3,093	13,407	—	52.58	1/28/2031		
	1/29/2021	2/15/2021[12]						13,407	68,376

(1) The exercise price of each option granted prior to November 29, 2017 was repriced to $1.29 per share on November 29, 2017.

(2) This option will vest in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period commencing on a change in control.

(3) Market value calculated by multiplying $5.10, the closing trading price per share of our common stock as of December 31, 2021, by the number of unvested RSUs outstanding as of December 31, 2021.

(4) This option includes an early exercise provision with respect to unvested shares, which are subject to repurchase by us at the original exercise price in the event of a termination of service. The option vests as to 25% of the total number of shares subject to the option on the first anniversary of the vesting commencement date and as to 1/48th of the total number of shares subject to the option on each monthly anniversary thereafter, in each case, subject to continued service. Vesting accelerates in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period commencing on a change in control.

(5) This option includes an early exercise provision with respect to unvested shares, which are subject to repurchase by us at the original exercise price in the event of a termination of service. This option was set to vest and become exercisable based on the achievement of certain performance goals, subject to continued service through the date of achievement. On April 24, 2019, our Board approved the amendment of this option such that the option would not terminate as a result of the failure to achieve the performance conditions and was converted to a time-based vesting option that vests as to 1/48th of the total number of shares subject to the option on each monthly anniversary of the vesting commencement date, subject to continued service. Vesting accelerates in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period commencing on a change in control.

(6) This option includes an early exercise provision with respect to unvested shares, which are subject to repurchase by us at the original exercise price in the event of a termination of service. The option vests as to 1/48th of the total number of shares subject to the option on each monthly anniversary of the vesting commencement date, subject to continued service. Vesting accelerates in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period commencing on a change in control.

(7) The exercise price of each option with an exercise price greater than $2.55 per share was repriced to $2.55 per share on August 3, 2020. Prior to the repricing, the exercise price per share of these options was $4.728.

(8) This option includes an early exercise provision with respect to unvested shares, which are subject to repurchase by us at the original exercise price in the event of a termination of service. This option vests and becomes exercisable following the determination of the achievement of certain performance goals, subject to continued service through the date of achievement and subsequent vesting. On February 26, 2020, the number of options was reduced, pursuant to its terms, based on the achievement of such goals, and the option vests as to 1/48th of the number of shares subject to the option on each monthly anniversary of this date. Vesting accelerates in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period commencing on a change in control.

(9) This option vests and becomes exercisable as to 1/48th of the total number of shares subject to the option on the one-month anniversary of the vesting commencement date and as to 1/48th of the total number of shares subject to the option on each monthly anniversary thereafter, in each case, subject to continued service. Vesting accelerates in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period immediately following a change in control.

(10) This option vests and becomes exercisable as to 25% of the total number of shares subject to the option on the first anniversary of the vesting commencement date and as to 1/48th of the total number of shares subject to the option on each monthly anniversary thereafter, in each case, subject to continued service. Vesting accelerates in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period commencing on a change in control.

(11) This option vests and becomes exercisable as to $1/16^{th}$ of the number of shares underlying the option on each quarterly anniversary of the vesting commencement date, subject to continued service. Vesting accelerates in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period commencing on a change in control.

(12) These RSUs vest as to $1/16^{th}$ of the number of RSUs on each quarterly anniversary of the vesting commencement date, subject to continued service. Vesting accelerates in full in the event the holder is terminated by us without cause or the holder resigns for good reason, in each case, within the 12-month period commencing on a change in control.

Option Exercises and Stock Vested

The following table provides information for our NEOs on the number of shares of common stock acquired upon the exercise of options or the vesting of RSU awards, as applicable, in 2021 and the value realized, in each case before payment of any applicable withholding tax.

	Option awards		Stock awards[1]	
Name	Number of shares acquired on exercise (#)	Value realized on exercise ($)	Number of shares acquired on vesting (#)	Value realized on vesting ($)[2]
Christian Gormsen			9,525	209,773
Adam Laponis	10,000	358,800	3,093	68,119
William Brownie	24,196	434,656	3,093	68,119

(1) Reflects RSUs that vested during 2021. Included in the table are an additional 3,175, 1,031, and 1,031 RSUs for each of Mr. Gormsen, Mr. Brownie, and Mr. Laponis, respectively, which vested in November 2021 when the underlying stock was valued at $21,876, $7,104 and $7,104, respectively, based on the closing trading price of our common stock on November 15, 2021, but were settled in cash in March 2022 for $12,732, $4,134, and $4,134, respectively.

(2) The value realized upon vesting of these awards represents the aggregate dollar amount computed by multiplying the number of RSUs vesting by the closing price of the underlying shares on the applicable vesting dates.

Pension Benefits

We have not maintained, and do not currently maintain, a defined benefit pension plan providing for retirement benefits.

While we have not maintained, and do not currently maintain, a formal nonqualified deferred compensation plan, RSUs that vested in November 2021 were not settled until March 2022. The table below includes information on the RSUs held by our NEOs for which settlement was deferred.

Non-Qualified Deferred Compensation Table

Name	Executive Contributions in Last Fiscal Year ($)	Company Contributions in Last Fiscal Year ($)[1]	Aggregate Earnings in Last Fiscal Year ($)[2]	Aggregate Withdrawals/ Distributions in Last Fiscal Year ($)	Aggregate Balance at December 31, 2021 ($)[3]
Christian Gormsen	—	21,876	(5,683)	—	16,193
Adam Laponis	—	7,104	(1,846)	—	5,258
William Brownie	—	7,104	(1,846)	—	5,258

(1) Amount is also captured in the "Value Realized on Vesting" reflected in the 2021 Option Exercises and Stock Vested table above. Represents the value of the shares of common stock underlying the RSUs that vested on November 15, 2021, multiplied by $6.89, the closing per share price of our common stock on the vesting date. The RSUs were settled in cash in March 2022.

(2) Represents the change in value of shares of our common stock subject to the vested RSUs based on the change in the closing per share price from $6.89 on the vesting date to $5.10 on December 31, 2021.

(3) Represents the aggregate value of the vested RSUs based on $5.10, the closing trading price per share of our common stock on December 31, 2021.

Potential Payments upon Termination or Change in Control

We have entered into employment agreements with each of our NEOs. Each of our NEOs may be entitled to certain severance and other benefits upon a termination of employment under their respective employment agreements, as described in further detail below. The description of the relevant terms of such employment agreements set forth below does not purport to be a complete description of all of the provisions of any such agreements and is qualified in its entirety by reference to the forms such agreements previously filed.

Pursuant to the terms of the employment agreements, in the event the NEO is terminated without Cause or resigns for Good Reason (each, as defined in the employment agreements), in each case, other than during the period that is on or 12 months following a change in control of the Company, the NEO will be eligible to receive: (i) a lump sum cash payment equal to 1x, in the case of our Chief Executive Officer, or 0.75x, in the case of our other NEOs, the sum of the executive's annual base salary and target annual bonus; and (ii) payment or reimbursement of COBRA premiums for 12 months, in the case of our Chief Executive Officer, or nine months, in the case of our other NEOs.

In addition, in the event the NEO is terminated without Cause or resigns for Good Reason, in each case, during the 12-month period commencing on a change in control of the Company, the NEO will be eligible to receive: (i) a lump sum cash payment equal to 2x, in the case of our Chief Executive Officer, or 1x, in the case of our other NEOs, the sum of the executive's annual base salary and target annual bonus; (ii) payment or reimbursement of COBRA premiums for up to 24 months, in the case of our Chief Executive Officer, or up to 12 months, in the case of our other NEOs; and (iii) full accelerated vesting of all equity awards.

All severance payments and benefits under the employment agreements are subject to the NEO's timely execution of a release of claims against us.

The following table sets forth the estimated payments that would be received by each NEO if a hypothetical termination of employment without Cause or following a resignation for Good Reason on December 31, 2021.

Name	Cash severance	COBRA(1)	RSU acceleration(2)	Stock option acceleration(3)	Total
Christian Gormsen					
Covered Termination (Non-CIC)	990,000	26,000	—	—	1,016,000
Covered Termination (CIC)	1,980,000	52,000	226,695	5,382,016	7,640,711
William Brownie					
Covered Termination (Non-CIC)	468,000	17,000	—	—	485,000
Covered Termination (CIC)	624,000	23,000	73,634	1,150,443	1,871,077
Adam Laponis					
Covered Termination (Non-CIC)	438,750	—	—	—	438,750
Covered Termination (CIC)	585,000	—	73,634	887,698	1,546,332

(1) Reflects the estimated lump-sum present value of all future COBRA premiums which will be paid on behalf of the NEO under the Company's health and welfare benefit plans for the applicable continuation period specified in the NEO's employment agreement.

(2) The amounts reported reflect the amount determined by multiplying the number of unvested RSUs held by the NEO on December 31, 2021 by $5.10, the closing trading price per share of our common stock on December 31, 2021.

(3) The amounts reported reflect the sum of the positive difference, if any, between $5.10, the closing trading price per share of our common stock on December 31, 2021, and the exercise price per share of each option, multiplied by the number of unvested shares underlying the option.

Director compensation

Director Compensation Program

Pursuant to the compensation policy for our non-employee directors (the "Director Compensation Program"), which became effective in October 2020 in connection with our IPO, our non-employee directors receive cash compensation as follows:

- Each non-employee director receives an annual cash retainer in the amount of $40,000 per year.
- The non-executive Chairperson receives an additional annual cash retainer in the amount of $35,000 per year.
- The chairperson of the Audit Committee receives additional annual cash compensation in the amount of $20,000 per year for such chairperson's service on the Audit Committee. Each non-chairperson member of the Audit Committee receives additional annual cash compensation in the amount of $10,000 per year for such member's service on the Audit Committee.
- The chairperson of the Compensation Committee receives additional annual cash compensation in the amount of $15,000 per year for such chairperson's service on the Compensation Committee. Each non-chairperson member of the Compensation Committee receives additional annual cash compensation in the amount of $7,500 per year for such member's service on the Compensation Committee.
- The chairperson of the Nominating and Corporate Governance Committee receives additional annual cash compensation in the amount of $10,000 per year for such chairperson's service on the Nominating and Corporate Governance Committee. Each non-chairperson member of the Nominating and Corporate Governance Committee receives additional annual cash compensation in the amount of $5,000 per year for such member's service on the Nominating and Corporate Governance Committee.

Under the Director Compensation Program, each non-employee director automatically is granted (i) an option to purchase that number of shares of our common stock calculated by dividing (a) $200,000 by (b) the per share grant date fair value of the option, calculated based on the 30 trading day average closing price of our common stock as of the date of grant (or if the date of grant is not a trading day, the immediately preceding trading day) and using assumptions published in our most recent periodic report as of the date of grant, rounded down to the nearest whole share, upon the director's initial appointment or election to our Board, referred to as the Initial Grant, and (ii) for each non-employee director who has served for at least 6 months as of the date of each annual stockholder's meeting, an option to purchase that number of shares of our common stock calculated by dividing (a) $120,000 by (b) the per share grant date fair value of the option, calculated based on the 30 trading day average closing price of our common stock as of the trading day immediately preceding the date of grant and using assumptions published in our most recent periodic report as of the date of grant, rounded down to the nearest whole share, automatically on the date of each annual stockholder's meeting thereafter, referred to as the Annual Grant. The Initial Grants vest and become exercisable as to 1/36th of the underlying shares on a monthly basis over three years, subject to continued service through each applicable vesting date. The Annual Grants vest and become exercisable as to 1/12th of the underlying shares on each monthly anniversary of the applicable date of grant, provided, that if our annual stockholder's meeting immediately following the date of grant takes place prior to the first anniversary of the date of grant, the Annual Grants vest and become exercisable immediately prior to our annual stockholder's meeting following the date of grant, subject to continued service through each applicable vesting date.

In the event of a change in control (as defined under the Director Compensation Program), each Initial Grant and Annual Grant, along with any other stock options or equity-based awards held by any non-employee director, will vest and become exercisable, as applicable, immediately prior to such change in control.

As a result of the uncertainty created by the DOJ investigation and the claims audits (as further described in "Business—DOJ investigation and settlement and claims audits"), the Board determined to suspend the

non-employee director compensation program with respect to the option awards that would otherwise have been awarded to non-employee directors automatically on the date of the Company's annual meeting of stockholders held on November 9, 2021. Ms. Bayne received her Initial Grant in connection with her appointment to the Board in June 2021.

2021 Director Compensation Table

The following table sets forth information regarding the compensation earned for service as a non-employee director on our Board during the year ended December 31, 2021. The compensation for Mr. Gormsen, as a named executive officer, is set forth above under "—Summary Compensation Table."

Name[1]	Fees earned or paid in cash ($)[2]	Option awards ($)[3]	All other compensation ($)	Total ($)
Josh Makower, M.D.	$ 95,000	$ —	$ —	$ 95,000
Katie Bayne	25,125	196,023	—	221,148
Peter Tuxen Bisgaard	55,292	—	—	55,292
Doug Hughes	50,000	—	—	50,000
Geoff Pardo	31,882	—	—	31,882
Nina Richardson	47,500	—	—	47,500
A. Brooke Seawell	60,000	—	—	60,000
Juliet Tammenoms Bakker	25,396	—	—	25,396
David Wu	44,011	—	—	44,011

(1) Juliet Tammenoms Bakker resigned from our Board in June 2021, and Geoff Pardo resigned from our Board in July 2021. Katie Bayne joined our Board in June 2021.

(2) These amounts include fees earned in 2021 and paid in 2022 in accordance with our Director Compensation Program, described above. Amounts earned by Messrs. Bisgaard, Hughes, and Seawell, Ms. Bayne, and Ms. Richardson were paid to them directly. Amounts earned by Ms. Tammenoms Bakker were paid to Longitude Capital Management Co., LLC; amounts earned by Mr. Makower were paid to NEA Management Company LLC; amounts earned by Mr. Pardo were paid to Gilde (as defined below); and amounts earned by Mr. Wu were paid to Maveron LLC.

(3) Amounts reported represent the aggregate grant date fair value of stock options granted to our non-employee directors during 2021 under our 2020 Plan, computed in accordance with ASC Topic 718. Assumptions used in the calculation of these amounts are included in Notes 2 and 10 to our audited consolidated financial statements included in this Annual Report on Form 10-K. As of December 31, 2021, our non-employee directors held the following outstanding options:

Name	Shares subject to outstanding options (#)
Josh Makower, M.D.	6,666
Katie Bayne	10,325
Peter Tuxen Bisgaard	6,666
Doug Hughes	29,500
Geoff Pardo	—
Nina Richardson	56,832
A. Brooke Seawell	29,500
Juliet Tammenoms Bakker	—
David Wu	6,666

None of our non-employee directors held unvested stock awards as of December 31, 2021.

Compensation Committee interlocks and insider participation

None of the members of our Compensation Committee is currently, or has been at any time, one of our executive officers or employees. None of our executive officers currently serves, or has served during the last year, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our Board or on our Compensation Committee.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Equity Compensation Plan Information

The following table provides information on our equity compensation plans as of December 31, 2021. Information is included for equity compensation plans approved by our stockholders.

Name	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plans approved by security holders[1][2][3]	5,835,266	$ 4.87[4]	7,179,165[5]
Equity compensation plans not approved by security holders			
Total	5,835,266	$ 4.87	7,179,165

(1) Consists of options outstanding and available for issuance under our 2010 Plan, 2020 Plan and the Employee Stock Purchase Plan (ESPP).

(2) The 2020 Plan contains an "evergreen" provision, pursuant to which the number of shares of common stock reserved for issuance or transfer pursuant to awards under the 2020 Plan shall be increased on the first day of each year beginning in 2021 and ending in 2030 equal to the lesser of (A) five percent (5.0%) of the shares of common stock outstanding (on an as converted basis) on the last day of the immediately preceding fiscal year and (B) such smaller number of shares of stock as determined by our Board; provided, however, that no more than 28,344,144 shares of stock may be issued upon the exercise of incentive stock options.

(3) The ESPP contains an "evergreen" provision, pursuant to which the maximum number of shares of our common stock authorized for sale under the ESPP shall be increased on the first day of each year beginning in 2021 and ending in 2030, equal to the lesser of (A) one percent (1.0%) of the shares of common stock outstanding (on an as converted basis) on the last day of the immediately preceding fiscal year and (B) such number of shares of common stock as determined by our Board; provided, however, no more than 5,450,797 shares of our common stock may be issued thereunder.

(4) Excludes restricted stock units, which have no exercise price.

(5) Includes 934,496 shares available for future issuance under the ESPP.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth, as of March 21, 2022, information regarding beneficial ownership of our common stock:

- each person, or group of affiliated persons, known by us to beneficially own more than 5% of our common stock;
- each of our named executive officers;

- each of our directors; and
- all of our executive officers and directors as a group.

The percentage of ownership is based on 39,331,666 shares of common stock outstanding as of March 21, 2022. Beneficial ownership is determined according to the rules of the SEC and generally means that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power of that security. In addition, any shares that the entity or individual has the right to acquire within 60 days of March 21, 2022 through the exercise of any stock options or through the vesting and settlement of RSUs payable in shares of common stock are included in the following table. These shares are deemed to be outstanding and beneficially owned by the person holding those options, RSUs or warrants for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. The information contained in the following table does not necessarily indicate beneficial ownership for any other purpose. Unless otherwise indicated, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to applicable community property laws.

Unless otherwise noted below, the address for each beneficial owner listed in the table below is c/o Eargo, Inc., 2665 North First Street, Suite 300, San Jose, California 95134.

Name of beneficial owner	Number of outstanding shares beneficially owned	Number of shares exercisable within 60 days	Number of shares beneficially owned	Percentage of beneficial ownership
5% and greater stockholders:				
Entities affiliated with New Enterprise Associates[1]	4,520,670	—	4,520,670	11.49%
Cooperatieve Gilde Healthcare V U.A.[2]	2,996,686	—	2,996,686	7.62%
Entities affiliated with Pivotal Alpha Limited[3]	2,886,724	—	2,886,724	7.34%
The Charles and Helen Schwab Living Trust U/A DTD 11/22/1985	2,062,684	—	2,062,684	5.24%
Named executive officers and directors:				
Christian Gormsen[4]	87,887	1,198,089	1,285,976	3.17%
William Brownie[5]	180,020	225,419	405,439	1.02%
Adam Laponis[6]	47,578	186,778	234,356	*
Josh Makower, M.D.[7]	508	6,666	7,174	*
Katie Bayne[8]	—	2,581	2,581	*
Peter Tuxen Bisgaard[9]	2,928,694	6,666	2,935,360	7.46%
Doug Hughes[10]	35,709	16,391	52,100	*
Nina Richardson[11]	—	43,723	43,723	*
A. Brooke Seawell[12]	394	16,391	16,785	*
David Wu[13]	1,552,369	6,666	1,559,035	3.96%
All current directors and executive officers as a group (10 persons)	4,833,158	1,709,370	6,542,528	16.63%

* Indicates beneficial ownership of less than 1% of the total outstanding common stock.

(1) Consists of (a) 4,520,019 shares of our common stock held by New Enterprise Associates 15, L.P. (“NEA 15”) (based on the most recently available Schedule 13D/A filed jointly with the SEC on June 3, 2021) and (b) 651 shares of our common stock held by NEA Ventures 2015, L.P. (“Ven 2015”). The shares held directly by NEA 15 are indirectly held by NEA Partners 15, L.P. (“NEA Partners 15”), which is the sole general partner of NEA 15, NEA 15 GP, LLC (“NEA 15 LLC”), which is the sole general partner of NEA Partners 15, and the individual managers of NEA 15 LLC (the “NEA Managers”). The NEA Managers are

Forest Baskett, Anthony A. Florence, Jr., Mohamad H. Makhzoumi, Scott D. Sandell and Peter W. Sonsini. The NEA Managers share voting and dispositive power with regard to the shares held by NEA 15. The shares directly held by Ven 2015 are indirectly held by Karen P. Welsh, the general partner of Ven 2015. Karen P. Welsh has voting and dispositive power with regard to the shares held by Ven 2015. All indirect owners of the above-referenced shares disclaim beneficial ownership of all applicable shares except to the extent of their actual pecuniary interest in such shares. The principal address for NEA 15 is c/o New Enterprise Associates, Inc., 1954 Greenspring Drive, Suite 600, Timonium, Maryland 21093.

(2) Based on the Form 4 filed with the SEC on May 4, 2021 by Geoff Pardo. According to the Form 4, this amount consists of 2,996,686 shares of our common stock held directly by Coöperatieve Gilde Healthcare V U.A. ("Gilde"). Gilde is managed by Gilde Healthcare V Management B.V. ("Gilde Management"), which is owned and managed by Gilde Healthcare Holding B.V. ("Gilde Holding"). Each of Gilde Management and Gilde Holding may be deemed to share voting, investment and dispositive power with respect to the shares held by Gilde. Mr. Pardo was a member of our Board until his resignation in July 2021 and is a partner of Gilde and may be deemed to share voting and dispositive power over the shares held by Gilde. According to the most recently available Schedule 13D/A filed with the SEC on April 28, 2021, the managing partners of Gilde Holding are Edwin de Graaf, Marc Olivier Perret and Martemanshurk BV (of which Pieter van der Meer is the owner and manager). Each of these individuals disclaim beneficial ownership of all applicable shares except to the extent of their actual pecuniary interest in such shares. The principal office of Gilde is located at Newtonlaan 91, 3584 BP Utrecht, the Netherlands.

(3) Based on the most recently available Schedule 13D filed jointly with the SEC on October 29, 2020 by Nan Fung Group Holdings Limited ("NFGHL"), NF Investment Holdings Limited ("NFIHL"), Permwell Management Limited ("Permwell"), Grand Epoch Holdings Limited ("Grand Epoch"), Eternal Sky Holdings Limited ("Eternal Sky"), and Pivotal Alpha Limited ("Pivotal Alpha"). According to the Schedule 13D, this amount consists of 2,664,502 shares of our common stock held directly by Pivotal Alpha and 222,222 shares of our common stock held by Permwell. Pivotal Alpha is wholly owned by Eternal Sky, which is wholly owned by Grand Epoch. Grand Epoch and Permwell are both wholly owned by NFIHL, which is wholly owned by NFGHL. The members of the Executive Committee of NFGHL make investment decisions with respect to shares of our common stock held by Pivotal Alpha and Permwell. Mr. Kam Chung Leung, Mr. Frank Kai Shui Seto, Mr. Vincent Sai Sing Cheung, Mr. Pui Kuen Cheung, Mr. Kin Ho Kwok, Ms. Vanessa Tih Lin Cheung, Mr. Meng Gao and Mr. Chun Wai Nelson Tang are the members of the Executive Committee of NFGHL. Pivotal Alpha, Eternal Sky and Grand Epoch each disclaims beneficial ownership of all applicable shares beneficially owned by Permwell and Permwell disclaims beneficial ownership of all applicable shares beneficially owned by Pivotal Alpha, Eternal Sky and Grand Epoch. The principal business address of NFGHL, Permwell, Pivotal Alpha and the named members of the NFGHL executive committee is 23rd Floor, Nan Fung Tower, 88 Connaught Road Central and 173 Des Voeux Road Central, Central, Hong Kong. The registered office address of NFIHL, Grand Epoch and Eternal Sky is Vistra Corporate Services Centre, Wickhams Cay II, Road Town, Tortola, VG1110, British Virgin Islands.

(4) Consists of (a) 87,887 shares of common stock held directly, (b) 3,175 restricted stock units that vested on February 15, 2022 but have not yet settled in stock, (c) 3,175 restricted stock units that are scheduled to vest within 60 days of March 21, 2022 and (d) 1,191,739 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 21, 2022.

(5) Consists of (a) 180,020 shares of our common stock held directly, (b) 1,031 restricted stock units that vested on February 15, 2022 but have not yet settled in stock, (c) 1,031 restricted stock units that are scheduled to vest within 60 days of March 21, 2022 and (d) 223,357 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 21, 2022.

(6) Consists of (a) 47,578 shares of our common stock held directly, (b) 1,031 restricted stock units that vested on February 15, 2022 but have not yet settled in stock, (c) 1,031 restricted stock units that are scheduled to vest within 60 days of March 21, 2022 and (d) 184,716 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 21, 2022.

(7) Consists of (a) 508 shares of our common stock held by the Makower Family Trust and (b) 6,666 shares of common stock that may be acquired pursuant to the exercise of stock options held by Dr. Makower within 60 days of March 31, 2022. As of August 1, 2021, Dr. Makower is a Special Partner of NEA, which is

affiliated with NEA 15 and Ven 2015. Dr. Makower has no voting or dispositive power with regard to any of the shares of our common stock held by NEA 15 and Ven 2015 as described in footnote (1) above and disclaims beneficial ownership of the above-referenced shares held by NEA 15 and Ven 2015, except to the extent of his actual pecuniary interest in such shares.

(8) Consists of 2,581 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 21, 2022.

(9) Consists of (a) 2,886,724 shares of common stock beneficially owned by Pivotal Alpha and Permwell, (b) 41,970 shares of common stock held directly and (c) 6,666 shares of common stock that may be acquired pursuant to the exercise of stock options held by Mr. Bisgaard within 60 days of March 21, 2022. Investment and voting decisions by Pivotal Alpha are made jointly by three or more individuals and therefore no individual is the beneficial owner of the shares held by Pivotal Alpha. Mr. Bisgaard is a Managing Partner of Pivotal Bioventure Partners LLC, which is affiliated with Pivotal Alpha and Permwell, and disclaims beneficial ownership of all applicable shares except to the extent of his actual pecuniary interest in such shares.

(10) Consists of (a) 35,709 shares of common stock held directly and (b) 16,391 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 21, 2022.

(11) Consists of 43,723 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 21, 2022.

(12) Consists of (a) 394 shares of common stock held directly, and (b) 16,391 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 21, 2022.

(13) Consists of (a) 1,552,369 shares of common stock beneficially owned by Maveron Equity Partners IV, L.P., Maveron Equity Partners V, L.P., Maveron IV Entrepreneurs Fund L.P., Maveron V Entrepreneurs Fund L.P., MEP Associates IV, L.P., and MEP Associates V, L.P., and (b) 6,666 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 21, 2022. The stock options are held in Mr. Wu's name but are contractually assigned to Maveron LLC. Mr. Wu is a Partner at Maveron LLC, which is affiliated with Maveron Equity Partners IV, L.P., Maveron Equity Partners V, L.P., Maveron IV Entrepreneurs Fund L.P., Maveron V Entrepreneurs Fund L.P., MEP Associates IV, L.P., and MEP Associates V, L.P. and disclaims beneficial ownership of all applicable shares except to the extent of his actual pecuniary interest in such shares.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Other than compensation arrangements, including employment arrangements, with our directors and executive officers, including those discussed in "Item 11. Executive Compensation" of this Annual Report on Form 10-K, the following is a description of each transaction since January 1, 2021 in which:

- we were a party or will be a party;
- the amounts involved exceeded or will exceed $120,000; and
- any of our directors, executive officers or holders of more than 5% of our capital stock, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest.

Investors' Rights Agreement

We entered into an amended and restated investors' rights agreement with the purchasers of our convertible preferred stock, which was subsequently converted into common stock in connection with the IPO, and certain of our other stockholders, including certain of our directors and executive officers, holders of more than 5% of our capital stock and entities with which certain of our directors are affiliated. As of December 31, 2021, the holders of approximately 8.7 million shares of our common stock are entitled to rights with respect to the registration of their shares under the Securities Act.

Indemnification agreements

We have entered into indemnification agreements with certain of our current directors, executive officers and certain other employees. Our amended and restated certificate of incorporation and our amended and restated bylaws will provide that we will indemnify our directors and officers to the fullest extent permitted by applicable law.

Policies and procedures for related-party transactions

Our Board has adopted a written related-person transaction policy, setting forth the policies and procedures for the review and approval or ratification of related-person transactions. This policy covers, with certain exceptions set forth in Item 404 of Regulation S-K, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships in which we were or are to be a participant, where the amount involved exceeds $120,000 and a related person had or will have a direct or indirect material interest, including, without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. In reviewing and approving any such transactions, our Audit Committee considers all relevant facts and circumstances, including, but not limited to, whether the transaction is on terms comparable to those that could be obtained in an arm's length transaction with an unrelated third party and the extent of the related person's interest in the transaction. The amended and restated investors' rights agreement was entered into prior to the adoption of this policy.

Independence of the Board of Directors

Our Board currently consists of eight members. Our Board has determined that all of our directors, other than Mr. Gormsen, qualify as "independent" directors in accordance with the Listing Rules. Mr. Gormsen is not considered independent by virtue of his position as our President and Chief Executive Officer. Under the Listing Rules, the definition of independence includes a series of objective tests, such as that the director is not, and has not been for at least three years, one of our employees and that neither the director nor any of his or her family members has engaged in various types of business dealings with us. In addition, as required by the Listing Rules, our Board has made a determination as to each independent director that no relationship exists that, in the opinion of our Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, our Board reviewed and discussed information provided by the directors and us with regard to each director's business and personal activities and relationships as they may relate to us and our management. There are no family relationships among any of our directors or executive officers.

Item 14. Principal Accountant Fees and Services.

Aggregate fees for professional services rendered for us by Deloitte & Touche LLP for the years ended December 31, 2021 and 2020, were as follows, all of which were approved by the Audit Committee:

	2021	2020
	(in thousands)	
Audit fees[1]	$1,988	$1,625
Audit-related fees[2]	—	—
Tax fees[3]	57	37
All other fees[4]	—	—
Total	$2,045	$1,662

(1) Represents the aggregate fees billed for the audit of the Company's consolidated financial statements, review of the condensed consolidated financial statements included in the Company's quarterly reports and

services in connection with the statutory and regulatory filings or engagements for those years. Fees for our fiscal year ended December 31, 2020 also consisted of professional services rendered in connection with our Registration Statement on Form S-1 related to our IPO.

(2) Represents the aggregate fees billed for assurance and related services that are reasonably related to the performance of the audit or review of the Company's consolidated financial statements and are not reported under "audit fees."

(3) Represents the aggregate fees billed for tax compliance, advice and planning.

(4) Represents the aggregate fees billed for all products and services that are not included under "audit fees," "audit-related fees" or "tax fees."

Pre-Approval Policies and Procedures

Pursuant to its charter, the Audit Committee or the Chair of the Audit Committee pre-approves all audit and non-audit services provided by the Company's independent registered public accounting firm, unless the engagement is entered into pursuant to appropriate pre-approval policies established by the Audit Committee or if such service falls within applicable exceptions under SEC rules. The Audit Committee pre-approved all services provided by Deloitte & Touche LLP for 2021 in accordance with its pre-approval policies.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

We have filed the following documents as part of this Annual Report on Form 10-K:

1. Financial Statements: The financial statements included in "Index to Consolidated Financial Statements" in Part II, Item 8 are filed as part of this Annual Report on Form 10-K
2. Exhibits: The exhibits listed in the accompanying index to exhibits are filed or incorporated by reference as part of this Annual Report on Form 10-K.

Item 16. Form 10-K Summary

None.

Exhibit Index

Exhibit Number	Description	Incorporated by reference		
		Form	Dated	Number
3.1	Amended and Restated Certificate of Incorporation.	8-K	10/20/2020	3.1
3.2	Amended and Restated Bylaws.	8-K	10/20/2020	3.2
4.1	Reference is made to Exhibits 3.1 through 3.2.			
4.2	Form of Common Stock Certificate.	S-1	9/25/2020	4.2
4.3	Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934.	10-K	3/16/2021	4.3
10.1	Amended and Restated Investors' Rights Agreement, dated July 13, 2020, by and among Eargo, Inc. and the investors listed therein.	S-1	9/25/2020	10.1
10.2(a)	2010 Equity Incentive Plan, as amended.#	S-1/A	10/01/2020	10.2(a)
10.2(b)	Form Agreements under 2010 Equity Incentive Plan, as amended.#	S-1	9/25/2020	10.2(b)
10.3(a)	2020 Incentive Award Plan.#	S-8	10/19/2020	99.2(a)
10.3(b)	Form Agreements under the 2020 Incentive Award Plan.#	S-1	9/25/2020	10.3(b)
10.3(c)	Form of Restricted Stock Unit Award Agreement under the 2020 Incentive Award Plan (Cash Settled Awards).#†			
10.4	2020 Employee Stock Purchase Plan.#	S-8	10/19/2020	99.3
10.5	Employment Agreement, by and between Eargo, Inc. and Christian Gormsen.#	S-1	9/25/2020	10.5
10.6	Employment Agreement, by and between Eargo, Inc. and William Brownie.#	S-1	9/25/2020	10.6
10.7	Employment Agreement, by and between Eargo, Inc. and Adam Laponis.#	S-1	9/25/2020	10.7
10.8	Non-Employee Director Compensation Program.#	S-1	9/25/2020	10.8
10.9	Form of Indemnification Agreement for directors, officers and certain other employees.	S-1	9/25/2020	10.9
10.10	Manufacturing Services Agreement, dated May 5, 2017, by and between Eargo, Inc. and Hana Microelectronics Co., Ltd.*	S-1	9/25/2020	10.10
10.11	Sublease Agreement, dated July 30, 2018, by and between Eargo, Inc. and Microchip Technology Incorporated.	S-1	9/25/2020	10.11
10.12	Office & Parking Lease, dated September 11, 2018, by and between Eargo, Inc. and SEV 8th and Division, LLC.	S-1	9/25/2020	10.12
10.13	Standard Office Building Lease, dated April 27, 2018, by and between Eargo, Inc. and LAGOS PROPERTIES, LLC.	S-1	9/25/2020	10.13
10.14	Loan and Security Agreement, dated June 6, 2018, by and among Eargo, Inc., Eargo Hearing, Inc. and Silicon Valley Bank, as amended by the First Amendment, dated January 31, 2019, as further amended by the Second Amendment, dated May 1, 2020, as further amended by the Third Amendment, dated September 9, 2020.	S-1	9/25/2020	10.14

10.15	Manufacturing Agreement, dated August 21, 2018, by and between Eargo, Inc. and Pegatron Corporation.*	S-1	9/25/2020	10.15
10.16	First Amendment to Lease, dated February 19. 2021, by and between Eargo, Inc. and SEV 8th and Division, LLC.†			
10.17	Standard Form Office Lease, executed September 3, 2021, by and between Eargo, Inc. and GZI First North 1, LLC.†			
10.18	First Amendment to Lease, dated January 26, 2022, by and between Eargo, Inc. and GZI First North 1, LLC.†			
10.19	Promotion Letter by and between Eargo, Inc. and Mark Thorpe.	8-K	1/18/2022	10.1
10.20	Employment Agreement by and between Eargo, Inc. and Mark Thorpe.	8-K	1/18/2022	10.2
10.21	Settlement Agreement	8-K	1/18/2022	10.1
21.1	List of subsidiaries.†			
23.1	Consent of Deloitte & Touche LLP, independent registered public accounting firm.†			
24.1	Power of Attorney (included in the signature page hereto).†			
31.1	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.†			
31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.†			
32.1	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.‡			
32.2	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.‡			
101.INS	Inline XBRL Instance Document†			
101.SCH	Inline XBRL Taxonomy Extension Schema Document†			
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document†			
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document†			
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document†			
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document†			
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)†			

# Indicates management contract or compensatory plan.
* Certain schedules and exhibits to this agreement have been omitted pursuant to Item 601(a)(5) of Registration S-K. A copy of any omitted schedule and/or exhibit will be furnished supplementally to the SEC upon request.
† Filed herewith.
‡ Furnished herewith.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Eargo, Inc.

Date: May 13, 2022

By: /s/ Christian Gormsen
Christian Gormsen
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this Report has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

Name	Title	Date
/s/ Christian Gormsen **Christian Gormsen**	President, Chief Executive Officer and Director (Principal Executive Officer)	May 13, 2022
/s/ Adam Laponis **Adam Laponis**	Chief Financial Officer (Principal Financial Officer)	May 13, 2022
/s/ Mark Thorpe **Mark Thorpe**	Chief Accounting Officer (Principal Accounting Officer)	May 13, 2022
/s/ Josh Makower, M.D. **Josh Makower, M.D.**	Chair of the Board of Directors	May 13, 2022
/s/ Katie J. Bayne **Katie J. Bayne**	Director	May 13, 2022
/s/ Peter Tuxen Bisgaard **Peter Tuxen Bisgaard**	Director	May 13, 2022
/s/ Doug Hughes **Doug Hughes**	Director	May 13, 2022
/s/ Nina Richardson **Nina Richardson**	Director	May 13, 2022
/s/ A. Brooke Seawell **A. Brooke Seawell**	Director	May 13, 2022
/s/ David Wu **David Wu**	Director	May 13, 2022

EARGO, INC.
2020 INCENTIVE AWARD PLAN

RESTRICTED STOCK UNIT AWARD GRANT NOTICE

Eargo, Inc., a Delaware corporation (the "***Company***"), pursuant to its 2020 Incentive Award Plan, as amended from time to time (the "***Plan***"), hereby grants to the holder listed below (the "***Participant***"), an award of restricted stock units ("***Restricted Stock Units***" or "***RSUs***"). Each vested Restricted Stock Unit represents the right to receive, in accordance with the Restricted Stock Unit Award Agreement attached hereto as **Exhibit A** (the "***Agreement***"), the Fair Market Value of one share of Common Stock ("***Share***"), provided, that to the extent the RSUs are settled in cash, the maximum cash payment per RSU shall be the Maximum Cash per RSU set forth below. This award of Restricted Stock Units is subject to all of the terms and conditions set forth herein and in the Agreement and the Plan, each of which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Restricted Stock Unit Award Grant Notice (the "***Grant Notice***") and the Agreement.

Participant:	[_____]
Grant Date:	[_____]
Total Number of RSUs:	[_____]
Vesting Commencement Date:	[_____]
Maximum Cash per RSU:	$8.00
Vesting Schedule:	[_____]
Termination:	If the Participant experiences a Termination of Service, all RSUs that have not become vested on or prior to the date of such Termination of Service will thereupon be automatically forfeited by the Participant without payment of any consideration therefor.

By the Participant's signature below, the Participant agrees to be bound by the terms and conditions of the Plan, the Agreement and this Grant Notice. The Participant has reviewed the Plan, the Agreement and this Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of the Plan, the Agreement and this Grant Notice. The Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan, the Agreement or this Grant Notice. In addition, by signing below, the Participant also agrees that the Company, in its sole discretion, may satisfy any withholding obligations in accordance with Section 2.6(b) of the Agreement by (i) withholding cash otherwise payable or Shares otherwise issuable to the Participant upon vesting of the RSUs, (ii) in the event of settlement in Shares, instructing a broker on the Participant's behalf to sell Shares otherwise issuable to the Participant upon vesting of the RSUs and submit the proceeds of such sale to the Company, or (iii) using any other method permitted by Section 2.6(b) of the Agreement or the Plan.

EARGO, INC.:

By: _____
Print Name: _____
Title: _____
Address: _____

PARTICIPANT:

By: _____
Print Name: _____

Address: _____

EXHIBIT A
TO RESTRICTED STOCK UNIT AWARD GRANT NOTICE

RESTRICTED STOCK UNIT AWARD AGREEMENT

Pursuant to the Restricted Stock Unit Award Grant Notice (the "***Grant Notice***") to which this Restricted Stock Unit Award Agreement (this "***Agreement***") is attached, Eargo, Inc., a Delaware corporation (the "***Company***"), has granted to the Participant the number of restricted stock units ("***Restricted Stock Units***" or "***RSUs***") set forth in the Grant Notice under the Company's 2020 Incentive Award Plan, as amended from time to time (the "***Plan***"). Each Restricted Stock Unit represents the right to receive the Fair Market Value of one share of Common Stock (a "***Share***") upon vesting.

ARTICLE I.

GENERAL

1.1 Defined Terms. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan and the Grant Notice.

1.2 Incorporation of Terms of Plan. The RSUs are subject to the terms and conditions of the Plan, which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

ARTICLE II.

GRANT OF RESTRICTED STOCK UNITS

2.1 Grant of RSUs. Pursuant to the Grant Notice and upon the terms and conditions set forth in the Plan and this Agreement, effective as of the Grant Date set forth in the Grant Notice, the Company hereby grants to the Participant an award of RSUs under the Plan in consideration of the Participant's past or continued employment with or service to the Company or any Subsidiaries and for other good and valuable consideration.

2.2 Unsecured Obligation to RSUs. Unless and until the RSUs have vested in the manner set forth in Article 2 hereof, the Participant will have no right to receive a payment in cash or the Common Stock under any such RSUs. Prior to actual payment of any vested RSUs, such RSUs will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company.

2.3 Vesting Schedule. Subject to Section 2.5 hereof, the RSUs shall vest and become nonforfeitable with respect to the applicable portion thereof according to the vesting schedule set forth in the Grant Notice (rounding down to the nearest whole RSU).

2.4 Consideration to the Company. In consideration of the grant of the award of RSUs pursuant hereto, the Participant agrees to render faithful and efficient services to the Company or any Subsidiary.

2.5 Forfeiture, Termination and Cancellation upon Termination of Service. Notwithstanding any contrary provision of this Agreement or the Plan, upon the Participant's Termination of Service for any or no reason, all Restricted Stock Units which have not vested prior to or in connection with such Termination of Service shall thereupon automatically be forfeited, terminated and cancelled as of the applicable termination date without payment of any consideration by the Company, and the Participant, or the Participant's beneficiary or personal representative, as the case may be, shall have no further rights hereunder. No portion of the RSUs which has not become vested as of the date on which the Participant incurs a Termination of Service shall thereafter become vested, except as may otherwise be provided by the Administrator or as set forth in a written agreement between the Company and the Participant.

2.6 Payment upon Vesting.

(a) As soon as administratively practicable following the vesting of any Restricted Stock Units pursuant to Section 2.3 hereof, but in no event later than 30 days after such vesting date (for the avoidance of doubt, this deadline is intended to comply with the "short term deferral" exemption from Section 409A of the Code), the Company shall either (i) pay to the Participant (or any transferee permitted under Section 3.2 hereof) an amount in cash equal to the Fair Market Value of a number of Shares equal to the number of RSUs subject to this Award that vest on the applicable vesting date, rounded down to the nearest cent, provided, that the maximum amount of such payment per RSU shall be the Maximum Cash per RSU set forth in the Grant Notice or (ii) deliver to the Participant (or any transferee permitted under Section 3.2 hereof) a number of Shares equal to the number of RSUs subject to this Award that vest on the applicable vesting date. Unless otherwise determined by the Administrator, the RSUs shall be settled in Shares pursuant to Section 2.6(a)(ii) above in the event the Shares are registered on an effective Form S-8 on the date of settlement and shall otherwise be settled in cash.

(b) As set forth in Section 10.5 of the Plan, the Company shall have the authority and the right to deduct or withhold, or to require the Participant to remit to the Company, an amount sufficient to satisfy all applicable federal, state and local taxes required by law to be withheld with respect to any taxable event arising in connection with the Restricted Stock Units. The Company shall not be obligated to pay any cash or deliver any Shares to the Participant or the Participant's legal representative unless and until the Participant or the Participant's legal representative shall have paid or otherwise satisfied in full the amount of all federal, state and local taxes applicable to the taxable income of the Participant resulting from the grant or vesting of the Restricted Stock Units, the payment of cash or the issuance of Shares.

2.7 Conditions to Delivery of Shares. In the event of a settlement in Shares, the Shares delivered hereunder may be either previously authorized but unissued Shares, treasury Shares or issued Shares which have then been reacquired by the Company. Such Shares shall be fully paid and nonassessable. The Company shall not be required to issue Shares prior to fulfillment of the conditions set forth in Section 10.7 of the Plan.

2.8 Rights as Stockholder. The holder of the RSUs shall not be, nor have any of the rights or privileges of, a stockholder of the Company, including, without limitation, voting rights and rights to dividends, in respect of the RSUs and any Shares underlying the RSUs and deliverable hereunder unless and until such Shares shall have been issued by the Company and held of record by such holder (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Article IX of the Plan.

ARTICLE III.

OTHER PROVISIONS

3.1 Administration. The Administrator shall have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator in good faith shall be final and binding upon the Participant, the Company and all other interested persons. No member of the Administrator or the Board shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, this Agreement or the RSUs.

3.2 Transferability. The RSUs shall be subject to the restrictions on transferability set forth in Section 10.1 of the Plan.

3.3 Tax Consultation. The Participant understands that the Participant may suffer adverse tax consequences in connection with the RSUs granted pursuant to this Agreement (and the cash payable or Shares issuable with respect thereto). The Participant represents that the Participant has consulted with any tax consultants the Participant deems advisable in connection with the RSUs, the cash payable in respect thereof and the issuance of Shares with respect thereto and that the Participant is not relying on the Company for any tax advice.

3.4 Binding Agreement. Subject to the limitation on the transferability of the RSUs contained herein, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

3.5 Adjustments Upon Specified Events. The Administrator may accelerate the vesting of the RSUs in such circumstances as it, in its sole discretion, may determine. The Participant acknowledges that the RSUs are subject to adjustment, modification and termination in certain events as provided in this Agreement and Article IX of the Plan.

3.6 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to the Participant shall be addressed to the Participant at the Participant's last address reflected on the Company's records. By a notice given pursuant to this Section 3.6, either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

3.7 Participant's Representations. If any Shares issuable hereunder have not been registered under the Securities Act or any applicable state laws on an effective registration statement at the time of such issuance, the Participant shall, if required by the Company, concurrently with such issuance, make such written representations as are deemed necessary or appropriate by the Company or its counsel.

3.8 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

3.9 Governing Law. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

3.10 Conformity to Securities Laws. The Participant acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any other Applicable Law. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the RSUs are granted, only in such a manner as to conform to Applicable Law. To the extent permitted by Applicable Law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such Applicable Law.

3.11 Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Administrator or the Board; *provided, however,* that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the RSUs in any material way without the prior written consent of the Participant.

3.12 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth in Section 3.2 hereof, this Agreement shall be binding upon the Participant and his or her heirs, executors, administrators, successors and assigns.

3.13 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if the Participant is subject to Section 16 of the Exchange Act, then the Plan, the RSUs and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

3.14 Not a Contract of Service Relationship. Nothing in this Agreement or in the Plan shall confer upon Participant any right to continue to serve as an employee or other service provider of the Company or any of its Subsidiaries or interfere with or restrict in any way with the right of the Company or any of its Subsidiaries, which rights are hereby expressly reserved, to discharge or to terminate for any reason whatsoever, with or without cause, the services of the Participant at any time.

3.15 Entire Agreement. The Plan, the Grant Notice and this Agreement (including all Exhibits thereto, if any) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and the Participant with respect to the subject matter hereof, provided that the RSUs shall be subject to any accelerated vesting provisions in any written agreement between the Participant and the Company or a Company plan pursuant to which the Participant participates, in each case, in accordance with the terms therein.

3.16 Section 409A. This Award is not intended to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code (together with any Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date hereof, "***Section 409A***"). However, notwithstanding any other provision of the Plan, the Grant Notice or this Agreement, if at any time the Administrator determines that this Award (or any portion thereof) may be subject to Section 409A, the Administrator shall have the right in its sole discretion (without any obligation to do so or to indemnify Participant or any other person for failure to do so) to adopt such amendments to the Plan, the Grant Notice or this Agreement, or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Administrator determines are necessary or appropriate for this Award either to be exempt from the application of Section 409A or to comply with the requirements of Section 409A.

3.17 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. The Participant shall have only the rights of a general unsecured creditor of the Company and its Subsidiaries with respect to amounts credited and benefits payable, if any, with respect to the RSUs, and rights no greater than the right to receive the Common Stock as a general unsecured creditor with respect to RSUs, as and when payable hereunder.

* * * * *

FIRST AMENDMENT TO LEASE

GZI FIRST NORTH 1, LLC

This **First Amendment to Lease** is made as of this **26th day of January, 2022,** by and between **GZI First North 1, LLC, a Delaware Limited Liability Company,** (as Lessor/Landlord) and **EARGO, INC., A DELAWARE CORPORATION** (as Lessee/Tenant).

RECITALS

A. Lessor and Lessee entered into that certain **STANDARD FORM OFFICE LEASE** dated for reference purposes only **JULY 31, 2021 and executed on September 3, 2021,** with respect to those certain premises known as **2665 North First Street, Suite 300, Suite 200 and Suite 112, San Jose, California**, consisting of approximately **30,153 rentable square feet** of office space (the Premises).

B. Lessor and Lessee desire to AMEND the terms of the Lease according to the provisions herein contained.

C. In the event of any conflict between this **First Amendment to Lease** and the Lease, the terms and conditions of this **First Amendment to Lease** shall control.

THE PARTIES HEREBY AGREE AS FOLLOWS:

AGREEMENT

1. **Premises Square Footage**: (Pursuant to Article 1, Paragraph 6, Page 2) The Premises Square Footage shall be amended to read: **Approximately 3,736 rentable square feet (Suite 200)**, and **approximately 25,417 rentable square feet (Suite 300)**, and **approximately 1,000 rentable square feet (Suite 112)**.

2. **Exhibit A, B, C, D, and E**: (Pursuant to each Exhibit attached to the Lease) In the first sentence of each Exhibit, and for clarification, the referenced **Date** of the Standard Form Office Lease, shall be dated for reference purposes only **JULY 31, 2021**.

3. **Miscellaneous:** This Agreement: (a) contains the entire agreement between the parties regarding the matters covered in this Agreement, and there have been no other statements, promises, or representations made by the parties that are intended to alter, modify, or complement this Agreement; (b) may not be altered, amended, modified, or otherwise changed in any respect, except by a writing executed by an authorized representative of each party; (c) may be executed in one or more counterparts, each of which shall be deemed an original, and all taken together, shall constitute one and the same instrument; (d) shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns; and (e) may be executed and transmitted electronically and such electronic signatures shall be deemed originals as provided in the Uniform Electronic Transactions Act, Civil Code §1631.1, et seq.

4. All other terms and conditions of the above referenced Lease agreement shall remain in full force and effect for the term hereof.

5. This amendment shall be effective upon both Lessor and Lessee's full execution.

LESSEE:
Eargo, Inc.,
A Delaware Corporation

/s/ Adam Laponis
Signature

Adam Laponis Chief Financial Officer

1/27/2022
Date

LESSOR:
GZI First North 1, LLC,
A Delaware Limited Liability Company

/s/ Ming Lin
Signature

Ming Lin Managing Member

1/28/2022
Date

STANDARD FORM OFFICE LEASE

This. Standard Form Office Lease (**"Lease"**), dated for reference purposes only as of **JULY 31, 2021**, is entered into by and between **GZI First North 1, LLC, a Delaware limited liability company** (**"Landlord"**), and **Eargo, Inc., a Delaware corporation** (**"Tenant"**).

ARTICLE I

BASIC LEASE PROVISIONS

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

1. Address of Landlord:

   a. Notices:

GZI First North 1, LLC
c/o Borelli Investment Company
2051 Junction Avenue, Suite 100
San Jose, CA 95131
Attention: Lee Jatta or Buddy R. Parsons

with a copy to:

GZI First North 1, LLC
Attention: Ming Lin

   b. Rent Payments:

2665 N First St, Suite 206
San Jose, CA 95134

By check, payable to GZI First North 1, LLC
Delivered to:
Borelli Investment Company
Attention: Jing Zhao, Accounting
2051 Junction Avenue, Suite 100
San Jose, CA 95131

2. Premises Address: At the Premises

3. Address of Tenant: 2665 North First St, SUITE 300, San Jose, CA 95134

2665 North First St., SUITE 200, San Jose, CA 95134

4. Tenant's Trade Name: **Eargo, Inc.**

5. Tenant's Contact: Christy LaPierre

6. Premises Square Footage: Approximately **25,417** rentable square feet (Suite 200) and **3,736** rentable square feet (Suite 300) and Approximately 1,000 rentable square feet (Suite 112)

Building Square Footage: Approximately 130,723 rentable square feet

7. Commencement Date: **January 1, 2022**.

8. Term: **NINETY (90) MONTHS** with two (2) extension options of sixty (60) months each subject to Section 3.8 of this Lease.

9. Monthly Rent: Subject to Section 4.1 hereof; commencing on Commencement Date**,** the Monthly Rent payable by Tenant under the Lease during the Term shall be as follows:

SUITE 112:

Months	Monthly Rent (Per Square Foot)
00-90	$ 0.00

SUITE 200:

Months	Monthly Rent (Per Square Foot)
00 - 02	$ 0.00
03 - 14	$ 3.40
15 - 16	$ 0.00
17 - 28	$ 3.51
29 - 30	$ 0.00
31 – 42	$ 3.62
43 – 54	$ 3.73
55 – 66	$ 3.85
67 – 78	$ 3.97
79 - 90	$ 4.09

SUITE 300:

Months	Monthly Rent (Per Square Foot)
00 - 02	$ 0.00
03 - 14	$ 3.55
15 - 16	$ 0.00
17 - 28	$ 3.66
29 - 30	$ 0.00
31 – 42	$ 3.77
43 – 54	$ 3.88
55 – 66	$ 4.00
67 – 78	$ 4.12
79 - 90	$ 4.24

10. Security Deposit: $123,048.00 (One full month of Monthly Rent based on the Rent for last month of the Term).

11. Permitted Uses: General office purposes consistent with a first-class office building, research and development labs, and manufacturing, all in accordance with Applicable Laws and Restrictions (as hereafter defined) and pursuant to approvals to be obtained by Tenant from all relevant City, County and other required governmental agencies and authorities.

12. Broker: CBRE, Inc. (Donald Lonsinger, Tom Taylor, David Fukuda, and Matthew Taylor) is representing Landlord

JLL (Conor Flannery and Joe Long) is representing Tenant

13. Landlord's Architect: As designated by Landlord from time to time

14. Guarantor: N/A

15. Vehicle Parking Spaces: The Building has 403 parking stalls, which shall be apportioned on a prorata basis. All parking will be first come first serve and at no additional charge for the Term. Tenant's prorata number of parking spaces is **SEVENTY EIGHT** (**78**) unreserved, unassigned vehicle parking spaces (**"Unreserved Spaces"**), which shall be provided subject to Section 10.7 of this Lease.

16. Tenant's Share: 22.58**%**

17. Project Costs Expense Base: Project Costs for the **2022** calendar year

18. Tax Expense Base: Real Property Taxes for the **2022** calendar year

19. Expansion Rights. Tenant shall have the First Right of Offer on any available space in the Building that is listed on the market subject to Section 22.4 of this Lease. Tenant shall have a Right of First Refusal on Suite 202 subject to Section 22.5 of this Lease.

Exhibits: Exhibits A (Diagram of Premises), B (Commencement Date Memorandum), C (Rules and Regulations), and D (Work Letter).

ARTICLE II

DEFINITIONS

1. Certain Definitions. The capitalized terms set forth below, unless the context clearly requires otherwise, shall have the following meanings in this Lease.

"Additional Rent" means any and all sums (whether or not specifically called "Additional Rent" in this Lease), other than Monthly Rent, which Tenant is or becomes obligated to pay to Landlord under this Lease. See also Rent.

"Alterations" means any alterations, decorations, modifications, additions or improvements made in, on, about, under or contiguous to the Premises (or relating to Tenant's use thereof) by or for the benefit of Tenant (other than the Tenant Improvements), including, but not limited to, telecommunications and data cabling and wiring, lighting, HVAC and electrical fixtures, pipes and conduits, transfer, storage and disposal facilities, partitions, drapery, wall coverings, shelves, cabinetwork and carpeting.

"Applicable Laws" is defined in Section 5.2.

"Applicable Rate" means the lesser of ten percent (10%) per annum or four percent (4%) in excess of the discount rate of the Federal Reserve Bank of San Francisco in effect on the twenty-fifth (25th) day of the calendar month immediately prior to the event giving rise to the Applicable Rate imposition; provided, however, the Applicable Rate shall in no event exceed the maximum interest rate permitted to be charged by Applicable Laws.

"Broker" means, collectively, the person(s) or entity(ies) identified in Item 12 of the Basic Lease Provisions.

"Building" means that certain building within which the Premises are located.

"Business Day" is a day which is not a Saturday, a Sunday, or a state or federal holiday in the state where the Building is located.

"Casualty" is defined in Section 12.1.

"CC&R's" means any declaration of covenants, conditions and restrictions (or similar instrument), if any, applicable to all or any part of the Property and recorded in the Official Records of the County, as the same may be amended from time to time.

"City" means the city in which the Premises are located.

"Commencement Date" means the commencement date of the Term, described in Section 3.2.

"Common Area" is defined in Section 3.1.

"County" means the county in which the Premises are located.

"Event of Default" means the Tenant defaults described in Section 15.1.

"Excess Project Costs" is defined in Section 7.1.

"Excess Real Property Taxes" is defined in Section 7.1.

"Guarantor" means the person(s) or entity identified in Item 14 of the Basic Lease Provisions, if any.

"HVAC" means the heating, ventilating and air conditioning system serving the Building.

"Hazardous Materials" is defined in Article VI.

"Landlord's Agents" means Landlord's agents, representatives, property managers (whether as agents or independent contractors), consultants, contractors, investment managers, partners, managers, members, subsidiaries, affiliates, directors, officers and employees.

"**Landlord's Architect**" means the architect or architectural firm from time to time designated by Landlord to perform the function of Landlord's Architect set forth in this Lease.

"**Lease**" means this instrument together with all exhibits, amendments, addenda and riders attached hereto and made a part hereof.

"**Monthly Rent**" means the monthly rental which Tenant is to pay to Landlord pursuant to Section 4.1, as the same may be adjusted from time to time as set forth in this Lease. See also Rent.

"Mortgage" means any mortgage, deed of trust, or similar lien now or hereafter affecting the Property or any portion thereof, and any renewal, modification, consolidation, replacement and/or extension thereof.

"Mortgagee" means any mortgagee, beneficiary or lender under any Mortgage now or hereafter affecting the Property or any portion thereof.

"Notice" means each and every notice, communication, request, demand, reply or advice, or duplicate thereof, in this Lease provided or permitted to be given, made or accepted by either party to the other party, which shall be in writing and given in accordance with the provisions of Section 21.6.

"Operating Expenses" means, collectively, Project Costs and Real Property Taxes.

"Premises" means the premises shown in Exhibit A, and all areas appurtenant thereto, if any, for the exclusive use of Tenant, as shown in Exhibit A. The Premises are located within and constitute a portion of the Building at the address set forth in Item 2 of the Basic Lease Provisions.

"Premises Square Footage" means (a) the entire area included within the Premises, being the area bounded by the inside surface of any exterior glass walls (or the inside surface of the permanent exterior wall where there is no glass) of the Building bounding the Premises, the inside surface of the exterior of all walls separating the Premises from any public corridors or such other public areas on such floor, and the centerline of all walls separating the Premises from other areas leased or to be leased to other tenants on such floor; and (b) an amount equal to Tenant's Share of the lobby areas, corridors, restrooms, mechanical rooms, janitorial rooms, electrical rooms and telephone closets in the Building. The Premises Square Footage as of the execution of this Lease is set forth in Item 6 of the Basic Lease Provisions.

"Property" is defined in Section 3.1.

"Project Costs" is defined in Section 7.3.

"Project Costs Expense Base" means the allowance for Project Costs that Landlord will credit to Tenant's Share of Project Costs under Article VII, which allowance amount is set forth under Item 17 of the Basic Lease Provisions.

"Real Property Taxes" is defined in Section 7.4.

"Rent" means Monthly Rent and Additional Rent, collectively.

"Restrictions" means, collectively, the CC&Rs and any other covenants, conditions or restrictions affecting the Premises or any portion thereof, as the same may be amended from time to lime.

"Rules and Regulations" means, collectively, the rules and regulations attached hereto as Exhibit C and any modifications thereto promulgated by Landlord or Landlord's Agents from time to time, and such rules and regulations promulgated by the Restrictions.

"Security Deposit" means the amount set forth in Item 10 of the Basic Lease Provisions, which shall be paid to Landlord by Tenant pursuant to Section 4.6.

"Substantial Completion" and **"Substantially Completed"** mean, with respect to repair of the Premises following a Casualty or any other repairs or works of construction to be performed by Landlord, that such work or repairs have been fully completed except for minor details of construction, mechanical adjustments or decoration which do not materially interfere with Tenant's use and enjoyment of the Premises (items normally referred to as "punch list" items).

"Tax Expense Base" means the allowance for Real Property Taxes that Landlord will credit to Tenant's Share of Real Property Taxes under Article VII, which allowance amount is set forth under Item 18 of the Basic Lease Provisions.

"Tenant Delays" means any and all delays due to the fault of Tenant, including, without limitation, Tenant's failure to deliver to Landlord, concurrently with Tenant's execution of this Lease, executed copies of policies of insurance or certificates thereof as required under Section 11.8 and the Security Deposit and Monthly Rent for the first month such Monthly Rent is due hereunder. "Tenant Delays" shall not include any delay caused by Landlord's failure to promptly give approvals or consents, or take any other action with respect to Tenant's Improvements, as set forth in the Work Letter, or any Unavoidable Delay.

"Tenant Improvements" means those certain improvements to be constructed on the Premises as provided in the Work Letter.

"Tenant's Agents" means Tenant's agents, representatives, consultants, contractors, affiliates, subsidiaries, officers, directors, employees, subtenants, guests, visitors and invitees.

"Tenant's Personal Property" means Tenant's removable trade fixtures, furniture, equipment and other personal property located in or on the Premises.

"Tenant's Share" is defined in Section 7.2.

"Term" means the term of this Lease, as provided in Section 3.2.

"Unavoidable Delay" means any delays which are beyond a party's reasonable control, including, but not limited to, delays due to inclement weather, strikes, acts of God, inability to obtain labor or materials, inability to secure governmental approvals or permits, governmental restrictions, civil commotion, fire, earthquake, explosion, flood, hurricane, the elements, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, lockouts or any other cause whether similar or dissimilar to the foregoing which is beyond a party's reasonable control; provided however, that in no event shall any of the foregoing ever apply with respect to the payment of any monetary obligation.

"Work Letter" means the work letter between Landlord and Tenant regarding the construction of the Tenant Improvements in the form of Exhibit D attached hereto.

2. Other Definitions. Terms defined elsewhere in this Lease, unless the context clearly requires otherwise, shall have the meaning as there given.

ARTICLE III

PREMISES AND TERM

1. Lease of Premises. Subject to and upon the terms and conditions set forth herein, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord. The Premises are part of that certain office building commonly known as **2665 North First Street, San Jose, California, 95134** (**"Building"**). The Building is located on a parcel of land owned by Landlord (which parcel and all improvements located thereon from time to time, including, without limitation, the Building, driveways, landscaping and hardscaping, are referred to herein as the **"Property"**).

Tenant shall have the non-exclusive right to use the Common Area in common with other tenants in the Building. The term **"Common Area"** as used in this Lease shall mean those interior common areas of the Building (including, without limitation, common entrances, lobbies, corridors, stairways and stairwells, public restrooms and elevators) and exterior common areas of the Property (including, without limitation, the surface parking areas, vehicle lanes, driveways, sidewalks, walkways and similar areas) that are provided and designated by Landlord from time to time for the general non-exclusive use of Landlord, tenants of the Building (and other authorized users) and their respective agents, employees, suppliers, shippers, customers and invitees.

2. Term and Commencement. Unless sooner terminated as provided herein, the Term of this Lease shall be for that period of years and/or months set forth in Item 8 of the Basic Lease Provisions, and shall commence on the date set forth in Item 7 of the Basic Lease Provisions (the **"Commencement Date"**). When the actual Commencement Date has occurred, Tenant shall execute a Commencement Date Memorandum in the form shown in Exhibit B (the **"Commencement Date Memorandum"**) as provided by Landlord within five (5) business days after Landlord's request therefore. Tenant's failure to execute the Commencement Date Memorandum within said five (5) business day period shall, at Landlord's option, constitute Tenant's acknowledgment of the truth of the facts contained in the Commencement Date Memorandum delivered by Landlord to Tenant.

3. Early Entry. If Tenant is in compliance with all of the terms of this Lease, including but not limited to insurance provisions, Tenant, commencing upon the date of this Lease, shall have the right to enter upon the Premises for the purpose of commencing its Tenant Improvements and installing its FF&E ("**Early Entry**"). Subject to the penultimate sentence in Section 3.6, Tenant's Early Entry shall constitute Tenant's acceptance of the Premises in AS-IS condition for all purposes. During any Early Entry, Tenant shall be bound by all terms of the Lease, except for the payment of Monthly Rent and Additional Rent.

4. Delay in Possession. If Landlord cannot deliver possession of the Premises to Tenant on or before the Commencement Date or any other date for any reason, Landlord shall not be subject to any liability therefor, and such failure shall not affect the validity of this Lease or the obligations of Tenant hereunder, but in such case, Tenant shall not be obligated to pay Monthly Rent or Additional Rent other than as provided in Section 3.5 until possession of the Premises has been delivered to Tenant (which date shall then be deemed the Commencement Date for all purposes under this Lease). Tenant understands that, notwithstanding anything to the contrary contained herein, Landlord shall have no obligation to deliver possession of the Premises to Tenant for so long as Tenant fails to deliver to Landlord executed copies of policies of insurance or certificates thereof as required under Section 11.8. Notwithstanding the foregoing, if Landlord has not delivered the Premises to Tenant on or before February 1, 2022, Tenant shall have the right to terminate this Lease by written notice to Landlord, in which event this Lease shall terminate, Landlord and Tenant shall have no further obligations to one another, and Landlord shall promptly return to Tenant all monies previously paid by Tenant to Landlord hereunder.

5. Tenant Delays. The Commencement Date shall not be delayed or postponed due to Tenant Delays, and the Term, Tenant's obligations to pay Rent and all of Tenant's other obligations under this Lease shall commence upon the date which would have been the Commencement Date but for Tenant Delays.

6. "AS-IS" Condition of Premises. Subject to the penultimate sentence in this Section, Tenant shall accept the Premises from the Landlord in its "AS-IS" condition and Tenant acknowledges and agrees that Landlord has no obligation to improve alter or remodel the in any manner whatsoever. The taking of possession or use of the Premises by Tenant for any purpose shall conclusively establish that Tenant has inspected the Premises and accepts them as being in good and sanitary order, condition and repair; provided, however, that Tenant shall have thirty (30) days following the Commencement Date to notify Landlord of any deficiencies in the structure or operating systems of the Building and Premises, and Landlord shall promptly cure any such deficiencies at its sole costs and expense. Landlord hereby informs Tenant that the Building and the Project have not undergone an inspection by a person certified pursuant to Section 4459.2 of the California Government Code (a Certified Access Specialist).

7. No Representations. Tenant acknowledges that neither Landlord nor any of Landlord's Agents has made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business, including, but not limited to, any representations or warranties regarding zoning or other land use matters, or for any other purpose, and that neither Landlord nor any of Landlord's Agents has agreed to undertake any alterations or additions or construct any tenant improvements to the Premises except as expressly provided in this Lease.

8. Renewal Options. Tenant shall have two successive options to extend the Term of this Lease for an additional five years (60 months) each upon the following terms:

   (a) Each such option may be exercised by Tenant only by written notice of exercise to Landlord no earlier than nine (9) months and no later than six (6) months prior to the expiration of the then-effective Term.

   (b) Upon such exercise, the parties shall be obligated under all the terms and conditions of this Lease through the extended Term, except that Monthly Rent during the extension of the Term shall be equal to the fair market rent for the Premises.

   (c) Within 20 days of Tenant's notice of exercise, Landlord shall propose a fair market Monthly Rent for the extended Term. The parties shall negotiate in good faith, but if they are unable to agree upon such Monthly Rent by 30 days after the delivery of Landlord's proposal, then either party may elect to cause such Monthly Rent to be determined by reference to the appraised fair market rent. Such election shall be made by such party by notice to the other party, including in such notice the designation of an appraiser. The other party may accept such appraiser or designate another appraiser within 10 days of such notice. If it does not designate another appraiser in such period, it shall be deemed to have accepted the first appraiser. If a second appraiser is designated, the two appraisers shall promptly appoint a third appraiser.

   (d) Each appraiser shall determine the fair market rent for the Premises for the extended Term by reference to all factors deemed appropriate in his or her professional opinion, and notify the parties within 30 days of the date of appointment of the last appraiser of such fair market rent. The Monthly Rent for the extended Term shall be calculated by reference to the fair market monthly rent determined by the single appraiser or, if there are three appraisers, the mean average of the two closest fair market monthly rents. There shall be no pre-set floor or ceiling on the appraisers' determination of Monthly Rent.

   (e) All appraisers under this appraisal provision shall be independent certified professional appraisers with at least five years' experience appraising office properties/business park complexes in the North San Jose area. If there are three appraisers, each party shall pay for the cost of its designated appraiser and 50% of the cost of the third appraiser. If there is only one appraiser, each party shall pay 50% of the cost of such appraiser.

(f) Tenant may not exercise its option to renew the Term if at the time of exercise an Event of Default has occurred and is continuing under this Lease. If an Event of Default has occurred and is continuing at the commencement of the extended Term, Landlord may, in addition to its other remedies under this Lease, elect to terminate such extension by notice in writing to Tenant, whereupon the Term shall expire without any such extension.

(g) The renewal options are personal to Tenant and are not transferable via assignment of the Lease or otherwise, except to a Permitted Transferee.

9. Intentionally Omitted.

ARTICLE IV

RENT AND ADJUSTMENTS

1. Monthly Rent. From and after the Commencement Date, Tenant shall pay to Landlord, for each calendar month of the Term, the Monthly Rent set forth in Item 9 of the Basic Lease Provisions. Monthly Rent shall be due and payable to Landlord in lawful money of the United States, in advance, on the first (1st) day of each calendar month of the Term, without abatement, deduction, claim or offset (except as expressly set forth in this Lease), and without prior Notice, invoice or demand, at Landlord's address for payment of Rent set forth in Item 1 of the Basic Lease Provisions or at such place as Landlord may from time to time designate. Tenant's payment of Monthly Rent for the first (1st) month of the Term for which Monthly Rent is payable shall be delivered to Landlord concurrently with Tenant's execution of this Lease.

2. Additional Rent. All Additional Rent shall be due and payable to Landlord in lawful money of the United States, at Landlord's address for payment of Rent set forth in Item 1 of the Basic Lease Provisions or at such other place as Landlord may from time to time designate, without abatement, deduction, claim or offset (except as expressly set forth in this Lease), within ten (10 business days of receipt of Landlord's invoice or statement for same, or, if this Lease provides another time for the payment of certain items of Additional Rent, then at such other time. Notwithstanding the foregoing, Additional Rent for Tenant's Share of Operating Expenses shall be payable on the first (1st) day of each calendar month of the Term in which such payments are due, without abatement, deduction, claim or offset.

3. Prorations. If the Commencement Date is not the first (1st) day of a month, or if the expiration of the Term of this Lease is not the last day of a month, a prorated installment of Monthly Rent based on a thirty (30) day month shall be paid for the fractional month during which the Term commences or expires, as applicable.

4. Application of Payments. Landlord shall have the right to apply payments received from Tenant under this Lease to any sums past or currently due under this Lease, whether Monthly Rent, Additional Rent or otherwise, in such order and in such amounts as Landlord, in its sole discretion, may elect, regardless of any designation of such payments by Tenant to the contrary.

5. Late Payment Charges. Tenant acknowledges that late payment by Tenant to Landlord of Rent under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult or impracticable to determine. Such costs include, but are not limited to, processing and accounting charges, late charges that may be imposed on Landlord by the terms of any Mortgage, and late charges and penalties that may be imposed due to late payment of Real Property Taxes. Therefore, if any installment of Monthly Rent or any payment of Additional Rent due from Tenant is not received by Landlord in good funds by the second (2nd) calendar day from the applicable due date, Tenant shall pay to Landlord an additional sum equal to three percent (3%) of the amount overdue as a late charge for every month or portion thereof that such amount remains unpaid. The parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant. Acceptance of any late Rent and late charge therefor shall not prevent Landlord from exercising any of the other rights and remedies available to Landlord for any other Event of Default under this Lease. In no event shall this provision for a late charge be deemed to grant Tenant a grace period or extension of time within which to pay Rent or prevent Landlord from exercising any of the other rights and remedies available to Landlord for any Event of Default under this Lease. Notwithstanding the foregoing, should any payment of Rent by personal check be rejected for insufficient funds, Landlord shall have the right, upon Notice to Tenant, to require that all future payments by Tenant under this Lease be by cashier's check acceptable to Landlord. Notice is hereby given to Tenant that the acceptance of partial· Rent by Landlord shall not constitute a waiver by Landlord of any rights, including, without limitation, the right of Landlord to recover possession of the Premises and/or sue for the remaining balance owed. The foregoing Notice shall be deemed to constitute Notice to Tenant as required under California Code of Civil Procedure Section 1161.1(c).

6. Security Deposit. Concurrently with its execution of this Lease, Tenant shall deposit with Landlord the sum set forth in Item 10 of the Basic Lease Provisions ("Security Deposit") as security for the full and faithful performance by Tenant of its obligations under this Lease. The Security Deposit is not an advance payment or prepayment of Rent or a measure or limit of Landlord's damages upon a default or an Event of Default. Any such application of the Security Deposit is not and shall never be dependent upon an Event of Default. Without waiver of any rights Landlord may have under this Lease or at law or in equity, Landlord may from time to time apply all or a portion of the Security Deposit as is necessary for the following purposes: (i) to remedy any Event of Default by Tenant in the payment of Rent, (ii) to repair damage to the Premises caused by Tenant, (iii) to clean the Premises upon the expiration or sooner termination of this Lease, and/or (iv) to the payment of any other amount which Landlord may spend or become obligated to spend by reason of an Event of Default and/or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of an Event of Default, to the fullest extent permitted by law (including, without limitation, on account of damages owing to Landlord under Section 15.3 below), and, in this regard, Tenant hereby expressly waives any restriction on the uses to which the Security Deposit may be put contained in Section 1950.7 of the California Civil Code and any present or future laws otherwise governing the uses to which the Security Deposit may be put. If any portion of the Security Deposit is so applied, Tenant shall, within ten (10) business days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. The unused portion of the Security Deposit, if any, shall be returned to Tenant within thirty (30) days of the expiration of this Lease or any sooner termination of this Lease, so long as Tenant has vacated the Premises in the manner required by this Lease and paid all sums required to be paid under this Lease, provided however that Landlord may retain the Security Deposit until such time as any amounts of Additional Rent due from Tenant have been determined and paid in full (and Tenant hereby expressly waives the provisions of Section 1950.7 of the California Civil Code and any present or future laws otherwise governing the return of the Security Deposit to Tenant to the extent of reasonably anticipated Additional Rent retained by Landlord pursuant to this sentence). If this Lease is terminated following an Event of Default, any unapplied portion of the Security Deposit may be held by Landlord and applied against future rent damages (and, the unapplied portion of the Security Deposit, if any, remaining following such application shall be returned to Tenant within fifteen (15) days after final determination of all damages due Landlord, and, in this respect, the provisions of California Civil Code Section 1950.7 are hereby expressly waived by Tenant).

ARTICLE V

USE

1. Tenant's Use. Tenant shall use the Premises solely for the purposes set forth in Item 11 of the Basic Lease Provisions and shall use the Premises for no other purpose. Tenant's use of the Premises shall be subject to all of the terms and conditions of this Lease, including, but not limited to, all the provisions of this Article V. Tenant, at Tenant's sole cost and expense, shall procure, maintain and make available for Landlord's inspection throughout the Term, all governmental approvals, licenses and permits required for the proper and lawful conduct of Tenant's permitted use of the Premises. At Landlord's request, Tenant shall deliver copies of all such approvals, licenses and permits to Landlord.

5.2 Compliance with Applicable Laws. Throughout the Term, Tenant, at Tenant's sole cost and expense, shall comply with, and shall not use the Premises, Building Property or Common Area, or suffer or permit anything to be done in or about the same which will in any way conflict with, (i) any and all present and future laws, statutes, zoning restrictions, ordinances, orders, regulations, directions, rules and requirements of all governmental or private authorities having jurisdiction over all or any part of the Property or Premises (including, but not limited to, state, municipal, county and federal governments and their departments, bureaus, boards and officials) pertaining to Tenant's use or occupancy of the Premises, (ii) any and all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as defined in Article VI), waste disposal, air emissions and other environmental or health and safety matters, zoning, land use and utility availability, which impose any duty upon Tenant directly or with respect to the use or occupation of the Property or any portion thereof, (iii) the requirements of the Board of Fire Underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises, Building or Property or any portion thereof, (iv) any covenants, conditions, easements or restrictions, including, but not limited to, the Restrictions, now or hereafter affecting or encumbering the Building or the Property, or any portion thereof, regardless of when they become effective, and (v) the Rules and Regulations (collectively, (i) through (v) above are hereinafter referred to as **"Applicable Laws"**). Tenant shall not commit any waste of the Premises, Building or Property, or any public or private nuisance or any other act or thing which might or would disturb the quiet enjoyment of any other tenant of the Building or any occupant of nearby property. Tenant shall not place or permit to be placed any loads upon the floors, walls or ceilings in excess of the maximum designed load specified by Landlord or which might damage the Premises, Building or Property, or place or permit to be placed any harmful liquids in the drainage systems, and Tenant shall not dump or store, or permit to be placed or stored, any inventory, waste materials, refuse or other materials or allow any such materials to remain outside the Building proper, except in designated enclosed trash areas. Tenant shall not conduct or permit any auctions, sheriff's sales or other like activities at the Property or any portion thereof. For the avoidance of doubt it is specifically agreed that Tenant shall have no obligation to comply with any laws of general applicability to the Property or relating to any structural component of the Building, unless such compliance is required because of Tenant's particular use of the Premises.

1. Restrictions. Tenant agrees that this Lease is subject and subordinate to the Restrictions, as the same may now or hereafter exist, and that it will execute and deliver to Landlord within ten (10) business days of Landlord's request therefor, any further documentation or instruments which Landlord deems necessary or desirable to evidence or effect such subordination. Without limiting the provisions of Section 5.2, Tenant shall throughout the Term timely comply with all of the terms, provisions, conditions and restrictions of the Restrictions which pertain to, restrict or affect the Premises or Tenant's use thereof, or Tenant's use of any other area of the Property or Building permitted hereunder, including the payment by Tenant of any periodic or special dues or assessments charged against the Premises or Tenant which may be allocated to the Premises or Tenant in accordance with the provisions of the Restrictions. Tenant shall hold Landlord, Landlord's Agents and the Premises harmless and shall indemnify, protect and defend Landlord and Landlord's Agents from and against any loss, expense, damage, attorneys' fees and costs or liability arising out of or in connection with the failure of Tenant to so perform or comply with the Restrictions. Tenant agrees that it will subordinate this Lease to any other covenants, conditions and restrictions and any reciprocal easement agreements or any similar agreements which Landlord may hereafter record against the Premises and to any amendment or modification to any of the existing Restrictions, provided that such subordination does not unreasonably interfere with Tenant's use and enjoyment of the Premises or impose any material limitations or costs on Tenant.

2. Landlord's Right of Entry. Landlord and Landlord's Agents shall have the right to enter the Premises at all reasonable times upon twenty four (24) hours' Notice to Tenant (except for emergencies or to provide janitorial services, in which case no Notice shall be required) to inspect the Premises, to take samples and conduct environmental investigations, to post notices of non-responsibility and similar notices and signs indicating the availability of the Premises for sale, to show the Premises to interested parties such as prospective lenders and purchasers, to perform Landlord's obligations under this Lease, to perform Tenant's obligations as permitted herein when Tenant has failed to do so to exercise Landlord's rights under this Lease and, at any reasonable time after one hundred eighty (180) days prior to the expiration of the Term, to place upon the Premises reasonable signs indicating the availability of the Premises for lease and to show the Premises to prospective tenants, all without being deemed to have caused an eviction of Tenant and without any liability to Tenant or abatement of Rent. The above rights are subject to reasonable security regulations of Tenant, and in exercising its rights set forth herein, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's business. Landlord shall at all times have the right to retain a key which unlocks all of the doors in the Premises, excluding Tenant's vaults and safes, and Landlord and Landlord's Agents shall have the right to use any and all means which Landlord may deem proper to open the doors in an emergency to obtain entry to the Premises, and any entry to the Premises so obtained by Landlord or Landlord's Agents shall not under any circumstances be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises.

5.5 Energy Disclosure Regulations. Tenant acknowledges that Landlord may, from time to time, be required to disclose certain information concerning the Building's energy use pursuant to California Public Resources Code Section 25402.10 and the regulations promulgated pursuant thereto (collectively, together with any future law or regulation regarding disclosure of energy efficiency data with respect to the Building, **"Energy Disclosure Regulations"**). Tenant shall cooperate with Landlord with respect to any disclosure and/or reporting requirements pursuant to any Energy Disclosure Regulations. Without limiting the generality of the foregoing, Tenant shall, within ten (10) business days following request from Landlord, disclose to Landlord all information requested by Landlord in connection with the Energy Disclosure Regulations, including, but not limited to, the amount of power or other utilities consumed within the Premises for which the meters for such utilities are in Tenant's name, the number of employees working within the Premises, the operating hours for Tenant's business in the Premises, and the type and number of equipment operated by Tenant in the Premises. Tenant acknowledges that this information shall be provided on a non-confidential basis and may be provided by Landlord to the applicable utility providers, the California Energy Commission (and other governmental entities having jurisdiction with respect to the Energy Disclosure Regulations), and any third parties to whom Landlord is required to make the disclosures pursuant to the Energy Disclosure Regulations. Tenant agrees that neither Landlord nor any Mortgagee shall be liable for any loss, cost, damage, expense or liability related to Landlord's disclosure of such information provided by Tenant. In addition, Tenant represents to Landlord that any and all information provided by Tenant to Landlord pursuant to this Section 5.5 shall be, to the best of Tenant's knowledge, true and correct in all material respects.

ARTICLE VI

HAZARDOUS MATERIALS

Tenant, at its sole cost and expense, shall comply and shall cause Tenant's Agents to comply with all laws, ordinances, regulations, and standards regulating or controlling hazardous wastes or hazardous substances, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq., the Hazardous Material Transportation Act, 49 U.S.C. 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, Health and Safety Code Section 25300, et seq.; the Underground Storage of Hazardous Substance Act, Health and Safety Section 25280, et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code Section 25249.5, et seq.); and the Hazardous Waste Control Law, Health and Safety Code Section 25100, et seq. (the **"Environmental Laws"**). Tenant hereby indemnifies and at all times shall indemnify and hold harmless the Landlord, the Landlord's Agents and any successors to the Landlord's interest in the chain of title to the Property, their respective Landlord's Agents, and agents from and against any and all claims, suits, demands, response costs, contribution costs, liabilities, losses, or damages, directly or indirectly arising out of the existence, use, generation, manufacture, storage, transportation, release, threatened release, or disposal of Hazardous Materials (defined below) in, on, or under the Property or in the groundwater under the Property and the migration or transportation of Hazardous Materials to or from the Property or the groundwater underlying the Property caused by Tenant or Tenant's Agents. This indemnity extends lo the costs incurred by Landlord or its successors to reasonably repair, clean up, dispose of, or remove such Hazardous Materials in order to comply with the Environmental Laws, provided Landlord gives Tenant not less than thirty (30) days advance written Notice of its intention to incur such costs. Tenant's obligations pursuant to the foregoing indemnification and hold harmless agreement shall survive the expiration or sooner termination of this Lease. Tenant's Agents shall not use, generate, manufacture, store, transport, release, threaten release, or dispose of Hazardous Materials in, on, or about the Property unless Tenant shall have received Landlord's prior written consent therefor, which Landlord may withhold or revoke at any time in its reasonable discretion, and shall not cause or permit the release or disposal of Hazardous Materials from the Property except in compliance with applicable Environmental Laws. Tenant shall not permit any person, including, without limitation, Tenant's Agents to use, generate, manufacture, store, transport, release, threaten release, or dispose of Hazardous Materials in, on, or about the Property or transport Hazardous Materials from the Property unless Tenant shall have received Landlord's prior written consent therefor, which Landlord may withhold or revoke at any time in its reasonable discretion and shall not cause or permit the release or disposal of Hazardous Materials. Tenant shall promptly deliver written Notice to Landlord if it obtains knowledge sufficient to infer that Hazardous Materials are located on the Property that are not in compliance with applicable Environmental Laws or if any third party, including, without limitation, any governmental agency, claims a significant disposal of Hazardous Materials occurred on the Property or is being or has been released from the Property, or any such party gives Notice of its intention to declare the Property to be Border Zone Property (as defined in Section 25117.4 of the California Health and Safety Code). If Landlord has reasonable cause to believe that Tenant is in breach of its obligations under this paragraph, then, upon reasonable written request of Landlord, Tenant, through its professional engineers, shall thoroughly investigate such suspected Hazardous Materials contamination of the Property and, if such Hazardous Materials contamination exists and was caused by Tenant or any Tenant Agent, Tenant, using duly licensed and insured contractors, shall promptly commence and diligently complete the removal, repair, clean-up, and detoxification of any Hazardous Materials from the Property as may be required by applicable Environmental Laws**.**

Notwithstanding anything to the contrary in this Lease, nothing herein shall prevent Tenant from using materials other than Hazardous Materials on the Premises as would be used in the ordinary course of the Tenant's business as contemplated by this Lease. Tenant warrants and represents to Landlord that Tenant does not in the course of the Tenant's current business use Hazardous Materials. If, during the Term, Tenant contemplates utilizing Hazardous Materials (or subleases/assigns this Lease to a subtenant or assignee who utilizes Hazardous Materials), Tenant shall obtain prior written approval from Landlord. Landlord, at its option, may cause an engineer selected by Landlord, to review (a) the Tenant's operations including materials used, generated, stored, disposed, and manufactured in the Tenant's business, and (b) the Tenant's compliance with terms of this Article VI. Tenant shall provide the engineer with such information reasonably requested by the engineer to complete the review. The first such review may occur prior to or shortly following the Commencement Date. Thereafter, such review shall not occur more frequently than once each year unless cause exists for some other review schedule. The fees and costs of the engineer shall be paid by Landlord, unless such review discloses violations of this paragraph by Tenant, in which case such fees and costs shall be paid promptly by Tenant to Landlord upon receipt of written Notice of such fees and costs.

Notwithstanding anything to the contrary in this Lease, Tenant shall not be liable for the acts of persons other than Tenant and Tenant's Agents with respect to Hazardous Materials, nor shall Tenant be liable for contamination that existed at the Premises, the Building or the Property prior to the Commencement Date or for contamination emanating from neighboring land. Landlord shall defend, indemnify, and hold Tenant harmless from any and all costs and penalties arising in connection with Hazardous Materials that exist in, on or about the Premises, the Building and the Property on the Commencement Date or that are released by Landlord or any Landlord Agent. Landlord's obligations under this paragraph shall survive the expiration or earlier termination of this Lease.

"Hazardous Materials" means any hazardous waste or hazardous substance as defined in any federal, state, county, municipal, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation, the Environmental Laws. **"Hazardous Materials"** shall also include asbestos or asbestos-containing materials, radon gas, petroleum or petroleum fractions, urea formaldehyde foam insulation, transformers containing levels of polychlorinated biphenyls greater than 50 parts per million, and chemicals known to cause cancer or reproductive toxicity, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation**.**

ARTICLE VII

OPERATING EXPENSES; TAXES; UTILITIES

1. Tenant to Bear Tenant's Share of Operating Expenses. Tenant shall pay to Landlord, as an item of Additional Rent, Tenant's Share (as defined in Section 7.2) of (i) Project Costs in excess of the Project Costs Expense Base ("**Excess Project Costs**"), and (ii) Real Property Taxes in excess of the Tax Expense Base (**"Excess Real Property Taxes"**). Prior to the Commencement Date and thereafter prior to the commencement of each of Landlord's fiscal years during the Term, Landlord shall give Tenant a written estimate of Tenant's Share of Excess Project Costs and Excess Real Property Taxes for the ensuing fiscal year or partial fiscal year, as the case may be. Commencing on January 1, 2023 and continuing thereafter throughout the Term, Tenant shall pay, as an item of Additional Rent, such estimated amount in equal monthly installments, in advance, on or before the first (1st) day of each calendar month. If Landlord has not furnished its written estimate by the time set forth above, Tenant shall pay monthly installments of Excess Project Costs and Excess Real Property Taxes at the rate established for the prior fiscal year, if any; provided that when the new estimate is delivered to Tenant, Tenant shall at the next monthly payment date pay Landlord any accrued deficiency based on the new estimate, or Landlord shall credit any accrued overpayment based on such estimate toward Tenant's next installment payment hereunder. Within ninety (90) days after the end of each fiscal year, Landlord shall furnish Tenant a statement (**"Annual Statement"**) showing in reasonable detail Tenant's Share of the actual Excess Project Costs and Excess Real Property Taxes incurred for the period in question; provided, however, with respect to the fiscal year during which this Lease expires or sooner terminates, rather than wait until after the determination of actual Operating Expenses for such fiscal year to furnish Tenant with an Annual Statement for said fiscal year, Landlord may, at its election, provide Tenant with an Annual Statement for such fiscal year prior to the end of such fiscal year based on estimated (not actual) Operating Expenses for such fiscal year, as determined by Landlord, which Annual Statement shall be subject to further adjustment or reconciliation once actual Operating Expenses are determined for such fiscal year. If Tenant's estimated payments are less than Tenant's Share of actual Operating Excess Project Costs and Excess Real Property Taxes as shown by the applicable Annual Statement, Tenant shall pay the difference to Landlord within thirty (30) days thereafter. If Tenant shall have overpaid Landlord, Landlord shall credit such overpayment toward Tenant's next installment payment hereunder. When the Annual Statement is furnished to Tenant for the fiscal year in which this Lease expires or sooner terminates, Tenant shall, even if this Lease has expired or sooner terminated, pay to Landlord within thirty (30) days after Notice the excess of Tenant's Share of the actual Excess Project Costs and Excess Real Property Taxes set forth in such Annual Statement over the estimate of Tenant's Share of such Excess Project Costs and Excess Real Property Taxes paid by Tenant. Conversely, any overpayment shall be rebated by Landlord to Tenant within such thirty (30)-day period. If this Lease expires or sooner terminates on a day other than the last day of a fiscal year, Tenant's Share of Excess Project Costs and Excess Real Property Taxes for such partial fiscal year shall be calculated over the entire twelve-month fiscal year, but shall be prorated on the basis by which the number of days from the commencement of such fiscal year to and including the expiration or sooner termination of this Lease bears to 365. If Landlord shall determine at any time that the estimate of Tenant's Share of Excess Project Costs and Excess Real Property Taxes for the current fiscal year is or will become inadequate to meet Tenant's Share of all such Operating Expenses for any reason, Landlord may, at its election, determine the approximate amount of such inadequacy and issue a supplemental estimate as to Tenant's Share of such Operating Expenses, and Tenant shall pay any increase as reflected by such supplemental estimate. Landlord shall keep or cause to be kept separate and complete books of accounting covering all Operating Expenses and showing the method of calculating Tenant's Share of Excess Project Costs and Excess Real Property Taxes, and shall preserve for at least two (2) years after the close of each fiscal year all material documents evidencing said Operating Expenses for that fiscal year. Any delay or failure by Landlord in delivering any estimate or statement pursuant to this Section 7.1 shall not constitute a waiver of its right to require Tenant to pay Tenant's Share of Excess Project Costs and Excess Real Property Taxes pursuant hereto. If the Building is not 100% occupied during any fiscal year, as determined by Landlord, then Operating Expenses shall be computed by Landlord for such fiscal year as if the Building had been 100% occupied during such fiscal year.

2. Definition of Tenant's Share. The term **"Tenant's Share"** means that portion of an Operating Expense determined by multiplying the cost of such item by a fraction, the numerator of which is the Premises Square Footage and the denominator of which is the total square footage of the floor area of the Building or the Property, depending on the nature of the Operating Expense to be charged, as of the date on which the computation is made. A determination of Tenant's Share for various Operating Expenses for the Building is set forth in Item 16 of the Basic Lease Provisions. Tenant acknowledges that the total square footage of the Building or Property may change from time to time, and that Tenant's Share under any or all of the foregoing categories of Operating Expenses may vary accordingly, effective on the first day of the month after each such change occurs. A determination of Tenant's Share and Building square footage as of the date hereof is set forth in Items 16 and 6, respectively, of the Basic Lease Provisions**.**

3. Definition of Project Costs. The term **"Project Costs"** means all costs and expenses incurred by Landlord or Landlord's Agents in connection with the operation of the Building, including, but not limited to, the following: repair and maintenance of the roof, structural frame, foundation and exterior walls of the Building, periodic painting of the Building, periodic cleaning of the exterior windows of the Building, landscaping services, outside pest control, normal maintenance and repair of the HVAC through maintenance contracts or otherwise, sweeping, maintenance services, repairs to and replacement of asphalt paving, bumpers, striping, light bulbs, light standards, monument and directional signs and lighting systems, perimeter walls, retaining walls, sidewalks, planters, landscaping and sprinkler system in planting area, any and all assessments levied against the Building pursuant to the Restrictions, water, electrical and other utility services not supplied directly to a tenant, removal of trash, rubbish and other refuse from the Building, cleaning of and replacement of signs of the Building not reimbursed directly by a tenant, including re-lamping and repairs made as required; repair, operation and maintenance of the Common Area, including, but not limited to, removal of any obstructions not reasonably required for the Common Area uses, prohibition and removal of the sale or display of merchandise or the storing of materials and/or equipment in the Common Area, and payment of all electrical, water and other utility charges or fees for services furnished to the Common Area; obtaining and maintaining public liability, property damage and other forms of insurance which Landlord may or is required to maintain in connection with the Building (including the payment of any deductibles thereunder); costs incurred in connection with compliance of Applicable Laws, including, without limitation, any Applicable Laws or changes in Applicable Laws regarding Hazardous Materials; establishment of reasonable reserves for replacements and/or repair of Common Area improvements, equipment and supplies; employment of such personnel as Landlord may deem reasonably necessary, if any, to police the Common Area and facilities; the cost of any capital improvements (other than tenant improvements for specific tenants) made by or on behalf of Landlord to the Building or Common Area to the extent of the amortized amount thereof the useful life of such capital improvements calculated at a market cost of funds, as reasonably determined by Landlord, for each year of the applicable amortization period during the Term; depreciation of machinery and equipment used in connection with the maintenance and operation of the Common Area for which a reasonable reserve has not been established as herein provided; employment of personnel used in connection with any of the foregoing, including, but not limited to, payment or provision for unemployment insurance, worker's compensation insurance and other employee costs; the cost of bookkeeping, accounting and auditing and legal services provided in connection with any of the foregoing; the cost of any tax, insurance or other consultant utilized in connection with the Property; and any other items reasonably necessary from time to time to properly repair, replace, maintain and operate the Property or Building. Project Costs shall also include a management fee to cover Landlord's management, overhead and administrative expenses; provided, however, if Landlord elects to delegate its duties hereunder to a professional property manager, then Project Costs shall not include any management fee to Landlord but under such circumstances any amounts paid to the professional property manager shall be added to and deemed a part of Project Costs (provided, however, that in no event shall the management fee paid directly to Landlord or Landlord's property manager exceed four percent (4%) of gross rents for the Building). If Landlord elects to perform any maintenance or repair herein described in conjunction with properties other than the Property, and if a common maintenance contractor is contracted with for such purpose, the contract amount allocable to the Property, as reasonably determined by Landlord, shall be added to and deemed a part of Project Costs hereunder, subject to the limitation in the previous sentence. Project Costs shall also include any costs, expenses and other charges levied or charged against Landlord and/or the Property by under the Restrictions. Increases in Project Costs by reason of a disproportionate impact by Tenant thereon (for example, and not by way of limitation, increases in costs of trash collection because of Tenant's excessive generation of trash or increases in costs of Common Area maintenance because of Tenant's unpermitted storage of inventory or materials in the Common Area), in Landlord's reasonable judgment, may be billed by Landlord, as an item of Additional Rent, directly to Tenant. .Notwithstanding the foregoing, Operating Expenses shall not include: (i) the cost of capital improvements or other capital expenditures to the Project unless such capital costs or expenditures are made to (a) reduce the normal annual operating costs of the Project, or (b) comply with applicable laws, statutes, rules, regulations or ordinances enacted or promulgated by any governmental authority after the Commencement Date, (ii) costs incurred in the leasing of any portion of the Project, including brokerage fees, marketing costs and tenant improvement costs, (iii) depreciation and amortization, (iv) interest and principal payments on mortgages and other debt costs, (v) costs for which Landlord is reimbursed by insurance, warranty, or any tenant or other third party, (vi) costs associated with the operation of the business of the entity that constitutes Landlord (as distinguished from the costs of operation of the Building and the Property, (vii) ground rents, (viii) costs arising from the gross negligence or willful misconduct of Landlord or its agents, employees or contractors in connection with this Lease, (ix) costs to correct any construction defect in the Building or to remedy any violation of any covenant, condition, restriction, or law that exists as of the Commencement Date, (x) costs incurred to comply with laws relating to removal or remediation of Hazardous Materials from the Building or the Property and any costs of fines or penalties related thereto, in each case to the extent not brought onto the Premises, the Building or the Property by Tenant, (xi) legal fees and accountants' fees incurred in connection with disputes with tenants or associated with the enforcement of the terms of any leases with tenants, (xii) capital cost occasioned by casualties or condemnation, (xiii) any bad debt loss, rent loss or reserved for bad debt or rent loss not used in the same year; (xiv) the wages of any employee who does not devote substantially all of his or her employed time at the Property unless such wages and benefits are prorated to reflect time spent on operating and managing the Property versus time spent on unrelated matters; (xv) costs incurred due to the violation by Landlord or any other tenant of the Building or the terms of a Lease; or (xvi) costs incurred in connection with the construction of any additional buildings or structures on the Property.

4. Definition of Real Property Taxes. The term **"Real Property Taxes"** means any form of tax, assessment, charge, license, fee, rent tax, levy, penalty (if a result of Tenant's delinquency), real property or other tax Rent payable under this Lease by any authority having the direct or indirect power to tax, or by any city, county, state or federal government or any improvement district or other district or division thereof, whether such tax or any portion thereof (i) is determined by the area of the Property or any part thereof or the Rent payable under this Lease by Tenant, including, but not limited to, any gross income or excise tax levied by any of the foregoing authorities with respect to receipt of the Rent due under this Lease, (ii) is levied or assessed in lieu of, in substitution for, or in addition to, existing or additional taxes with respect to the Property or any part thereof whether or not now customary or within the contemplation of Landlord or Tenant, or (iii) is based upon any legal or equitable interest of Landlord in the Property or any part thereof. Notwithstanding the foregoing, "Real Property Taxes" shall not include (i) any excess profits tax, franchise tax, capital stock tax, estate or inheritance tax, federal or state income tax, or any other tax applicable to Landlord's net income (as opposed to rents or other income attributable to operations of the Property), (ii) any tax penalties, interest or late charges incurred as a result of Landlord's failure to make timely payment of Real Property Taxes, or (iii) assessments in excess of the amounts which would be payable if such assessment expense were paid in installments over the longest permitted term.

5. Tax on Improvements. Tenant shall, at Landlord's election, be directly responsible for and shall pay the full amount of any increase in Real Property Taxes attributable to the Tenant improvements and any other improvements of any kind whatsoever placed in, on or about the Premises for the benefit of, at the request of, or by Tenant, which payment shall be made by Tenant to Landlord within thirty (30) days following Landlord's written demand therefor from time to time.

6. Utilities and Services. Provided that no Event of Default has occurred and is continuing, Landlord agrees to furnish to the Premises (a) during reasonable hours of generally recognized Business Days, as established by Landlord from time to time (**"Building standard hours"**; currently Monday through Friday (excluding Holidays (as defined below)), 7:30 a.m. to 6:00 p.m.), subject to the conditions and in accordance with the standards set forth in the Rules and Regulations, as may be amended **in** writing by Landlord from time to time during the Term of this Lease and delivered to Tenant, reasonable quantities of electric current for normal lighting and fractional horsepower office machines, water for lavatory and drinking purposes, heat and air conditioning required in Landlord's judgment for the comfortable use and occupation of the Premises, and to the extent provided in the Building only, elevator service by non-attended automatic elevators, and (b) janitorial service, five (5) days per week (excluding Holidays), at such times as determined by Landlord from time to time. Except as otherwise provided herein, the cost of all such utilities and services shall be included within the definition of Project Costs, and shall be paid by Tenant in the manner set forth in Section 7.1. Landlord shall not be liable for, and Tenant shall not be entitled to terminate this Lease or to any abatement or reduction of Rent by reason of Landlord's failure to furnish any of the foregoing when such failure is caused by accident, breakage, repairs, Unavoidable Delay or by any other cause, except to the extent due to the negligence or willful misconduct of Landlord or any Landlord Party or a violation of Landlord's obligations under this Lease. In addition, Landlord may install separate meter(s) for the Premises, at Tenant's sole expense, and Tenant thereafter shall pay all charges of the metered service. If such utilities and services (including, without limitation, HVAC service) are requested by Tenant during hours other than the Building standard hours, Landlord shall use reasonable efforts to furnish such utilities and services upon reasonable Notice from Tenant, and Tenant shall pay Landlord's charges for such utilities and services therefor on demand as Additional Rent (after-hours HVAC services are charged by Landlord on a per hour basis; Landlord's current charge for after-hours HVAC services is $60 per hour but is variable according to several factors, but may be provided to Tenant upon request from time to time, provided that such charge is subject to adjustment by Landlord from time to time). If Tenant is using more than commercial reasonable quantities of electric current tor other utilities relative with other tenants in the Building, Landlord may directly apportion such over usage charges to Tenant in Landlord's reasonable discretion. Tenant shall cooperate with any present or future government conservation requirements and with any conservation practices established by Landlord. If there is any failure, stoppage or interruption of any services provided hereunder, Landlord shall use reasonable diligence to resume services promptly. Subject to the entry requirements in Section 5.4, Landlord shall at all times have free access to all mechanical installations of the Building and Premises, including, but not limited to, air conditioning equipment and vents, fans, ventilating and machine rooms and electrical closets. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure in the delivery of utilities to the Building or the Property due to any cause whatsoever, and Rent shall not abate as a result thereof. Tenant shall be solely responsible for securing telecommunications services to the Premises, all at its sole cost and expense, and Landlord shall have no responsibility therefor. For purposes of this Lease, **"Holidays"** means those days recognized by any federal, state or local governmental agency as a holiday which Landlord, in its sole discretion, designates from time to time as **"Holidays"** for purposes of this Lease, such designation being subject to change from time to time.

7. Books and Records. Within one hundred twenty (120) days after receiving any Annual Statement (the **"Review Notice Period"**), Tenant may give Landlord Notice (**"Review Notice"**) stating that Tenant elects to review Landlord's calculation of the Operating Expenses and/or Real Property Taxes for the calendar year to which such Annual Statement applies, and the records of Landlord relating thereto. Within a reasonable time after receiving a timely Review Notice (and, at Landlord's option, an executed commercially reasonable confidentiality agreement as described below), Landlord shall deliver to Tenant, or make available for inspection at a location reasonably designated by Landlord, copies of such records. Landlord shall make all pertinent records available for inspection that are reasonably necessary for Tenant to conduct its review. Within sixty (60) days after such records are made available to Tenant (the "Objection Period"), Tenant may deliver to Landlord notice (an **"Objection Notice"**) stating with reasonable specificity any objections to the Annual Statement, in which event Landlord and Tenant shall work together in good faith to resolve Tenant's objections. Tenant may not deliver more than one Review Notice or more than one Objection Notice with respect to any calendar year. If Tenant fails to give Landlord a Review Notice before the expiration of the Review Notice Period or fails to give Landlord an Objection Notice before the expiration of the Objection Period, Tenant shall be deemed to have approved the Annual Statement. If Tenant retains an agent to review Landlord's records, the agent must be with a CPA firm licensed to do business in the State of California and its fees shall not be contingent, in whole or in part, upon the outcome of the review. No such audit may be performed by any person or entity who, within the last five (5) years, has performed any review or audit of Operating Expenses for any tenant in any part of the Property. Tenant shall be responsible for all costs of such review (subject to Tenant's reimbursement right set forth below). The records and any related information obtained from Landlord shall be treated as confidential, and as applicable only to the Premises, by Tenant, its auditors, consultants, and any other parties reviewing the same on behalf of Tenant (collectively, **"Tenant's Auditors"**). Before making any records available for review, Landlord may require Tenant and Tenant's Auditors to execute a reasonable confidentiality agreement, in which event Tenant shall cause the same to be executed and delivered to Landlord within thirty (30) days after receiving it from Landlord, and if Tenant fails to do so, the Objection Period shall be reduced by one day for each day by which such execution and delivery follows the expiration of such thirty-day period. Notwithstanding any contrary provision hereof, Tenant may not give any notice hereunder, examine Landlord's records or dispute any Statement if an Event of Default is then existing. If, for any calendar year, Landlord and Tenant determine that the sum of Tenant's Share of the Components is less or more than the amount reported, Tenant shall receive a credit in the amount of its overpayment against Rent then or next due hereunder, or shall pay Landlord the amount of its underpayment with the Rent next due hereunder; provided, however, that if this Lease has expired or terminated and Tenant has vacated the Premises, Landlord shall pay Tenant the amount of Tenant's overpayment (less any Rent due), or Tenant shall pay Landlord the amount of Tenant's underpayment, within thirty (30) days after such determination. Further, in the event that such examination reveals that Tenant was over-charged by more than five percent (5%) of aggregate Operating Expenses, then Landlord shall also promptly reimburse Tenant for the actual cost of performing the audit. Tenant agrees that Tenant's sole right to inspect Landlord's books and records and to contest the amount of Expenses or Taxes payable by Tenant shall be as set forth in this Section 7.8 and Tenant waives any and all other rights to inspect such books and records and/or to contest the amount of Operating Expenses payable by Tenant. As a condition precedent to Tenant's exercise of its right of objection, dispute, inspection and/or audit as set forth in this Section 7.8, Tenant shall not be permitted to withhold payment of, and Tenant shall timely pay to Landlord, the full amounts as required by the provisions of this Article VII in accordance with the Annual Statement.

ARTICLE VIII

ALTERATIONS

1. Permitted Alterations. Tenant shall not make or permit any Alterations without the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, in no event shall any Alterations (i) affect the exterior of the Building or the outside areas of the Property or the Building (or be visible from adjoining sites), (ii) affect or penetrate any of the structural portions of the Building, including, but not limited to, the roof, (iii) require any change to the basic floor plan of the Premises, any change to the structural or mechanical components of the Premises, or any governmental approval or permit as a prerequisite to the construction thereof, (iv) interfere in any manner with the proper functioning of or Landlord's access to any mechanical, electrical, plumbing or HVAC systems, facilities or equipment located in or serving the Building, or (v) diminish the value of the Premises. All Alterations shall be constructed pursuant to plans and specifications previously provided to and, when applicable, approved in writing by Landlord, shall be installed by a licensed contractor at Tenant's sole expense in compliance with all Applicable Laws, and shall be accomplished in a good and workmanlike manner conforming in quality and design with the Premises existing as of the Commencement Date and in accordance with the provisions of Section 22.1 below. No Hazardous Materials, including, but not limited to, asbestos or asbestos-containing materials, shall be used by Tenant or Tenant's Agents in the construction or installation of any Alterations permitted hereunder. All Alterations made by Tenant shall be and become the property of Landlord upon the construction or installation thereof and shall not be deemed Tenant's Personal Property; provided, however, that Landlord may, at its option and by notice delivered to Tenant at the time of Landlord's approval, require that Tenant, upon the expiration or sooner termination of this Lease, at Tenant's expense, remove any or all Alterations and return the Premises to its condition as of the Commencement Date, normal wear and tear excepted. Notwithstanding any other provisions of this Lease to the contrary, Tenant shall be solely responsible for the maintenance, repair and replacement of any and all Alterations made by or for the benefit of Tenant (including, without limitation, by Landlord for the benefit of Tenant). In addition, Tenant shall be responsible for the payment of any increase in Real Property Taxes that are attributable to any Alterations, which payment shall be made by Tenant to Landlord within ten (10) days following Landlord's written demand therefor from time to time. Notwithstanding anything to the contrary in this Section 8.1, Tenant, without Landlord's consent, may make minor Alterations to the Premises which do not affect the Building's structure or operating systems and that do not cost more than $50,000.00 per project; provided however, Tenant shall provide notice no less than ten (10) business days' notice of such Alterations.

2. Trade Fixtures; Taxes. Tenant shall, at its own expense, provide, install and maintain in good condition all of Tenant's Personal Property required in the conduct of its business in the Premises. Tenant shall pay before delinquency any and all taxes, assessments, license fees and public charges levied, assessed or imposed against Tenant or Tenant's estate in this Lease or the property of Tenant situated within the Premises which become due during the Term, including, without limitation any Alterations and Tenant's Personal Property. Upon request by Landlord, Tenant shall promptly furnish Landlord with satisfactory evidence of these payments.

3. Mechanics' Liens. Tenant shall give Landlord Notice of Tenant's intention to perform any work on the Premises which might result in any claim of lien at least twenty (20) days prior to the commencement of such work to enable Landlord to post and record a notice of non-responsibility or other notice Landlord deems proper prior to the commencement of any such work. Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against the Property or the Building or any portion thereof or against Tenant's leasehold interest in the Premises. If Tenant fails to cause the release of record of any lien(s) filed against the Property or the Building or any portion thereof or its leasehold estate in the Premises by payment or posting of a proper bond within ten (10) business days from the date of the lien filing(s), then Landlord may, at Tenant's expense, cause such lien(s) to be released by any means Landlord deems proper, including, but not limited to, payment of or defense against the claim giving rise to the lien(s). All sums reasonably disbursed, deposited or incurred by Landlord in connection with the release of the lien(s), including, but not limited to, all costs, expenses and actual attorneys' fees, shall be due and payable by Tenant to Landlord, as an item of Additional Rent, on demand by Landlord, together with interest thereon at the Applicable Rate from the date of such demand until paid by Tenant.

4. Alterations by Landlord. Landlord reserves the right at any time and from time to time without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor or otherwise affecting Tenant's obligations under this Lease, to make such changes, alterations, additions, improvements, repairs or replacements in or to the Building (including the Premises if required to do so by any Applicable Laws) and the fixtures and equipment thereof, as well as in or to the street entrances, walls, passages, and stairways thereof, or to change the name by which the Building or the Property is commonly known, as Landlord may deem necessary or desirable. Nothing contained herein shall be deemed to relieve Tenant of any duty, obligation or liability of Tenant with respect to making any repair, replacement or improvement or complying with any Applicable Laws in connection with the Premises, and nothing contained herein shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care of the Building or any part thereof other than as otherwise especially provided in this Lease.

ARTICLE IX

MAINTENANCE AND REPAIR

1. Landlord's Maintenance and Repair Obligations. Landlord shall, subject to Article XII and Article XIII, maintain in good condition and repair the roof, exterior walls and foundation of the Building, provide normal maintenance services for the HVAC serving the Building through maintenance contracts or otherwise, and paint the exterior of the Building and clean the exterior windows of the Building as and when such painting or window cleaning, as the case may be, becomes necessary in Landlord's reasonable discretion. Landlord shall also provide maintenance and repair services to the electrical, plumbing, and mechanical systems serving the Building, the Common Areas and the Premises. Landlord shall not be required to make any repairs unless and until Tenant has notified Landlord in writing of the need for such repair and Landlord shall have a reasonable period of time thereafter to commence and complete said repair, if warranted. The cost of any maintenance and repairs on the part of Landlord provided for in this Section 9.1 shall be considered part of Project Costs, except that repairs which Landlord deems arise out of any act or omission of Tenant or Tenant's Agents shall be made at the expense of Tenant. Landlord's obligation to so repair and maintain the Premises shall be limited to the cost of effecting such repair and maintenance and in no event shall Landlord be liable for any costs or expenses in excess of said amounts, including, but not limited to, any consequential damages, opportunity costs or lost profits incurred or suffered by Tenant.

2. Tenant's Maintenance and Repair Obligations. Tenant shall at all times during the Term of this Lease, at Tenant's sole cost and expense, clean, keep, maintain, repair and make necessary improvements to, the Premises and every portion thereof and all improvements therein or thereto, in good and sanitary order and condition to the reasonable satisfaction of Landlord and in compliance with all Applicable Laws, usual wear and tear excepted. The performance of such obligations shall be subject to the requirements of Section 22.1 below. Any damage or deterioration of the Premises shall not be deemed usual wear and tear if the same could have been prevented by good maintenance practices by Tenant. Tenant's repair and maintenance obligations herein shall include, but are not limited to, all necessary maintenance and repairs to all portions of the Premises, and all exterior entrances to the Premises, all glass, windows, window casements, show window moldings, partitions, doors, doorjambs, door closures, hardware, fixtures, electrical lighting and outlets, plumbing fixtures, interior walls, floors, ceilings, skylights, fans and exhaust equipment, and fire extinguisher equipment and life safety and other systems to the extent located within the Premises. As part of its maintenance obligations hereunder, Tenant shall, at Landlord's request, provide Landlord with copies of all maintenance schedules, reports and notices prepared by, for, or on behalf of Tenant. Landlord may impose reasonable restrictions and requirements with respect to repairs by Tenant, which repairs shall be at least equal in quality to the original work, and the provisions of Section 8.3 above shall apply to all such repairs. Tenant's obligation to repair includes the obligation to replace, as necessary, regardless of whether the benefit of such replacement extends beyond the Term. Notwithstanding the foregoing, Landlord shall have the right (but not the obligation), upon Notice to Tenant, to undertake the responsibility for maintenance and repair of automatic fire extinguisher equipment, such as sprinkler systems and alarms, and other obligations of Tenant hereunder which Landlord deems appropriate to undertake that affect the Building as a whole, in which event the cost thereof shall be included as part of Project Costs and paid by Tenant in the manner set forth in Section 7.1. Landlord has no obligation to construct, remodel, improve, repair, decorate or paint the Premises or any improvement on or part of the Premises. Tenant shall pay for the cost of all repairs to the Premises not required to be made by Landlord and shall be responsible for any redecorating, remodeling, alteration, painting and carpet cleaning other than routine vacuuming during the Term. Tenant shall not permit or authorize any person to go onto the roof of the Building without the prior written consent of Landlord.

3. Waiver. Tenant hereby waives all rights provided for by the provisions of Sections 1932(1), 1941 and 1942 of the California Civil Code and any present or future laws regarding Tenant's right to make repairs at the expense of Landlord or to terminate this Lease because of the condition of the Premises.

4. Self-Help. If Tenant refuses or fails to repair and maintain the Premises as required hereunder within fifteen (15) business days from the date on which Landlord makes a written demand on Tenant to effect such repair and maintenance (or such shorter time as may be required in the event of an emergency), Landlord may enter upon the Premises and make such repairs or perform such maintenance without liability to Tenant for any loss or damage that may accrue to Tenant or its merchandise, fixtures or other property or to Tenant's business by reason thereof. All sums reasonably disbursed, deposited or incurred by Landlord in connection with such repairs or maintenance shall be due and payable by Tenant to Landlord, as an item of Additional Rent, on demand by Landlord, together with interest at the Applicable Rate on such aggregate amount from the date of such demand until paid by Tenant.

ARTICLE X

COMMON AREA AND PARKING

1. Grant of Nonexclusive Common Area License and Right. Subject to the provisions of Section 10.7 and Exhibit C, Landlord hereby grants to Tenant and its permitted subtenants a non-exclusive license and right ,in common with Landlord and all persons, firms and entities conducting business in the Building and their respective agents, employees, guests, customers, invitees and subtenants, to use the Common Area for vehicular parking, for pedestrian and vehicular ingress, egress and travel, and for such other purposes and for doing such other things as may be provided for, authorized and/or permitted by this Lease and the Restrictions, such nonexclusive license and right to be appurtenant to Tenant's leasehold estate created by this Lease. The nonexclusive license and right granted pursuant to the provisions of this Article X shall be subject to the provisions of the Restrictions, which pertain in any way to the Common Area covered by such Restrictions, and the provisions of this Lease.

2. Use of Common Area. Notwithstanding anything to the contrary herein, Tenant and its successors, assigns, employees, agents and invitees shall use the Common Area only for the purposes permitted hereby and by the Restrictions and the Rules and Regulations. All uses permitted within the Common Area shall be undertaken in such reasonable manner so as not to interfere with the primary use of the Common Area which is to provide parking and vehicular and pedestrian access throughout the Common Area within the Building or Property and to adjacent public streets for Landlord, Landlord's Agents, and its tenants, subtenants, contractors and all persons, firms and entities conducting business within the Property and their respective agents, employees, guests, customers and invitees. In no event shall Tenant erect, install, or place, or cause to be erected, installed, or placed any structure, building, trailer, fence, wall, signs or other obstructions on the Common Area, and Tenant shall not store or sell any merchandise, equipment or materials on the Common Area.

3. Control of Common Area. Subject to provisions of the Restrictions, all Common Area and all improvements located from time to time within the Common Area shall at all times be subject to the exclusive control and management of the Landlord. Without in any way limiting the foregoing, Landlord shall have the right to construct, maintain and operate lighting facilities and other improvements within the Common Area; to police the Common Area from time to time; to change the area, level, location and arrangement of the parking areas and other improvements within the Common Area; to restrict parking by tenants, their officers, agents and employees to employee parking areas; to enforce parking charges (by operation of meters or otherwise); to close all or any portion of the Common Area or improvements therein to such extent as may, in the opinion of counsel for Landlord, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; to close temporarily all or any portion of the Common Area and/or the improvements thereon (including, without limitation, in connection with any repairs, maintenance and renovations thereof), provided such closure does not unreasonably impact Tenant's parking rights or access to the Building or the Premises; to discourage noncustomer parking; and to do and perform such other acts in and to said Common Area and improvements thereon as, in the use of good business judgment, Landlord shall determine to be advisable. Landlord reserves the right to promulgate such reasonable rules and regulations relating to the use of the Common Area as Landlord may deem appropriate, and Tenant agrees to comply with (and cause its agents, employees, guests, customers, invitees and subtenants to comply with) any such rules and regulations so promulgated by Landlord. In the event Landlord elects or is required by any Applicable Law to limit or control parking within the Common Area, by validation of parking tickets or any other method, Tenant agrees to participate in such validation or other program under such reasonable rules and regulations as are from time to time established by Landlord.

4. Maintenance of Common Area. Subject to the provisions of the Restrictions, Landlord shall operate and maintain (or cause to be operated and maintained) the Common Area in a similar condition to comparable office building projects located in the general vicinity of the Property, in such manner as Landlord in its reasonable discretion shall determine from time to time. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ or cause to be employed all personnel and to make or cause to be made all rules and regulations pertaining to or necessary for the proper operation and maintenance of the Common Area and the improvements located thereon. The cost of such maintenance of the Common Area shall be included as part of Project Costs. Tenant shall not use any part of the Common Area for the storage of any items, including, without limitation, vehicles, materials, inventory and equipment. Tenant shall place all trash and other refuse in designated receptacles. Tenant shall not perform or permit any work of any kind in the Common Area, including, but not limited to, painting, drying, cleaning, repairing, manufacturing, assembling, cutting, merchandising or displaying.

5. Intentionally Omitted.

6. Landlord's Reserved Rights. Landlord reserves the right to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises or outside the Premises, change the boundary lines of the Property and install, use, maintain, repair, alter or relocate, expand and replace any Common Area; provided, however, Landlord shall not unreasonably interfere with Tenant's use of the Premises or reduce Tenant's parking. Such rights of Landlord shall include, but are not limited to, designating from time to time certain portions of the Common Area as exclusively for the benefit of certain tenants in the Property or the Building (and Tenant shall not be permitted to use any portions so designated by Landlord).

7. Parking. Tenant shall be entitled to the number of vehicle parking spaces set forth in Item 15 of the Basic Lease Provisions. In no event shall such number of vehicle parking spaces be reduced during the Term. The Unreserved Spaces shall be unreserved and unassigned, on those portions of the Common Area designated by Landlord from time to time for unreserved and unassigned parking. Tenant shall not use more parking spaces than such numbers. All parking spaces shall be used only for parking by vehicles no larger than full size passenger automobiles or pick-up trucks. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities. Parking within the Common Area shall be limited to striped parking stalls, and no parking shall be permitted in any driveways, access ways or in any area which would prohibit or impede the free flow of traffic within the Common Area. There shall be no overnight parking of any vehicles of any kind. If Tenant commits, permits or allows a violation of any of the terms and conditions of this Lease relating to the use of the Common Area or the rules then in effect with respect thereto, or if a vehicle is being operated by Tenant or its agents, employees, guests, customers, invitees or subtenants in a manner that Landlord or its designated agent reasonably determines is a danger to the health and safety of persons on or about the Project, then Landlord, through its designated agent, shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved from the Project and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord. In the event of a permanent reduction of the parking stalls available to Tenant by 15 or less stalls, for a reason such as eminent domain or other issue beyond Landlord's control, Landlord shall reduce the rent by the market value of alternative parking (within two blocks of the Property), and if 16 or more stalls are rendered permanently unavailable, Tenant shall have the right to terminate this Lease upon ninety (90) days advance notice to Landlord; provided however in either event, if Landlord provides notice to Tenant that the same number of alternative stalls for parking within a two block radius have been made available for Tenant's use at Landlord's expense, Tenant shall not be entitled to any remedy under this Section 10.7

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ARTICEXI

INDEMNITY AND INSURANCE

1. Indemnification. Subject to the terms and provisions of Section 11.11 hereof, Tenant hereby agrees to defend (with attorneys acceptable to Landlord), indemnify, protect and hold harmless Landlord and Landlord's Agents and any successors to all or any portion of Landlord's interest in the Premises and their directors, officers, partners, managers, members, employees, authorized agents, representatives, affiliates and Mortgagees (collectively, the **"Landlord Parties"**), from and against any and all damage, loss, claim, liability and expense, including, but not limited to, actual attorneys' fees and legal costs, incurred directly or indirectly by reason of any claim, suit or judgment brought by or on behalf of (i) any person or persons for damage, loss or expense due to, but not limited to, personal or bodily injury or property damage sustained by such person or persons which arise out of, are occasioned by, or are in any way attributable to the use or occupancy of the Premises or the acts or omissions of the Tenant or Tenant's Agents in or about the Premises, the Property or the Building (including, but not limited to, any Event of Default hereunder), or (ii) Tenant or Tenant's Agents for damage, loss or expense due to, but not limited to, personal or bodily injury or property damage which arise out of, are occasioned by, or are in any way attributable to the use of any of the Common Area, except, in each case to the extent caused by the negligence or willful misconduct of Landlord or any Landlord Party or Landlord's violation of this Lease. .

2. Landlord's Insurance. Landlord shall obtain and keep in force during the Term of this Lease a policy or policies of insurance, with commercially reasonable deductibles consistent with those maintained by landlords of similar properties in the vicinity of the Building, covering (i) loss or damage to the Premises, the Building, the Tenant Improvements and objects owned by Landlord and normally covered under a **"Boiler and Machinery"** policy (as such term is used in the insurance industry), at least in the amount of the full replacement cost thereof (excluding foundations and other non-insurable portions), and in no event less than the total amount required by Mortgagees, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils ("all risk" or "special causes of loss," as such terms are used in the insurance industry, including, at Landlord's option, collapse, earthquake and flood) and other perils as required by the Mortgagees or deemed necessary by Landlord, and (ii) commercial general liability insurance with limits of liability not less than those required of Tenant hereunder protecting Landlord against claims for bodily injury and property damage arising out of Landlord's ownership, use, and maintenance of the Building and the Common Areas. Landlord's insurance policies shall include an express waiver of any right of subrogation by the insurance company against Tenant. A stipulated value or agreed amount endorsement deleting any co-insurance provision of said policy or policies shall be procured with said insurance. The cost of such insurance policies shall be included in the definition of Project Costs, and shall be paid by Tenant in the manner set forth in Section 7.1. Such insurance policies shall provide for payment of loss thereunder to Landlord or, at Landlord's election, to the Mortgagees. If the Premises are part of a larger building, then Tenant shall pay for any increase in the property insurance of the Building if such increase is caused by Tenant's acts, omissions, use or occupancy of the Premises. Tenant shall obtain and keep in force during the Term, at its sole cost and expense, (i) an "all risk" or "special causes of loss" property policy in the amount of the full replacement cost covering Tenant's Personal Property and any Alterations made by or at the request of Tenant, with Landlord insured as its interest may appear, and (ii) an "all risk" or "special causes of loss" policy of business interruption and/or loss of income insurance covering a period of one (1) years, plus such additional period of time, if any, as will permit Tenant to be in a position to have the same revenues as were in effect the day before a loss giving rise to a claim under such insurance occurs, with loss payable to Landlord to the extent of Monthly Rent and Additional Rent only.

3. Liability/Miscellaneous Insurance. Tenant shall maintain in full force and effect at all times during the Term (plus such earlier and later periods as Tenant may be in occupancy of the Premises), at its sole cost and expense, for the protection of Tenant, Landlord and the Landlord Parties, policies of insurance issued by a carrier or carriers acceptable to Landlord and the Mortgagees which afford the following coverage:

(i) statutory workers' compensation;

(ii) employer's liability for bodily injury by disease per person and bodily injury by accident with minimum limits of One Million Dollars ($1,000,000);

(iii) comprehensive/commercial general liability insurance, including, but not limited to, blanket contractual liability (including the indemnity set forth in Section 11.1), fire and water legal liability, broad form property damage, contractual liability, personal injury, completed operations, products liability, independent contractors, and, if alcoholic beverages are served in the Premises, limited liquor liability, of not less than One Million Dollars ($1,000,000) per occurrence, Two Million Dollars ($2,000,000) general aggregate;

(iv) auto liability insurance for owned, non-owned and hired vehicles, of not less than One Million Dollars ($1,000,000) per occurrence;

(v) umbrella/excess liability on a following form basis with minimum limits of Five Million Dollars ($5,000,000);

(vi) such increased amounts of insurance and other insurance in such form and amounts as may be required by Landlord or any current or prospective Mortgagees from time to time, to the extent such increases are then customarily required by landlords owning similar real property in the vicinity of the Building.

The insurance listed in (iii), (iv) and (v) above shall include Landlord, and the Landlord Parties as additional insureds, and shall include a cross-liability or severability of interests endorsement. Tenant shall deliver to Landlord a certificate evidencing such insurance coverage not less than five (5) business days prior to the Commencement Date or such earlier date as may be required for early access or the Work Letter. Tenant is responsible for ensuring that certificates provided to Landlord are accurate, current and in effect. Landlord's failure to monitor compliance or to object to noncompliance or unsatisfactory compliance with any terms of these insurance requirements does not modify or waive Tenant's obligations set forth in this Article XI in any way. Tenant is responsible for providing certificates for renewal policies within ten (10) business days of renewal of each policy mentioned. Landlord or Landlord's Agents on behalf of Landlord may, at Landlord's election, obtain liability insurance in such amounts and on such terms as Landlord shall determine, and the cost thereof shall be included in Project Costs and paid by Tenant in the manner described in Section 7.1.

4. Deductibles. Tenant shall be solely responsible for the payment of any deductible.

5. Blanket Coverage. Any insurance required of Tenant pursuant to this Lease may be provided by means of a so-called "blanket policy", so long as (i) the Premises are specifically covered (by rider, endorsement or otherwise), (ii) the limits of the policy are applicable on a "per location" basis to the Premises and provide for restoration of the aggregate limits, and (iii) the policy otherwise complies with the provisions of this Lease.

6. Increased Coverage. Upon demand, Tenant shall provide Landlord, at Tenant's expense, with such increased amount of existing insurance, and such other insurance as Landlord or the Mortgagees may reasonably require, to the extent such increases are then customarily required by landlords owning similar real property in the vicinity of the Building.

7. Sufficiency of Coverage. Neither Landlord nor any of Landlord's Agents makes any representation that the types of insurance and limits specified to be carried by Tenant under this Lease are adequate to protect Tenant. If Tenant believes that any such insurance coverage is insufficient, Tenant shall provide, at its own expense, such additional insurance as Tenant deems adequate. Nothing contained herein shall limit Tenant's liability under this Lease, and Tenant's liability under any provision of this Lease, including, without limitation, under any indemnity provisions, shall not be limited to the amount of any insurance obtained.

8. Insurance Requirements. Tenant's insurance (i) shall be in a form satisfactory to Landlord and the Mortgagees and shall be carried with companies that have a "Best Key Rating Guide" rating of AVII or better and that are determined by Landlord, in its sole discretion, as financially sound on a current basis, and (ii) shall be primary, and any insurance carried by Landlord or Landlord's Agents shall be excess and noncontributing. Tenant's policy or policies, or duly executed certificates for them in the form and content acceptable to Landlord, shall be deposited with Landlord concurrently with Tenant's execution of this Lease, and prior to renewal of such policies. Tenant shall provide at least thirty (30) days' prior written notice to Landlord in the event of material alteration or cancellation of coverage. If Tenant fails to procure and maintain the insurance required to be procured by Tenant under this Lease, Landlord may, but shall not be required to, order such insurance at Tenant's expense. All sums reasonably disbursed, deposited or incurred by Landlord in connection therewith, including, but not limited to, all costs, expenses and actual attorneys' fees, shall be due and payable by Tenant to Landlord, as an item of Additional Rent, on demand by Landlord, together with interest thereon at the Applicable Rate from the date of such demand until paid by Tenant.

9. Intentionally Omitted.

11.10 Landlord's Disclaimer. Notwithstanding any other provisions of this Lease, Landlord and Landlord's Agents shall not be liable for any loss or damage to persons or property resulting from theft, vandalism, fire, explosion, falling materials, glass, tile or sheetrock, steam, gas, electricity, water or rain which may leak from any part of the Premises, or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface, or from acts of God or from any other cause whatsoever, unless caused by or due to the negligence or willful misconduct of Landlord or any Landlord Party, or Landlord's violation of this Lease. Landlord and Landlord's Agents shall not be liable for interference with light or air, or for any latent defect in the Premises except as otherwise expressly provided in this Lease. Tenant shall give prompt Notice to Landlord in case of a casualty, accident or repair needed to the Premises

11.11 Waiver of Subrogation. Landlord and Tenant each hereby waives all rights of subrogation and recovery against the other and the other's agents on account of loss and damage occasioned to such waiving party to the extent that such loss or damage is insured against under any insurance policies required by this Article XI covering real or personal property (or would have been covered if Landlord or Tenant, as the case may be, was carrying the insurance required to be carried under this Article XI); provided, such waiver shall not apply to amounts of loss above such coverage). Tenant and Landlord shall, upon obtaining policies of insurance required hereunder, give notice to the insurance carriers that the foregoing waiver of subrogation is contained in this Lease and such policies shall be endorsed, if necessary, to prevent the invalidation of such policies by reason of such waiver. .

11.12 Waiver of Consequential Damages. Except for Tenant's potential liability under Section 19.2, each of Landlord and Tenant agrees that the other shall have no liability for consequential, indirect or punitive damages, and waivers any right it may have to claim same.

11.13 Material Interference. In the event that Tenant is prevented from using, and does not use, all of any portion of the Premises because of Material Interference (as defined below), Tenant shall immediately give Landlord written notice of same. Notwithstanding anything in this Lease to the contrary, if Tenant is prevented from using, and does not use, the Premises or any portion thereof for more than three (3) days after Landlord's receipt of Tenant's notice of Material Interference, Rent will be abated or reduced, as the case may be, starting on the fifth (5th) day after Landlord's receipt of such notice until the Material Interference has ceased, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises. "Material Interference" means that Tenant is prevented from using, and does not use, the Premises or any portion thereof for the normal conduct of Tenant's business as a result of (i) any repair, maintenance, or alteration performed by Landlord, or which Landlord fails to perform, after the Commencement Date, and which is required to be performed by Landlord under this Lease, or (ii) the presence of Hazardous Materials on the Property not caused by Tenant. Notwithstanding anything to the contrary contained herein, under no circumstances shall the term Material Interference include any event to the extent caused in whole or in part by Tenant or Tenant's employees, agents, contractors, representatives, successors, assignees, subtenants, licensees or invitees. To the extent a Material Interference is caused by an event covered by Articles XII or XIII, Tenant's right to abate rent shall be governed by the terms of such Articles, as applicable.

ARTICLE XII

DAMAGE OR DESTRUCTION

1. Landlord's Obligation to Rebuild. If the Premises are damaged or destroyed by fire or other casualty (a **"Casualty"**), Tenant shall promptly give Notice thereof to Landlord, and Landlord shall thereafter repair the Premises as set forth in Sections 12.3 and 12.4 unless Landlord has the right to terminate this Lease as provided in Section 12.2 and Landlord elects to so terminate this Lease.

2. Landlord's Right to Terminate. Landlord shall have the right to terminate this Lease following a Casualty if any of the following occurs: (i) insurance proceeds (together with any additional amounts Tenant elects, at its option, to contribute) are not available to Landlord to pay one hundred percent (100%) of the cost to fully repair the Premises, excluding the deductible (for which Tenant shall pay Tenant's Share of such deductible), regardless of whether such unavailability is due to coverage or other policy limits or the requirements of any Mortgagee; (ii) Landlord's Architect determines that the Premises cannot, with reasonable diligence, ·be fully repaired by Landlord (or cannot be safely repaired because of the presence of hazardous factors, including, but not limited to, Hazardous Materials, earthquake faults, radiation, chemical waste and other similar dangers) within three hundred sixty five (365) after the date of issuance of any necessary permits to complete the repair of the Premises; or (iii) the Premises are destroyed or damaged during the last twelve (12) months of the Term. If Landlord elects to terminate this Lease following a Casualty pursuant to this Section 12.2, Landlord shall give Tenant Notice of Landlord's election to terminate within sixty (60) days after Landlord has knowledge of such Casualty, and this Lease shall terminate fifteen (15) days after the date of such Notice.

3. Effect of Termination. If this Lease is terminated following a Casualty pursuant to Section 12.2, Landlord shall, subject to the rights of the Mortgagees, be entitled to receive and retain all the insurance proceeds resulting from or attributable to such Casualty, except for those proceeds payable under policies obtained by Tenant which specifically insure Tenant's Personal Property. If Landlord does not exercise any such right to terminate this Lease, this Lease will continue in full force and effect, and Landlord shall, within sixty (60) days after the date of such Casualty commence the process of obtaining necessary permits and approvals for the repair of the Premises, and shall commence such repair and prosecute the same diligently to completion as soon as is practicable following Landlord's receipt of such permits and approvals. Tenant shall fully cooperate with Landlord in removing Tenant's Personal Property and any debris from the Premises to facilitate the making of such repairs.

4. Obligation to Repair. Landlord's obligation, should it elect or be obligated to repair the Premises following a Casualty, shall be to restore the Premises and the Common Areas to substantially the same condition as existed prior to the casualty, except for modifications required by zoning and building codes and modifications to the Common Areas deemed desirable by Landlord, and to restore the Tenant Improvements. Tenant shall, at its expense, replace or fully repair all Tenant's Personal Property and any Alterations existing at the time of such Casualty. If the Premises are to be repaired in accordance with the foregoing, Tenant shall make available to Landlord any portion of insurance proceeds that Tenant receives which are allocable to the Tenant Improvements.

5. Abatement of Monthly Rent. During any period when there is substantial interference with Tenant's use of the Premises by reason of a Casualty, Monthly Rent shall be temporarily abated in proportion to the degree of such substantial interference; provided however, there shall be a Rent abatement only if the damage or destruction of the Premises or the Property did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees.. Such abatement shall commence upon the date Tenant notifies Landlord of such Casualty and shall end upon the Substantial Completion of the repair of the Premises which Landlord undertakes or is obligated to undertake hereunder. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the Premises, Tenant's Personal Property or other damage or any inconvenience occasioned by a Casualty or by the repair or restoration of the Premises thereafter, including, but not limited to, any consequential damages, opportunity costs or lost profits incurred or suffered by Tenant. Tenant hereby waives the provisions of Section 1932(2) and Section 1933(4) of the California Civil Code, and the provisions of any similar or successor statutes.

6. Landlord's Determination. The determination in good faith by Landlord's Architect of or relating to the estimated cost of repair of any damage, replacement cost or the time period required for repair shall be conclusive for purposes of this Article XII and Article XIII.

7. Tenant's Right to Terminate. Notwithstanding anything to the contrary in this Article XII, if (a) the casualty occurs during the last twelve (12) months of the Term, Landlord shall have forty five (45) days to review the casualty and provide Tenant a notice of anticipated restoration timing ("Restoration Notice"). If the Restoration Notice provides that it will take more than sixty (60) days to restore, or (b) in the reasonable judgement of Landlord's Architect, the repairs cannot be completed within eight (8) months after the date of the discovery of the Casualty (or are in fact not completed within nine (9) months after the date of discovery of the casualty, Tenant may elect to terminate this Lease within ten (10) days of receipt of the Restoration Notice by written notice to Landlord which termination shall be effective thirty (30) days after the date such notice is given by Tenant..

ARTICLE XIII

CONDEMNATION

1. Total Taking-Termination. If title to the Premises or the Common Area or so much thereof is taken for any public or quasi-public use under any statute or by right of eminent domain so that reconstruction of the Premises will not result in the Premises being reasonably suitable for Tenant's continued occupancy for the uses and purposes permitted by this Lease, or Tenant's parking rights will be materially reduced, this Lease shall terminate as of the date possession of the Premises or part thereof is so taken.

2. Partial Taking. If any part of the Premises is taken for any public or quasi-public use under any statute or by right of eminent domain and the remaining part is reasonably suitable for Tenant's continued occupancy for the uses permitted by this Lease, this Lease shall, as to the part so taken, terminate as of the date that possession of such part of the Premises is taken and the Monthly Rent shall be reduced in the same proportion that the floor area of the portion of the Premises so taken (less any addition thereto by reason of any reconstruction) bears to the original floor area of the Premises. Landlord shall, at its own cost and expense, make all necessary repairs or alterations to the Premises so as to make the portion of the Premises not taken a complete architectural unit. Such work shall not, however, exceed the scope of the work done by Landlord in originally constructing the Premises, unless required by current building codes and laws. If severance damages from the condemning authority are not available to Landlord in sufficient amounts to permit such restoration, Landlord may terminate this Lease upon Notice to Tenant. Monthly Rent due and payable hereunder shall be temporarily abated during such restoration period in proportion to the degree to which there is substantial interference with Tenant's use of the Premises. Each party hereby waives the provisions of Section 1265.130 of the California Code of Civil Procedure and any present or future law allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Building or Premises.

3. No Apportionment of Award. No award for any partial or total taking shall be apportioned, it being agreed and understood that Landlord shall be entitled to the entire award for any partial or entire taking. Tenant assigns to Landlord its interest in any award which may be made in such taking or condemnation, together with any and all rights of Tenant arising in or to the same or any part thereof. Nothing contained herein shall be deemed to give Landlord any interest in or require Tenant to assign to Landlord any separate award made to Tenant for the taking of Tenant's Personal Property, for the interruption of Tenant's business or its moving costs, or for the loss of its goodwill.

4. Temporary Taking. No temporary taking of the Premises (which for purposes hereof shall mean a taking of all or any part of the Premises for one hundred eighty (180) days or less) shall terminate this Lease or give Tenant any right to any abatement of Rent Any award made to Tenant by reason of such temporary taking shall belong entirely lo Tenant and Landlord shall not be entitled to share therein. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this Section 13.4.

5. Sale Under Threat of Condemnation. A sale made in good faith to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes of this Article XIII.

ARTICLE XIV

ASSIGNMENT AND SUBLETTING

1. Prohibition. Tenant shall not directly or indirectly, voluntarily or by operation of law, assign this Lease, or any right or interest hereunder, or sublet the Premises or any part thereof, or allow any other person or entity to occupy or use all or any part of the Premises without first obtaining the written consent of Landlord in each instance, which consent shall not be unreasonably withheld. In no event shall Tenant directly or indirectly, voluntarily or by operation of law, pledge, mortgage or hypothecate this Lease, or any right or interest hereunder or in or to the Premises. In addition, if Landlord consents to a subletting, in no event shall the applicable sublessee be permitted to assign the sublease or sub-sublet all or any portion of the applicable sublease premises (and any subleases of the Premises or any part thereof shall specifically include the foregoing prohibition). Any attempted assignment, subletting, pledge, mortgaging, hypothecation or other transfer in violation of the terms of this Article XIV, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy, or otherwise shall constitute an Event of Default under this Lease and shall be voidable at Landlord's option. Tenant hereby waives all rights provided for by the provisions of Section 1995.310 of the California Civil Code and any present or future laws regarding Tenant's right to terminate this Lease or to an award of any consequential or special damages in connection with Landlord's consent or denial thereof with respect to a request by Tenant under this Article XIV. To the extent not prohibited by provisions of the Bankruptcy Code of 1978, 11 U.S.C. Section 101 et seq. (as amended, the **"Bankruptcy Code"**), Tenant on behalf of itself, creditors, administrators and assigns waives the applicability of Sections 541(c) and 365(e) of the Bankruptcy Code unless the proposed assignee of the trustee for the estate of the bankrupt meets Landlord's standards for consent as set forth below. Landlord has entered into this Lease with Tenant in order to obtain for the benefit of the Property the unique attraction of Tenant's name and business; the foregoing prohibition on assignment or subletting is expressly agreed to by Tenant in consideration of such fact. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered lo Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or the estate of Tenant within the meaning of the Bankruptcy Code. Any and *all* monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered lo Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

2. Landlord's Consent. If Landlord consents to any assignment or subletting, then such consent shall not constitute a waiver of any of the restrictions of this Article XIV and the same shall apply to each successive assignment or subletting hereunder, if any. In no event shall an assignment or subletting affect the continuing primary liability of Tenant (which, following an assignment, shall be joint and several with the assignee), or relieve Tenant of any of its obligations hereunder without an express written release being given by Landlord. If Landlord shall consent to an assignment or subletting under this Article XIV, then such assignment or subletting shall not be effective until the assignee or sublessee shall assume in a writing delivered to Landlord all of the obligations of this Lease on the part of Tenant to be performed or observed and whereby the assignee or sublessee shall agree that the provisions contained in this Lease shall, notwithstanding such assignment or subletting, continue to be binding upon it with respect to all future assignments and sublettings, and Tenant and the applicable assignee or sublessee have entered into Landlord's standard consent to sublease agreement or consent to assignment agreement, as the case may be. Such assignment or sublease agreement and consent agreement shall be duly executed and a fully executed copy thereof shall be delivered to Landlord, and Landlord may collect Monthly Rent and Additional Rent due hereunder directly from the assignee or sublessee. Collection of Monthly Rent and Additional Rent directly from an assignee or sublessee shall not constitute a consent or a waiver of the necessity of consent to such assignment or subletting, nor shall such collection constitute a recognition of such assignee or sublessee as the Tenant hereunder or a release of Tenant from the performance of all of its obligations hereunder.

3. Information. Regardless of whether Landlord's consent is required under this Article XIV, Tenant shall notify Landlord in writing of Tenant's intent to assign this Lease or any right or interest hereunder, or to sublease the Premises or any part thereof, and of the name of the proposed assignee or sublessee, the nature of the proposed assignee's or sublessee's business to be conducted on the Premises, the terms and provisions of the proposed assignment or sublease, a copy of the proposed assignment or sublease form, and such other information as Landlord may reasonably request concerning the proposed assignee or sublessee, including, but not limited to, net worth, income statements and other financial statements for a two-year period preceding Tenant's request for consent, evidence of insurance complying with the requirements of Article XI, and the fee described in Section 14.7.

4. Landlord's Election. Landlord shall, within ten (10) days of receipt of such Notice and all information requested by Landlord concerning the proposed assignee or sublessee, elect to take one of the following actions by Notice to Tenant:

a) consent to such proposed assignment or sublease;

b) refuse to consent to such proposed assignment or sublease, which refusal shall be on reasonable grounds;

c) If Tenant proposes to sublease all or part of the Premises, elect to recapture such portion of the Premises as Tenant proposes to sublease and, as of the tenth (10th) day after Landlord so notifies Tenant of its election to recapture, this Lease shall terminate as to the portion of the Premises recaptured and the Monthly Rent payable under this Lease shall be reduced in the same proportion that the floor area of that portion of the Premises so recaptured bears to the floor area of the Premises prior to such recapture; or

d) If Tenant proposes to assign this Lease, elect to recapture the Premises and, as of the tenth (10th) day after Landlord so notifies Tenant of its election to recapture, this Lease shall terminate.

Tenant agrees, by way of example and without limitation, that it shall not be unreasonable for Landlord to withhold its consent to a proposed assignment or subletting if any of the following situations exist or may exist:

(i) Landlord determines that the proposed assignee's or sublessee's use of the Premises conflicts with Article V or Article VI, presents an unacceptable risk, as determined by Landlord, under Article VI, or conflicts with any other provision under this Lease;

(ii) Landlord determines that the proposed assignee or sublessee is not financially responsible as of the date of Tenant's request for consent or as of the effective date of such assignment or subletting;

(iii) Landlord determines that the proposed assignment or subletting would breach a covenant, condition or restriction in some other lease, financing agreement or other agreement relating to the Property, the Building, the Premises or this Lease;

(iv) Landlord determines that the proposed assignee or sublessee (a) has been required by any prior landlord, lender or governmental authority to take remedial action in connection with Hazardous Materials contaminating a property if such contamination resulted from the proposed assignee's or sublessee's actions or use of the property in question, or (b) is subject to any enforcement order issued by any governmental authority in connection with the use, disposal or storage of Hazardous Materials;

(v) An Event of Default has occurred and is continuing at the time of Tenant's request for Landlord's consent, or as of the effective date of such assignment or subletting;

(vi) The proposed assignee or sublessee is either a governmental agency or instrumentality thereof; or

(vii) The proposed assignee or sublessee or an affiliate thereof (a) occupies space in the Property at the time of the request for consent, (b) is negotiating with Landlord to lease space in the Property at such time, or (c) has negotiated with Landlord to lease space in the Property during the twelve (12) month period immediately preceding the request for consent.

Tenant acknowledges that if Tenant has any exterior sign rights under this Lease, such rights are personal to the original Tenant named herein and any Permitted Transferee, and may not be assigned or transferred to any assignee of this Lease or sublessee of the Premises (except for a Permitted Transferee) without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

5. Bonus Value. Tenant agrees that fifty percent (50%) of any amounts paid by the assignee or sublessee, however described, in excess of (i) the Monthly Rent payable by Tenant hereunder (or, in the case of sublease of a portion of the Premises, in excess of the Monthly Rent reasonably allocable to such portion), plus(ii) Tenant's direct out-of-pocket costs incurred in connection with such assignment of sublease for marketing fees, tenant improvements, reasonable legal fees and commercially reasonable brokerage fees which Tenant certifies to Landlord have been paid to provide occupancy related services to such assignee or sublessee of a nature commonly provided by landlords of similar space (which direct out-of-pocket costs shall, for purposes of calculating the amounts payable to Landlord under this Section 14.5, be amortized on a straight-line basis over the applicable sublease term (in the case of a sublease) or the then-remaining balance of the Term of this Lease (in the case of an assignment)), shall be the property of Landlord and such amounts shall be payable directly to Landlord by the assignee or sublessee. At Landlord's request, a written agreement shall be entered into by and among Tenant, Landlord and the proposed assignee or sublessee confirming the requirements of this Section 14.5.

6. Certain Transfers. If Tenant is a closely held corporation, an unincorporated association, a limited liability company or a partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association, limited liability company or partnership in the aggregate in excess of fifty percent (50%) shall be deemed an assignment within the meaning and provisions of this Article XIV. [If the acquiring or surviving entity is wholly-owned or majority controlled by another entity or person (**"Parent"**), then, without in any way limiting the basis upon which Landlord may grant or withhold its consent to such assignment, it shall not be unreasonable for Landlord to condition its consent upon the execution and delivery by the Parent of a written guaranty .of Tenant's obligations and liabilities under this Lease on a form of lease guaranty provided by Landlord.

7. Landlord's Fee and Expenses. If Tenant requests Landlord's consent to an assignment or subletting by Tenant under this Lease, Tenant shall pay to Landlord a fee of One Thousand Five Hundred Dollars ($1,500) and all of Landlord's out-of-pocket expenses, including, but not limited to, attorneys' fees reasonably incurred related to such assignment or subletting by Tenant, whether or not the assignment or subletting is approved.

8. Prohibited Transfers and Users. Notwithstanding anything contained in this Article XIV to the contrary, in no event shall Tenant enter into any assignments or subleases with, or permit the Premises or any portion thereof to be used by, any person or entity with whom United States persons or entities are restricted from doing business under existing or future regulations of the Office of Foreign Assets Control (**"OFAC"**) of the Department of the Treasury (including, without limitation, those named on OFAC's Specially Designated and Blocked Persons List) or under any existing or future statute, executive order (including, without limitation, Executive Order 13224 entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action. Any assignment, subletting or other agreement or arrangement made in violation of this Section 14.8 shall, at Landlord's option, be null and void and of no force or effect and constitute an Event of Default by Tenant under this Lease.

9. Permitted Transfers. Notwithstanding anything to the contrary in this Article XIV, (a) an assignment or subletting of all or a portion of the Premises to an affiliate of Tenant (an entity that is controlled by, controls, or is under common control with, Tenant), (b) an assignment to an entity that acquires all or substantially all of the assets or interests (partnership, stock or other) of Tenant, (c) an assignment of the Premises to an entity that is the resulting entity of a merger or consolidation of Tenant with another entity, or (d) a sale of corporate stock in Tenant in connection with an initial public offering or follow-on offering of Tenant's stock on a nationally recognized securities exchange (each, a "Permitted Transferee"), shall not be deemed a transfer under this Article XIV and, for the avoidance of doubt, Sections14.1. 14.4 and 14.5 shall not apply to such transfer), provided that (i) Tenant notifies Landlord of any such assignment or sublease and promptly supplies Landlord with any documents or information reasonably requested by Landlord with respect thereto, and (ii) such Permitted Transferee described in clause (b) or (c) above shall have a tangible net worth (not including goodwill as an asset) computed in accordance with generally accepted accounting principles at least equal to the net worth of Tenant on the day immediately preceding the effective date of such assignment or sublease. No such permitted assignment or sublease shall release Tenant of any of its obligations under this Lease.

ARTICLE XV
DEFAULTS AND REMEDIES

1. Tenant's Default. At the option of Landlord, a default under this Lease by Tenant shall exist if any of the following events shall occur (each is called an **"Event of Default"**):

(a) Tenant fails to pay the Rent payable hereunder, as and when due, for a period of three (3) days after Notice by Landlord; provided, however, the Notice given hereunder shall be in lieu of, and not in addition to, any notice required under Section 1161, et seq., of the California Code of Civil Procedure;

(b) Tenant attempts to make or suffers to be made any transfer, assignment or subletting, except as permitted in Article XIV hereof;

(c) Any of Tenant's rights under this Lease are sold or otherwise transferred by or under court order or legal process or otherwise or if any of the actions described in Section 15.2 are taken by or against Tenant or any Guarantor;

(d) The Premises are used for any purpose other than as permitted pursuant to Article V;

(e) Tenant vacates or abandons the Premises while Tenant is in default under this Lease;

(f) Any representation or warranty given by Tenant under or in connection with this Lease proves to be materially false or misleading;

(g) Tenant fails to timely comply with the provisions of Article VI ("**Hazardous Materials**"), Article XIV ("**Assignment and Subletting**"), or Article XVI ("**Subordination; Estoppel Certificate**"), and such failure continues for five (5) business days after Notice by Landlord.

(h) Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, Tenant fails to observe, keep, perform or cure within thirty (30) days after Notice by Landlord any of the other terms, covenants, agreements or conditions contained in this Lease or those set forth in any other agreements or rules or regulations which Tenant is obligated to observe or perform; provided, that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to cure such default. The Notice required by this Subparagraph 15.1(h) shall be in lieu of, and not in addition to, any notice required under Section 1161, et seq., of the California Code of Civil Procedure.

No Notice given under this Section 15.1 shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the Notice.

2. Bankruptcy or Insolvency. In no event shall this Lease be assigned or assignable by operation of law and in no event shall this Lease be an asset of Tenant in any receivership, bankruptcy, insolvency or reorganization proceeding. If:

(a) A court makes or enters any decree or order adjudging Tenant to be insolvent, or approving as properly filed by or against Tenant a petition seeking reorganization or other arrangement of Tenant under any provisions of the Bankruptcy Code or any Applicable Law of the State of California, or directing the winding up or liquidation of Tenant and such decree or order shall have continued for a period of thirty (30) days;

(b) Tenant makes or suffers any transfer which constitutes a fraudulent or otherwise avoidable transfer under any provisions of the Bankruptcy Code or any Applicable Law of the State of California;

(c) Tenant assigns its assets for the benefit of its creditors; or

(d) The material part of the property of Tenant or any property essential to Tenant's business or of Tenant's interest in this Lease is sequestered, attached or executed upon, and Tenant fails to secure a return or release of such property within ten (10) business days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier;

then this Lease shall, at Landlord's election, immediately terminate and be of no further force or effect whatsoever, without the necessity for any further action by Landlord, except that Tenant shall not be relieved of obligations which have accrued prior to the date of such termination. Upon such termination, the provisions herein relating to the expiration or earlier termination of this Lease shall control and Tenant shall immediately surrender the Premises in the condition required by the provisions of this Lease. Additionally, Landlord shall be entitled to all relief, including recovery of damages from Tenant, which may from time to time be permitted, or recoverable, under the Bankruptcy Code or any other Applicable Laws of the State of California.

3. Landlord's Remedies. Upon the occurrence of an Event of Default, then, in addition to and without waiving any other rights and remedies available to Landlord at law or in equity or otherwise provided in this Lease, Landlord may, at its option, cumulatively or in the alternative, to the fullest extent permitted by Applicable Laws exercise the following remedies:

(a) Landlord may terminate Tenant's right to possession of the Premises, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. No act by Landlord other than giving Notice to Tenant of Landlord's election to terminate Tenant's right to possession shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. Termination shall terminate Tenant's right to possession of the Premises but shall not relieve Tenant of any obligation under this Lease which has accrued prior to the date of such termination. Upon such termination, Landlord shall have the right to re-enter the Premises, and remove all persons and property, and Landlord shall also be entitled to recover from Tenant:

(i) The worth at the time of award of the unpaid Monthly Rent and Additional Rent which had been earned at the time of termination;

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

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

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result from Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, commissions and other expenses of reletting, including necessary repair, demolition and renovation of the Premises to the condition existing immediately prior to Tenant's occupancy, the unamortized portion of any brokerage commissions funded by Landlord in connection with this Lease, the cost of rectifying any damage to the Premises occasioned by the act or omission of Tenant, reasonable attorneys' fees, and any other reasonable costs; and

(v) At Landlord's election, all other amounts in addition to or in lieu of the foregoing as may be permitted by Applicable Law.

As used in Subsections (i) and (ii) above, the "worth at the time of award" shall be computed by allowing interest at the Applicable Rate. As used in Subsection (iii) above, the "worth at the time of award" shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) Landlord may elect not to terminate Tenant's right to possession of the Premises, in which event this Lease will continue in full force and effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the remedy described in California Civil Code section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations) and Landlord may continue to enforce all of its rights and remedies under this Lease, including the right to collect all Rent as it becomes due. If Landlord elects to avail itself of the remedy provided by this Section 15.3(b), Landlord shall not unreasonably withhold its consent to an assignment or subletting of the Premises subject to the standards and conditions for Landlord's consent as are contained in this Lease (which standards and conditions Tenant acknowledges and agrees are reasonable at the time this Lease is executed by Tenant). In addition, if Tenant has entered into a sublease which is valid under the terms of this Lease, Landlord may also, at its option, cause Tenant to assign to Landlord the interest of Tenant under said sublease, including, but not limited to, Tenant's right to payment of Rent as it becomes due. Landlord may elect to enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of cleaning and remodeling the Premises required by the reletting, attorneys' fees and like costs. Reletting can be for a period shorter or longer than the remaining Term of this Lease and for the entire Premises or any portion thereof. Tenant shall pay to Landlord the Monthly Rent and Additional Rent due under this Lease on the dates the Monthly Rent and such Additional Rent are due, less the Rent Landlord actually collects from any reletting. Except as provided in the preceding sentence, if Landlord relets the Premises or any portion thereof, such reletting shall not relieve Tenant of any obligation hereunder. Notwithstanding the above, no act by Landlord allowed by this Section 15.3(b) shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

4. No Surrender. Tenant waives any rights of redemption, reinstatement or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179 and California Civil Code Section 3275, and under any other present or future laws if Tenant is evicted or Landlord takes possession of the Premises or this Lease is terminated by reason of an Event of Default. No act or thing done by Landlord or Landlord's Agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Landlord. No employee of Landlord or of Landlord's Agents shall have any power to accept the keys to the Premises prior to the termination of this Lease, and the delivery of the keys to any employee shall not operate as a termination of this Lease or a surrender of the Premises.

5. Interest on Late Payments. Any Rent due under this Lease that is not paid to Landlord within three (3) days of the date when due shall commence to bear interest at the Applicable Rate until fully paid. Neither the accrual nor the payment of interest shall cure any default by Tenant under this Lease.

6. Attorneys' and Other Fees. All sums reasonably incurred by Landlord in connection with an Event of Default or holding over of possession by Tenant after the expiration or termination of this Lease, including, but not limited to, all costs, expenses and actual accountants', appraisers', attorneys' and other professional fees, and any collection agency or other collection charges, shall be due and payable by Tenant to Landlord on demand, and shall bear interest at the Applicable Rate from the date of such demand until paid by Tenant. In addition, if any action shall be instituted by either of the parties hereto for the enforcement of any of its rights in and under this Lease, the party in whose favor judgment shall be rendered shall be entitled to recover from the other party all expenses reasonably incurred by the prevailing party in such action, including actual costs and reasonable attorneys' fees.

7. Landlord's Default. Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within thirty (30) days after receipt of Notice by Tenant to Landlord (and the Mortgagees who have provided Tenant with Notice) specifying the nature of such default; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

8. Limitation of Landlord's Liability. The obligations of Landlord do not constitute the personal obligations of the individual partners, managers, members, trustees, directors, officers or shareholders of Landlord or its constituent partners. If Landlord shall fail to perform any covenant, term, or condition of this Lease upon Landlord's part to be performed, Tenant shall be required to deliver to Landlord Notice of the same. If, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of the sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Building and Property and out of rent or other income from such property receivable by Landlord or out of consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title or interest in the Building or Property, and no action for any deficiency may be sought or obtained by Tenant.

9. Mortgagee Protection. Upon any default on. the part of Landlord, Tenant will give Notice by registered or certified mail to any Mortgagee who has provided Tenant with Notice of its interest together with an address for receiving Notice, and shall offer such Mortgagee a reasonable opportunity to cure the default (which in no event shall be less than sixty (60) days), including time to obtain possession of the Premises by power of sale or a judicial foreclosure, if such should prove necessary, to effect a cure. Tenant agrees that each of the Mortgagees to whom this Lease has been assigned by Landlord is an express third party beneficiary hereof. Tenant shall not make any prepayment of Monthly Rent more than one (1) month in advance without the prior written consent of such Mortgagee. Tenant waives any right under any present or future law to the collection of any security deposit from such Mortgagee or any purchaser at a foreclosure sale of such Mortgagee's interest unless such Mortgagee or such purchaser shall have actually received and not refunded the security deposit in accordance with the terms of this Lease. Tenant agrees to make all payments under this Lease to the Mortgagee with the most senior encumbrance upon receiving a direction, in writing, to pay said amounts to such Mortgagee. Tenant shall comply with such written direction to pay without determining whether an event of default exists under such Mortgagee's loan to Landlord.

10. Landlord's Right to Perform. If an Event of Default shall have occurred and be continuing, Landlord may (but shall not be obligated to), at Tenant's expense, and without waiving or releasing Tenant from any obligation of Tenant under this Lease, make such payment or perform such other act to the extent Landlord may deem desirable, and in connection therewith, pay expenses and employ counsel. All sums paid by Landlord and all penalties, interest and costs, including, but not limited to, collection costs and attorneys' fees reasonably incurred in connection therewith, shall be due and payable by Tenant to Landlord, as an item of Additional Rent, on demand by Landlord, together with interest thereon at the Applicable Rate from the date of such demand until paid by Tenant.

11. Limitation of Actions Against Landlord. If Landlord commences any summary proceeding or action against Tenant for the nonpayment of Rent, Tenant shall not interpose any counterclaims of any nature or description in any such proceeding or action (unless such counterclaims shall be mandatory), rather Tenant shall be relegated to bringing an independent action at law therefor.

12. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF LANDLORD AND TENANT HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE.

ARTICLE XVI

SUBORDINATION; ESTOPPEL CERTIFICATE

1. Subordination, Attornment and Non-Disturbance. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, and at the election of Landlord or any Mortgagee or any ground lessor with respect to the land of which the Premises are a part, this Lease shall be subject and subordinate at all times to (i) all ground leases or underlying leases which may now or hereafter be executed affecting the Building, and (ii) the lien of any Mortgage which may now exist or hereafter be executed in any amount for which the Property, the Building, ground leases and/or underlying leases, and/or Landlord's interest or estate in any of said items, is specified as security. Landlord or any such Mortgagee or ground lessor shall have the right, at its election, to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. No subordination shall permit material interference with Tenant's rights hereunder, and any ground lessor or Mortgagee, whether under a ground lease or Mortgage now existing or hereafter executed, shall recognize Tenant and its permitted successors and assigns as the tenant of the Premises and shall not disturb Tenant's right to quiet possession of the Premises during the Term so long as no Event of Default has occurred and is continuing under this Lease. If Landlord's interest in the Premises is acquired by any ground lessor or Mortgagee, or if proceedings are brought for the foreclosure of, or in the event of exercise of power of sale under, any Mortgage made by Landlord covering the Premises or any part thereof, or if a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination and upon the request of such successor in interest to Landlord, attorn to and become the Tenant of the successor in interest to Landlord and recognize such successor in interest as the Landlord under this Lease. Although this Section 16.1 is self-executing, Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, or any Mortgagee, or ground lessor, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases or underlying leases or the lien of any such Mortgage, and/or evidencing the attornment of Tenant to any successor in interest to Landlord as herein provided.· Tenant's failure to timely execute and deliver such additional documents within ten (10) business days following written request therefor shall, at Landlord's option, constitute an Event of Default hereunder.

2. Estoppel Certificate. Tenant shall, within ten (10) business days following written request by Landlord from time to time, execute and deliver to Landlord any documents, including estoppel certificates, in a form required by Landlord (i) certifying that this Lease is unmodified and in full force and effect or, if modified, attaching a copy of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord or stating the nature of any uncured defaults, (iii) evidencing the status of this Lease as may be required by a Mortgagee or a purchaser of the Premises, (iv) certifying the current Monthly Rent amount and the amount and form of Security Deposit on deposit with Landlord, and (v) certifying to such other information as Landlord, Landlord's Agents, Mortgagees and/or prospective purchasers or their Mortgagees may reasonably request, including, but not limited to, any requested information regarding Hazardous Materials. Tenant's failure to deliver an estoppel certificate within ten (10) business days after delivery of Landlord's written request therefor shall, at Landlord's option, constitute an Event of Default hereunder, and shall be conclusive against Tenant (1) that this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) that there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim, or deduction against Rent; (3) not more than one (1) month's Rent has been paid in advance; and (4) as to the truth and accuracy of any other matters set forth in the form of estoppel certificate submitted to Tenant.

3. Intentionally Omitted.

ARTICLE XVII

SIGNS AND GRAPHICS

1. General. Subject to compliance with Applicable Laws, Tenant shall be entitled to the following Building-standard signage (**"Permitted Signage"**): (i) a listing of Tenant's name in the Building's main lobby directory, (ii) suite identification signage on or adjacent to the entrance to the Premises, (iii) directional signage on the Building's third (3"') floor elevator lobby area, and (iv) the Exterior Sign, as defined in Section 17.2 below. Except as provided in Section 17.2 below, Tenant shall have no right to maintain any other signs or graphics in any other location in, on or about the Premises or the Building and shall not display or erect any other signs, displays or other advertising materials that are visible from the exterior of the Building or outside of the Premises. Permitted Signage (other than the Exterior Sign) shall be installed, maintained by Landlord (and removed by Landlord upon the expiration or sooner termination of this Lease), at Tenant's sole cost and expense, and shall be subject to any Restrictions and conform to the sign criteria established by Landlord from time to time for such signage. All sums incurred by Landlord in connection with the installation, maintenance and removal of Tenant's Permitted Signage shall be due and payable by Tenant to Landlord within thirty (30) days following written demand therefor. Tenant grants to Landlord a non-exclusive and royalty-free license and limited right to use Tenant's Trade Name(s), trademark(s), logo(s) and design(s), whether registered or unregistered (the **"Licensed Marks"**) in marketing materials or other promotional materials relating to the Building or Property in all media, including, without limitation, the use, reproduction and distribution of photographs and video of the outside of the Premises or Building and Tenant's signage and the use of Licensed Marks in any tenant list.

2. Exterior Building Signage. Subject to the terms of this Section 17.2, as Alterations in accordance with Article VIII above (or as part of the Tenant Improvements in accordance with the Work Letter), Tenant shall have the right, at Tenant's sole cost and expense (subject to the Allowance, as defined below), to install Building signage on the northeast corner of the exterior of the Building (facing First Street), identifying the name and/or logo of the Original Tenant (e.g, "Eargo") or any Permitted Transferee (the **"Exterior Sign"**). All aspects of the Exterior Sign, including, without limitation, the location, graphics, materials, color, design, lettering, size, quality and specifications of the Exterior Sign shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. The Exterior Sign shall also comply with and be subject to all Restrictions and Applicable Laws, including, but not limited to, all requirements of the City of San Jose (**"City"**) (or other applicable governmental authorities); provided, however, that in no event shall the approval by the City (or other applicable governmental authorities) of the Exterior Sign be deemed a condition precedent to the effectiveness of this Lease, and if such approval is not obtained, Landlord's and Tenant's other obligations under this Lease shall not be affected thereby. Landlord shall, at no cost to Landlord, reasonably cooperate with Tenant in (i) obtaining applicable permits from the City in connection with the installation of the Exterior Sign and (ii) coordinating Tenant's installation of the Exterior Sign. Following the initial construction and installation of the Exterior Sign, Tenant shall be entitled to modify the name and/or logo for such signage, at Tenant's sole cost and expense, to the new name and/or logo adopted by Original Tenant or a Permitted Transferee, provided that the new name and/or logo shall not be an Objectionable Name or Logo (defined below). **"Objectionable Name or Logo"** shall mean any name or logo which relates to an entity which is of a character or reputation, or is associated with a political orientation or faction, which is inconsistent with the quality of the Building as a first-class office building, or which would otherwise reasonably offend a landlord of comparable buildings. Tenant shall, at its sole cost and expense, maintain the Exterior Sign in good condition and repair. The signage rights granted to Tenant under this Section 17.2 are personal to the Original Tenant and may only be exercised by the Original Tenant or a Permitted Transferee (and not any other assignee, or any sublessee or other transferee of the Original Tenant's interest in this Lease). Notwithstanding anything to the contrary contained in this Section 17.2, in no event shall Tenant have any right to the Exterior Sign if the Original Tenant or a Permitted Transferee is not leasing and occupying the entire Premises.

ARTICLE XVIII

QUIET ENJOYMENT

Landlord covenants that Tenant, upon performing the terms, conditions and covenants of this Lease, shall have quiet and peaceful possession of the Premises as against any person claiming the same by, through or under Landlord.

ARTICLE XIX

SURRENDER; HOLDING OVER

1. Surrender of the Premises. Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Premises to Landlord in its condition existing as of the Commencement Date normal wear and tear and acts of God excepted, with all interior walls in good repair, all carpets shampooed and cleaned, the HVAC equipment, plumbing, electrical and other mechanical installations in good operating order and all floors cleaned and waxed, all to the reasonable satisfaction of Landlord. Tenant shall remove those Alterations (including, without limitation, telecommunications and data cabling and wiring) which Tenant is required to remove pursuant to Section 8.1 above and Section 22.3 below, and all Tenant's Personal Property, and shall repair any damage and perform any restoration work caused by such removal. If Tenant fails to remove such Alterations and Tenant's Personal Property which Tenant is authorized and obligated to remove pursuant to the above, and such failure continues after the expiration or sooner termination of this Lease, Landlord may retain such properly and all rights of Tenant with respect to it shall cease, or Landlord may place all or any portion of such property in public storage for Tenant's account, or Landlord may dispose of such property in any other manner permitted by Applicable Law. Tenant shall pay to Landlord, upon demand, the costs of removal of any such Alterations and Tenant's Personal Property and storage and transportation costs of same, and the cost of repairing and restoring the Premises, together with attorneys' fees and interest on said amounts at the Applicable Rate from the date of expenditure by Landlord. If the Premises are not so surrendered at the expiration or sooner termination of this Lease, Tenant hereby agrees to indemnify Landlord and Landlord's Agents against all loss or liability resulting from any delay by Tenant in so surrendering the Premises, including, but not limited to, any claims made by any succeeding tenant, losses to Landlord due to lost opportunities to lease to succeeding tenants, and actual attorneys' fees and costs. In addition, if the Premises are not so surrendered at the expiration or sooner termination of this Lease, such failure shall, at Landlord's election and upon written Notice to Tenant, constitute an Event of Default under this Lease.

2. Holding Over. If Tenant remains in possession of all or any part of the Premises after the expiration or sooner termination of this Lease with the prior written consent of Landlord such holding over shall constitute a month-to-month tenancy only and shall not constitute a renewal or extension for any further term. If Tenant remains in possession of all or any part of the Premises after the expiration or sooner termination of this Lease without the prior written consent of Landlord, such possession shall constitute a tenancy at sufferance and shall be a default under the Lease upon Landlord's written notice. In either of such events, Monthly Rent shall be increased to an amount equal to one hundred fifty percent (150%) of the Monthly Rent payable during the last month of the Term, and any other sums due hereunder shall be payable in the amounts and at the times specified in this Lease. Any such tenancy shall be subject to every other term, condition and covenant contained in this Lease.

ARTICLE XX

CONSTRUCTION OF TENANT IMPROVEMENTS

The obligations of Landlord and Tenant with respect to the Tenant Improvements are set forth in the Work Letter. It is acknowledged and agreed that all Tenant Improvements under this Lease are and shall be the property of Landlord from and after their installation. Other than completion of Landlord's Work, if any, and subject to the penultimate sentence of Section 3.6, Tenant has reviewed the Premises and accepts the Premises and the Property in its As-Is condition.

ARTICLE XXI

MISCELLANEOUS AND INTERPRETIVE PROVISIONS

1. Broker. Each of Landlord and Tenant represents and warrants to the other that it has not had any dealings with any real estate broker, agent or finder in connection with the negotiation of this Lease or the introduction of the parties to this transaction, except for Broker, and that it knows of no other real estate broker, agent or finder who is or might be entitled to a commission or fee in connection with this Lease. In the event of any additional claims for brokers' or finders' fees with respect to this Lease, Tenant shall indemnify, hold harmless, protect and defend Landlord from and against such claims if they shall be based upon any statement or representation or agreement made by Tenant, and Landlord shall indemnify, hold harmless, protect and defend Tenant from and against such claims if they shall be based upon any statement, representation or agreement made by Landlord.

2. Examination of Lease: Effectiveness. Submission of this Lease for examination or signature by Tenant does not create a reservation of or option to lease. This Lease shall become effective and binding only upon full execution and delivery of this Lease by both Landlord and Tenant.

3. No Recording. Tenant shall not record this Lease or any memorandum of this Lease without Landlord's prior written consent, but if Landlord so requests, Tenant agrees to execute, have acknowledged and deliver a memorandum of this Lease in recordable form which Landlord thereafter may file for record.

4. Quitclaim. Upon any termination of this Lease, Tenant shall, at Landlord's request, execute, have acknowledged and deliver to Landlord an instrument in writing releasing and quitclaiming to Landlord all right, title and interest of Tenant in and to the Premises by reason of this Lease or otherwise.

5. Modifications for Mortgagees. If in connection with obtaining financing for the Premises or any portion thereof, Landlord's Mortgagees shall request reasonable modifications to this Lease as a condition to such financing, Tenant shall not unreasonably withhold, delay or defer its consent thereto, provided such modifications do not materially adversely affect Tenant's rights hereunder. Tenant's failure to so consent shall constitute an Event of Default under this Lease.

6. Notice. Any Notice required or desired to be given under this Lease shall be in writing and shall be addressed to the address of the party to be served. The notices addresses of Landlord and Tenant are as set forth in Item 1 and Item 3, respectively, of the Basic Lease Provisions, except that (a) prior to the Commencement Date, the address for Notices to Tenant shall be as set forth below Tenant's signature on this Lease, and (b) from and after the Commencement Date, notwithstanding the addresses for Tenant set forth in Item 3 of the Basic Lease Provisions, all Notices regarding the operation and maintenance of the Property shall be delivered to Tenant at the Premises. Each such Notice shall be deemed effective and given (i) upon receipt, if personally delivered, (ii) for any Notice given by overnight courier, the next Business Day after deposit with the courier, (iii) upon being telephonically confirmed as transmitted, if sent by telegram, telex or telecopy, (iv) two (2) Business Days after deposit in the United States mail in the County, certified and postage prepaid, properly addressed to the party to be served, or (v) upon receipt if sent in any other way. Any party hereto may from time to time, by Notice to the other in accordance with this Section 21.6, designate a different address than that set forth above for the purposes of Notice. If Tenant's address for Notices is an address not located in California and/or is a Post Office box, mail-stop or the like, then, notwithstanding anything contained in this Section 21.6 to the contrary, any notice given by Landlord under California Code of Civil Procedure sections 1161 and/or 1162 (including, without limitation, any Notices given by Landlord under Article XV above that are intended to satisfy the notice requirements under said sections 1161 and/or 1162) may, at Landlord's option, be served by Landlord at the Premises (and any courtesy copy of such Notice sent by Landlord in any other manner shall not affect the legal adequacy of the Notice served by Landlord at the Premises).

7. Captions. The captions and headings used in this Lease are for the purpose of convenience only and shall not be construed to limit or extend the meaning of any part of this Lease.

8. Executed Copy. Any fully executed copy of this Lease shall be deemed an original for all purposes.

9. Time. Time is of the essence for the performance of each term, condition and covenant of this Lease.

10. Severability. If any one or more of the provisions contained herein shall for any reason be-held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

11. Survival. All covenants and indemnities set forth herein which contemplate the payment of sums, or the performance by Landlord or Tenant after the Term or following an Event of Default, including specifically, but not limited to, the covenants and indemnities set forth in Section 5.3, Article VI, Article VII, Section 8.1, Section 9.2, Section 11.1, Section 11.10, Article XV, and Article XIX, and all representations and warranties of Landlord and Tenant, shall survive the expiration or sooner termination of this Lease.

12. Choice of Law; Construction. This Lease shall be construed and enforced in accordance with the Applicable Laws of the State of California. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant, it being the intent of the parties that this Lease shall be interpreted as if it was prepared by both parties, and any ambiguities shall not be resolved in favor of Tenant because all or a portion of this Lease was prepared by Landlord.

13. Gender; Singular. Plural. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership, limited liability company or corporation or joint venture, the singular includes the plural and the plural includes the singular.

14. Non-Agency. It is not the intention of Landlord or Tenant to create hereby a relationship of master- servant or principal-agent, and under no circumstance shall Tenant herein be considered the agent of Landlord, it being the sole purpose and intent of the parties hereto to create a relationship of landlord and tenant.

15. Successors. The terms, covenants, conditions and agreements contained in this Lease shall, subject to the provisions as to assignment, subletting, and bankruptcy contained herein and any other provisions restricting successors or assigns, apply to and bind the heirs, successors, legal representatives and assigns of the parties hereto.

16. Waiver; Remedies Cumulative. The waiver by either party of any term, covenant, agreement or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein contained, nor shall any custom or practice which may develop between the parties in the administration of this Lease be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by the other in strict accordance with all of the provisions of this Lease. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any provisions, covenant, agreement or condition of this Lease, other than the failure of Tenant to pay the particular Rent payment so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent payment. Landlord's acceptance of any check, letter or payment shall in no event be deemed an accord and satisfaction, and any such acceptance by Landlord shall be without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy available to it. The rights and remedies of either party under this Lease shall be cumulative and in addition to any and all other rights and remedies which either party has or may have.

17. Unavoidable Delay. Except for the monetary obligations of Tenant under this Lease, neither party shall be chargeable with, liable for, or responsible to the other for anything or in any amount for any Unavoidable Delay and any Unavoidable Delay shall not be deemed a breach of or default in the performance of this Lease, it being specifically agreed that any time limit provision contained in this Lease (other than the scheduled expiration of the Term) shall be extended for the same period of time lost by Unavoidable Delay.

18. Entire Agreement. This Lease is the entire agreement between the parties, and supersedes any prior agreements, representations, negotiations or correspondence between the parties except as expressed herein. Except as otherwise provided herein, no subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto.

19. Authority. Each of Landlord and Tenant represents to the other that the individual executing this Lease on its behalf is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with its corporate bylaws, operating agreement, statement of partnership or certificate of limited partnership, as the case may be, and that this Lease is binding upon said entity in accordance with its terms. If Tenant is a corporation, Tenant shall, if requested by Landlord, within thirty (30) days after execution of this Lease and prior to entering into possession of the Premises, deliver to Landlord evidence of the Board of Directors of the corporation authorizing the execution of this Lease.

20. Guaranty. As a condition to the execution of this Lease by Landlord, the obligations, covenants and performance of the Tenant as herein provided shall be guaranteed in writing by the Guarantor listed in Item 14 of the Basic Lease Provisions, if any, on a form of guaranty provided by Landlord.

21. Exhibits; References. All exhibits, amendments, riders and addenda attached to this Lease are hereby incorporated into and made a part of this Lease. In the event of variation or discrepancy, the duplicate original hereof (including exhibits, amendments, riders and addenda, if any, specified above) held by Landlord shall control. All references in this Lease to Articles, Sections, Exhibits, Riders and clauses are made, respectively, to Articles, Sections, Exhibits, Riders and clauses of this Lease, unless otherwise specified.

22. Basic Lease Provisions. The Basic Lease Provisions at the beginning of this Lease are intended to provide general information only. In the event of any inconsistency between the Basic Lease Provisions and the specific provisions of this Lease, the specific provisions of this Lease shall prevail.

23. No Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all such subtenancies.

24. Joint and Several Obligations. If more than one person or entity is Tenant, the obligations imposed on each such person or entity shall be joint and several.

25. No Light or Air Easement. Any diminution or shutting off of light or air by any structure which may be erected on lands adjacent to the Building shall in no way affect this Lease, abate Rent or otherwise impose any liability on Landlord. This Lease does not confer any right with regard to the subsurface below the ground level of the Building.

26. Security Measures. Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises, the Property or the Building. Tenant assumes all responsibility for the protection of Tenant, Tenant's Agents and the property of Tenant and of Tenant's Agents from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from providing security protection for the Property and/or the Building or any part thereof, in which event the cost thereof shall be included within the definition of Project Costs and paid by Tenant in the manner set forth in Section 7.1.

27. Transfers by Landlord. Landlord (and any party comprising Landlord) and its successors in interest shall have the right to transfer their respective interests in this Lease, the Building and the Property at any time and to any person or entity. In the event of any such transfer(s), the Landlord originally named herein (and, in the case of any subsequent transfer(s), the applicable transferor(s)) shall be automatically relieved from the date of such transfer, without further act by any person or entity, of all liability under any and all of the covenants and obligations of Landlord contained in or derived from this Lease accruing from and following the date of such transfer, and the successor shall automatically be deemed, without further act by any person or entity, to have assumed all such obligations. Upon the request of Landlord, Tenant agrees to attorn to any entity purchasing or otherwise acquiring the Premises.

28. ERISA. Tenant represents and warrants that it is not an employee benefit plan as defined under Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (**"ERISA"**), or an entity (e.g. an insurance company separate or general account) subject to ERISA or holding ERISA "plan assets" within the meaning of the Department of Labor Regulations at Section 2510.3-101.

29. Counterparts. This Lease 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 one and the same instrument.

30. No Offer. The submission of this Lease shall not be construed as an offer, nor shall either party hereto have any rights under this Lease unless each of Landlord and Tenant executes a copy of this Lease and delivers same to the other party hereto.

ARTICLE XXII

ADDITIONAL PROVISIONS

1. Additional Requirements Relating to Alterations and Other Work. The following terms and conditions shall apply to any work or service performed at the Building or on the Premises by Tenant or Tenant's contractors (including, without limitation, Alterations, repairs, maintenance, janitorial and cleaning services), which terms and conditions are in addition to those set forth in the Lease, including, without limitation, the terms and conditions set forth in Article VIII:

(a) Such work or services shall not proceed until Landlord has approved in writing: (i) Tenant's contractor, (ii) the amount and coverage of public liability and property damage insurance, with Landlord and the Landlord Parties named as additional insureds, carried by Tenant's contractor, (iii) complete and detailed plans and specifications for such work, and (iv) a schedule for the performance of the work or services.

(b) All work and services shall be done in conformity with a valid permit when required, a copy of which shall be furnished to Landlord before commencement of such work or services. In any case, all work and services shall be performed in accordance with all Applicable Laws. Notwithstanding any failure by Landlord to object to any such work or services, Landlord shall have no responsibility for Tenant's failure to comply with Applicable Laws.

(c) Tenant agrees to indemnify, defend and hold Landlord and Landlord's Agents harmless for any work or services performed, which is not performed in accordance with Applicable Laws or the provisions of this Lease, including, without limitation, this Section 22.1.

(d) Tenant understands that all contractors and subcontractors retained at the Property by Tenant to perform any work or services shall be signatory to a union collective bargaining agreement.

2. Restricted Persons. Tenant is and will remain in compliance with the requirements of Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) (the "Order'') and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury (**"OFAC"**) and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the **"Orders"**). Tenant:

(a) is not listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the **"Lists"**);

(b) has not been determined by competent authority to be subject to the prohibitions contained in the Orders;

(c) is not and will not become owned or controlled by, nor act for or on behalf of, any person or entity on the Lists or any other person or entity that has been determined by competent authority to be subject to the prohibitions contained in the Orders;

(d) is not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities on the Lists or that has been determined by competent authority to be subject to the prohibitions contained in the Orders; and

(e) agrees to cooperate with Landlord in providing such additional information and documentation on Tenant's legal or beneficial ownership, policies, procedures and sources of funds as Landlord reasonably deems necessary or prudent solely to enable it to comply with Orders or anti-money laundering laws as now in existence or hereafter amended.

Any breach or violation of this Section 22.2 shall, at Landlord's option, constitute an Event of Default by Tenant under this Lease.

3. Telecommunications.

(a) Tenant and its telecommunications companies, including local exchange telecommunications companies and alternative vendor service companies, shall have no right of access to or within the Building or the Property for the installation or operation of telecommunications services or systems, including, but not limited to, voice, video, data, and other telecommunications services provided over wire, fiber optic, microwave, wireless, or any other transmission system, for all or part of Tenant's telecommunications within the Building and from the Building or the Property to any other location without Landlord's prior written consent, which Landlord may withhold in its reasonable discretion.

(b) If Landlord consents in writing to the installation of any cabling and/or wires, then Tenant shall be responsible for ensuring that any such cabling and/or wiring is properly labeled. Tenant acknowledges and agrees that the following terms and conditions shall apply to the same:

(i) No later than the tenth (10th) day after the expiration or sooner termination of the Lease, Landlord may elect by written Notice to Tenant (the **"Election Right"**) to:

1) Retain any or all wiring, cables, risers, and similar installations appurtenant thereto installed by Tenant in the risers of the Building (the **"Wiring"**);

2) Remove any or all such Wiring and restore the Premises and risers to their condition existing prior to the installation of the Wiring (the **"Wire Restoration Work"**). Landlord shall perform such Wire Restoration Work at Tenant's sole cost and expense; or

3) Require Tenant to perform the Wire Restoration Work at Tenant's sole cost and expense.

(b) If Landlord elects to retain the Wiring, Tenant covenants that:

(i) Tenant shall convey good title to such Wiring, Tenant shall have good right to surrender such Wiring, and such Wiring shall be free of all liens and encumbrances; and

(ii) All wiring shall be left in good condition, working order, properly labeled at each end and in each telecommunications/electrical closet and junction box, and in safe condition.

(c) Notwithstanding anything to the contrary in Section 4.6, Landlord may retain Tenant's Security Deposit after the expiration or sooner termination of this Lease until the earliest of the following events:

(i) Landlord elects to retain the Wiring;

(ii) Landlord elects to perform the Wire Restoration Work, the Wire Restoration Work is complete, and Tenant has fully reimbursed Landlord for all costs related thereto; or

(iii) Landlord elects to require Tenant to perform the Wire Restoration Work, the Wire Restoration Work is complete, and Tenant has paid for all costs related thereto.

(d) If Tenant fails or refuses to pay all costs of the Wire Restoration Work within thirty (30) days after Tenant's receipt of Landlord's Notice requesting Tenant's reimbursement for or payment of such costs, Landlord may apply all or any portion of Tenant's Security Deposit toward the payment of such unpaid costs relative to the Wire Restoration Work.

(e) The retention or application of the Security Deposit as provided in this Section 22.3 does not constitute a limitation on or waiver of Landlord's right to seek further remedy under this Lease, at law, or in equity.

(f) The provisions of this Section 22.3 shall survive the expiration or sooner termination of this lease.

2. Right of First Offer. So long as Tenant is not then in default under this Lease beyond any applicable notice and cure period, Tenant shall have the First Right of Offer on any available space in the Building. Landlord shall deliver Notice of the availability of such space to Tenant. Tenant shall have option to exercise such right by delivering Notice containing Tenant's offer to lease the available space, including monthly rent, length of term and other material business points, to Landlord within ten (10) days of receipt of Landlord's Notice. If Landlord does not respond to Tenant's offer within five (5) days, such offer shall be deemed automatically rejected.

3. Right of First Refusal. So long as Tenant is not then in default under this Lease beyond any applicable notice and cure period, Tenant shall have a one-time Right of First Refusal as to Suite 202 subject to the following terms:

(a) Landlord shall provide Tenant notice of any bona-fide good faith third- party offer to lease received for Suite 202 and Tenant shall have ten (10) days to accept or reject the same.

(b) If Tenant accepts the terms of the offer, Landlord and Tenant shall execute an amendment to this Lease within twenty (20) days of such exercise of Tenant's right of first refusal.

(c) If Tenant does not accept the offer, Landlord shall have the right to enter into a lease of Suite 202 with the third party; provided, however, that if Landlord does not enter into such lease within sixty (60) days, or if the economic terms of the lease of Suite 202 would differ materially from the initial offer, Tenant shall again have a right of first refusal on Suite 202. For purposes of this Section 22.5(c), the economic terms of the offer shall be deemed to differ materially from the initial offer if they result in a ten percent (10%) decrease in aggregate economic value to Landlord.

ARTICLE XXIII

CALIFORNIA REQUIRED DISCLOSURES

For purposes of Section 1938(a) of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist (CASp). As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

[Signatures to appear on the following page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date of this Lease.

LANDLORD: GZI First North 1, LLC, a Delaware limited liability company

BY: /s/ Ming Lin DATE: 9/03/2021
Name: Ming Lin
Its: Managing Member

TENANT: Eargo Inc., a Delaware corporation

BY: /s/ Adam Laponis DATE: 9/03/2021

Name: Adam Laponis
Its: Vice President Finance

FIRST AMENDMENT TO LEASE

GZI FIRST NORTH 1, LLC

This **First Amendment to Lease** is made as of this **26th day of January, 2022,** by and between **GZI First North 1, LLC, a Delaware Limited Liability Company,** (as Lessor/Landlord) and **EARGO, INC., A DELAWARE CORPORATION** (as Lessee/Tenant).

RECITALS

A. Lessor and Lessee entered into that certain **STANDARD FORM OFFICE LEASE** dated for reference purposes only **JULY 31, 2021 and executed on September 3, 2021,** with respect to those certain premises known as **2665 North First Street, Suite 300, Suite 200 and Suite 112, San Jose, California**, consisting of approximately **30,153 rentable square feet** of office space (the Premises).

B. Lessor and Lessee desire to AMEND the terms of the Lease according to the provisions herein contained.

C. In the event of any conflict between this **First Amendment to Lease** and the Lease, the terms and conditions of this **First Amendment to Lease** shall control.

THE PARTIES HEREBY AGREE AS FOLLOWS:

AGREEMENT

1. **Premises Square Footage**: (Pursuant to Article 1, Paragraph 6, Page 2) The Premises Square Footage shall be amended to read: **Approximately 3,736 rentable square feet (Suite 200)**, and **approximately 25,417 rentable square feet (Suite 300)**, and **approximately 1,000 rentable square feet (Suite 112)**.

2. **Exhibit A, B, C, D, and E**: (Pursuant to each Exhibit attached to the Lease) In the first sentence of each Exhibit, and for clarification, the referenced **Date** of the Standard Form Office Lease, shall be dated for reference purposes only **JULY 31, 2021**.

3. **Miscellaneous:** This Agreement: (a) contains the entire agreement between the parties regarding the matters covered in this Agreement, and there have been no other statements, promises, or representations made by the parties that are intended to alter, modify, or complement this Agreement; (b) may not be altered, amended, modified, or otherwise changed in any respect, except by a writing executed by an authorized representative of each party; (c) may be executed in one or more counterparts, each of which shall be deemed an original, and all taken together, shall constitute one and the same instrument; (d) shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns; and (e) may be executed and transmitted electronically and such electronic signatures shall be deemed originals as provided in the Uniform Electronic Transactions Act, Civil Code §1631.1, et seq.

Initials____

____

4. All other terms and conditions of the above referenced Lease agreement shall remain in full force and effect for the term hereof.

5. This amendment shall be effective upon both Lessor and Lessee's full execution.

LESSEE:
Eargo, Inc.,
A Delaware Corporation

/s/ Adam Laponis
Signature

Adam Laponis Chief Financial Officer

1/27/2022
Date

LESSOR:
GZI First North 1, LLC,
A Delaware Limited Liability Company

/s/ Ming Lin
Signature

Ming Lin Managing Member

1/28/2022
Date

Initials /s/ AL
/s/ ML

Exhibit 21.1

Subsidiaries of Eargo, Inc.

The registrant's subsidiaries and affiliates as of December 31, 2021 are included in the list below.

Legal Name of Subsidiary	Jurisdiction of Organization
Eargo Hearing, Inc.	California
Eargo Screening, LLC	Delaware

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-249548 and 333-254357 on Form S-8 of our reports dated May 13, 2022, relating to the consolidated financial statements of Eargo, Inc. and the effectiveness of Eargo, Inc.'s internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ Deloitte & Touche LLP

San Jose, California

May 13, 2022

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Christian Gormsen, certify that:

1. I have reviewed this Annual Report on Form 10-K of Eargo, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 13, 2022

By: /s/ Christian Gormsen
Christian Gormsen
President and Chief Executive Officer
(*Principal Executive Officer*)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Adam Laponis, certify that:

1. I have reviewed this Annual Report on Form 10-K of Eargo, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 13, 2022

By: /s/ Adam Laponis
Adam Laponis
Chief Financial Officer
(*Principal Financial Officer*)

Exhibit 32.1

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

In connection with the Annual Report of Eargo, Inc. (the "Company") on Form 10-K for the period ending December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 13, 2022

By: /s/ Christian Gormsen
Christian Gormsen
President and Chief Executive Officer
(*Principal Executive Officer*)

Exhibit 32.2

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

In connection with the Annual Report of Eargo, Inc. (the "Company") on Form 10-K for the period ending December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 13, 2022

By: /s/ Adam Laponis
Adam Laponis
Chief Financial Officer
(*Principal Financial Officer*)