HeartWare International, Inc.

ARBN 132 897 762

and its controlled entities

ASX APPENDIX 4D
HALF-YEAR FINANCIAL REPORT
For the 6 Months Ended
30 JUNE 2012
provided pursuant to ASX Listing Rule 4.2A.

This is the Half-Year Report for the HeartWare Group. The HeartWare Group includes HeartWare International, Inc. (ASX:HIN, NASDAQ:HTWR) and its subsidiaries HeartWare Pty. Limited, HeartWare, Inc., HeartWare (UK) Limited, HeartWare GmbH and HeartWare France.

The HeartWare Group relies on relief available under ASIC Class Order 98/1418, and as such, will lodge its financial results for the half-year ended 30 June 2012, in the form of United States Securities and Exchange Commission ("SEC") Quarterly Report on Form 10-Q, which includes financial results for the three and six months ended 30 June 2012, prepared in accordance with United States Generally Accepted Accounting Principles, on or before 9 August 2012.

This Half-Year Report does not include all of the commentary, notes and information that are typically found in an annual financial report. Accordingly, this Half-Year Report should be read in conjunction with any public announcements made by the Company during the half-year in accordance with any continuous disclosure obligations arising under the *Corporations Act 2001*.

This Half-Year Report provides information as required by Appendix 4D of the ASX Listing Rules.

All amounts in this report are denominated in United States dollars unless otherwise indicated.

RESULTS FOR ANNOUNCEMENT TO THE MARKET

Important information concerning the financial results for the half-year ended 30 June 2012

The HeartWare Group relies on relief available under ASIC Class Order 98/1418, and as such, this report and accompanying financial results on United States Securities and Exchange Commission ("SEC") Quarterly Report on Form 10-Q ("Form 10-Q") are prepared in accordance with United States Generally Accepted Accounting Principles.

The financial results set out in this Half-Year Report and the attached interim financial report on SEC Form 10-Q are the consolidated financial results for the HeartWare Group, being HeartWare International, Inc., HeartWare Pty. Limited, HeartWare, Inc., HeartWare (UK) Limited and HeartWare GmbH, ("the Company").

All amounts in this report are denominated in United States dollars unless otherwise indicated.

Review of Operations and Earnings Results for the Half-Year Ended 30 June 2012

The net loss of the HeartWare Group for the half-year ended 30 June 2012 after providing for income tax was $41.6 million (2011:$19.5 million). The increase in the net loss reflects an increase in overall expenses related to supporting commercialization efforts outside of the U.S., an increase in clinical and regulatory costs associated with managing the Company's ADVANCE and ENDURANCE trials and the Pre-Market application process, and increased expenditure on the Company's pipeline technologies, including the next generation MVAD platform.

	Half-Year Ended 30 June 2012 US$ (000's)	Half-Year Ended 30 June 2011 US$ (000's)	Increase / (Decrease) US$	Increase / (Decrease) %
Revenues from ordinary activities	$55,398	$38,364	$17,034	44%
Profit / (Loss) from ordinary activities after tax attributable to members	($41,627)	($19,527)	$22,100	113%
Net profit / (Loss) for the period attributable to members	($41,627)	($19,527)	$22,100	113%

NET TANGIBLE ASSETS PER SECURITY

	Half-Year Ended 30 June 2012 US$	Half-Year Ended 30 June 2011 US$
Net tangible assets per share of HeartWare International, Inc. common stock	$15.22	$18.23

COMMENTARY TO THE EARNINGS RESULTS

A detailed discussion of our earnings results can be found in the section titled "*Management's Discussion and Analysis of Financial Condition and Results of Operations"* of the attached SEC Form 10-Q.

DIVIDENDS

No dividend was paid during the period ended 30 June 2012 and the Directors do not recommend that a dividend relating to the interim period ended 30 June 2012 be paid. As such, there is no franking or applicable record date.

COMPLIANCE STATEMENT

The attached interim financial report on SEC Form 10-Q is not subject to audit dispute or qualification. This Half-Year Report is based on the attached SEC Form 10-Q and has been subject to review procedures as required by the SEC and includes a Report of Independent Registered Public Accounting Firm provided by Grant Thornton LLP. HeartWare International, Inc. has a formally constituted audit committee.

Please find attached the Company's SEC Form 10-Q for the six months ended 30 June 2012.

Douglas Godshall
Chief Executive Officer
8 August 2012

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

FORM 10-Q

☑ **Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended June 30, 2012

☐ **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: 001-34256

HEARTWARE INTERNATIONAL, INC.
(Exact name of registrant as specified in its charter)

Delaware	**26-3636023**
(State of Incorporation)	**(I.R.S. Employer Identification No.)**

205 Newbury Street, Suite 101
Framingham, Massachusetts 01701
+1 508 739 0950
(Address of principal executive offices)
(Registrant's telephone number, including area code)

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

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

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

Large accelerated filer ☐	Accelerated filer ☑
Non-accelerated filer ☐	Smaller reporting company ☐

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	**Shares Outstanding as of August 3, 2012**
Common Stock, $0.001 Par Value Per Share	14,276,192

References

Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to:

- "HeartWare," "the Company," "HeartWare Group," "we," "us" and "our" refer to HeartWare International, Inc. and its consolidated subsidiaries, HeartWare Pty. Limited, HeartWare, Inc., HeartWare GmbH, HeartWare (UK) Limited and HeartWare France.
- "HeartWare International, Inc." refers to HeartWare International, Inc., a Delaware corporation incorporated on July 29, 2008.
- "HeartWare Pty. Limited" refers to HeartWare Pty. Limited (formerly known as HeartWare Limited), an Australian proprietary corporation originally incorporated on November 26, 2004.
- "HeartWare, Inc." refers to HeartWare, Inc., a Delaware corporation incorporated on April 3, 2003. HeartWare, Inc. was acquired by HeartWare Pty. Limited on January 24, 2005.
- "HeartWare GmbH" refers to HeartWare GmbH, a German corporation established on February 19, 2010.
- "HeartWare (UK) Limited" refers to HeartWare (UK) Limited, a limited liability corporation established in the United Kingdom on February 19, 2010.
- "HeartWare France" refers to HeartWare France, a French corporation established on August 16, 2011.

Currency

Unless indicated otherwise in this Quarterly Report on Form 10-Q, all references to "$", "U.S.$" or "dollars" refer to United States dollars, the lawful currency of the United States of America. References to "AU$" refer to Australian dollars, the lawful currency of the Commonwealth of Australia. References to "€" or "Euros" means Euros, the single currency of Participating Member States of the European Union. References to "£" or "British Pounds" refer to British pound sterling, the lawful currency of the United Kingdom.

Trademarks

HEARTWARE®, HVAD®, MVAD®, KRITON® and various company logos are the trademarks of the Company in the United States, Europe, Australia and other countries. All other trademarks and trade names mentioned in this Quarterly Report on Form 10-Q are the property of their respective owners.

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements are based on our management's beliefs, assumptions and expectations and on information currently available to our management. Generally, you can identify forward-looking statements by terms such as "may," "will," "should," "could," "would," "expects," "plans," "anticipates," "believes," "estimates," "projects," "predicts," "potential" and similar expressions intended to identify forward-looking statements, which generally are not historical in nature. All statements that address operating or financial performance, events or developments that we expect or anticipate will occur in the future are forward-looking statements, including without limitation:

- our expectations with respect to regulatory submissions and approvals, such as United States Food & Drug Administration ("FDA") approval of our premarket approval application for our HeartWare® Ventricular Assist System for a bridge-to-transplant indication;
- our expectations with respect to our clinical trials, including enrollment in or completion of our clinical trials as well as approval of new clinical trials and continued access protocols with respect to our existing clinical trials;
- our expectations with respect to the integrity or capabilities of our intellectual property position;
- our ability and plans to commercialize our existing products;
- our ability and plans to develop and commercialize new products and the expected features and functionalities and possible benefits of these products; and

- our estimates regarding our capital requirements and financial performance, including profitability fluctuation.

Our management believes that these forward-looking statements are reasonable as and when made. However, you should not place undue reliance on our forward-looking statements because they speak only as of the date when made. We do not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by federal securities laws and the rules and regulations of the Securities and Exchange Commission (the "SEC"). We may not actually achieve the plans, projections or expectations disclosed in our forward-looking statements, and actual results, developments or events could differ materially from those disclosed in the forward-looking statements. Forward-looking statements are subject to a number of risks and uncertainties, including without limitation those described in Part I, Item 1A. "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011 filed with the SEC on February 27, 2012, and those described from time to time in our other filings with the SEC.

PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except per share data)

	June 30, 2012 (unaudited)	December 31, 2011
ASSETS		
Current assets:		
Cash and cash equivalents	$ 114,501	$ 71,257
Short-term investments, net	16,501	91,925
Accounts receivable, net	21,443	14,953
Inventories, net	34,670	32,005
Prepaid expenses and other current assets	6,017	4,507
Total current assets	193,132	214,647
Property, plant and equipment, net	19,213	18,325
Other intangible assets, net	2,189	2,014
Deferred financing costs, net	2,496	2,653
Other assets	3,508	3,093
Total assets	$ 220,538	$ 240,732
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 11,008	$ 5,025
Other accrued liabilities	13,185	12,436
Total current liabilities	24,193	17,461
Convertible senior notes, net	97,205	94,277
Other long-term liabilities	2,913	2,210
Commitments and contingencies – See Note 15		
Stockholders' equity:		
Preferred stock—$.001 par value; 5,000 shares authorized; no shares issued and outstanding at June 30, 2012 and December 31, 2011	—	—
Common stock—$.001 par value; 25,000 shares authorized; 14,181 and 14,114 shares issued and outstanding at June 30, 2012 and December 31, 2011, respectively	14	14
Additional paid-in capital	327,868	316,748
Accumulated deficit	(223,951)	(182,324)
Accumulated other comprehensive loss:		
Cumulative translation adjustments	(7,701)	(7,631)
Unrealized loss on investments	(3)	(23)
Total accumulated other comprehensive loss	(7,704)	(7,654)
Total stockholders' equity	96,227	126,784
Total liabilities and stockholders' equity	$ 220,538	$ 240,732

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

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)
(In thousands, except per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
Revenue, net	$ 29,053	$ 20,389	$ 55,398	$ 38,364
Cost of revenue	12,665	7,913	23,493	15,509
Gross profit	16,388	12,476	31,905	22,855
Operating expenses:				
Selling, general and administrative	14,204	9,892	26,920	18,556
Research and development	20,005	10,280	40,012	19,580
Total operating expenses	34,209	20,172	66,932	38,136
Loss from operations	(17,821)	(7,696)	(35,027)	(15,281)
Other income (expense):				
Foreign exchange (loss) gain	(2,175)	134	(1,090)	726
Interest expense	(2,824)	(2,647)	(5,601)	(5,252)
Investment income, net	57	128	170	295
Other, net	(19)	(15)	(79)	(15)
Loss before income taxes	(22,782)	(10,096)	(41,627)	(19,527)
Provision for income taxes	—	—	—	—
Net loss	$(22,782)	$(10,096)	$(41,627)	$(19,527)
Net loss per common share — basic and diluted	$ (1.61)	$ (0.73)	$ (2.94)	$ (1.40)
Weighted average shares outstanding — basic and diluted	14,157	13,923	14,139	13,912

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

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(unaudited)
(In thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
Net loss	$ (22,782)	$ (10,096)	$ (41,627)	$ (19,527)
Other comprehensive income (loss)				
Foreign currency translation adjustments	32	65	(70)	91
Unrealized gain (loss) on investments	6	8	20	(25)
Comprehensive loss	$ (22,744)	$ (10,023)	$ (41,677)	$ (19,461)

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

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(unaudited)
(In thousands, except per share data)

	Common Shares, $0.001 Par Value Per Share		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Stockholders Equity
	Shares Issued	Amount				
Balance, December 31, 2011	14,114	$ 14	$316,748	$ (182,324)	$ (7,654)	$ 126,784
Issuance of common stock pursuant to share-based awards	67	—	1,065	—	—	1,065
Share-based compensation	—	—	10,055	—	—	10,055
Net loss	—	—	—	(41,627)	—	(41,627)
Other comprehensive loss	—	—	—	—	(50)	(50)
Balance, June 30, 2012	14,181	$ 14	$327,868	$ (223,951)	$ (7,704)	$ 96,227

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

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)
(In thousands)

	Six Months Ended June 30,	
	2012	2011
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (41,627)	$ (19,527)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of property, plant and equipment	2,054	1,020
Amortization of intangible assets	79	64
Share-based compensation expense	10,055	6,437
Amortization of premium on investments	497	441
Amortization of discount on convertible senior notes	2,928	2,597
Amortization of deferred financing costs	157	139
Other	401	340
Change in operating assets and liabilities:		
Accounts receivable	(6,845)	3,527
Inventories, net	(3,160)	(7,547)
Prepaid expenses and other current assets	(1,272)	(2,248)
Accounts payable	5,991	(555)
Other accrued liabilities	769	1,309
Other long-term liabilities	703	—
Net cash used in operating activities	(29,270)	(14,003)
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of investments	(15,000)	(80,128)
Maturities of investments	89,946	25,000
Additions to property, plant and equipment, net	(2,884)	(4,570)
Additions to patents	(254)	(254)
Cash paid for security deposits	(750)	—
Net cash provided by (used in) investing activities	71,058	(59,952)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from exercise of stock options	1,065	600
Payment of common stock issuance costs	—	(1)
Net cash provided by financing activities	1,065	599
Effect of exchange rate changes on cash and cash equivalents	391	52
INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	43,244	(73,304)
CASH AND CASH EQUIVALENTS — BEGINNING OF PERIOD	71,257	192,148
CASH AND CASH EQUIVALENTS — END OF PERIOD	$ 114,501	$ 118,844

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

HEARTWARE INTERNATIONAL, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 1. Basis of Presentation

HeartWare International, Inc., referred to in these notes collectively with its subsidiaries HeartWare Pty. Limited, HeartWare, Inc., HeartWare (UK) Limited, HeartWare GmbH and HeartWare France as "we," "our," "HeartWare" or the "Company," is a medical device company that develops, manufactures and markets miniaturized implantable heart pumps, or ventricular assist devices, to treat patients suffering from advanced heart failure.

The accompanying unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for reporting of interim financial information. Pursuant to such rules and regulations, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. Accordingly, these statements do not include all the disclosures normally required by accounting principles generally accepted in the United States for annual financial statements and should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations contained in this report and the audited financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011. The accompanying condensed consolidated balance sheet as of December 31, 2011 has been derived from our audited financial statements. The condensed consolidated statements of operations for the three and six months ended June 30, 2012 and cash flows for the six months ended June 30, 2012 are not necessarily indicative of the results to be expected for any future period or for the year ending December 31, 2012.

In the opinion of management, the accompanying unaudited interim condensed consolidated financial statements contain all adjustments (consisting of only normally recurring adjustments) necessary to present fairly the financial position and results of operations as of the dates and for the periods presented.

Note 2. Liquidity

At June 30, 2012, we had approximately $131.0 million of cash, cash equivalents and investments. The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States, which contemplate continuation of the Company as a going concern. We have incurred substantial losses from operations since our inception, and such losses have continued through June 30, 2012. At June 30, 2012, we had an accumulated deficit of approximately $224.0 million.

We have financed our operations primarily through the issuance of shares of our common stock and the issuance of convertible notes. Most recently, in December 2010, we consummated the issuance and sale of $143.75 million aggregate principal amount of convertible notes. The convertible notes are the senior unsecured obligations of the Company. The convertible notes bear interest at a rate of 3.5% per annum, payable semi-annually in arrears on June 15 and December 15 of each year. The convertible notes will mature on December 15, 2017, unless earlier repurchased or converted. The convertible notes will be convertible at an initial conversion rate of 10 shares of common stock per $1,000 principal amount of convertible notes, which corresponds to an initial conversion price of $100.00 per share of common stock.

For the remainder of 2012, our cash, cash equivalents and investments are expected to primarily be used to fund our ongoing operations including preparing the launch of the HeartWare® Ventricular Assist System (the "HeartWare System") in the United States, research and development of new products, managing on-going and new clinical trials, and regulatory and other compliance functions, as well as for general working capital. We believe our cash, cash equivalents and investment balances are sufficient to support our planned operations for at least the next twelve months.

Note 3. Significant Accounting Policies

Principles of Consolidation

The condensed consolidated financial statements include the accounts of HeartWare International, Inc., and its subsidiaries described in Note 1. All inter-company balances and transactions have been eliminated in consolidation. We hold certain investments in small development stage entities. In accordance with FASB ASC 810, we analyzed the investments to determine if the investments are variable interests or interests that gave us a controlling financial interest in a variable interest entity ("VIE"). As of June 30, 2012, we determined there were no VIE's required to be consolidated, because we are not the primary beneficiary, as we do not have the power to direct the most meaningful activities of the VIE. Investments where the Company does not exercise operating and financial control are accounted for under the equity method or cost method depending on our respective ownership interest.

Accounting Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents are recorded on our condensed consolidated balance sheets at cost, which approximates fair value. All highly liquid investments with an original maturity of three months or less at the date of purchase are considered to be cash equivalents.

Investments

Our investments classified as available-for-sale are stated at fair value with unrealized gains and losses reported in accumulated other comprehensive loss within stockholders' equity. We classify our available-for-sale investments as short-term if their remaining time to maturity at purchase is beyond three months, but less than twenty-four months. Investments with maturities beyond one year may be classified as short-term based on their highly liquid nature and because such marketable securities represent the investment of cash that is available for current operations. Interest on investments classified as available-for-sale is included in investment income, net. Premiums paid on our short-term investments are amortized over the remaining term of the investment and such amortization is included in investment income, net.

Receivables

Accounts receivable consists of amounts due from the sale of our HeartWare System to our customers, which include hospitals, health research institutions and medical device distributors. We grant credit to customers in the normal course of business, but do not require collateral or any other security to support credit sales. Our receivables are geographically dispersed, with a significant portion from customers located in Europe and other foreign countries. At June 30, 2012, one customer had an accounts receivable balance representing approximately 20% of our total accounts receivable. At December 31, 2011, no customer had an accounts receivable balance greater than 10% of our total accounts receivable.

We maintain allowances for doubtful accounts for estimated losses that may result from an inability to collect payments owed to us for product sales. We regularly review the allowance by considering factors such as historical experience, the age of the accounts receivable balances and current economic conditions that may affect a customer's ability to pay. Account balances are charged off against the allowance after appropriate collection efforts are exhausted and we feel it is probable that the receivable will not be recovered.

The following table summarizes the change in our allowance for doubtful accounts for the six months ended June 30, 2012 and 2011:

	2012	2011
	(in thousands)	
Beginning balance	$ 500	$ 600
Additions (bad debt expense)	250	300
Deductions (charge-offs)	—	—
Ending balance	$ 750	$ 900

As of June 30, 2012 and December 31, 2011, we did not have an allowance for returns.

Inventories, net

Inventories are stated at the lower of cost or market. Cost is determined using a first-in, first-out, or FIFO, method. Work-in-process and finished goods manufactured or assembled by us include direct and indirect labor and manufacturing overhead. Finished goods include product which is ready-for-use and which is held by us or by our customers on a consignment basis.

We review our inventory for excess or obsolete inventory and write-down obsolete or otherwise unmarketable inventory to its estimated net realizable value. Obsolescence may occur due to product expiring or product improvements rendering previous versions obsolete.

Deferred Financing Costs

Costs incurred in connection with the issuance of our convertible senior notes have been allocated between the liability component and the equity component as further discussed in Note 10. The liability component of the issuance costs incurred was capitalized and is included in deferred financing costs, net on our condensed consolidated balance sheets. These costs are being amortized using the effective interest method through December 15, 2017, the maturity date of the notes, and such amortization expense is reflected in interest expense on our condensed consolidated statements of operations. The amount of amortization for the three months ended June 30, 2012 and 2011 was approximately $0.1 million for each period. The amount of amortization for the six months ended June 30, 2012 and 2011 was approximately $0.2 million and $0.1 million, respectively. The amount of accumulated amortization at June 30, 2012 and December 31, 2011 was approximately $0.5 million and $0.3 million, respectively.

Product Warranty

Certain patient accessories sold with the HeartWare System are covered by a limited warranty ranging from one to two years. Estimated contractual warranty obligations are recorded as an expense when the related revenue is recognized and are included in cost of revenue on our condensed consolidated statements of operations. Factors that affect estimated warranty liability include the number of units sold, historical and anticipated rates of warranty claims, cost per claim, and vendor supported warranty programs. We periodically assess the adequacy of our recorded warranty liabilities and adjust the amounts as necessary.

The amount of the liability recorded is equal to the estimated costs to repair or otherwise satisfy claims made by customers. Accrued warranty expense is included as a component of other accrued liabilities on our condensed consolidated balance sheets.

The costs to repair or replace products associated with product recalls and voluntary service campaigns are recorded when they are determined to be probable and reasonably estimable as a cost of revenue and are not included in product warranty liability. No such costs were incurred in the three and six months ended June 30, 2012 and 2011.

The following table summarizes the change in our warranty liability for the six months ended June 30, 2012 and 2011:

	2012	2011
	(in thousands)	
Beginning balance	$ 203	$ 291
Accrual for (reversal of) warranty expense	449	(21)
Warranty costs incurred during the period	(385)	(28)
Ending balance	$ 267	$ 242

Leases

We lease all of our administrative and manufacturing facilities. We recognize rent expense on a straight-line basis over the terms of our leases. Any scheduled rent increases, rent holidays and other related incentives are recognized on a straight-line basis over the terms of the leases. The difference between the cash rental payments and the straight-line recognition of rent expense over the terms of the leases results in a deferred rent asset or liability. As of June 30, 2012, the long-term portion of our deferred rent liability of approximately $2.9 million is included in other long-term liabilities on our condensed consolidated balance sheets.

Fair Value Measurements

The carrying amounts reported on our condensed consolidated balance sheets for cash and cash equivalents, accounts receivable, accounts payable and other accrued liabilities approximate their fair value based on the short-term maturity of these instruments. Investments are considered available-for-sale as of June 30, 2012 and December 31, 2011 and are carried at fair value. See Note 4, “Fair Value Measurements” and Note 10, “Debt” for more information.

Vendor Concentration

For the three and six months ended June 30, 2012, we purchased approximately 70% and 71%, respectively, of our inventory components and supplies from three vendors. For the three and six months ended June 30, 2011, we purchased approximately 59% and 58%, respectively of our inventory components and supplies from the same three vendors. In addition, one of these vendors supplies consulting services and material used in research and development activities. As of June 30, 2012 and 2011, the amounts due to these vendors totaled approximately $1.6 million and $1.0 million, respectively.

We purchase certain important components of the HeartWare System from single-source suppliers. We cannot guarantee that we can secure alternative suppliers that could provide similar components on comparable terms. A change in suppliers could cause a delay in manufacturing and a possible loss of product sales or result in higher component costs, all of which would have a negative effect on our results of operations.

Concentration of Credit Risk and other Risks and Uncertainties

Financial instruments that potentially expose us to concentrations of credit risk consist primarily of cash and cash equivalents, investments and trade accounts receivable. Cash and cash equivalents are primarily on deposit with financial institutions in the United States and these deposits generally exceed the amount of insurance provided by the Federal Deposit Insurance Corporation (the “FDIC”). The Company has not experienced any historical losses on its deposits of cash and cash equivalents. Our investments consist of investment grade rated corporate and government agency debt and time deposits.

Concentration of credit risk with respect to our trade accounts receivable from our customers is primarily limited to hospitals, health research institutions and medical device distributors. Credit is extended to our customers, based on an evaluation of a customer's financial condition and collateral is not required.

We are subject to certain risks and uncertainties including, but not limited to, our ability to achieve profitability, to generate cash flow sufficient to satisfy our indebtedness, to run clinical trials in order to receive and maintain FDA and foreign regulatory approvals for our products, the ability to achieve widespread acceptance of our product, our ability to manufacture our products in a sufficient volume and at a reasonable cost, the ability to protect our proprietary technologies and develop new products, the risks associated with operating in foreign countries, and general competitive and economic conditions. Changes in any of the preceding areas could have a material adverse effect on our business, results of operations or financial position.

New Accounting Standards

In June 2011, the FASB issued ASU No. 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income*. ASU No. 2011-05 requires an entity to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income, or in two separate but consecutive statements. ASU No. 2011-05 eliminates the option to present components of other comprehensive income as part of the statement of stockholders' equity. The presentation requirements became effective for us on January 1, 2012. The adoption of ASU No. 2011-05 did not affect our consolidated financial position, results of operations or cash flows.

Note 4. Fair Value Measurements

FASB ASC 820 – *Fair Value Measurements and Disclosures,* defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. FASB ASC 820 requires disclosures about the fair value of all financial instruments, whether or not recognized, for financial statement purposes. Disclosures about the fair value of financial instruments are based on pertinent information available to us as of the reporting dates. Accordingly, the estimates presented in these condensed consolidated financial statements are not necessarily indicative of the amounts that could be realized on disposition of the financial instruments.

FASB ASC 820 specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect market assumptions. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurement).

The three levels of the fair value hierarchy are as follows:

Level 1 – Quoted prices for identical instruments in active markets.

Level 2 – Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.

Level 3 – Instruments with primarily unobservable value drivers.

The following table represents the fair value of our financial assets and financial liabilities measured at fair value on a recurring basis and which level was used in the fair value hierarchy.

At June 30, 2012					
			Fair Value Measurements at the Reporting Date Using		
	Carrying Value	Fair Value	Level 1	Level 2	Level 3
			(in thousands)		
Assets					
Short-term investments	$16,501	$ 16,501	$ —	$ 16,501	$ —
Liabilities					
Convertible senior notes	97,205(1)	166,930	—	166,930	—

At December 31, 2011					
			Fair Value Measurements at the Reporting Date Using		
	Carrying Value	Fair Value	Level 1	Level 2	Level 3
			(in thousands)		
Assets					
Short-term investments	$91,925	$ 91,925	$ —	$ 91,925	$ —
Liabilities					
Convertible senior notes	94,277(1)	145,259	—	145,259	—

(1) The carrying amount of our convertible senior notes is net of unamortized discount. See Note 10, “Debt” for more information.

The fair value of our investments and convertible senior notes was determined using quoted prices (including trade data) for the instruments in markets that are not active. The fair value of our convertible senior notes is presented for disclosure purposes only.

Note 5. Investments

We have cash investment policies that limit investments to investment grade rated securities. At June 30, 2012 and December 31, 2011, all of our investments were classified as available-for-sale and carried at fair value. At June 30, 2012, all of our investments had maturity dates of less than twenty-four months.

The amortized cost and fair value of our investments, with gross unrealized gains and losses, were as follows:

At June 30, 2012

	Amortized Cost Basis	Gross Unrealized Gains	Gross Unrealized Losses	Aggregate Fair Value
		(in thousands)		
Short-term investments:				
U.S. government agency debt	$ 11,849	$ 0	$ (3)	$ 11,846
Certificates of deposit	4,655	—	—	4,655
Total short-term investments	$ 16,504	$ 0	$ (3)	$ 16,501

At December 31, 2011

	Amortized Cost Basis	Gross Unrealized Gains	Gross Unrealized Losses	Aggregate Fair Value
		(in thousands)		
Short-term investments:				
U.S. government agency debt	$ 31,290	$ 2	$ (28)	$ 31,264
Corporate debt	5,023	3	—	5,026
Certificates of deposit	55,635	—	—	55,635
Total short-term investments	$ 91,948	$ 5	$ (28)	$ 91,925

For the three and six months ended June 30, 2012 and 2011, we did not have any realized gains or losses on our investments.

Note 6. Inventories, Net

Components of inventories, net are as follows:

	June 30, 2012	December 31, 2011
	(in thousands)	
Raw material	$ 9,242	$ 8,318
Work-in-process	9,559	7,385
Finished goods	15,869	16,302
	$34,670	$ 32,005

Finished goods inventories includes inventory held on consignment at customer sites of $8.6 million and $7.2 million at June 30, 2012 and December 31, 2011, respectively.

Note 7. Property, Plant and Equipment, Net

Property, plant and equipment, net consists of the following:

	Estimated Useful Lives	June 30, 2012	December 31, 2011
		(in thousands)	
Machinery and equipment	1.5 to 7 years	$15,989	$ 14,951
Leasehold improvements	3 to 10 years	7,684	5,747
Office equipment, furniture and fixtures	5 to 7 years	911	1,249
Purchased software	5 to 7 years	2,977	2,733
		27,561	24,680
Less: accumulated depreciation		(8,348)	(6,355)
		$19,213	$ 18,325

Note 8. Other Intangible Assets, Net

The gross carrying amount of intangible assets and the related accumulated amortization for intangible assets subject to amortization are as follows:

	Weighted Average Life	June 30, 2012		December 31, 2011	
Amortizable Intangible Assets	(Years)	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
		(in thousands)			
Patents	15	$ 2,670	$ (481)	$ 2,416	$ (402)

Amortization expense for the three months ended June 30, 2012 and 2011 was approximately $41,000 and $33,000, respectively. Amortization expense for the six months ended June 30, 2012 and 2011 was approximately $79,000 and $64,000, respectively.

Note 9. Other Accrued Liabilities

Other accrued liabilities consist of the following:

	June 30, 2012	December 31, 2011
	(in thousands)	
Accrued payroll and other employee costs	$ 4,854	$ 6,274
Accrued research and development costs	1,325	1,627
Accrued material purchases	1,395	1,332
Accrued litigation settlement	1,075	1,125
Accrued professional fees	2,217	1,100
Accrued VAT	1,296	390
Other accrued expenses	1,023	588
	$13,185	$ 12,436

Accrued payroll and other employee costs included estimated year-end employee bonuses of approximately $2.5 million and $4.4 million at June 30, 2012 and December 31, 2011, respectively.

Note 10. Debt

On December 15, 2010, we completed the sale of 3.5% convertible senior notes due 2017 (the "Convertible Notes") for an aggregate principal amount of $143.75 million pursuant to the terms of an Indenture dated December 15, 2010. The Convertible Notes are the senior unsecured obligations of the Company. The Convertible Notes bear interest at a rate of 3.5% per annum, payable semi-annually in arrears on June 15 and December 15 of each year. The Convertible Notes will mature on December 15, 2017, unless earlier repurchased by us or converted.

The Convertible Notes will be convertible at an initial conversion rate of 10 shares of our common stock per $1,000 principal amount of Convertible Notes, which corresponds to an initial conversion price of $100.00 per share of our common stock. The conversion rate is subject to adjustment from time to time upon the occurrence of certain events.

Prior to June 15, 2017, holders may convert their Convertible Notes at their option only upon satisfaction of one or more conditions relating to the sale price of our common stock, the trading price per $1,000 principal amount of Convertible Notes or specified corporate events. On or after June 15, 2017, until the close of business of the business day immediately preceding the date the Convertible Notes mature, holders may convert their Convertible Notes at any time, regardless of whether any of the foregoing conditions have been met. As of the date of this report, none of the events that would allow holders to convert their Convertible Notes have occurred. Upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock or a combination thereof, at our election.

We may not redeem the Convertible Notes prior to maturity. Holders of the Convertible Notes may require us to purchase for cash all or a part of their Convertible Notes at a repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest, upon the occurrence of certain fundamental changes (as defined in the Indenture) involving the Company. The Indenture does not contain any financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our subsidiaries.

The Indenture contains customary terms and nonfinancial covenants and defines events of default. If an event of default (other than certain events of bankruptcy, insolvency or reorganization) involving the Company occurs and is continuing, the Trustee (by notice to the Company) or the holders of at least 25% in principal amount of the outstanding Convertible Notes (by notice to the Company and the Trustee) may declare 100% of the principal of and accrued and unpaid interest, if any, on all the Convertible Notes to be due and payable. In case of certain events of bankruptcy, insolvency or reorganization, involving the Company, 100% of the principal of and accrued and unpaid interest on the Convertible Notes will automatically become due and payable. Upon a declaration of acceleration, principal and accrued and unpaid interest, if any, will be due and payable immediately. Notwithstanding the foregoing, the Indenture provides that, to the extent we elect, the sole remedy for an event of default relating to certain failures by us to comply with certain reporting covenants in the Indenture consists exclusively of the right to receive additional interest on the Convertible Notes.

In accordance with ASC 470-20, *Debt*, which applies to certain convertible debt instruments that may be settled in cash or other assets, or partially in cash, upon conversion, we recorded the long-term debt and equity components on our Convertible Notes separately on the issuance date. The amount recorded for long-term debt was determined by measuring the fair value of a similar liability that does not have an associated equity component. The measurement of fair value required the Company to make estimates and assumptions to determine the present value of the cash flows of the Convertible Notes, absent the conversion feature. This treatment increased interest expense associated with our Convertible Notes by adding a non-cash component to interest expense in the form of amortization of a debt discount calculated based on the difference between the 3.5% cash coupon rate and the effective interest rate on debt borrowing of approximately 12.5%. The discount is being amortized to interest expense through the December 15, 2017 maturity date of the Convertible Notes using the effective interest method and is included in interest expense on our condensed consolidated statements of operations. Additionally, we allocated the costs related to issuance of the Convertible Notes on the same percentage as the long-term debt and equity components, such that a portion of the costs is allocated to the long-term debt component and the equity component included in additional paid-in capital. The portion of the costs allocated to the long-term debt component is presented as deferred financing costs, net on our condensed consolidated balance sheets. These deferred financing costs are also being amortized to interest expense through the December 15, 2017 maturity date of the Convertible Notes using the effective interest method and such amortization is included in interest expense on our condensed consolidated statements of operations

The Convertible Notes and the equity component, which is recorded in additional paid-in-capital, consisted of the following:

	June 30, 2012	December 31, 2011
	(in thousands)	
Principal amount	$143,750	$ 143,750
Unamortized discount	(46,545)	(49,473)
Net carrying amount	$ 97,205	$ 94,277
Equity component	$ 55,038	$ 55,038

Based on the initial conversion rate of 10 shares of our common stock per $1,000 principal amount of Convertible Notes, which corresponds to an initial conversion price of $100.00 per share of our common stock, the number of shares issuable upon conversion of the Convertible Notes is 1,437,500. The value of these shares, based on the closing price of our common stock on June 29, 2012 of $88.80, was approximately $127.7 million. The fair value of our Convertible Notes as presented in Note 4 was $166.9 million at June 30, 2012.

Interest expense related to the Convertible Notes consisted of interest due on the principal amount, amortization of the discount and amortization of the portion of the deferred financing costs allocated to the long-term debt component. For the three and six months ended June 30, 2012 and 2011, interest expense related to the Convertible Notes was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
	(in thousands)			
Stated amount at 3.5% coupon rate	$ 1,258	$ 1,258	$2,516	$2,516
Amortization of discount	1,486	1,318	2,928	2,597
Amortization of deferred financing costs	80	71	157	139
	$ 2,824	$ 2,647	$5,601	$5,252

Note 11. Stockholders' Equity

In the six months ended June 30, 2012, we issued an aggregate of 31,820 shares of our common stock upon the exercise of stock options and an aggregate of 34,721 shares of our common stock upon the vesting of restricted stock units.

In the six months ended June 30, 2011, we issued an aggregate of 17,606 shares of our common stock upon the exercise of stock options and an aggregate of 29,692 shares of our common stock upon the vesting of restricted stock units.

Note 12. Share-Based Compensation

We recognize share-based compensation expense related to our stock options and restricted stock units ("RSU's) based on the estimated fair value of the awards on the date of the grant, net of estimated forfeitures, using an accelerated accrual method over the vesting period. Vesting of share-based awards issued with performance-based vesting criteria must be probable before we begin recording share-based compensation expense. At each reporting period, we review the likelihood that these awards will vest and if vesting is deemed probable, we begin to recognize compensation expense at that time. If ultimately performance goals are not met, for any awards where vesting was previously deemed probable, previously recognized compensation expense will be reversed.

We allocate share-based compensation expense to cost of revenue, selling, general and administrative expense and research and development expense based on the award holders' employment function. For the three and six months ended June 30, 2012 and 2011, we recorded share-based compensation expense as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
	(In thousands)			
Cost of revenues	$ 1,022	$ 533	$ 1,754	$1,119
Selling, general and administrative	3,606	2,209	5,487	3,653
Research and development	1,713	759	2,814	1,665
	$ 6,341	$ 3,501	$10,055	$6,437

A reduction in our estimated forfeiture rate resulted in approximately $1.9 million of additional share-based compensation expense for the three and six months ended June 30, 2012.

No deferred tax benefits were attributed to our share-based compensation expense recorded in the accompanying condensed consolidated financial statements because we are in a net operating loss position and a full valuation allowance is maintained for all net deferred tax assets. We receive a tax deduction for certain stock option exercises during the period the options are exercised, and for the vesting of restricted stock units during the period the restricted stock units vest. For stock options, the amount of the tax deduction is generally for the excess of the fair market value of our shares of common stock over the exercise price of the stock options at the date of exercise. For restricted stock units, the amount of the tax deduction is generally for the fair market value of our shares of common stock at the vesting date. Excess tax benefits are not included in the accompanying condensed consolidated financial statements because we are in a net operating loss position and a full valuation allowance is maintained for all net deferred tax assets.

Equity Plans

We have issued share-based awards to employees, non-executive directors and outside consultants through various approved plans and outside of any formal plan. New shares are issued upon the exercise of share-based awards.

On August 5, 2008, we adopted the HeartWare International, Inc. 2008 Stock Incentive Plan ("2008 SIP"). The 2008 SIP allowed for the issuance of share-based awards to employees, directors and consultants. We have issued options and RSU's to employees and directors under the 2008 SIP. As noted below, subsequent to adoption of the HeartWare International, Inc. 2012 Incentive Award Plan, no new awards will be granted under the 2008 SIP.

Upon receipt of stockholder approval on May 31, 2012, we adopted the HeartWare International, Inc. 2012 Incentive Award Plan ("2012 Plan"). The 2012 Plan provides for the grant of incentive stock options, non-qualified stock options, restricted stock, restricted stock units, performance awards, dividend equivalent rights, deferred stock, deferred stock units, stock payments and stock appreciation rights (collectively referred to as "Awards"), to our directors, employees and consultants. Under the terms of the 2012 Plan, the total number of shares of our common stock initially reserved for issuance under Awards is 1,375,000, provided that the total number of shares of our common stock that may be issued pursuant to "Full Value Awards" (Awards other than options, SARs or other awards for which the holder pays the intrinsic value existing as of the date of grant whether directly or by forgoing a right to receive a payment from the company) is 1,275,000. As of June 30, 2012, no awards had been issued under the 2012 Plan. Subsequent to adoption of the 2012 Plan, no new awards will be granted under the 2008 SIP (or prior plans). Any outstanding awards under the 2008 SIP and any other plans will continue to be subject to the terms and conditions of the plan from which they were granted.

Stock Options

Each option allows the holder to subscribe for and be issued one share of our common stock at a specified price, which is generally the quoted market price of our common stock on the date the option is issued. Options generally vest on a pro-rata basis on each anniversary of the issuance date within four years of the date the option is issued or vest in accordance with performance-based criteria. Options may be exercised after they have vested and prior to the specified expiry date provided applicable exercise conditions are met, if any. The expiry date can be for periods of up to ten years from the date the option is issued.

Performance-based options vest in four equal tranches contingent upon the achievement of pre-determined corporate milestones related primarily to the development of our products and the achievement of certain prescribed clinical and regulatory objectives. Any performance-based options that have not vested after five years from the date of grant automatically expire.

The fair value of each option is estimated on the date of grant using the Black-Scholes option pricing model using the assumptions established at that time. The following table includes the weighted average assumptions used for options issued in the three and six months ended June 30, 2012 and 2011.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
Dividend yield	0%	0%	0%	0%
Expected volatility	57.00%	58.24%	57.00%	58.31%
Risk-free interest rate	1.00%	2.10%	1.00%	2.16%
Estimated holding period (years)	6.25	6.25	6.25	6.25

Information related to options granted under all of our plans at June 30, 2012 and activity in the six months then ended is as follows (certain amounts in U.S.$ were converted from AU$ at the then period-end spot rate):

	Number of Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2011	381	$ 34.79		
Granted	7	81.37		
Exercised	(32)	33.46		
Forfeited	(3)	42.80		
Expired	—	—		
Outstanding at June 30, 2012	353	$ 35.73	5.40	$ 18,718
Exercisable at June 30, 2012	260	$ 34.09	4.75	$ 14,239

The aggregate intrinsic values at June 30, 2012 noted in the table above represent the closing price of our common stock traded on NASDAQ, less the weighted average exercise price at period end multiplied by the number of options outstanding or exercisable.

At June 30, 2012, 16,791 of the options outstanding that are not yet exercisable are subject to performance-based vesting criteria as described above.

The weighted average grant date fair value per share of options issued in the six months ended June 30, 2012 and 2011 was $43.83 and $44.36 per share, respectively.

The total intrinsic value of options exercised in the six months ended June 30, 2012 was approximately $1.4 million. Cash received from options exercised in the six months ended June 30, 2012 was approximately $1.1 million. The total intrinsic value of options exercised in the six months ended June 30, 2011 was approximately $1.0 million. Cash received from options exercised in the six months ended June 30, 2011 was approximately $0.6 million.

At June 30, 2012, there was approximately $1.0 million of unrecognized compensation expense related to non-vested option awards, including performance-based options not yet deemed probable of vesting. The expense is expected to be recognized over a weighted average period of 0.9 years.

Restricted Stock Units

RSU's issued under the plans vest on a pro-rata basis on each anniversary of the issuance date over three or four years or vest in accordance with performance-based criteria. The RSU's with performance-based vesting criteria vest in tranches contingent upon the achievement of pre-determined corporate milestones related primarily to the development of our products and the achievement of certain prescribed clinical and regulatory objectives. RSU's with performance-based vesting criteria not vested after five years from the date of grant automatically expire. There is no consideration payable on the vesting or exercise of RSU's issued under the plans. Upon vesting, the RSU's are exercised automatically and settled in shares of our common stock.

Information related to RSU's at June 30, 2012 and activity in the six months then ended is as follows:

	Number of Units (in thousands)	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2011	635		
Granted	48		
Vested/Exercised	(35)		
Forfeited	(11)		
Expired	—		
Outstanding at June 30, 2012	637	1.44	$ 56,597
Exercisable at June 30, 2012	—	—	$ —

The aggregate intrinsic value at June 30, 2012 noted in the table above represents the closing price of our common stock traded on NASDAQ, multiplied by the number of RSU's outstanding.

At June 30, 2012, 39,117 of the RSU's outstanding that are not yet exercisable are subject to performance-based vesting criteria as described above.

The total intrinsic value of RSU's vested in the six months ended June 30, 2012 and 2011 was approximately $2.7 million and $2.5 million, respectively.

The fair value of each RSU award equals the closing price of our common stock on the date of grant. The weighted average grant date fair value per share of RSU's granted in the six months ended June 30, 2012 and 2011 was $80.67 and $78.77, respectively.

At June 30, 2012, we had approximately $21.1 million of unrecognized compensation expense related to non-vested RSU awards, including awards not yet deemed probable of vesting. The expense is expected to be recognized over a weighted average period of 1.4 years.

Note 13. Net Loss Per Common Share

Basic net loss per common share is computed by dividing net loss for the period by the weighted-average number of common shares outstanding during the period. Diluted net loss per common share adjusts basic net loss per share for the dilutive effects of convertible securities, share-based awards and other potentially dilutive instruments only in the periods in which such effect is dilutive. Due to our net loss for all periods presented, all potentially dilutive instruments were excluded because their inclusion would have been anti-dilutive. The following instruments have been excluded from the calculation of diluted net loss per share, as their effect would be anti-dilutive.

	Three and Six Months Ended June 30,	
Common shares issuable upon:	**2012**	**2011**
	(in thousands)	
Conversion of convertible senior notes	1,438	1,438
Exercise or vesting of share-based awards	990	953

Note 14. Business Segment, Geographic Areas and Major Customers

For financial reporting purposes, we have one reportable segment which designs, manufactures and markets medical devices for the treatment of advanced heart failure. Products are sold to customers located in the United States through our clinical trials, as commercial products to customers in Europe and under special access in other countries. Product sales attributed to a country or region are based on the location of the customer to whom the products are sold. Long-lived assets are primarily held in the United States.

Product sales by geographic location were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	**2011**	**2012**	**2011**
	(in thousands)			
United States	$ 4,196	$ 6,291	$10,637	$12,189
Germany	10,282	8,214	19,813	13,712
International, excluding Germany	14,575	5,884	24,948	12,463
	$29,053	$20,389	$55,398	$38,364

Revenue from U.S. sources for the three and six months ended June 30, 2012 is lower than comparable periods in 2011 due to variability in clinical enrollment. We completed enrollment in our Destination Therapy trial in May 2012. As the majority of our revenue is generated outside of the U.S., we are dependent on favorable economic and regulatory environments for our products in Europe and other countries outside of the U.S. For the three and six months ended June 30, 2012, no customers exceeded 10% of product sales individually. For the three and six months ended June 30, 2011, one customer accounted for approximately 11% and 10%, respectively, of product sales in the aggregate.

Note 15. Commitments and Contingencies

At June 30, 2012, we had purchase order commitments of approximately $18.4 million related to product costs, supplies, services and property, plant and equipment purchases. Many of our materials and supplies require long lead times and as such purchase order commitments reflect materials that may be received up to one year from the date of order.

Litigation

From time to time we may be involved in litigation or other contingencies arising in the ordinary course of business. Except as set forth below or in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011, and based on the information presently available, management believes that there are no contingencies, claims or actions, pending or threatened, the ultimate resolution of which will have a material adverse effect on our financial position, liquidity or result of operations.

On February 24, 2010, we received a letter from two holders of Series A Preferred Stock in HeartWare, Inc., an indirect subsidiary of HeartWare International, Inc. These holders requested various financial and other information regarding HeartWare, Inc. for the purpose of determining the Company's compliance with their rights as holders of Series A Preferred Stock, including whether a liquidation event has occurred since inception in 2003. HeartWare, Inc. issued Series A-1 and Series A-2 Preferred Stock to certain equity holders of Kriton Medical, Inc. when HeartWare, Inc. purchased out of bankruptcy substantially all of the assets of Kriton in July 2003. The Series A-1 and Series A-2 Preferred Stock do not have voting or dividend rights but entitle the holders thereof to receive, upon certain liquidation events of HeartWare, Inc. (but not the liquidation of or change of control of HeartWare International, Inc.), an amount equal to $10 per share of Series A-1 and $21 per share of Series A-2. The aggregate liquidation preference payment obligation totals approximately $15 million.

On June 27, 2011, HeartWare International, Inc. and HeartWare, Inc., along with HeartWare's directors, certain officers and a significant stockholder, were named as defendants in a putative class action lawsuit filed in Massachusetts state court by two other Series A Preferred Stockholders on behalf of all holders of Series A Preferred Stock. The complaint alleges that the defendants breached their fiduciary and contractual obligations to Series A Preferred Stockholders by preventing them from receiving a payment of the liquidation preference in connection with certain corporate transactions, including a transaction in 2005 in which HeartWare, Inc. was acquired by HeartWare Limited, a subsidiary of HeartWare International, Inc. The plaintiffs seek monetary damages, interest, costs and limited equitable relief. We do not believe HeartWare International, Inc., HeartWare, Inc. or any of our directors, officers or stockholders have abrogated the rights, or in any way failed to satisfy obligations owed to, any of our stockholders, including holders of Series A Preferred Stock. On September 12, 2011, the defendants served on plaintiffs a motion to dismiss the complaint with prejudice. On February 3, 2012, counsel for plaintiffs and defendants entered into a Memorandum of Understanding to settle the matter. Defendants have agreed to pay up to $1.1 million to participating putative class members in exchange for a full and unconditional release of all claims asserted in the litigation, including any and all claims arising from any right to receive a payment upon any liquidation or deemed liquidation event that has arisen or may arise in the future. On March 22, 2012, the parties filed with the court a stipulation of settlement

formalizing the settlement agreement. Shortly thereafter, plaintiffs caused notice of the settlement to be made to putative class members. Following a hearing on July 25, 2012, the court entered judgment granting plaintiffs' motion to finally approve the settlement, including the full and unconditional release of all present and future claims to receive the liquidation preference.

In accordance with ASC 450*, Contingencies*, we accrue loss contingencies including costs of settlement, damages and defense related to litigation to the extent they are probable and reasonably estimable. Otherwise, we expense these costs as incurred. If the estimate of a probable loss is a range and no amount within the range is more likely, we accrue the minimum amount of the range. At December 31, 2011, we determined that settlement of the litigation discussed above was probable and that the reasonably estimable settlement amount is $1.1 million. Accordingly, we recorded a liability for the $1.1 million, a $0.2 million receivable from one of the co-defendants, who is a related party. In the six months ended June 30, 2012, we deposited $50,000 in escrow in connection with the potential settlement. As a result of the settlement approval we recorded a receivable at June 30, 2012 in the amount of $0.8 million representing the estimated contribution we will receive from our insurance carrier in connection with the settlement of this litigation. The anticipated insurance recovery is included in selling, general and administrative expenses in our statement of operations.

Milestone Payment

In connection with the purchase of the assets from Kriton Medical, we entered into a settlement and release agreement pursuant to which we are required to make a milestone payment of $1.25 million within 6 months of the date when the first circulatory assist device is approved for sale in the United States, provided that we have at least $25 million in cash on hand and, if we do not have $25 million at that time, then the payment is deferred until such time that we have $25 million in cash on hand. On April 25, 2012, the FDA's Circulatory System Devices Advisory Committee voted 9 to 2 that the benefits outweigh the risks for the use of the HeartWare System as a bridge to heart transplantation in patients with end-stage heart failure. The Advisory Committee's recommendation, while not binding, will be considered by the FDA in its review of the Premarket Approval (PMA) application that HeartWare submitted for the HeartWare System in December 2010. Approval of the PMA application will result in this contingent liability being recognized. We will record the effect of this payment obligation when and if this event occurs.

Note 16. Subsequent Events

Acquisition of World Heart

On August 2, 2012, we completed the acquisition of 100% of the outstanding shares of World Heart Corporation ("World Heart") for consideration of $8.0 million in the form of approximately 83,000 shares of HeartWare International common stock. The acquisition will expand our intellectual property and technology portfolio. In accordance with accounting standards for business combinations, we will account for the acquisition of World Heart under the acquisition method. Under the acquisition method, the assets and liabilities assumed at the date of acquisition are to be recorded in the consolidated financial statements at their respective fair values at the acquisition date. The excess of the purchase price over the fair value of the acquired net assets, if any, will be recorded as goodwill. We have expensed all legal, consulting and other costs related to the acquisition and have included these costs in selling, general and administrative expenses in our statements of operations. World Heart's results of operations will be included in our consolidated financial statements from the date of acquisition.

We have evaluated events and transactions that occurred subsequent to June 30, 2012 through the date the financial statements were issued, for potential recognition or disclosure in the accompanying condensed consolidated financial statements. Except as disclosed above, we did not identify any events or transactions that should be recognized or disclosed in the accompanying condensed consolidated financial statements.

ITEM 2: MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read together with our unaudited interim condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q. Certain abbreviated key terms have the meanings defined elsewhere in this Quarterly Report on Form 10-Q.

Overview

HeartWare is a medical device company that develops, manufactures and markets miniaturized implantable heart pumps, or ventricular assist devices, to treat patients suffering from advanced heart failure.

The HeartWare® Ventricular Assist System (the "HeartWare System"), which includes a ventricular assist device ("VAD"), or blood pump, patient accessories and surgical tools, is designed to provide circulatory support for patients in the advanced stage of heart failure. The core of the HeartWare System is a proprietary continuous flow blood pump, the HVAD® Pump, which is a full-output device capable of pumping up to 10 liters of blood per minute. The HeartWare System is designed to be implanted adjacent to the heart, avoiding the abdominal surgery generally required to implant similar devices.

In 2009, we received CE Marking for the HeartWare System in the European Union and in March 2011 we received approval from the Therapeutic Goods Administration in Australia allowing for commercial sale and distribution of our device. In the U.S., our device is the subject of clinical trials for two indications: bridge-to-transplant and destination therapy. Our device is also available in other countries around the world under special access programs and limited commercial availability.

Recent key milestones in the development and commercialization of the HeartWare System include the following:

- In May 2012, we received an expanded European label for long-term use of the HeartWare System in all patients at risk of death from refractory, end-stage heart failure.
- In May 2012, results from our ADVANCE bridge-to-transplant clinical trial were published in the American Heart Association's journal *Circulation.*
- In May 2012, we completed enrollment of our ENDURANCE destination therapy clinical trial. In July 2012, we requested from the U.S. Food and Drug Administration's (FDA) approval to implant additional Destination Therapy patients under a Continued Access Protocol (CAP) in U.S. centers that implanted a patient in the ENDURANCE trial.
- On April 25, 2012, the FDA's Circulatory System Devices Advisory Committee voted 9 to 2 that the benefits outweigh the risks for the use of the HeartWare System as a bridge to heart transplantation in patients with end-stage heart failure.
- In March 2012, the FDA approved an Investigational Device Exemption Supplement that allows us to enroll a fourth allotment, of 54 additional patients, in our ADVANCE bridge-to-transplant clinical trial under a CAP. In three prior CAP allotments granted by FDA, 202 patients were enrolled between April 2010 and December 2011.

Beyond the HeartWare System, we are also evaluating our next generation device, the MVAD® Pump. The MVAD Pump is a development-stage miniature ventricular assist device, approximately one-third the size of the HVAD Pump. The MVAD Pump is based on the same proprietary impeller suspension technology used in the HVAD Pump, with its single moving part held in place through a combination of passive-magnetic and hydrodynamic forces. Like the HVAD Pump, the MVAD Pump is designed to support the heart's full cardiac output, yet also has the capability for partial support. On September 9, 2011, pre-clinical data was presented at

the 19th Congress of the International Society for Rotary Blood Pumps (ISRBP), which demonstrated that the MVAD Pump attained the objectives for system performance, hemocompatability and biocompatibility in Good Laboratory Practice ("GLP") animal studies, a precursor to human clinical trials. We are currently preparing to commence human clinical studies in the second half of 2012. The MVAD Pump is designed to be implantable by surgical techniques that are even less invasive than those required to implant the HVAD Pump.

We began generating revenue from our products in August 2008 and have incurred net losses in each year since our inception. We expect our losses to continue as we continue to develop commercial markets, expand our research and development into next generation products including the MVAD Pump and related accessories and support on-going and new clinical trial activity.

We have financed our operations primarily through the issuance of convertible notes and the issuance of shares of our common stock. Most recently, on December 15, 2010, we issued convertible notes with an aggregate principal amount of $143.75 million pursuant to the terms of an Indenture dated as of December 15, 2010. The convertible notes are senior unsecured obligations of the Company. The convertible notes bear interest at a rate of 3.5% per annum, payable semi-annually in arrears on June 15 and December 15 of each year. The convertible notes will mature on December 15, 2017, unless earlier repurchased or converted.

We are headquartered in Framingham, Massachusetts. We have operations and manufacturing facilities in Miami Lakes, Florida, a development and operations facility in Sydney, Australia and a distribution and customer service facility in Hannover, Germany.

Critical Accounting Policies and Estimates

We prepare our financial statements in accordance with accounting principles generally accepted in the United States. We are required to adopt various accounting policies and to make estimates and assumptions in preparing our financial statements that affect the reported amounts of our assets, liabilities, revenue and expenses. On an ongoing basis, we evaluate our estimates and assumptions. We base our estimates on our historical experience to the extent practicable and on various other assumptions that we believe are reasonable under the circumstances and at the time they are made. If our assumptions prove inaccurate or if our future results are not consistent with our historical experience, we may be required to make adjustments in our policies that affect our reported results. Our significant accounting policies are disclosed in Note 3 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011 ("2011 Annual Report on Form 10-K") filed with the Securities and Exchange Commission on February 27, 2012. During the six months ended June 30, 2012, there were no significant changes to any of our significant accounting policies.

Our most critical accounting policies and estimates include revenue recognition, inventory capitalization and valuation, accounting for share-based compensation, measurement of fair value, and the valuation of tax assets and liabilities. We also have other key accounting policies that are less subjective and, therefore, their application is less subject to variations that would have a material impact on our reported results of operations. There have been no material changes to our critical accounting policies and estimates from the information provided in Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations* included in our 2011 Annual Report on Form 10-K.

Results of Operations

Three and six months ended June 30, 2012 and 2011

Revenue, net

In the three and six months ended June 30, 2012 and 2011, we generated revenue from commercial sales outside of the U.S. and sales in connection with our clinical trials in the U.S. The increase in revenue in 2012 is primarily due to increased market penetration outside of the U.S.

	Three Months Ended June 30,			Six Months Ended June 30,		
	2012	2011	Change	2012	2011	Change
	(in thousands)			(in thousands)		
Revenue, net	$29,053	$20,389	42%	$55,398	$38,364	44%

In the three months ended June 30, 2012, approximately 14% of our product sales were derived in the U.S. compared to approximately 31% in the three months ended June 30, 2011. In the six months ended June 30, 2012, approximately 19% of our product sales were derived in the U.S. compared to 32% in the six months ended June 30, 2011. The percentage of our revenue generated in the U.S. decreased in the three and six months ended June 30, 2012 as compared to the same periods in 2011 primarily due to the continued expansion of our commercial efforts in Europe. Revenue from U.S. sources for the three and six months ended June 30, 2012 is lower than comparable periods in 2011 due to variability in clinical enrollment. We completed enrollment in our Destination Therapy trial in May 2012.

Our sales outside of the U.S. are made in multiple currencies, with the majority of our international revenue denominated in the Euro. In the three and six months ended June 30, 2012, our net international revenue denominated in foreign currencies increased by $6.9 million, or 55%, and $12.8 million, or 56%, respectively, compared to the three and six months ended June 30, 2011. Changes in foreign exchange rates unfavorably impacted revenue by approximately $1.9 million, or 9%, and $2.4 million, or 6%, in the three and six months ended June 30, 2012, respectively, compared to the three and six months ended June 30, 2011.

Prior to FDA approval of the HeartWare System for sale in the U.S., revenue from U.S. sources may vary from quarter to quarter as revenue from U.S. clinical trials is dependent on FDA approval of Continued Access Protocols. In March 2012, the FDA approved an Investigational Device Exemption Supplement that allowed us to enroll a fourth allotment, of 54 additional patients, in our ADVANCE bridge-to-transplant clinical trial under a Continued Access Protocol (CAP). In May 2012, we completed enrollment of our ENDURANCE destination therapy clinical trial and in July 2012 requested from the FDA approval to implant additional patients under a CAP in U.S. centers that implanted a patient in the ENDURANCE trial.

Cost of Revenue

Cost of revenue includes costs associated with manufacturing and distributing our product and consists of direct materials, labor and overhead expenses allocated to the manufacturing process. Cost of revenue totaled approximately $12.7 million and $7.9 million in the three months ended June 30, 2012 and 2011, respectively. Cost of revenue totaled approximately $23.5 million and $15.5 million in the six months ended June 30, 2012 and 2011, respectively.

Gross profit and gross margin percentage are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
	(in thousands)		(in thousands)	
Gross profit	$16,388	$12,476	$31,905	$22,855
Gross margin %	56.4%	61.2%	57.6%	59.6%

Gross margin percentage for the three and six months ended June 30, 2012 decreased compared to the same periods in 2011 primarily due to the negative impact of currency movements upon revenue, including principally the Euro, and an increase in certain reserves including warranty obligations and obsolescence. During the three and six months ended June 30, 2012 we realized increased expense related to obsolete inventory particularly related to prior versions of our controller, a component of the HVAD system. We also experienced an increase in expired product and warranty expense.

Selling, General and Administrative

Selling, general and administrative expenses include costs associated with selling and marketing our products and the general corporate administration of the Company. These costs are primarily related to salaries and wages and related employee costs, travel, external consultants and contractors, legal and accounting fees and general infrastructure costs, and include all operating costs not associated with or otherwise classified as research and development costs or cost of revenue.

	Three Months Ended June 30,			Six Months Ended June 30,		
	2012	2011	Change	2012	2011	Change
	(in thousands)			(in thousands)		
Total selling, general and administrative expenses	$ 14,204	$ 9,892	44%	$26,920	$18,556	45%
% of operating expenses						

The increase of $4.3 million for the three months ended June 30, 2012 as compared to the three months ended June 30, 2011 was primarily a result of an increase in employee costs, including salaries and wages and related costs, of approximately $1.1 million, due to increased headcount to build our global sales and marketing and administrative functions to support expected future growth. We also experienced an increase in non-cash share-based compensation expense of $1.4 million, primarily due to a reduction in our estimated forfeiture rate. Other contributors included increased costs for consultants and contractors of $0.2 million, marketing expenses of $0.2 million and travel expenses of $0.3 million. Increased legal costs of $0.8 million associated with litigation and corporate transaction activity, including the acquisition of World Heart, were offset by the anticipated insurance recovery of $0.8 million related to the settlement of litigation discussed in Note 15 to the accompanying condensed consolidated financial statements.

The increase of $8.4 million for the six months ended June 30, 2012 as compared to the six months ended June 30, 2011 was primarily a result of an increase in employee costs, including salaries and wages and related costs, of approximately $2.8 million, due to increased headcount to build our global sales and marketing and administrative functions to support expected future growth. We also experienced an increase in non-cash share-based compensation expense of $1.8 million, primarily due to a reduction in our estimated forfeiture rate. Other contributors included increased costs for consultants and contractors of $0.6 million, marketing expenses of $0.5 million, travel expenses of $0.6 million and office expenses of $0.2 million. Increased legal costs of $1.1 million associated with litigation and corporate transaction activity, including the acquisition of World Heart, were mostly offset by the anticipated insurance recovery of $0.8 million related to the settlement of litigation discussed in Note 15 to the accompanying condensed consolidated financial statements.

We expect our selling, general and administrative expenses to continue to increase in 2012 compared to 2011 as we prepare for the launch of the HeartWare System in the United States, and continue to expand our sales and distribution capabilities as well as our administrative capabilities to support our overall corporate growth. We have and will continue to experience an increase in our employee headcount as well as an increase in costs associated with the necessary administrative infrastructure to support this expansion.

Research and Development

Research and development expenses are the direct and indirect costs associated with developing our products prior to commercialization and are expensed as incurred. These expenses fluctuate based on project level activity and consist primarily of salaries and wages and related employee costs of our research and development, clinical and regulatory staff, external research and development costs, and materials and expenses associated with clinical trials. Additional costs include travel, facilities and overhead allocations.

	Three Months Ended June 30,			Six Months Ended June 30,		
	2012	2011	Change	2012	2011	Change
	(in thousands)			(in thousands)		
Total research and development expenses	$ 20,005	$ 10,280	95%	$40,012	$19,580	104%
% of operating expenses						

The increase of $9.7 million for the three months ended June 30, 2012 as compared to the three months ended June 30, 2011 was due to an increase in costs associated with development projects, including consumables, outside engineering, consultants and contractors, of $4.2 million, related to development projects and on-going clinical trials. We also experienced an increase in employee costs, including salaries and wages and related costs, of approximately $1.1 million related to new product development and an increase in non-cash share-based compensation of $1.0 million due to a reduction in our estimated forfeiture rate. Costs associated with our U.S. clinical trials increased by $3.2 million.

The increase of $20.4 million for the six months ended June 30, 2012 as compared to the six months ended June 30, 2011 was due to an increase in costs associated with development projects, including consumables, outside engineering, consultants and contractors, of $11.2 million, primarily related to development projects and on-going clinical trials. We also experienced an increase in employee costs, including salaries and wages and related costs, of approximately $2.9 million related to new product development and an increase in non-cash share-based compensation of $1.1 million due to a reduction in our estimated forfeiture rate. Costs associated with our U.S. clinical trials increased by $4.4 million.

We expect that research and development expenses will continue to represent a significant portion of our operating expenses for the foreseeable future related to clinical trials in the U.S. and new product development, including costs related to the development of the MVAD system.

Foreign Exchange

We generate a substantial portion of our revenue and collect receivables in foreign currencies. Fluctuations in the exchange rate of the U.S. dollar against the Euro, British Pound and Australian dollar can result in foreign currency exchange gains and losses that may significantly impact our financial results. Continued fluctuation of these exchange rates could result in financial results that are not comparable from quarter to quarter. In general, we do not currently utilize foreign currency contracts to mitigate foreign exchange gains and losses.

In the three and six months ended June 30, 2012, our net foreign exchange losses totaled approximately $2.2 million and $1.1 million, respectively, compared to net gains of approximately $0.1 million and $0.7 million in the same periods of 2011. In 2012 and 2011, the majority of our realized and unrealized foreign exchange gains and losses were experienced upon the collection of certain accounts receivable that were denominated in foreign currencies, and the translation to U.S. dollars at period end of certain balance sheet accounts, denominated in foreign currencies, primarily the Euro. We expect to continue to realize foreign exchange gains and losses for the foreseeable future as the majority of our sales denominated in foreign currencies are settled in Euros.

Interest Expense

Interest expense in 2012 and 2011 consists of interest incurred on the principal amount of our convertible senior notes issued in December 2010, amortization of the related discount and amortization of the portion of the deferred financing costs allocated to the debt component. The convertible senior notes bear interest at a rate of 3.5% per annum. The discount on the convertible senior notes and the deferred financing costs are being amortized to interest expense through the December 15, 2017 maturity date of the convertible senior notes using the effective interest method.

In the three months ended June 30, 2012, interest expense was approximately $2.82 million, which included $1.26 million of interest incurred on the principal amount of the convertible notes at the 3.5% coupon rate and $1.56 million of non-cash amortization of the discount and deferred financing costs. In the three months ended June 30, 2011, interest expense was approximately $2.65 million, which included $1.26 million of interest incurred on the principal amount of the convertible notes at the 3.5% coupon rate and $1.39 million of non-cash amortization of the discount and deferred financing costs.

In the six months ended June 30, 2012, interest expense was approximately $5.6 million, which included $2.51 million of interest incurred on the principal amount of the convertible notes at the 3.5% coupon rate and $3.09 million of non-cash amortization of the discount and deferred financing costs. In the six months ended June 30, 2011, interest expense was approximately $5.25 million, which included $2.51 million of interest incurred on the principal amount of the convertible notes at the 3.5% coupon rate and $2.74 million of non-cash amortization of the discount and deferred financing costs.

Investment Income, net

Investment income is primarily derived from investments and cash and short-term deposit accounts held in the U.S. The amortization of premium on our investments is also included in investment income, net. Investment income, net was approximately $0.1 million and $0.2 million in the three and six months ended June 30, 2012, compared to $0.1 million and $0.3 million in the same periods in the prior year. We have had lower cash and investments balances during 2012 and have experienced lower interest rates compared to 2011.

Income Taxes

We are subject to taxation in the United States and jurisdictions outside of the United States. These jurisdictions have different marginal tax rates. While we have incurred losses since inception, changes in issued capital and share ownership, as well as other factors, may limit our ability to utilize any net operating loss carry-forwards, and as such a 100% valuation allowance has been recorded against our net deferred tax assets.

As of June 30, 2012, we did not have earnings which would be sufficient to allow any portion of our deferred tax assets to be recorded. We intend to monitor closely whether to record a deferred tax asset as we further expand the commercialization of our products.

Liquidity and Capital Resources

As of June 30, 2012, our cash and cash equivalents were approximately $114.5 million as compared to $71.3 million at December 31, 2011.

Following is a summary of our cash flow activities:

	Six Months Ended June 30,	
	2012	2011
	(in thousands)	
Net cash used in operating activities	$ (29,270)	$ (14,003)
Net cash provided by (used in) investing activities	71,058	(59,952)
Net cash provided by financing activities	1,065	599
Effect of exchange rate changes on cash and cash equivalents	391	52
Net increase (decrease) in cash and cash equivalents	$ 43,244	$ (73,304)

Cash Used in Operating Activities

For the six months ended June 30, 2012, cash used in operating activities included a net loss of approximately $41.6 million and non-cash adjustments to net loss totaling approximately $16.2 million, which primarily consisted of $10.1 million of share-based compensation, $2.9 million for the amortization of the discount on our convertible senior notes and $2.1 million of depreciation and amortization on long-lived assets. Also included in cash used in operating activities in the six months ended June 30, 2012 is approximately $6.8 million related to an increase in accounts receivable, $3.2 million for the purchase and manufacture of inventories and $1.3 million for prepaid expenses and other current assets. These amounts were partially offset by increases in trade accounts payable of $6.0 million and other current liabilities of $0.8 million.

For the six months ended June 30, 2011, cash used in operating activities included a net loss of approximately $19.5 million and non-cash adjustments to net loss totaling approximately $11.0 million, which primarily consisted of $6.4 million of share-based compensation, $2.6 million for the amortization of the discount on our convertible notes and $1.1 million of depreciation and amortization. Also included in cash used in operating activities in the six months ended June 30, 2011 is approximately $7.5 million for the purchase and manufacture of inventories, $2.2 million for prepaid expenses and $555,000 for payment of trade accounts payable. These amounts were partially offset by net collections of trade accounts receivable of $3.5 million and an increase in accrued expenses of $1.3 million.

Cash Used in Investing Activities

In the six months ended June 30, 2012, net cash provided by investing activities included $75.0 million received upon maturity (net of purchases) of available-for-sale securities, $2.9 million used to acquire property, plant and equipment and $0.8 million paid for a security deposit on a facility lease.

In the six months ended June 30, 2011, net cash used by investing activities included $55.1 million for the purchase (net of maturities in 2011) of available-for sale securities. Other investing activities in the six months ended June 30, 2011 used cash of approximately $4.9 million. These amounts were expended to acquire property, plant and equipment and for capitalized patent costs.

Cash Provided by Financing Activities

The exercise of stock options in the six months ended June 30, 2012 and 2011 resulted in cash proceeds of approximately $1.1 million and $0.6 million, respectively.

Operating Capital and Capital Expenditure Requirements

We have incurred operating losses to date and anticipate that we will continue to incur substantial net losses as we expand our sales and marketing capabilities, and develop new products. For the remainder of 2012, cash on hand is expected to primarily be used to fund our ongoing operations, including;

- Expanding our sales and marketing capabilities on a global basis, including preparing for the commercial launch in the U.S. of the HeartWare System subject to FDA approval,
- continued product development, including first human implants and clinical trials of next generation projects,
- existing and new clinical trials,
- regulatory and other compliance functions, and
- general working capital.

We expect to experience increased cash requirements for inventory and other working capital requirements to support continued growth.

Our convertible notes bear interest at a rate of 3.5% per annum, payable semi-annually in arrears on June 15 and December 15 of each year. During the quarter ended June 30, 2012 we paid the $2.5 million interest payment that was due on June 15, 2012. The $2.5 million interest payments that were due on June 15 and December 15, 2011 were also paid on a timely basis. Based on the outstanding principal amount of our convertible senior notes at June 30, 2012, the semi-annual interest payment due on December 15, 2012 will be approximately $2.5 million. This amount is expected to be paid from cash on hand.

We believe cash on hand and investment balances as of June 30, 2012 are sufficient to support our planned operations for at least the next twelve months.

Because of the numerous risks and uncertainties associated with the development of medical devices we are unable to estimate the exact amounts of capital outlays and operating expenditures necessary to maintain regulatory approvals, fund commercial expansion. and develop and obtain regulatory approvals for new products. Our future capital requirements will depend on many factors, including but not limited to the following:

- commercial acceptance of our products;
- costs to manufacture our products;
- expenses required to operate multiple clinical trials;
- further product research and development for next generation products and peripherals and expanding indications for our products as well as efforts to sustain and implement incremental improvements to existing products;
- expanding our sales and marketing capabilities on a global basis, including building a team to support U.S. commercialization should the FDA approve our device for marketing in the U.S.;
- broadening our infrastructure in order to meet the needs of our growing operations;
- expenses related to funding and integrating strategic investments, acquisitions and collaborative arrangements; and
- complying with the requirements related to being a public company in both the United States and Australia.

Contractual Obligations

In the six months ended June 30, 2012, there were no material changes to our contractual obligations provided in Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations* included in our 2011 Annual Report on Form 10-K filed with the SEC on February 27, 2012, outside the ordinary course of business.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of changes in the value of market risk sensitive instruments caused by fluctuations in interest rates, foreign exchange rates and commodity prices. Changes in these factors could cause fluctuations in our results of operations and cash flows.

Interest Rate Risk

Our exposure to interest rate risk is currently confined to interest earnings on our cash and cash equivalents that are invested in highly liquid money market funds, short-term time deposits, short-term bank notes and short-term commercial paper. The primary objective of our investment activities is to preserve our capital to fund operations. We also seek to generate reasonable income from our investments without assuming significant risk. We do not presently use derivative financial instruments in our investment portfolio. Our cash and investments policy emphasizes liquidity and preservation of principal over other portfolio considerations.

If interest rates rise, the market value of our investment portfolio may decline, which could result in a loss if we choose or are forced to sell an investment before its scheduled maturity. We do not utilize derivative financial instruments to manage interest rate risks.

Our convertible senior notes do not bear interest rate risk as the notes were issued with a fixed interest rate of 3.5% per annum.

Foreign Currency Rate Fluctuations

We conduct business in foreign countries. For U.S. reporting purposes, we translate all assets and liabilities of our non-U.S. entities at the period-end exchange rate and revenue and expenses at the average exchange rates in effect during the periods. The net effect of these translation adjustments is shown in the accompanying condensed consolidated financial statements as a component of stockholders' equity.

We generate a significant portion of our revenue and collect receivables in foreign currencies. Fluctuations in the exchange rate of the U.S. dollar against major foreign currencies, including the Euro, British Pound and Australian dollar, can result in foreign currency exchange gains and losses that may significantly impact our financial results. These foreign currency transaction and translation gains and losses are presented as a separate line item on our condensed consolidated statements of operations. Continued fluctuation of these exchange rates could result in financial results that are not comparable from quarter to quarter. We do not currently utilize foreign currency contracts to mitigate the gains and losses generated by the re-measurement of non-functional currency assets and liabilities but do hold cash reserves in currencies in which those reserves are anticipated to be expended.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of the Chief Executive Officer and Chief Financial Officer, carried out an evaluation required by the Securities Exchange Act of 1934, as amended (the "Exchange Act"), of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of June 30, 2012. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2012, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the fiscal quarter ended June 30, 2012, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Controls and Procedures

Our management, including the Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Thus, misstatements due to error or fraud may occur and not be detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of controls.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Except as described in Note 15 to the accompanying condensed consolidated financial statements, the Company is not a party to any material legal proceedings at the date of filing of the Quarterly Report on Form 10-Q.

ITEM 1A. RISK FACTORS

In addition to the information set forth in this report you should carefully consider the risk factors described in Part I, Item 1A. "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011 filed with the SEC on February 27, 2012.

The following risk factor reflects a material addition to the Risk Factors set forth in our 2011 Annual Report on Form 10-K.

Global market and economic conditions may exacerbate certain risks affecting our business.

International markets, especially Europe, represent a major part of our present business. Approximately 86% of our second quarter 2012 revenues were derived from international sales and much of our marketing efforts are focused on European countries. Although not materially impacted to date, our accounts receivable in certain European countries may be subject to significant payment delays due to government funding and reimbursement practices or limited financial flexibility of our distributors. European governments have announced or implemented austerity measures to constrain the overall level of government expenditures, which may include reforming health care coverage and reducing health care costs. These measures will continue to exert pressure on our customers and may impact their ability to pay for product on a timely basis or to maintain their current purchasing patterns. These adverse market and economic conditions could reduce our product sales and revenue, result in additional allowances, or reduce credit sales to our distribution network.

ITEM 6. EXHIBITS

3.1	Certificate of Incorporation of HeartWare International, Inc. (1)
3.2	Bylaws of HeartWare International, Inc. (1)
10.1	Offer Letter, dated as of June 18, 2012, between HeartWare, Inc. and Peter McAree
10.2	HeartWare International, Inc. 2012 Incentive Award Plan
31.1	Certification by the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification by the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification by the Chief 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 by the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101	The following materials from the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2012, formatted in XBRL (Extensible Business Reporting Language): (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations, (iii) Condensed Consolidated Statements of Comprehensive Loss, (iv) Condensed Consolidated Statement of Stockholders' Equity, (v) Condensed Consolidated Statements of Cash Flows, and (vi) Notes to the Condensed Consolidated Financial Statements. ***

(1) Incorporated by reference to the respective exhibits filed with the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 13, 2008.

*** This exhibit shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any filing, except to the extent the Company specifically incorporates it by reference.

SIGNATURES

In accordance with the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

HEARTWARE INTERNATIONAL, INC.

Date: August 7, 2012

/s/ Douglas Godshall

Douglas Godshall
President and Chief Executive Officer
(Principal Executive Officer)

Date: August 7, 2012

/s/ Peter F. McAree

Peter F. McAree
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

EXHIBIT INDEX

10.1	Offer Letter, dated as of June 18, 2012, between HeartWare, Inc. and Peter McAree
10.2	HeartWare International, Inc. 2012 Incentive Award Plan
31.1	Certification by the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification by the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification by the Chief 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 by the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101	The following materials from the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2012, formatted in XBRL (Extensible Business Reporting Language): (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations, (iii) Condensed Consolidated Statements of Comprehensive Loss, (iv) Condensed Consolidated Statement of Stockholders' Equity, (v) Condensed Consolidated Statements of Cash Flows, and (vi) Notes to the Condensed Consolidated Financial Statements.

Exhibit 10.1

June 18, 2012

Peter McAree
10 South Barn Road
Hopkinton, Massachusetts 01748

Dear Peter:

We are pleased to offer you a position with HeartWare International, Inc. and HeartWare, Inc. (together, the "Company" or "we" or "us") on the terms and conditions set out below:

1. **Position.** Your title will be Senior Vice President, Chief Financial Officer and Treasurer of the Company**.** As such, you will be responsible, among other things, for the leadership of the Company's financial and IT organizations. The position represents the focal point of all financial matters for the Company and its affiliates, and will be a key architect in the design of the Company's financial strategy. You will partner with the CEO and other members of senior management to advance the Company's investment thesis on Wall Street, broaden and strengthen the Company's sell-side research coverage, and build its base of equity investors. You will also be responsible, in partnership with the CEO and other members of senior management, to develop the Company's strategic plan, and develop an IT strategy which improves company performance and reduces risk. This position will work closely with the other members of the executive team to optimize the financial performance of the Company's portfolio of medical products technology and assets. You will report directly to the Chief Executive Officer of the Company, and shall provide such other services as may be requested by the Chief Executive Officer or the Board of Directors of the Company, consistent with your position. Your usual place of business will be at the Company's offices in Framingham, Massachusetts. You understand and agree that the Company may from time to time require you to travel to and work at other locations. We expect your commencement date to be July 9, 2012 ("Commencement Date").

2. **Compensation.** Your base salary shall be at the annual rate of $320,000, payable in accordance with the Company's payroll policies as from time to time in effect ("Base Salary"). Your Base Salary will be reviewed annually by the Board and may be adjusted by the Board in its discretion.

3. **Annual Bonus.** The Company may pay you an annual cash bonus based on your performance (which may be measured by specific goals), targeted at 40% of your salary and as determined by the Board in its discretion. Your annual cash bonus will be prorated for length of service with the Company in 2012. The Company shall pay the annual cash bonus for a calendar year, if at all, on or after January 1st, but by no later than March 15th, of the next year. No annual cash bonus is guaranteed. Payment of all annual bonuses rests in the sole discretion of the Board regardless of the achievement of pre-specified goals, and you must be employed with the Company on the payment date in order to be eligible to receive any annual bonus.

4. **Vacation, Insurance and Benefits; Expenses.**

   a. You shall be entitled to all legal holidays recognized by the Company, and 20 days of paid vacation per annum. Any unused vacation shall be subject to Company policy as from time to time in effect. Vacation days for the first fiscal year of your employment will be prorated from the Commencement Date.

   b. You shall be eligible for participation in any health, dental, and other insurance plans that may be established and maintained by the Company from time to time for its employees of your level, all as determined by the Board in its discretion. You shall also be entitled to participate in any employee benefit programs that the Board may establish for Company employees generally, including but not limited to health insurance, 401(k) Plan and equity incentive plans. The Company's employee benefit programs will be discussed during your orientation.

   c. The Company shall reimburse you for all usual and ordinary business expenses incurred by you in the scope of your employment hereunder in accordance with the Company's expense reimbursement policy as from time to time in effect.

5. **Equity Award.** The Company will recommend to the Board of Directors of HeartWare International, Inc. (the "Parent") that you be granted 25,000 restricted stock units. The restricted stock units would have a purchase price of zero and would vest in four equal installments on each of the first four anniversaries of the Commencement Date and on such other terms and conditions as the Board shall determine in its sole discretion at the time of grant generally consistent with past practice. Vesting of the above mentioned securities shall be subject to you continuing to be employed by the Company as of an anniversary date.

6. Severance Pay.

a. If your employment is terminated by the Company without "Cause" (as defined below) or by you for "Good Reason" (as defined below) other than in connection with a Change in Control (as described below), and subject to the notice and release requirements described below, the Company shall pay, beginning within 15 days after your termination of employment, (i) your Base Salary for a period of 6 months, payable in accordance with the standard payroll practices then in effect for active senior executives; and (ii) the employee portion of your COBRA continuation coverage (to the extent that you elect coverage) for a period of 6 months or, if earlier, until you become entitled to participate in another employer's health plan.

b. If your employment is terminated by the Company without "Cause" (as defined below) or by you for "Good Reason" (as defined below) coincident with or within 18 months after a Change in Control (as defined below), and subject to the notice and release requirements described below, the Company shall cause to be paid, on or beginning within 15 days after your termination of employment, (i) a lump-sum cash payment in an amount equal to one times your Total Salary; and (ii) the employee portion of your COBRA continuation coverage (to the extent that you elect coverage) for a period of 12 months or, if earlier, until you become entitled to participate in another employer's health plan. The severance pay provided under this Section 6(b) shall supersede, and not be in duplication of, the severance pay provided under Section 6(a). "Total Salary" means your then current Base Salary plus the most recent amount paid to you as your Annual Bonus, provided that for purposes of this Section 6(b) your 2012 Annual Bonus shall not be prorated and prior to the payment of your 2012 Annual Bonus your target 2012 Annual Bonus shall be deemed to be the most recent amount paid to you as your Annual Bonus.

c. "Cause" means your: (i) material or persistent breach of this letter agreement; (ii) engaging in any act that constitutes serious misconduct, theft, fraud, material misrepresentation, serious dereliction of fiduciary obligations or duty of loyalty to the Company; (iii) conviction of a felony, or a plea of guilty or *nolo contendere* to a felony charge or any criminal act involving moral turpitude or which in the reasonable opinion of the Board brings you, the Board, the Company or any affiliate into disrepute; (iv) neglect of or negligent performance of your duties under this letter agreement; (v) willful, unauthorized disclosure of material confidential information belonging to the Company, or entrusted to the Company by a client, customer, or other third party; (vi) repeatedly being under the influence of drugs or alcohol (other than prescription medicine or other medically related drugs to the extent that they are taken in accordance with their directions) during the performance of your duties under this letter agreement, or, while under the influence of such drugs or alcohol, engaging in grossly inappropriate conduct during the performance of your duties under this letter agreement; (vii) repeated failure to comply with the lawful directions of your immediate supervisor or the Board that are

not inconsistent with the terms of this letter agreement; or (viii) actual engagement in conduct that violates applicable state or federal laws governing the workplace that could reasonably be expected to bring the Company or any affiliate into disrepute. In order for the Company to terminate your employment for Cause under any of clauses (i), (iv), (vi) or (vii) in the preceding sentence, the Company must provide you with written notice of its intention to terminate employment for Cause and describing the acts or omissions upon which such termination for Cause is based, and you shall be provided a 30-day period from the date of such notice within which to cure or correct such acts or omissions if they are reasonably susceptible of cure or correction.

d. "Good Reason" means the occurrence of any of the following without your consent:

i. a material diminution in your Base Salary;

ii. a material diminution in your authority, duties, or responsibilities;

iii. a material diminution in the authority, duties, or responsibilities of the supervisor to whom you are required to report, including a requirement that you report to a corporate officer or employee instead of the Board;

iv. a material diminution in the budget over which you retain authority; or

v. any other action or inaction that constitutes a material breach by the Company of any agreement under which you provide services.

Notwithstanding the above, no "Good Reason" exists unless (I) you notify the Company in writing within 90 days after the initial existence of any condition listed above, and the Company fails to cure the condition within 30 days after receiving notice, and (II) you terminate employment by no later than 2 years after the initial existence of any condition listed above.

e. A "Change in Control" means the earliest to occur of any of the following events, construed in accordance with section 409A of the Internal Revenue Code:

i. Any one Person or more than one Person Acting as a Group (each as defined below) acquires, or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person or Group, beneficial ownership of more than a majority of the total fair market value or total voting power of the then-outstanding securities of the Parent;

ii. Any one Person or more than one Person Acting as a Group (each as defined below) acquires, or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person or Group, the assets of the

Parent that have a total gross fair market value (as determined by the Board) of more than 50% of the total gross fair market value of all of the assets of, as applicable, the Parent immediately prior to the initiation of the acquisition; or

iii. A majority of the members of the board of directors of the Parent is replaced during any 12-month period by directors whose appointment or election is not endorsed or approved by a majority of the members of the board who were members of the board prior to the initiation of the replacement.

For purposes of this Section 6(e), a "Person" means any individual, entity or group within the meaning of section 13(d)(3) or 14 (d)(2) of the Securities Exchange Act of 1934, as amended, other than (A) the Parent, (B) any trustee or other fiduciary holding securities under an employee benefit plan of the Parent, or (C) any corporation owned, directly or indirectly, by the stockholders of the Parent in substantially the same proportions as their ownership of stock of the Parent. Persons will be considered to be "Acting as a Group" (or a "Group") if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the corporation. If a Person owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such stockholder is considered to be Acting as a Group with other stockholders only with respect to the ownership in that corporation before the transaction giving rise to the change and not with respect to the ownership interest in the other corporation. Persons will not be considered to be Acting as a Group solely because they purchase assets of the same corporation at the same time or purchase or own stock of the same corporation at the same time, or as a result of the same public offering.

For purposes of this Section 6(e), section 318(a) of the Internal Revenue Code applies to determine stock ownership. Stock underlying a vested option is considered owned by the individual who holds the vested option (and the stock underlying an unvested option is not considered owned by the individual who holds the unvested option). For purposes of the preceding sentence, however, if a vested option is exercisable for stock that is not substantially vested (as defined by Treasury regulation section 1.83 3(b) and (j)), the stock underlying the option is not treated as owned by the individual who holds the option.

f. Your right to receive severance pay under this Section 6 is conditioned upon (i) your signing and delivering to the Company, before any payment is due or scheduled to begin, a general release of claims, in form and substance reasonably acceptable to the Company, by which you release the Company from any claim arising from your employment by, or termination of employment with, the Company, in consideration for the payment; and (ii) your compliance with Sections 8, 9, 10 and 11 of this letter agreement. The Company shall make no payment before the general release becomes effective upon the expiration of any applicable revocation period.

g. Although your employment may be terminated immediately by the Company at any time for any reason, if your employment is terminated by the Company

other than for Cause upon less than 90 days' prior written notice of such termination, the Company agrees to pay you that portion of your compensation attributable to the period for which the Company fails to satisfy the 90 day notice requirement described above. Any such payment of compensation in lieu of notice will be paid in accordance with the provisions of Section 6(a) or 6(b), as applicable. Any termination of employment by you for any reason shall require 90 days' prior written notice.

h. Notwithstanding the above, on termination of your employment (for whatever reason) you shall be entitled to receive the pro rata portion of your Base Salary through the date of your termination, together with such compensation or benefits to which you may be entitled by law or under the terms of the Company's compensation and benefit plans in effect including, without limitation, amounts owed to you for unpaid vacation leave accrued during the course of your employment with the Company.

7. At Will Employment.

a. This letter agreement describes the compensation and benefits that you are entitled to receive for so long as you remain employed by the Company, but is not a contract or guarantee of employment for any particular period of time. At all times you will remain an employee at will, and you and the Company are free to terminate your employment at any time for any reason.

b. Should your employment with the Company be terminated by the Company for Cause, by you without Good Reason, or as a result of your death or permanent disability or other physical or mental incapacity, you shall be entitled to receive only the prorated portion of your Base Salary through the date of your termination of employment, together with such other compensation or benefits to which you may be entitled by law, the terms of this letter agreement, or under the terms of the Company's compensation and benefit plans then in effect.

8. Noncompetition.

a. You will not without the prior written consent of the Company or the Parent during your employment either directly or indirectly in any capacity (including without limitation as principal, agent, partner, employee, stockholder, unit holder, joint venturer, director, trustee, beneficiary, manager, consultant, or advisor) carry on, advise, provide services to or be engaged, concerned or interested in or associated with any Competitive Business (as defined below), or be engaged or interested in any public or private work or duties which in the reasonable opinion of the Board or the CEO, may hinder or otherwise interfere with the performance of your duties.

b. You will not at any time in the 12 months after the termination of your employment (for whatever reason) without the written consent of the Company or the Parent:

i. on a worldwide basis directly or indirectly in any capacity (whether as principal, agent, partner, employee, stockholder, unit holder, joint venturer, director, trustee, beneficiary, manager, consultant, or advisor) carry on, advise, provide services to or be engaged, concerned or interested in or associated with any Competitive Business (as defined below); or

ii. counsel, procure, or otherwise assist any person to do any of the acts referred to in Section 8(b)(i).

Given that the business of the Company and the Parent is and is expected to continue to be conducted on a worldwide basis, and you will be actively involved with and intimately familiar with the business of the Company on a worldwide basis, you acknowledge and agree that more narrow geographical limitations of any nature on this noncompetition covenant (and the non-solicitation covenant below) are therefore not appropriate and would not adequately protect the Company or the Parent.

Nothing in this Section 8(b) prohibits you (whether directly or through nominees) of holding shares listed on a recognized stock exchange, provided you do not hold more than 5% of the issued capital of a company.

c. "Competitive Business" means any business or activity which is involved in the research, development, sale, distribution and/or marketing of mechanical circulatory assist devices.

9. Non-solicitation. During your employment with the Company and for 12 months after your termination of employment (for whatever reason), you shall not, directly or indirectly, on your own behalf or on behalf of any third party, without the express written consent of the Company or the Parent:

a. canvass, solicit, target, induce or entice or endeavor to solicit, target, induce or entice away from the Company or the Parent, or attempt to divert, reduce or take away, the business or patronage (with respect to products or services of the kind or type developed, produced, marketed, furnished or sold by the Company with which you were substantively involved during the course of your employment with the Company) of, of any of the clients, customers, vendors, suppliers or accounts, or prospective clients, customers, suppliers, vendors or accounts of the Company or the Parent that you contacted, solicited or served while employed by the Company or supplier to or in the habit of dealing with the Company or the Parent;

b. target, recruit, solicit, hire away, or otherwise interfere with the employment relationship of, or endeavor to entice away, any employee of the Company or the Parent, or otherwise induce any such employee to cease their relationship with the Company or the Parent; or

c. counsel, procure or otherwise assist any person to do any of the acts referred to in Section 9(a) or (b).

10. Non-disparagement. You shall not, while employed by the Company or at any time after your termination of employment, directly, or through any other personal entity, make any public or private statements that are disparaging of the Company or the Parent, their respective businesses or employees, officers, directors, or stockholders. The Company agrees that, after your termination of employment with the Company for any reason, it will refrain from making any public statements that disparage you. The Company's obligations under this Section 9 extend only to the then-current officers and members of the Board, and only for so long as those individuals are officers or directors of the Company. Nothing herein shall be deemed to prevent you or the Company from complying with their respective legal obligations or responding to a subpoena or other court order.

11. Indemnification. Except in the case of negligence, fraud, embezzlement or misrepresentation, the Company hereby agrees to indemnify and hold you harmless to the fullest extent permitted by Section 145 of the Delaware General Corporation Law and to cause any parent or subsidiary of the Company (including, without limitation, the Parent) to indemnify and hold you harmless to the fullest extent permitted by the provisions of the laws of the jurisdiction of its incorporation against any liability, loss or expense (including reasonable attorney's fees and costs incurred in defense of such claims) incurred in connection with the your services as an officer or director of the Company or any of its subsidiaries or affiliates, including the Parent, if in each of the foregoing cases, (i) you acted in good faith and in a manner you believed to be in, or not opposed to, the best interests of the Company, and, with respect to any criminal proceeding, had no reasonable cause to believe your conduct was unlawful, and (ii) your conduct did not constitute gross negligence or willful or wanton misconduct. Without limitation of the foregoing, this paragraph shall be deemed to grant to the you the rights to indemnification provided by the Company's and the Parent's certificate of incorporation and by-laws, as currently constituted, regardless of any subsequent amendment or modification of the applicable provisions of such instruments, with such provisions being deemed incorporated herein by reference. The Company shall advance or cause its subsidiaries to advance all expenses (including all reasonable legal fees and expenses) reasonably incurred by you in defending any such claim, action or proceeding, whether civil, administrative, criminal or otherwise, brought against you in your capacity as an officer of director of the Company or any of its subsidiaries or affiliates, including the Parent, to the fullest extent permitted under applicable law, provided you provide an undertaking pursuant to which you agree to repay all such advances if it is ultimately determined that you are not entitled to indemnification under the circumstances. Notwithstanding anything else contained in this letter agreement, the above shall not apply where the liability, loss or expense (including reasonable attorney's fees and costs incurred in defense of such claims) incurred by you arise as a result, directly or indirectly, of any claim or action taken against you by the Company, the Parent or any of their respective subsidiaries or affiliates.

12. **Proprietary Information.** Both during and after your employment with the Company, you will treat all proprietary or other confidential information as strictly confidential. Further, you agree to sign and comply with the terms and conditions of the enclosed Proprietary Information, Confidentiality, and Inventions Assignment Agreement, which is incorporated by reference into this letter agreement. This offer of continued employment is contingent upon your signing that agreement.

13. **Injunctive Relief: Clawback.** You recognize and acknowledge that it would be difficult to ascertain the damages arising from a breach or threatened breach of the covenants set forth in Sections 8 (noncompetition), 9 (non-solicitation), 10 (non-disparagement), and 11 (proprietary information) and that any such breach or threatened breach could result in irreparable harm to the Company. You therefore agree that, notwithstanding anything in this letter agreement to the contrary, including but not limited to the forfeiture and clawback provision below, the Company shall have the right to an injunction or other equitable relief in any court of competent jurisdiction, enjoining any such breach, without prior notice to you and without the posting of a bond or other guarantee, to enforce this letter agreement. You hereby waive any and all defenses you may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. The existence of this right shall not preclude any other rights and remedies at law or in equity that the Company may have. The provisions of Section 12 shall survive termination of this letter agreement and/or your employment with the Company. The existence of a claim or cause of action of any kind by you against the Company shall not constitute a defense to the enforcement by the Company of the rights provided in this Section 12 and shall not be a defense to any injunction proceeding. In addition, notwithstanding anything herein to the contrary, if the Board, in its discretion, determines that you have engaged in any activity that contravenes any covenant set forth in Section 8, 9, 10 or 11, you shall forfeit any amount payable under Section 6 (severance pay), and you agree to repay the Company, within 30 days after you receive notice of the Board's determination, any amount previously paid by the Company under Section 6.

14. **Blue Pencil; Severability**. If any provision of this letter agreement is construed by a court of competent jurisdiction to be invalid or unenforceable, that construction does not affect the remainder of this agreement, which is to be given full force and effect without regard to the invalid or unenforceable provision. Any invalid or unenforceable provision is to be reformed to the maximum time, geographic and/or business limitations permitted by applicable laws, so as to be valid and enforceable.

15. **Waivers.** No delay or omission by the Company in exercising any right under this letter agreement operates as a waiver of that or any other right. The Company's waiver or consent on any one occasion is effective only for that occasion and is not be construed as a bar or waiver of any right on any other occasion.

16. **Federal Employment Law.** Please note that Federal law requires you to provide the Company with documentation of your identity and eligibility to work in the United States. In addition, the Company verifies the validity of social security numbers. Accordingly, this offer is further conditioned upon your providing the required documentation to the Company within three business days after your start date. A list of the required documentation will be provided during your orientation.

17. **Prior Employers.** By accepting this offer of employment, you are representing that you are not party to any agreement with any prior employer that prevents your working for the Company or that would prevent you from performing your assigned duties for the Company.

18. **Background Check.** The Company reserves the right to conduct a background check of its employees, and your employment may be conditioned on satisfactory results.

19. **Tax Withholding.** The Company may withhold from any amounts payable under this letter agreement such federal, state, local or foreign income and employment taxes as shall be required to be withheld under applicable law.

20. **Section 409A Compliance.** The following rules relate to section 409A of the Internal Revenue Code of 1986 and any regulations and Treasury guidance promulgated thereunder ("Section 409A"), which govern deferred compensation:

    a. This letter agreement is intended to comply with, or otherwise be exempt from, Section 409A.

    b. The Company shall undertake to administer, interpret, and construe this letter agreement in a manner that does not result in the imposition on you of any additional tax, penalty, or interest under Section 409A.

    c. The Company and you agree to execute any and all amendments to this letter agreement permitted under applicable law, as mutually agreed in good faith, as may be necessary to ensure that this letter agreement complies with Section 409A.

    d. The preceding provisions, however, shall not be construed as a guarantee by the Company of any particular tax effect to you under this letter agreement. The Company shall not be liable to you for any payment made under this letter agreement that is determined to result in an additional tax, penalty, or interest under Section 409A, nor for reporting in good faith any payment made under this letter agreement as an amount includible in gross income under Section 409A.

    e. For purposes of Section 409A, the right to a series of installment payments under this letter agreement shall be treated as a right to a series of separate payments.

f. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, you, as specified under this letter agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in section 105(b) of the Internal Revenue Code; (ii) the reimbursement of an eligible expense shall be made no later than the end of the year after the year in which such expense was incurred; and (iii) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

g. "Termination of employment," or words of similar import, as used in this letter agreement means, for purposes of any payments under this letter agreement that are payments of deferred compensation subject to Section 409A, your "separation from service" as defined in Section 409A.

h. If a payment obligation under this letter agreement arises on account of your separation from service while you are a "specified employee" (as defined under Section 409A and determined in good faith by the Board), any payment of "deferred compensation" (as defined under Treasury regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury regulation sections 1.409A-1(b)(3) through (b)(12)) that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid within 15 days after the end of the six-month period beginning on the date of such separation from service or, if earlier, within 15 days after the appointment of the personal representative or executor of your estate following your death.

21. Successors, Binding Agreement. This letter agreement shall not be assignable by you. This letter agreement may be assigned by the Company to any affiliate or to any other person that is a successor in interest to all or substantially all of the business operations of the Company. This letter agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs and permitted assigns.

22. Governing Law. This letter agreement shall be governed in all respects, including as to validity, interpretation and effect, by the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws principles.

23. Entire Agreement, Amendments. This letter agreement, including the proprietary information, confidentiality, and inventions assignment agreement incorporated herein by reference, sets forth the entire agreement between you and the Company regarding your employment with the Company and supersedes all prior agreements or other understandings, whether written or oral, express or implied, between the parties to the extent that such agreements or understandings contain provisions addressed

herein. This letter agreement may not be amended or modified except by a written agreement executed by the parties hereto or their respective successors and legal representatives.

* * * *

To indicate your acceptance of these updated terms and conditions of your employment, please sign and return the following to me no later than June 20, 2012:

- one copy of this letter, and
- one copy of the Company's standard Proprietary Information, Confidentiality, and Inventions Assignment Agreement, the form of which is annexed hereto as Exhibit A.

This is a great opportunity for both you and the Company, and we look forward to having you as a member on our team.

Sincerely,

HEARTWARE, INC.

By: /s/ Doug Godshall
Name: Doug Godshall
Title: President and Chief Executive Officer

Agreed to and accepted:

/s/ Peter McAree
Name: Peter McAree

Dated: June 19, 2012

EXHIBIT A

PROPRIETARY INFORMATION, CONFIDENTIALITY AND INVENTIONS ASSIGNMENT AGREEMENT

The undersigned, Peter McAree, in consideration of and as a condition of my engagement as an employee of HeartWare Inc., a Delaware corporation (the "Company"), does hereby agree with the Company as follows:

1. I will not, whether during or after the termination or for a period of five (5) years after cessation of my employment, reveal to any person, association or company any of the trade secrets or confidential information concerning the organization, business or finances of the Company so far as they have come or may come to my knowledge, except as may be necessary in the course of my duties for the Company or to the extent that such trade secrets or confidential information come to be in the public domain through no fault of mine, or I am required to disclose such information as a matter of law, including pursuant to court order, and I shall keep secret all matters entrusted to me and shall not use or attempt to use any such information in any manner which could reasonably be expected to injure or cause loss or may be calculated to injure or cause loss whether directly or indirectly to the Company or for any purpose other than the performance of my duties on behalf of the Company.

Further, I agree that during the period of my employment I shall not make, use or permit to be used, even if not in the nature of a trade secret or otherwise marked confidential, any notes, memoranda, drawings, specifications, programs, data, know how, trade secrets, or other materials of any nature relating to any matter within the scope of the business of the Company or concerning any of its dealings or affairs otherwise than for the benefit of the Company. I further agree that I shall not, for a period of five (5) years after the termination of my employment, use or permit to be used, even if not in the nature of a trade secret or otherwise marked confidential, any such notes, memoranda, drawings, specifications, programs, data, know how, trade secrets, or other materials, it being agreed that any of the foregoing shall be and remain the sole and exclusive property of the Company and that immediately upon the termination or cessation of my employment I shall deliver all of the foregoing, and all copies thereof, to the Company, at its main office.

2. If at any time or times during my employment, I shall (either alone or with others) make, conceive, discover, reduce to practice or become possessed of any invention, modification, discovery, design, development, improvement, process, formula, data, technique, know-how, secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright or similar statutes or subject to analogous protection) (herein called "Inventions") in any application that relates to the business of the Company or any of the products or services being developed, manufactured, marketed, sold or otherwise provided by the Company or which may conveniently be used in relation therewith, or results from tasks assigned me by the Company or results from the use of premises, equipment, supplies, facilities or confidential information owned, leased or contracted for by the Company ("Company Inventions"), such Company Inventions and the benefits thereof shall, from the moment

of their creation or fixation in tangible media, immediately become the sole and absolute property of the Company, and I shall promptly disclose to the Company (or any persons designated by it) each such Company Invention and hereby irrevocably and perpetually assign any rights, including without limitation any patent, copyright or other intellectual property rights, I may have or acquire in the Company Inventions and benefits and/or rights resulting therefrom to the Company without compensation and shall communicate, without cost or delay, and without publishing the same, all available information relating thereto (with all necessary plans and models) to the Company. I hereby further represent and acknowledge that any and all such Company Inventions made, conceived, discovered or reduced to practice prior to the date hereof, whether or not I am the named inventor, are owned solely by the Company, and that I have no right, title or interest therein, and I agree that upon the request of the Company, and without any compensation to me, I will take such action and execute such documents as the Company may request to evidence and perfect the Company's ownership of such Company Inventions.

I will also promptly disclose to the Company any Invention made, conceived, discovered, reduced to practice or possessed by me (either alone or with others) at any time or times during my employment for the purpose of determining whether they constitute "Company Inventions," as defined herein.

Upon disclosure of each Company Invention to the Company, I will, at the request and cost of the Company, sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized agents may reasonably require:

(a) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection for any such Company Invention in any country throughout the world and when so obtained or vested to renew and restore the same; and

(b) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

In the event the Company is unable, after reasonable effort, to secure my signature on any letters patent, copyright or other analogous protection relating to a Company Invention, whether because of my physical or mental incapacity or for any other reason whatsoever, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact (which designation and appointment shall be (i) deemed coupled with an interest and (ii) irrevocable, and shall survive my death or incapacity), to act for and in my behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by me.

In addition to the foregoing assignment of Company Inventions to the Company, I hereby irrevocably transfer and assign to the Company: (i) all worldwide patents, patent applications, copyrights, mask works, trade secrets and other intellectual property rights in any Company Invention; and (ii) any and all "Moral Rights" (as defined below) that I may have in or with respect to any Company Invention. I also hereby forever waive and agree never to assert any and all Moral Rights I may have in or with respect to any Company Invention, even after termination of my work on behalf of the Company.

"Moral Rights" mean any rights to claim authorship of an Invention, to object to or prevent the modification of any Invention, or to withdraw from circulation or control the publication or distribution of any Invention, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

3. I agree that any breach, or threatened breach, of this Agreement by me could cause irreparable damage and that in the event of such breach, or threatened breach, the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performanceas well as all other equitable relief, to prevent the violation of my obligations hereunder without the necessity of any proof of actual damages or the posting of a bond or other security.

4. I understand that this Agreement, by itself, does not create an employment agreement with the Company or other obligation on the part of the Company to retain my services as an employee.

5. I represent that the Inventions identified in the pages, if any, attached hereto comprise all the Inventions which I have made or conceived prior to my engagement by the Company, which Inventions are excluded from this Agreement. I understand that it is only necessary to list the title of such Inventions and the purpose thereof but not details of the Invention itself. IF THERE ARE ANY SUCH UNPATENTED INVENTIONS TO BE EXCLUDED, THE UNDERSIGNED SHOULD INITIAL HERE. OTHERWISE IT WILL BE DEEMED THAT THERE ARE NO SUCH EXCLUSIONS.

I further represent that I am free to enter into an employment relationship with the Company, and my performance of all the terms of this Agreement, and my performance as an employee of the Company, does not and will not breach any agreement with a third party, including but not limited to any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my engagement by the Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith. I further agree to indemnify the Company to the extent it is made a party to any lawsuit based upon my violation of any such agreement.

I further represent that if the representations set forth in the preceding paragraph are inapplicable, I have attached hereto a copy of each agreement, if any, which presently affects my compliance with the terms of this Agreement (such copy specifies the other contracting party or employer, the date of such agreement, the date of termination of any employment.) IF THERE ARE ANY SUCH AGREEMENTS, THE UNDERSIGNED SHOULD INITIAL HERE. OTHERWISE IT WILL BE DEEMED THAT THERE ARE NO SUCH AGREEMENTS.

I further represent that I have or will return all property, including documents, memoranda, software or other record containing information belonging to my former employer(s) and will not bring any such materials to the Company's premises or otherwise use any such material in performing work for the Company. I further agree to indemnify the Company to the extent it is made a party to any lawsuit based upon my violation of this representation.

6. Any waiver by the Company of a breach of any provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach hereof.

7. I hereby agree that each provision herein shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity or subject so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting and reducing it or them, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

8. My obligations under this Agreement shall survive the termination or cessation of my employment regardless of the manner of such termination or cessation and shall be binding upon my heirs, executors and administrators.

9. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth Massachusetts.

10. For purposes of this Agreement, the term "employment" shall also mean any period of consultancy with the Company that may follow formal employment by the Company.

11. The term "Company" shall include HeartWare Inc., a Delaware corporation, HeartWare Limited, as Australian corporation, and any of their predecessors, successors, parents, subsidiaries, subdivisions, affiliates or assigns. The parties agree that the Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns, without requiring Executive to renew this Agreement or execute a new Agreement reflecting the terms contained herein.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the 19th day of June, 2012.

HEARTWARE INC.

By: /s/ Marcie Cain
Title: VP, Human Resources
Print: Marcie Cain

EMPLOYEE:

Name: /s/ Peter McAree
Name: Peter McAree

Exhibit 10.2

HEARTWARE INTERNATIONAL, INC.
2012 INCENTIVE AWARD PLAN

ARTICLE 1.

PURPOSE

The purpose of the HeartWare International, Inc. 2012 Incentive Award Plan (as it may be amended or restated from time to time, the "Plan") is to promote the success and enhance the value of HeartWare International, Inc. (the "Company") by linking the individual interests of the members of the Board, Employees, and Consultants to those of Company stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to Company stockholders. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of members of the Board, Employees, and Consultants upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent.

ARTICLE 2.

DEFINITIONS AND CONSTRUCTION

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 "Administrator" shall mean the entity that conducts the general administration of the Plan as provided in Article 14. With reference to the duties of the Committee under the Plan which have been delegated to one or more persons pursuant to Section 14.6, or as to which the Board has assumed, the term "Administrator" shall refer to such person(s) unless the Committee or the Board has revoked such delegation or the Board has terminated the assumption of such duties.

2.2 "Applicable Accounting Standards" shall mean Generally Accepted Accounting Principles in the United States, International Financial Reporting Standards or such other accounting principles or standards as may apply to the Company's financial statements under United States federal securities laws from time to time.

2.3 "Applicable Law" shall mean any applicable law, including without limitation: (i) provisions of the Code, the Securities Act, the Exchange Act and any rules or regulations thereunder; (ii) corporate, securities, tax or other laws, statutes, rules, requirements or regulations, whether federal, state, local or foreign; and (iii) rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded.

2.4 "ASX" shall mean ASX Limited ACN 008 624 691 or the market which it operates, as the context requires.

2.5 "ASX Listing Rules" shall mean the Listing Rules of ASX which are applicable while the Company is admitted to the official list of ASX, each as amended or repealed from time to time, except to the extent of any express written waiver by ASX.

2.6 "ASX Settlement" shall mean ASX Settlement Pty Limited ABN 49 008 504.

2.7 "ASX Settlement Operating Rules" shall mean the settlement and operating rules of the settlement facility provided by ASX Settlement.

2.8 "Automatic Exercise Date" shall mean, with respect to an Option or a Stock Appreciation Right, the last business day of the applicable Option Term or Stock Appreciation Right Term that was initially established by the Administrator for such Option or Stock Appreciation Right (*e.g.*, the last business day prior to the tenth anniversary of the date of grant of such Option or Stock Appreciation Right if the Option or Stock Appreciation Right initially had a ten-year Option Term or Stock Appreciation Right Term, as applicable).

2.9 "Award" shall mean an Option, a Restricted Stock award, a Restricted Stock Unit award, a Performance Award, a Dividend Equivalents award, a Deferred Stock award, a Deferred Stock Unit award, a Stock Payment award or a Stock Appreciation Right, which may be awarded or granted under the Plan (collectively, "Awards").

2.10 "Award Agreement" shall mean any written notice, agreement, terms and conditions, contract or other instrument or document evidencing an Award, including through electronic medium, which shall contain such terms and conditions with respect to an Award as the Administrator shall determine consistent with the Plan.

2.11 "Award Limit" shall mean with respect to Awards that shall be payable in Shares or in cash, as the case may be, the respective limit set forth in Section 4.3.

2.12 "Board" shall mean the Board of Directors of the Company.

2.13 "CDI" shall mean CHESS Depositary Interests representing one thirty-fifth of a share of Common Stock.

2.14 "CHESS Depositary Interests" has the meaning given to that term in the ASX Settlement Operating Rules.

2.15 "Change in Control" shall mean and includes each of the following:

(a) A transaction or series of transactions (other than an offering of Common Stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) During any period of twelve months, individuals who, at the beginning of such period, constitute the Board together with any new Director(s) (other than a Director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in Section 2.15(a) or 2.15(c)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least a majority of the Directors then still in office who either were Directors at the beginning of the twelve-month period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (w) a merger, consolidation, reorganization, or business combination, (x) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions, (y) the acquisition of assets or stock of another entity, or (z) a liquidation or dissolution of the Company, in each case other than a transaction:

(i) which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "Successor Entity")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) after which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this Section 2.15(c)(ii) as beneficially owning 50% or more of the combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction.

Notwithstanding the foregoing, if a Change in Control constitutes a payment event with respect to any portion of an Award that provides for the deferral of compensation and is subject to Section 409A of the Code, the transaction or event described in subsection (a), (b), (c) or (d) with respect to such Award (or portion thereof) must also constitute a "change in control event," as defined in Treasury Regulation Section 1.409A-3(i)(5) to the extent required by Section 409A.

The Committee shall have full and final authority, which shall be exercised in its sole discretion, to determine conclusively whether a Change in Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change in Control and any incidental matters relating thereto; provided that any exercise of authority in conjunction with a determination of whether a Change in Control is a "change in control event" as defined in Treasury Regulation Section 1.409A-3(i)(5) shall be consistent with such regulation.

2.16 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, together with the regulations and official guidance promulgated thereunder.

2.17 "Committee" shall mean the Compensation Committee of the Board, or another committee or subcommittee of the Board or the Compensation Committee, appointed as provided in Section 14.1.

2.18 "Common Stock" shall mean the common stock of the Company, par value $0.001 per share (which at all times while the Company is traded on the ASX, trade on ASX in the form of CDIs).

2.19 "Company" shall have the meaning set forth in Article 1.

2.20 "Consultant" shall mean any consultant or adviser engaged to provide services to the Company or any Subsidiary that qualifies as a consultant under the applicable rules of the Securities and Exchange Commission for registration of shares on a Form S-8 Registration Statement.

2.21 "Covered Employee" shall mean any Employee who is, or could be, a "covered employee" within the meaning of Section 162 (m) of the Code.

2.22 "Deferred Stock" shall mean a right to receive Shares awarded under Section 11.4.

2.23 "Deferred Stock Unit" shall mean a right to receive Shares awarded under Section 11.5.

2.24 "Director" shall mean a member of the Board, as constituted from time to time.

2.25 "Dividend Equivalent" shall mean a right to receive the equivalent value (in cash or Shares) of dividends paid on Shares, awarded under Section 11.2.

2.26 "Effective Date" shall mean the date the Plan is approved by the Board, subject to approval of the Plan by the Company's stockholders.

2.27 "Eligible Individual" shall mean any person who is an Employee, a Consultant or a Non-Employee Director, as determined by the Committee.

2.28 "Employee" shall mean any officer or other employee (as determined in accordance with Section 3401(c) of the Code and the Treasury Regulations thereunder) of the Company or of any Subsidiary.

2.29 "Equity Restructuring" shall mean a nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off, rights offering or recapitalization through a large, nonrecurring cash dividend, that affects the number or kind of Shares (or other securities of the Company) or the share price of Common Stock (or other securities) and causes a change in the per-share value of the Common Stock underlying outstanding Awards.

2.30 "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

2.31 "Expiration Date" shall have the meaning given to such term in Section 15.1.

2.32 "Fair Market Value" shall mean, as of any given date, the value of a Share determined as follows:

(a) If the Common Stock is listed on any (i) established securities exchange (such as the New York Stock Exchange, the NASDAQ Stock Market, the NASDAQ Global Market, the NASDAQ Global Select Market and the ASX), (ii) national market system or (iii) automated quotation system on which the Shares are listed, quoted or traded, its Fair Market Value shall be the closing sales price for a Share as quoted on such exchange or system for such date or, if there is no closing sales price for a Share on the date in question, the closing sales price for a Share on the last preceding date for which such quotation exists, as reported in *The Wall Street Journal*, *The Australian Financial Review* or such other source as the Administrator deems reliable;

(b) If the Common Stock is not listed on an established securities exchange, national market system or automated quotation system, but the Common Stock is regularly quoted by a recognized securities dealer, its Fair Market Value shall be the mean of the high bid and low asked prices for such date or, if there are no high bid and low asked prices for a Share on such date, the high bid and low asked prices for a Share on the last preceding date for which such information exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(c) If the Common Stock is neither listed on an established securities exchange, national market system or automated quotation system nor regularly quoted by a recognized securities dealer, its Fair Market Value shall be established by the Administrator in good faith.

2.33 "Full Value Award" shall mean any Award that is settled in Shares other than: (i) an Option, (ii) a Stock Appreciation Right or (iii) any other Award for which the Holder pays the intrinsic value existing as of the date of grant (whether directly or by forgoing a right to receive a payment from the Company or any Subsidiary).

2.34 "Greater Than 10% Stockholder" shall mean an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any subsidiary corporation (as defined in Section 424(f) of the Code) or parent corporation thereof (as defined in Section 424(e) of the Code).

2.35 "Holder" shall mean a person who has been granted an Award.

2.36 "Incentive Stock Option" shall mean an Option that is intended to qualify as an incentive stock option and conforms to the applicable provisions of Section 422 of the Code.

2.37 "Listing Rules" shall mean the official listing rules or any other applicable rules of ASX, the NASDAQ Stock Market, or any other securities exchange or automated quotation system on which the Shares are listed, quoted or traded.

2.38 "Non-Employee Director" shall mean a Director of the Company who is not an Employee.

2.39 "Non-Employee Director Equity Compensation Policy" shall have the meaning set forth in Section 5.6.

2.40 "Non-Qualified Stock Option" shall mean an Option that is not an Incentive Stock Option.

2.41 "Option" shall mean a right to purchase Shares at a specified exercise price, granted under Article 7. An Option shall be either a Non-Qualified Stock Option or an Incentive Stock Option; provided, however, that Options granted to Non-Employee Directors and Consultants shall only be Non-Qualified Stock Options.

2.42 "Option Term" shall have the meaning set forth in Section 7.4.

2.43 "Parent" shall mean any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities ending with the Company if each of the entities other than the Company beneficially owns, at the time of the determination, securities or interests representing at least fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.44 "Performance Award" shall mean a cash bonus award, stock bonus award, performance award or incentive award that is paid in cash, Shares or a combination of both, awarded under Section 11.1.

2.45 "Performance-Based Compensation" shall mean any compensation that is intended to qualify as "performance-based compensation" as described in Section 162(m)(4)(C) of the Code.

2.46 "Performance Criteria" shall mean the criteria (and adjustments) that the Committee selects for an Award for purposes of establishing the Performance Goal or Performance Goals for a Performance Period, determined as follows:

(a) The Performance Criteria that shall be used to establish Performance Goals are limited to the following: (i) net earnings (either before or after one or more of the following: (A) interest, (B) taxes, (C) depreciation and (D) amortization); (ii) gross or net sales or revenue; (iii) net income (either before or after taxes); (iv) adjusted net income; (v) operating earnings or profit; (vi) cash flow (including, but not limited to, operating cash flow and free cash flow); (vii) return on assets; (viii) return on capital; (ix) return on stockholders' equity; (x) total stockholder return; (xi) return on sales; (xii) gross or net profit or operating margin; (xiii) costs; (xiv) funds from operations; (xv) expenses; (xvi) working capital; (xvii) earnings per share; (xviii) adjusted earnings per share; (xix) price per share; (xx) regulatory body approval for commercialization of a product; (xxi) implementation or completion of critical projects; (xxii) market share; (xxiii) economic value; (xxiv) cash flow per share; (xxv) price-to-earnings ratio; (xxvi) growth in assets; (xxvii) share price performance; (xxviii) market penetration; (xxix) business expansion; (xxx) clinical trials; (xxxi) product feasibility studies; (xxxii) other quantifiable performance goals related to the conduct of the Company's business; (xxxiii) regulatory submissions or approvals; and (xxxiv) acquisitions or divestitures, any of which may be measured either in absolute terms or as compared to any incremental increase or decrease or as compared to results of a peer group or to market performance indicators or indices.

(b) The Administrator, in its sole discretion but subject to applicable Listing Rules, may provide that one or more objectively determinable adjustments shall be made to one or more of the Performance Goals. Such adjustments may include one or more of the following: (i) items related to a change in accounting principle; (ii) items relating to financing activities; (iii) expenses for restructuring or productivity initiatives; (iv) other non-operating items; (v) items related to acquisitions; (vi) items attributable to the business operations of any entity acquired by the Company during the Performance Period; (vii) items related to the disposal of a business or segment of a business; (viii) items related to discontinued operations that do not qualify as a segment of a business under Applicable Accounting Standards; (ix) items attributable to any stock dividend, stock split, combination or exchange of stock occurring during the Performance Period; (x) any other items of significant income or expense which are determined to be appropriate adjustments; (xi) items relating to unusual or extraordinary corporate transactions, events or developments, (xii) items related to amortization of acquired intangible assets; (xiii) items that are outside the scope of the Company's core, on-going business activities; (xiv) items related to acquired in-process research and development; (xv) items relating to changes in tax laws; (xvi) items relating to major licensing or partnership arrangements; (xvii) items relating to asset impairment charges; (xviii) items relating to gains or losses for litigation, arbitration and contractual settlements; (xix) items related to a restatement of prior period financial results; or (xx) items relating to any other unusual or nonrecurring events or changes in Applicable Law, accounting principles or business conditions. For all Awards intended to qualify as Performance-Based Compensation, such determinations shall be made within the time prescribed by, and otherwise in compliance with, Section 162(m) of the Code.

2.47 “Performance Goals” shall mean, for a Performance Period, one or more goals established in writing by the Administrator for the Performance Period based upon one or more Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a Subsidiary, division, business unit, or an individual. The achievement of each Performance Goal shall be determined, to the extent applicable, with reference to Applicable Accounting Standards.

2.48 “Performance Period” shall mean one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Holder’s right to, and the payment of, an Award.

2.49 “Performance Stock Unit” shall mean a Performance Award awarded under Section 11.1 which is denominated in units of value including dollar value of Shares.

2.50 “Permitted Transferee” shall mean, with respect to a Holder, any “family member” of the Holder, as defined in the instructions to Form S-8 under the Securities Act, or any other transferee specifically approved by the Administrator after taking into account Applicable Law.

2.51 “Plan” shall have the meaning set forth in Article 1.

2.52 “Prior Plan” shall mean the HeartWare International, Inc. 2008 Stock Incentive Plan, as amended.

2.53 “Program” shall mean any program adopted by the Administrator pursuant to the Plan containing the terms and conditions intended to govern a specified type of Award granted under the Plan and pursuant to which such type of Award may be granted under the Plan.

2.54 “Restricted Stock” shall mean Common Stock awarded under Article 9 that is subject to certain restrictions and may be subject to risk of forfeiture or repurchase.

2.55 “Restricted Stock Units” shall mean the right to receive Shares awarded under Article 10.

2.56 "Securities Act" shall mean the Securities Act of 1933, as amended.

2.57 "Shares" shall mean shares of Common Stock.

2.58 "Stock Appreciation Right" shall mean a stock appreciation right granted under Article 12.

2.59 "Stock Appreciation Right Term" shall have the meaning set forth in Section 12.4.

2.60 "Stock Payment" shall mean (a) a payment in the form of Shares, or (b) an option or other right to purchase Shares, as part of a bonus, deferred compensation or other arrangement, awarded under Section 11.3.

2.61 "Subsidiary" shall mean any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities beginning with the Company if each of the entities other than the last entity in the unbroken chain beneficially owns, at the time of the determination, securities or interests representing at least fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.62 "Substitute Award" shall mean an Award granted under the Plan upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock; provided, however, that in no event shall the term "Substitute Award" be construed to refer to an award made in connection with the cancellation and repricing of an Option or Stock Appreciation Right.

2.63 "Termination of Service" shall mean:

(a) As to a Consultant, the time when the engagement of a Holder as a Consultant to the Company or a Subsidiary is terminated for any reason, with or without cause, including, without limitation, by resignation, discharge, death or retirement, but excluding terminations where the Consultant simultaneously commences or remains in employment or service with the Company or any Subsidiary.

(b) As to a Non-Employee Director, the time when a Holder who is a Non-Employee Director ceases to be a Director for any reason, including, without limitation, a termination by resignation, failure to be elected, death or retirement, but excluding terminations where the Holder simultaneously commences or remains in employment or service with the Company or any Subsidiary.

(c) As to an Employee, the time when the employee-employer relationship between a Holder and the Company or any Subsidiary is terminated for any reason, including, without limitation, a termination by resignation, discharge, death, disability or retirement; but excluding terminations where the Holder simultaneously commences or remains in employment or service with the Company or any Subsidiary.

The Administrator, in its sole discretion, shall determine the effect of all matters and questions relating to any Termination of Service, including, without limitation, the question of whether a Termination of Service resulted from a discharge for cause and all questions of whether particular leaves of absence constitute a Termination of Service; provided, however, that, with respect to Incentive Stock Options, unless the Administrator otherwise provides in the terms of the Program, the Award Agreement or otherwise, or as otherwise required by Applicable Law, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service only if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then-applicable regulations and revenue rulings under said Section. For purposes of the Plan, a Holder's employee-employer relationship or consultancy relations shall be deemed to be terminated in the event that the Subsidiary employing or contracting with such Holder ceases to remain an Subsidiary following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

ARTICLE 3.
EFFECT OF THE ASX LISTING RULES ON THE OPERATION OF THE PLAN

3.1 ASX Listing Rules. At all times while the Company is admitted to the official list of ASX, the following will apply:

(a) Notwithstanding anything contained in this Plan, if the applicable ASX Listing Rules prohibit an act being done, the act shall not be done.

(b) Nothing contained in this Plan prevents an act being done that the applicable ASX Listing Rules require to be done.

(c) If the applicable ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).

(d) If the applicable ASX Listing Rules require this Plan to contain a provision and it does not contain such a provision, this Plan is deemed to contain that provision.

(e) If the applicable ASX Listing Rules require this Plan not to contain a provision and it contains such a provision, this Plan is deemed not to contain that provision.

(f) If any provision of this Plan is or becomes inconsistent with the applicable ASX Listing Rules, this Plan is deemed not to contain that provision to the extent of the inconsistency.

ARTICLE 4.
SHARES SUBJECT TO THE PLAN

4.1 Number of Shares.

(a) Subject to Sections 4.1(b) and 15.2, the aggregate number of Shares that may be issued or transferred pursuant to Awards under the Plan is 1,375,000; provided, however, that the aggregate number of Shares that may be issued or transferred pursuant to Full Value Awards is 1,275,000.

(b) If any Shares subject to an Award are forfeited or expire or such Award is settled for cash (in whole or in part), the Shares subject to such Award shall, to the extent of such forfeiture, expiration or cash settlement, again be available for future grants of Awards under the Plan. Notwithstanding anything to the contrary contained herein, the following Shares shall not be added to the Shares authorized for grant under Section 4.1(a) and shall not be available for future grants of Awards: (i) Shares tendered by a Holder or withheld by the Company in payment of the exercise price of an Option; (ii) Shares tendered by the Holder or withheld by the Company to satisfy any tax withholding obligation with respect to an Award; (iii) Shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right on exercise thereof; and (iv) Shares purchased on the open market with the cash proceeds from the exercise of Options. Any Shares repurchased by the Company under Section 9.4 at the same price paid by the Holder so that such Shares are returned to the Company shall again be available for Awards. The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not be counted against the Shares available for issuance under the Plan. Notwithstanding the provisions of this Section 4.1(b), no Shares may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

(c) Substitute Awards shall not reduce the Shares authorized for grant under the Plan. Additionally, in the event that a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan; provided that Awards using such available Shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing services to the Company or its Subsidiaries immediately prior to such acquisition or combination.

4.2 Stock Distributed. Any Shares distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Common Stock, treasury Common Stock or Common Stock purchased on the open market.

4.3 Limitation on Number of Shares Subject to Awards. Notwithstanding any provision in the Plan to the contrary, and subject to Section 15.2, the maximum aggregate number of Shares with respect to one or more Awards that may be granted to any one person during any fiscal year of the Company shall be 250,000 and the maximum aggregate amount of cash that may be paid in cash to any one person during any fiscal year of the Company with respect to one or more Awards payable in cash shall be $5,000,000.

4.4 Full Value Award Vesting Limitations. Notwithstanding any other provision of the Plan to the contrary, Full Value Awards made to Employees or Consultants shall become vested over a period of not less than three years (or, in the case of vesting based upon the attainment of Performance Goals or other performance-based objectives, over a period of not less than one year measured from the commencement of the period over which performance is evaluated) following the date the Award is made; provided, however, that, notwithstanding the foregoing, the Administrator may provide that such vesting restrictions may lapse or be waived upon the Holder's death, disability, retirement, any other specified Termination of Service or the consummation of a Change in Control.

ARTICLE 5.
GRANTING OF AWARDS

5.1 Participation. The Administrator may, from time to time, select from among all Eligible Individuals, those to whom an Award shall be granted and shall determine the nature and amount of each Award, which shall not be inconsistent with the requirements of the Plan. Except as provided in Section 5.6 regarding the grant of Awards pursuant to the Non-Employee Director Equity Compensation Policy, no Eligible Individual shall have any right to be granted an Award pursuant to the Plan.

5.2 Award Agreement. Each Award shall be evidenced by an Award Agreement that sets forth the terms, conditions and limitations for such Award, which may include the term of the Award, the provisions applicable in the event of the Holder's Termination of Service, and the Company's authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind an Award. Award Agreements evidencing Awards intended to qualify as Performance-Based Compensation shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 162(m) of the Code. Award Agreements evidencing Incentive Stock Options shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 422 of the Code.

5.3 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any individual who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including Rule 16b-3 of the Exchange Act and any amendments thereto) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

5.4 At-Will Employment; Voluntary Participation. Nothing in the Plan or in any Program or Award Agreement hereunder shall confer upon any Holder any right to continue in the employ of, or as a Director or Consultant for, the Company or any Subsidiary, or shall interfere with or restrict in any way the rights of the Company and any Subsidiary, which rights are hereby expressly reserved, to discharge any Holder at any time for any reason whatsoever, with or without cause, and with or without notice, or to terminate or change all other terms and conditions of employment or engagement, except to the extent expressly provided otherwise in a written agreement between the Holder and the Company or any Subsidiary. Participation by each Holder in the Plan shall be voluntary and nothing in the Plan shall be construed as mandating that any Eligible Individual shall participate in the Plan.

5.5 Foreign Holders. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in countries other than the United States in which the Company and its Subsidiaries operate or have Employees, Non-Employee Directors or Consultants, or in order to comply with the requirements of any foreign securities exchange, the Administrator, in its sole discretion, shall have the power and authority to: (a) determine which Subsidiaries shall be covered by the Plan; (b) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (c) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with applicable foreign laws or listing requirements of any such foreign securities exchange; (d) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable (any such subplans and/or modifications shall be attached to the Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Sections 4.1 and 4.3; and (e) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any such foreign securities exchange. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate Applicable Law. For purposes of the Plan, all references to foreign laws, rules, regulations or taxes shall be references to the laws, rules, regulations and taxes of any applicable jurisdiction other than the United States or a political subdivision thereof.

5.6 Non-Employee Director Awards. The Administrator, in its sole discretion, may provide that Awards granted to Non-Employee Directors shall be granted pursuant to a written nondiscretionary formula established by the Administrator (the "Non-Employee Director Equity Compensation Policy"), subject to the limitations of the Plan. Such written formula may be memorialized in the meeting minutes or in a resolution of the Administrator. The Non-Employee Director Equity Compensation Policy shall set forth the type of Award(s) to be granted to Non-Employee Directors, the number of Shares to be subject to Non-Employee Director Awards, the conditions on which such Awards shall be granted, become exercisable and/or payable and expire, and such other terms and conditions as the Administrator shall determine in its sole discretion. The Non-Employee Director Equity Compensation Policy may be modified by the Administrator from time to time in its sole discretion.

5.7 Stand-Alone and Tandem Awards. Awards granted pursuant to the Plan may, in the sole discretion of the Administrator, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

ARTICLE 6.
PROVISIONS APPLICABLE TO AWARDS INTENDED TO QUALIFY AS PERFORMANCE-BASED COMPENSATION

6.1 Purpose. The Committee, in its sole discretion, may determine at the time an Award is granted or at any time thereafter whether such Award is intended to qualify as Performance-Based Compensation. If the Committee, in its sole discretion, decides to grant such an Award to an Eligible Individual that is intended to qualify as Performance-Based Compensation (other than an Option or Stock Appreciation Right), then the provisions of this Article 6 shall control over any contrary provision contained in the Plan. The Administrator, in its sole discretion, may grant Awards to other Eligible Individuals that are based on Performance Criteria or Performance Goals or any such other criteria and goals as the Administrator shall establish, but that do not satisfy the requirements of this Article 6 and that are not intended to qualify as Performance-Based Compensation. Unless otherwise specified by the Committee at the time of grant, the Performance Criteria with respect to an Award intended to be Performance-Based Compensation payable to a Covered Employee shall be determined on the basis of Applicable Accounting Standards.

6.2 Applicability. The grant of an Award to an Eligible Individual for a particular Performance Period shall not require the grant of an Award to such Eligible Individual in any subsequent Performance Period and the grant of an Award to any one Eligible Individual shall not require the grant of an Award to any other Eligible Individual in such period or in any other period.

6.3 Types of Awards. Notwithstanding anything in the Plan to the contrary, the Committee may grant any Award to an Eligible Individual intended to qualify as Performance-Based Compensation, including, without limitation, Restricted Stock the restrictions with respect to which lapse upon the attainment of specified Performance Goals, Restricted Stock Units that vest and become payable upon the attainment of specified Performance Goals and any Performance Awards described in Article 11 that vest or become exercisable or payable upon the attainment of one or more specified Performance Goals.

6.4 Procedures with Respect to Performance-Based Awards. To the extent necessary to comply with the requirements of Section 162 (m)(4)(C) of the Code, with respect to any Award granted to one or more Eligible Individuals which is intended to qualify as Performance-Based Compensation, no later than 90 days following the commencement of any Performance Period or any designated fiscal period or period of service (or such earlier time as may be required under Section 162(m) of the Code), the Committee shall, in writing, (a) designate one or more Eligible Individuals, (b) select the Performance Criteria applicable to the Performance Period, (c) establish the Performance Goals, and amounts of such Awards, as applicable, which may be earned for such Performance Period based on the Performance Criteria, and (d) specify the relationship between Performance Criteria and the Performance Goals and the amounts of such Awards, as applicable, to be earned by each Covered Employee for such Performance Period. Following the completion of each Performance Period, the Committee shall certify in writing whether and the extent to which the applicable Performance Goals have been achieved for such Performance Period. In determining the amount earned under such Awards, the Committee shall have the right to reduce or eliminate (but not to increase) the amount payable at a given level of performance to take into account additional factors that the Committee may deem relevant, including the assessment of individual or corporate performance for the Performance Period. Any designation, selection, certification or specification required to be in writing by this Section 6.4 may be memorialized in the meeting minutes of the Committee or in a resolution of the Committee.

6.5 Payment of Performance-Based Awards. Unless otherwise provided in the applicable Program or Award Agreement and only to the extent otherwise permitted by Section 162(m) of the Code, as to an Award that is intended to qualify as Performance-Based Compensation, the Holder must be employed by the Company or a Subsidiary throughout the Performance Period. Unless otherwise provided in the applicable Performance Goals, Program or Award Agreement, a Holder shall be eligible to receive payment pursuant to such Awards for a Performance Period only if and to the extent the Performance Goals for such period are achieved.

6.6 Change in Control. In the event that a Change in Control occurs after the grant of an Award that is intended to qualify as Performance-Based Compensation but before completion of the applicable Performance Period, such Award shall become payable, or the restrictions shall lapse, as applicable, as of the date of the Change in Control.

6.7 Additional Limitations. Notwithstanding any other provision of the Plan and except as otherwise determined by the Administrator, any Award which is granted to an Eligible Individual and is intended to qualify as Performance-Based Compensation shall be subject to any additional limitations set forth in Section 162(m) of the Code or any regulations or rulings issued thereunder that are requirements for qualification as Performance-Based Compensation, and the Plan and the applicable Program and Award Agreement shall be deemed amended to the extent necessary to conform to such requirements.

ARTICLE 7.
GRANTING OF OPTIONS

7.1 Granting of Options to Eligible Individuals. The Administrator is authorized to grant Options to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine, which shall not be inconsistent with the Plan.

7.2 Qualification of Incentive Stock Options. No Incentive Stock Option shall be granted to any person who is not an Employee of the Company or any subsidiary corporation (as defined in Section 424(f) of the Code) of the Company. No person who qualifies as a Greater Than 10% Stockholder may be granted an Incentive Stock Option unless such Incentive Stock Option conforms to the applicable provisions of Section 422 of the Code. Any Incentive Stock Option granted under the Plan may be modified by the Administrator, with the consent of the Holder, to disqualify such Option from treatment as an "incentive stock option" under Section 422 of the Code. To the extent that the aggregate Fair Market Value of stock with respect to which "incentive stock options" (within the meaning of Section 422 of the Code, but without regard to Section 422(d) of the Code) are exercisable for the first time by a Holder during any calendar year under the Plan, and all other plans of the Company and any parent or subsidiary corporation thereof (each as defined in Section 424(e) and 424(f) of the Code, respectively), exceeds $100,000, the Options shall be treated as Non-Qualified Stock Options to the extent required by Section 422 of the Code. The rule set forth in the immediately preceding sentence shall be applied by taking Options and other "incentive stock options" into account in the order in which they were granted and the Fair Market Value of stock shall be determined as of the time the respective options were granted.

7.3 Option Exercise Price. The exercise price per Share subject to each Option shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value of a Share on the date the Option is granted (or, as to Incentive Stock Options, on the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code). In addition, in the case of Incentive Stock Options granted to a Greater Than 10% Stockholder, such price shall not be less than 110% of the Fair Market Value of a Share on the date the Option is granted (or the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code).

7.4 Option Term. The term of each Option (the "Option Term") shall be set by the Administrator in its sole discretion; provided, however, that the Option Term shall not be more than ten (10) years from the date the Option is granted, or five (5) years from the date an Incentive Stock Option is granted to a Greater Than 10% Stockholder. The Administrator shall determine the time period, including the time period following a Termination of Service, during which the Holder has the right to exercise the vested Options, which time period may not extend beyond the last day of the Option Term. Except as limited by the requirements of Section 409A or Section 422 of the Code and regulations and rulings thereunder or the first sentence of this Section 7.4, the Administrator may extend the Option Term of any outstanding Option, and may extend the time period during which vested Options may be exercised, in connection with any Termination of Service of the Holder, and may amend, subject to Section 15.1, any other term or condition of such Option relating to such a Termination of Service.

7.5 Option Vesting.

(a) The period during which the right to exercise, in whole or in part, an Option vests in the Holder shall be set by the Administrator and the Administrator may determine that an Option may not be exercised in whole or in part for a specified period after it is granted. Such vesting may be based on service with the Company or any Subsidiary, any of the Performance Criteria, or any other criteria selected by the Administrator, and, except as limited by the Plan, at any time after the grant of an Option, the Administrator, in its sole discretion and subject to whatever terms and conditions it selects, may accelerate the period during which an Option vests.

(b) No portion of an Option which is unexercisable at a Holder's Termination of Service shall thereafter become exercisable, except as may be otherwise provided by the Administrator either in the applicable Program, the Award Agreement evidencing the grant of an Option, or, subject to applicable Listing Rules, by action of the Administrator following the grant of the Option. Unless otherwise determined by the Administrator in the Award Agreement or by action of the Administrator following the grant of the Option, the portion of an Option that is unexercisable at a Holder's Termination of Service shall automatically expire thirty (30) days following such Termination of Service.

7.6 Substitute Awards. Notwithstanding the foregoing provisions of this Article 7 to the contrary, in the case of an Option that is a Substitute Award, the price per share of the Shares subject to such Option may be less than the Fair Market Value per share on the date of grant; provided that the excess of: (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the Shares subject to the Substitute Award, over (b) the aggregate exercise price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise price of such shares.

ARTICLE 8.
EXERCISE OF OPTIONS

8.1 Partial Exercise. An exercisable Option may be exercised in whole or in part. However, an Option shall not be exercisable with respect to fractional Shares and the Administrator may require that, by the terms of the Option, a partial exercise must be with respect to a minimum number of Shares.

8.2 Expiration of Option Term: Automatic Exercise of In-The-Money Options. Unless otherwise provided by the Administrator (in an Award Agreement or otherwise) or as otherwise directed by an Option Holder in writing to the Company, each Option outstanding on the Automatic Exercise Date with an exercise price per share that is less than the Fair Market Value per share of Common Stock as of such date shall automatically and without further action by the Option Holder or the Company be exercised on the Automatic Exercise Date. In the sole discretion of the Administrator, payment of the exercise price of any such Option shall be made pursuant to Section 13.1(b) or 13.1(c) and the Company or any Subsidiary shall deduct or withhold an amount sufficient to satisfy all taxes associated with such exercise in accordance with Section 13.2. Unless otherwise determined by the Administrator, this Section 8.2 shall not apply to an Option if the Holder of such Option incurs a Termination of Service on or before the Automatic Exercise Date. For the avoidance of doubt, no Option with an exercise price per share that is equal to or greater than the Fair Market Value per share of Common Stock on the Automatic Exercise Date shall be exercised pursuant to this Section 8.2.

8.3 Manner of Exercise. All or a portion of an exercisable Option shall be deemed exercised upon delivery of all of the following to the Secretary of the Company, the stock administrator of the Company or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Option, or a portion thereof, is exercised. The notice shall be signed by the Holder or other person then entitled to exercise the Option or such portion of the Option;

(b) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with Applicable Law. The Administrator, in its sole discretion, may also take whatever additional actions it deems appropriate to effect such compliance including, without limitation, placing legends on share certificates and issuing stop-transfer notices to agents and registrars;

(c) In the event that the Option shall be exercised pursuant to Section 13.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Option, as determined in the sole discretion of the Administrator; and

(d) Full payment of the exercise price and applicable withholding taxes to the stock administrator of the Company for the Shares with respect to which the Option, or portion thereof, is exercised, in a manner permitted by Sections 13.1 and 13.2.

8.4 Notification Regarding Disposition. The Holder shall give the Company prompt written or electronic notice of any disposition of Shares acquired by exercise of an Incentive Stock Option which occurs within (a) two years from the date of granting (including the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code) such Option to such Holder, or (b) one year after the transfer of such Shares to such Holder.

ARTICLE 9.
AWARD OF RESTRICTED STOCK

9.1 Award of Restricted Stock.

(a) The Administrator is authorized to grant Restricted Stock to Eligible Individuals, and shall determine the terms and conditions, including the restrictions applicable to each award of Restricted Stock, which terms and conditions shall not be inconsistent with the Plan, and may impose such conditions on the issuance of such Restricted Stock as it deems appropriate.

(b) The Administrator shall establish the purchase price, if any, and form of payment for Restricted Stock; provided, however, that if a purchase price is charged, such purchase price shall be no less than the par value, if any, of the Shares to be purchased, unless otherwise permitted by Applicable Law. In all cases, legal consideration shall be required for each issuance of Restricted Stock.

9.2 Rights as Stockholders. Subject to Section 9.4, upon issuance of Restricted Stock, the Holder shall have, unless otherwise provided by the Administrator, all the rights of a stockholder with respect to said Shares, subject to the restrictions in the applicable Program or in each individual Award Agreement, including the right to receive all dividends and other distributions paid or made with respect to the Shares; provided, however, that, in the sole discretion of the Administrator, any extraordinary distributions with respect to the Shares shall be subject to the restrictions set forth in Section 9.3. In addition, with respect to a share of Restricted Stock with performance-based vesting, dividends which are paid prior to vesting shall only be paid out to the Holder to the extent that the performance-based vesting conditions are subsequently satisfied and the share of Restricted Stock vests.

9.3 Restrictions. All shares of Restricted Stock (including any shares received by Holders thereof with respect to shares of Restricted Stock as a result of stock dividends, stock splits or any other form of recapitalization) shall, in the terms of the applicable Program or in each individual Award Agreement, be subject to such restrictions and vesting requirements as the Administrator shall provide. Such restrictions may include, without limitation, restrictions concerning voting rights and transferability and such restrictions may lapse separately or in combination at such times and pursuant to such circumstances or based on such criteria as selected by the Administrator, including, without limitation, criteria based on the Holder's duration of employment, directorship or consultancy with the Company, the Performance Criteria, Company performance, individual performance or other criteria selected by the Administrator. By action taken after the Restricted Stock is issued, the Administrator may, on such terms and conditions as it may determine to be appropriate, accelerate the vesting of such Restricted Stock by removing any or all of the restrictions imposed by the terms of the applicable Program or Award Agreement. Restricted Stock may not be sold or encumbered until all restrictions are terminated or expire.

9.4 Repurchase or Forfeiture of Restricted Stock. Except as otherwise determined by the Administrator at the time of the grant of the Award or thereafter, if no price was paid by the Holder for the Restricted Stock, upon a Termination of Service during the applicable restriction period, the Holder's rights in unvested Restricted Stock then subject to restrictions shall lapse, and such Restricted Stock shall be surrendered to the Company and cancelled without consideration. If a price was paid by the Holder for the Restricted Stock, upon a Termination of Service during the applicable restriction period, the Company shall have the right to repurchase from the Holder the unvested Restricted Stock then subject to restrictions at a cash price per share equal to the price paid by the Holder for such Restricted Stock or such other amount as may be specified in the applicable Program or Award Agreement. Notwithstanding the foregoing, except as otherwise provided by Section 4.4, the Administrator, in its sole discretion, may provide that upon certain events, including a Change in Control, the Holder's death, retirement or disability or any other specified Termination of Service or any other event, the Holder's rights in unvested Restricted Stock shall not lapse, such Restricted Stock shall vest and, if applicable, the Company shall not have a right of repurchase.

9.5 Certificates for Restricted Stock. Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Administrator shall determine. Certificates or book entries evidencing shares of Restricted Stock shall include an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock. The Company, in its sole discretion, may (a) retain physical possession of any stock certificate evidencing shares of Restricted Stock until the restrictions thereon shall have lapsed and/or (b) require that the stock certificates evidencing shares of Restricted Stock be held in custody by a designated escrow agent (which may but need not be the Company) until the restrictions thereon shall have lapsed, and that the Holder deliver a stock power, endorsed in blank, relating to such Restricted Stock.

9.6 Section 83(b) Election. If a Holder makes an election under Section 83(b) of the Code to be taxed with respect to the Restricted Stock as of the date of transfer of the Restricted Stock rather than as of the date or dates upon which the Holder would otherwise be taxable under Section 83(a) of the Code, the Holder shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service along with proof of the timely filing thereof with the Internal Revenue Service.

ARTICLE 10.
AWARD OF RESTRICTED STOCK UNITS

10.1 Grant of Restricted Stock Units. The Administrator is authorized to grant Awards of Restricted Stock Units to any Eligible Individual selected by the Administrator in such amounts and subject to such terms and conditions as determined by the Administrator.

10.2 Term. Except as otherwise provided herein, the term of a Restricted Stock Unit award shall be set by the Administrator in its sole discretion.

10.3 Purchase Price. The Administrator shall specify the purchase price, if any, to be paid by the Holder to the Company with respect to any Restricted Stock Unit award; provided, however, that value of the consideration shall not be less than the par value of a Share, unless otherwise permitted by Applicable Law.

10.4 Vesting of Restricted Stock Units. At the time of grant, the Administrator shall specify the date or dates on which the Restricted Stock Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate, including, without limitation, vesting based upon the Holder's duration of service to the Company or any Subsidiary, one or more Performance Criteria, Company performance, individual performance or other specific criteria, in each case on a specified date or dates or over any period or periods, as determined by the Administrator, subject to Section 4.4.

10.5 Maturity and Payment. At the time of grant, the Administrator shall specify the maturity date applicable to each grant of Restricted Stock Units (*i.e.*, the date on which the Shares are transferred to the Holder), which shall be no earlier than the vesting date or dates of the Award; provided that, except as otherwise determined by the Administrator, set forth in any applicable Award Agreement, and subject to compliance with Section 409A of the Code, in no event shall the maturity date relating to each Restricted Stock Unit occur following the later of (a) the 15thday of the third month following the end of calendar year in which the applicable portion of the Restricted Stock Unit vests; or (b) the 15th day of the third month following the end of the Company's fiscal year in which the applicable portion of the Restricted Stock Unit vests. On the maturity date, the Company shall, subject to Section 13.4(e), transfer to the Holder one unrestricted, fully transferable Share for each Restricted Stock Unit scheduled to be paid out on such date and not previously forfeited, or in the sole discretion of the Administrator, an amount in cash equal to the Fair Market Value of such Shares on the maturity date or a combination of cash and Common Stock as determined by the Administrator.

10.6 Payment upon Termination of Service. An Award of Restricted Stock Units shall only be payable while the Holder is an Employee, a Consultant or a member of the Board, as applicable; provided, however, that the Administrator, in its sole discretion, may provide (in an Award Agreement or otherwise) that a Restricted Stock Unit award may be paid subsequent to a Termination of Service in certain events, including a Change in Control, the Holder's death, retirement or disability or any other specified Termination of Service.

10.7 No Rights as a Stockholder. Unless otherwise determined by the Administrator, a Holder of Restricted Stock Units shall possess no incidents of ownership with respect to the Shares represented by such Restricted Stock Units, unless and until such Shares are transferred to the Holder pursuant to the terms of this Plan and the Award Agreement.

ARTICLE 11.

AWARD OF PERFORMANCE AWARDS, DIVIDEND EQUIVALENTS, STOCK PAYMENTS, DEFERRED STOCK, DEFERRED STOCK UNITS

11.1 Performance Awards.

(a) The Administrator is authorized to grant Performance Awards, including Awards of Performance Stock Units, to any Eligible Individual and to determine whether such Performance Awards shall be Performance-Based Compensation. The value of Performance Awards, including Performance Stock Units, may be linked to any one or more of the Performance Criteria or other specific criteria determined by the Administrator, in each case on a specified date or dates or over any period or periods and in such amounts as may be determined by the Administrator. Performance Awards, including Performance Stock Unit awards may be paid in cash, Shares, or a combination of cash and Shares, as determined by the Administrator.

(b) Without limiting Section 11.1(a), the Administrator may grant Performance Awards to any Eligible Individual in the form of a cash bonus payable upon the attainment of objective Performance Goals, or such other criteria, whether or not objective, which are established by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator. Any such bonuses paid to a Holder which are intended to be Performance-Based Compensation shall be based upon objectively determinable bonus formulas established in accordance with the provisions of Article 6.

11.2 Dividend Equivalents.

(a) Dividend Equivalents may be granted by the Administrator based on dividends declared on the Common Stock, to be credited as of dividend payment dates during the period between the date an Award is granted to a Holder and the date such Award vests, is exercised, is distributed or expires, as determined by the Administrator. Such Dividend Equivalents shall be converted to cash or additional Shares by such formula and at such time and subject to such restrictions and limitations as may be determined by the Administrator. In addition, Dividend Equivalents with respect to an Award with performance-based vesting that are based on dividends paid prior to the vesting of such Award shall only be paid out to the Holder to the extent that the performance-based vesting conditions are subsequently satisfied and the Award vests.

(b) Notwithstanding the foregoing, no Dividend Equivalents shall be payable with respect to Options or Stock Appreciation Rights.

11.3 Stock Payments. The Administrator is authorized to make Stock Payments to any Eligible Individual. The number or value of Shares of any Stock Payment shall be determined by the Administrator and may be based upon one or more Performance Criteria or any other specific criteria, including service to the Company or any Subsidiary, determined by the Administrator. Shares underlying a Stock Payment which is subject to a vesting schedule or other conditions or criteria set by the Administrator shall not be issued until those conditions have been satisfied. Unless otherwise provided by the Administrator, a Holder of a Stock Payment shall have no rights as a Company stockholder with respect to such Stock Payment until such time as the Stock Payment has vested and the Shares underlying the Award have been issued to the Holder. Stock Payments may, but are not required to, be made in lieu of base salary, bonus, fees or other cash compensation otherwise payable to such Eligible Individual.

11.4 Deferred Stock. The Administrator is authorized to grant Deferred Stock to any Eligible Individual. The number of shares of Deferred Stock shall be determined by the Administrator and may (but is not required to) be based on one or more Performance Criteria or other specific criteria, including service to the Company or any Subsidiary, as the Administrator determines, in each case on a specified date or dates or over any period or periods determined by the Administrator. Shares underlying a Deferred Stock award which is subject to a vesting schedule or other conditions or criteria set by the Administrator shall be issued on the vesting date(s) or date(s) that those conditions and criteria have been satisfied, as applicable. Unless otherwise provided by the Administrator, a Holder of Deferred Stock shall have no rights as a Company stockholder with respect to such Deferred Stock until such time as the Award has vested and any other applicable conditions and/or criteria have been satisfied and the Shares underlying the Award have been issued to the Holder.

11.5 Deferred Stock Units. The Administrator is authorized to grant Deferred Stock Units to any Eligible Individual. The number of Deferred Stock Units shall be determined by the Administrator and may (but is not required to) be based on one or more Performance Criteria or other specific criteria, including service to the Company or any Subsidiary, as the Administrator determines, in each case on a specified date or dates or over any period or periods determined by the Administrator. Each Deferred Stock Unit shall entitle the Holder thereof to receive one Share on the date the Deferred Stock Unit becomes vested or upon a specified settlement date thereafter (which settlement date may (but is not required to) be the date of the Holder's Termination of Service). Shares underlying a Deferred Stock Unit award which is subject to a vesting schedule or other conditions or criteria set by the Administrator shall not be issued until on or following the date that those conditions and criteria have been satisfied. Unless otherwise provided by the Administrator, a Holder of Deferred Stock Units shall have no rights as a Company stockholder with respect to such Deferred Stock Units until such time as the Award has vested and any other applicable conditions and/or criteria have been satisfied and the Shares underlying the Award have been issued to the Holder.

11.6 Term. The term of a Performance Award, Dividend Equivalent award, Stock Payment award, Deferred Stock award and/or Deferred Stock Unit award shall be established by the Administrator in its sole discretion.

11.7 Purchase Price. The Administrator may establish the purchase price of a Performance Award, Shares distributed as a Stock Payment award, shares of Deferred Stock or Shares distributed pursuant to a Deferred Stock Unit award; provided, however, that value of the consideration shall not be less than the par value of a Share, unless otherwise permitted by Applicable Law.

11.8 Termination of Service. A Performance Award, Stock Payment award, Dividend Equivalent award, Deferred Stock award and/or Deferred Stock Unit award is distributable only while the Holder is an Employee, Director or Consultant, as applicable. The Administrator, however, in its sole discretion, may provide that the Performance Award, Dividend Equivalent award, Stock Payment award, Deferred Stock award and/or Deferred Stock Unit award may be distributed subsequent to a Termination of Service in certain events, including a Change in Control, the Holder's death, retirement or disability or any other specified Termination of Service.

ARTICLE 12.
AWARD OF STOCK APPRECIATION RIGHTS

12.1 Grant of Stock Appreciation Rights.

(a) The Administrator is authorized to grant Stock Appreciation Rights to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine, which shall not be inconsistent with the Plan.

(b) A Stock Appreciation Right shall entitle the Holder (or other person entitled to exercise the Stock Appreciation Right pursuant to the Plan) to exercise all or a specified portion of the Stock Appreciation Right (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount determined by multiplying the difference obtained by subtracting the exercise price per share of the Stock Appreciation Right from the Fair Market Value on the date of exercise of the Stock Appreciation Right by the number of Shares with respect to which the Stock Appreciation Right shall have been exercised, subject to any limitations the Administrator may impose. Except as described in (c) below, the exercise price per Share subject to each Stock Appreciation Right shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value on the date the Stock Appreciation Right is granted.

(c) Notwithstanding the foregoing provisions of Section 12.1(b) to the contrary, in the case of a Stock Appreciation Right that is a Substitute Award, the price per share of the Shares subject to such Stock Appreciation Right may be less than 100% of the Fair Market Value per share on the date of grant; provided that the excess of: (i) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the Shares subject to the Substitute Award, over (ii) the aggregate exercise price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise price of such shares.

12.2 Stock Appreciation Right Vesting.

(a) The period during which the right to exercise, in whole or in part, a Stock Appreciation Right vests in the Holder shall be set by the Administrator and the Administrator may determine that a Stock Appreciation Right may not be exercised in whole or in part for a specified period after it is granted. Such vesting may be based on service with the Company or any Subsidiary, any of the Performance Criteria, or any other criteria selected by the Administrator. Except as limited by the Plan, at any time after grant of a Stock Appreciation Right, the Administrator, in its sole discretion and subject to whatever terms and conditions it selects, may accelerate the period during which a Stock Appreciation Right vests.

(b) No portion of a Stock Appreciation Right which is unexercisable at a Holder's Termination of Service shall thereafter become exercisable, except as may be otherwise provided by the Administrator in the applicable Program, the Award Agreement evidencing the grant of a Stock Appreciation Right, or by action of the Administrator following the grant of the Stock Appreciation Right.

12.3 Manner of Exercise. All or a portion of an exercisable Stock Appreciation Right shall be deemed exercised upon delivery of all of the following to the Secretary of the Company, the stock administrator of the Company, or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Stock Appreciation Right, or a portion thereof, is exercised. The notice shall be signed by the Holder or other person then entitled to exercise the Stock Appreciation Right or such portion of the Stock Appreciation Right;

(b) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with Applicable Law. The Administrator, in its sole discretion, may also take whatever additional actions it deems appropriate to effect such compliance, including, without limitation, placing legends on share certificates and issuing stop-transfer notices to agents and registrars;

(c) In the event that the Stock Appreciation Right shall be exercised pursuant to this Section 12.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Stock Appreciation Right, as determined in the sole discretion of the Administrator; and

(d) Full payment of the exercise price and applicable withholding taxes to the stock administrator of the Company for the Shares with respect to which the Stock Appreciation Right, or portion thereof, is exercised, in a manner permitted by Sections 13.1 and 13.2.

12.4 Stock Appreciation Right Term. The term of each Stock Appreciation Right (the "Stock Appreciation Right Term") shall be set by the Administrator in its sole discretion; provided, however, that the Stock Appreciation Right Term shall not be more than ten (10) years from the date the Stock Appreciation Right is granted. The Administrator shall determine the time period, including the time period following a Termination of Service, during which the Holder has the right to exercise the vested Stock Appreciation Rights, which time period may not extend beyond the last day of the Stock Appreciation Right Term applicable to such Stock Appreciation Right. Except as limited by the requirements of Section 409A of the Code and regulations and rulings thereunder or the first sentence of this Section 12.4, the Administrator may, subject to applicable Listing Rules, extend the Stock Appreciation Right Term of any outstanding Stock Appreciation Right, and may, subject to applicable Listing Rules, extend the time period during which vested Stock Appreciation Rights may be exercised, in connection with any Termination of Service of the Holder, and may amend, subject to Section 15.1, any other term or condition of such Stock Appreciation Right relating to such a Termination of Service.

12.5 Payment. Payment of the amounts payable with respect to Stock Appreciation Rights pursuant to this Article 12 shall be in cash, Shares (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised), or a combination of both, as determined by the Administrator.

12.6 Expiration of Stock Appreciation Right Term: Automatic Exercise of In-The-Money Stock Appreciation Rights. Unless otherwise provided by the Administrator (in an Award Agreement or otherwise) or as otherwise directed by a Stock Appreciation Right Holder in writing to the Company, each Stock Appreciation Right outstanding on the Automatic Exercise Date with an exercise price per share that is less than the Fair Market Value per share of Common Stock as of such date shall automatically and without further action by the Stock Appreciation Right Holder or the Company be exercised on the Automatic Exercise Date. In the sole discretion of the Administrator, the Company or any Subsidiary shall deduct or withhold an amount sufficient to satisfy all taxes associated with such exercise in accordance with Section 13.2. For the avoidance of doubt, no Stock Appreciation Right with an exercise price per share that is equal to or greater than the Fair Market Value per share of Common Stock on the Automatic Exercise Date shall be exercised pursuant to this Section 12.6.

ARTICLE 13.
ADDITIONAL TERMS OF AWARDS

13.1 Payment. The Administrator shall determine the methods by which payments by any Holder with respect to any Awards granted under the Plan shall be made, including, without limitation: (a) cash or check, (b) Shares (including, in the case of payment of the exercise price of an Award, Shares issuable pursuant to the exercise of the Award) or Shares held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences, in each case, having a Fair Market Value on the date of delivery equal to the aggregate payments required, (c) delivery of a written or electronic notice that the Holder has placed a market sell order with a broker acceptable to the Company with respect to Shares then issuable upon exercise or vesting of an Award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate payments required; provided that payment of such proceeds is then made to the Company upon settlement of such sale, or (d) other form of legal consideration acceptable to the Administrator in its sole discretion. The Administrator shall also determine the methods by which Shares shall be delivered or deemed to be delivered to Holders. Notwithstanding any other provision of the Plan to the contrary, no Holder who is a Director or an "executive officer" of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to make payment with respect to any Awards granted under the Plan, or continue any extension of credit with respect to such payment, with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.

13.2 Tax Withholding. The Company or any Subsidiary shall have the authority and the right to deduct or withhold, or require a Holder to remit to the Company, an amount sufficient to satisfy federal, state, local and foreign taxes (including the Holder's FICA, employment tax or other social security contribution obligation) required by law to be withheld with respect to any taxable event concerning a Holder arising as a result of the Plan. The Administrator, in its sole discretion and in satisfaction of the foregoing requirement, may withhold, or allow a Holder to elect to have the Company withhold, Shares otherwise issuable under an Award (or allow the surrender of Shares). The number of Shares which may be so withheld or surrendered shall be limited to the number of Shares which have a fair market value on the date of withholding or repurchase equal to the aggregate amount of such liabilities based on the minimum statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such supplemental taxable income. The Administrator shall determine the fair market value of the Shares, consistent with applicable provisions of the Code, for tax withholding obligations due in connection with a broker-assisted cashless Option or Stock Appreciation Right exercise involving the sale of Shares to pay the Option or Stock Appreciation Right exercise price or any tax withholding obligation.

13.3 Transferability of Awards.

(a) Except as otherwise provided in Section 13.3(b) and 13.3(c):

(i) No Award under the Plan may be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution unless and until such Award has been exercised, or the Shares underlying such Award have been issued, and all restrictions applicable to such Shares have lapsed;

(ii) No Award or interest or right therein shall be liable for the debts, contracts or engagements of the Holder or the Holder's successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, hypothecation, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by Section 13.3(a)(i); and

(iii) During the lifetime of the Holder, only the Holder may exercise an Award (or any portion thereof) granted to such Holder under the Plan; after the death of the Holder, any exercisable portion of an Award may, prior to the time when such portion becomes unexercisable under the Plan or the applicable Program or Award Agreement, be exercised by the Holder's personal representative or by any person empowered to do so under the deceased Holder's will or under the then-applicable laws of descent and distribution.

(b) Notwithstanding Section 13.3(a), the Administrator, in its sole discretion, may determine to permit a Holder to transfer an Award other than an Incentive Stock Option to any one or more Permitted Transferees, subject to the following terms and conditions: (i) an Award transferred to a Permitted Transferee shall not be assignable or transferable by the Permitted Transferee other than by will or the laws of descent and distribution; (ii) an Award transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Award as applicable to the original Holder (other than the ability to further transfer the Award); (iii) any transfer of an Award to a Permitted Transferee shall be without consideration, except as required by Applicable Law; and (iv) the Holder and the Permitted Transferee shall execute any and all documents requested by the Administrator, including, without limitation documents to (A) confirm the status of the transferee as a Permitted Transferee, (B) satisfy any requirements for an exemption for the transfer under Applicable Law and (C) evidence the transfer.

(c) Notwithstanding Section 13.3(a), a Holder may, in the manner determined by the Administrator, designate a beneficiary to exercise the rights of the Holder and to receive any distribution with respect to any Award upon the Holder's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Program or Award Agreement applicable to the Holder, except to the extent the Plan, the Program and the Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Administrator. If the Holder is married or a domestic partner in a domestic partnership qualified under Applicable Law and resides in a community property state, a designation of a person other than the Holder's spouse or domestic partner, as applicable, as the Holder's beneficiary with respect to more than 50% of the Holder's interest in the Award shall not be effective without the prior written or electronic consent of the Holder's spouse or domestic partner. If no beneficiary has been designated or survives the Holder, payment shall be made to the person entitled thereto pursuant to the Holder's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Holder at any time; provided that the change or revocation is filed with the Administrator prior to the Holder's death.

13.4 Conditions to Issuance of Shares.

(a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares pursuant to the exercise of any Award, unless and until the Board or the Committee has determined, with advice of counsel, that the issuance of such Shares is in compliance with Applicable Law and the Shares are covered by an effective registration statement or applicable exemption from registration. In addition to the terms and conditions provided herein, the Board or the Committee may require that a Holder make such reasonable covenants, agreements and representations as the Board or the Committee, in its sole discretion, deems advisable in order to comply with Applicable Law.

(b) All share certificates delivered pursuant to the Plan and all Shares issued pursuant to book entry procedures are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with Applicable Law. The Administrator may place legends on any share certificate or book entry to reference restrictions applicable to the Shares.

(c) The Administrator shall have the right to require any Holder to comply with any timing or other restrictions with respect to the settlement, distribution or exercise of any Award, including a window-period limitation, as may be imposed in the sole discretion of the Administrator.

(d) No fractional Shares shall be issued and the Administrator, in its sole discretion, shall determine whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding down.

(e) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by Applicable Law, the Company need not deliver to any Holder certificates evidencing Shares issued in connection with any Award and instead such Shares may be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

13.5 Forfeiture and Claw-Back Provisions. Pursuant to its general authority to determine the terms and conditions applicable to Awards under the Plan, the Administrator shall have the right to provide, in an Award Agreement or otherwise, or to require a Holder to agree by separate written or electronic instrument, that:

(a)(i) Any proceeds, gains or other economic benefit actually or constructively received by the Holder upon any receipt or exercise of the Award, or upon the receipt or resale of any Shares underlying the Award, shall be paid to the Company, and (ii) the Award shall terminate and any unexercised portion of the Award (whether or not vested) shall be forfeited, if (x) a Termination of Service occurs prior to a specified date, or within a specified time period following receipt or exercise of the Award, or (y) the Holder at any time, or during a specified time period, engages in any activity in competition with the Company, or which is inimical, contrary or harmful to the interests of the Company, as further defined by the Administrator or (z) the Holder incurs a Termination of Service for "cause" (as such term is defined in the sole discretion of the Administrator, or as set forth in a written agreement relating to such Award between the Company and the Holder); and

(b) All Awards (including any proceeds, gains or other economic benefit actually or constructively received by the Holder upon any receipt or exercise of any Award or upon the receipt or resale of any Shares underlying the Award) shall be subject to the provisions of any claw-back policy implemented by the Company, including, without limitation, any claw-back policy adopted to comply with the requirements of Applicable Law, including without limitation the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder, to the extent set forth in such claw-back policy and/or in the applicable Award Agreement.

13.6 Prohibition on Repricing. Subject to Section 15.2 and the applicable Listing Rules, the Administrator shall not, without the approval of the stockholders of the Company, (i) authorize the amendment of any outstanding Option or Stock Appreciation Right to reduce its price per share, or (ii) cancel any Option or Stock Appreciation Right in exchange for cash or another Award when the Option or Stock Appreciation Right price per share exceeds the Fair Market Value of the underlying Shares. Subject to Section 15.2, and the applicable Listing Rules, the Administrator shall have the authority, without the approval of the stockholders of the Company, to amend any outstanding Award to increase the price per share or to cancel and replace an Award with the grant of an Award having a price per share that is greater than or equal to the price per share of the original Award. Furthermore, for purposes of this Section 13.6, except in connection with a corporate transaction involving the Company (including, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination or exchange of shares) and provided that in respect of which the Company complies with the requirements imposed under applicable Listing Rules, the terms of outstanding Awards may not be amended to reduce the exercise price per share of outstanding Options or Stock Appreciation Rights or cancel outstanding Options or Stock Appreciation Rights in exchange for cash, other Awards or Options or Stock Appreciation Rights with an exercise price per share that is less than the exercise price per share of the original Options or Stock Appreciation Rights without the approval of the stockholders of the Company and then only to the extent permitted by applicable Listing Rules.

ARTICLE 14.
ADMINISTRATION

14.1 Administrator. The Committee (or another committee or a subcommittee of the Board assuming the functions of the Committee under the Plan) shall administer the Plan (except as otherwise permitted herein). To the extent necessary to comply with Rule 16b-3 of the Exchange Act, and with respect to Awards that are intended to be Performance-Based Compensation, including Options and Stock Appreciation Rights, then the Committee (or another committee or subcommittee of the Board assuming the functions of the Committee under the Plan) shall take all action with respect to such Awards, and the individuals taking such action shall consist solely of two or more Non-Employee Directors appointed by and holding office at the pleasure of the Board, each of whom is intended to qualify as both a "non-employee director" as defined by Rule 16b-3 of the Exchange Act or any successor rule and an "outside director" for purposes of Section 162(m) of the Code. Additionally, to the extent required by Applicable Law, each of the individuals constituting the Committee (or another committee or subcommittee of the Board assuming the functions of the Committee under the Plan) shall be an "independent director" under the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded. Notwithstanding the foregoing, any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 14.l or otherwise provided in any charter of the Committee. Except as may otherwise be provided in any charter of the Committee, appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written or electronic notice to the Board. Vacancies in the Committee may only be filled by the Board. Notwithstanding the foregoing, (a) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to Awards granted to Non-Employee Directors and, with respect to such Awards, the terms "Administrator" and "Committee" as used in the Plan shall be deemed to refer to the Board and (b) the Board or Committee may delegate its authority hereunder to the extent permitted by Section 14.6.

14.2 Duties and Powers of Committee. It shall be the duty of the Committee to conduct the general administration of the Plan in accordance with its provisions. The Committee shall have the power to interpret the Plan, the Program and the Award Agreement, and to adopt such rules for the administration, interpretation and application of the Plan as are not inconsistent therewith, to interpret, amend or revoke any such rules and to amend any Program or Award Agreement; provided that the rights or obligations of the Holder of the Award that is the subject of any such Program or Award Agreement are not affected adversely by such amendment, unless the consent of the Holder is obtained or such amendment is otherwise permitted under Section 13.5 or Section 15.10. Any such grant or award under the Plan need not be the same with respect to each Holder. Any such interpretations and rules with respect to Incentive Stock Options shall be consistent with the provisions of Section 422 of the Code. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Rule 16b-3 under the Exchange Act or any successor rule, or Section 162(m) of the Code, or any regulations or rules issued thereunder, or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded are required to be determined in the sole discretion of the Committee.

14.3 Action by the Committee. Unless otherwise established by the Board or in any charter of the Committee, a majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by all members of the Committee in lieu of a meeting, shall be deemed the acts of the Committee. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Subsidiary, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

14.4 Authority of Administrator. Subject to the Company's Bylaws, the Committee's Charter and any specific designation in the Plan, the Administrator has the exclusive power, authority and sole discretion to:

(a) Designate Eligible Individuals to receive Awards;

(b) Determine the type or types of Awards to be granted to each Eligible Individual;

(c) Determine the number of Awards to be granted and the number of Shares to which an Award will relate;

(d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, purchase price, any Performance Criteria, any restrictions or limitations on the Award, any schedule for vesting, lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, and any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Administrator in its sole discretion determines;

(e) Determine whether, to what extent, and pursuant to what circumstances an Award may be settled in, or the exercise price of an Award may be paid in cash, Shares, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(f) Prescribe the form of each Award Agreement, which need not be identical for each Holder;

(g) Decide all other matters that must be determined in connection with an Award;

(h) Establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan;

(i) Interpret the terms of, and any matter arising pursuant to, the Plan, any Program or any Award Agreement;

(j) Make all other decisions and determinations that may be required pursuant to the Plan or as the Administrator deems necessary or advisable to administer the Plan; and

(k) Accelerate wholly or partially the vesting or lapse of restrictions of any Award or portion thereof at any time after the grant of an Award, subject to whatever terms and conditions it selects and Section 4.4 and Section 15.2.

14.5 Decisions Binding. The Administrator's interpretation of the Plan, any Awards granted pursuant to the Plan, any Program, any Award Agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding and conclusive on all parties.

14.6 Delegation of Authority. To the extent permitted by Applicable Law, the Board or Committee may from time to time delegate to a committee of one or more members of the Board or one or more officers of the Company the authority to grant or amend Awards or to take other administrative actions pursuant to this Article 14; provided, however, that in no event shall an officer of the Company be delegated the authority to grant awards to, or amend awards held by, the following individuals: (a) individuals who are subject to Section 16 of the Exchange Act, (b) Covered Employees or (c) officers of the Company (or Directors) to whom authority to grant or amend Awards has been delegated hereunder; provided, further, that any delegation of administrative authority shall only be permitted to the extent it is permissible under Section 162(m) of the Code and other Applicable Law. Any delegation hereunder shall be subject to the restrictions and limits that the Board or Committee specifies at the time of such delegation, and the Board may at any time rescind the authority so delegated or appoint a new delegatee. At all times, the delegatee appointed under this Section 14.6 shall serve in such capacity at the pleasure of the Board and the Committee.

ARTICLE 15.
MISCELLANEOUS PROVISIONS

15.1 Amendment, Suspension or Termination of the Plan. Except as otherwise provided in this Section 15.1, the Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board or the Committee. However, without approval of the Company's stockholders given within twelve (12) months before or after the action by the Administrator, no action of the Administrator may, except as provided in Section 15.2, (a) increase the limits imposed in Section 4.1 on the maximum number of Shares which may be issued under the Plan, (b) to the extent permitted by applicable Listing Rules, reduce the price per share of any outstanding Option or Stock Appreciation Right granted under the Plan or take any action prohibited under Section 13.6, or (c) cancel any Option or Stock Appreciation Right in exchange for cash or another Award when the Option or Stock Appreciation Right price per share exceeds the Fair Market Value of the underlying Shares. Except as provided in Section 13.5 and Section 15.10, no amendment, suspension or termination of the Plan shall, without the consent of the Holder, impair any rights or obligations under any Award theretofore granted or awarded, unless the Award itself otherwise expressly so provides. No Awards may be granted or awarded during any period of suspension or after termination of the Plan, and notwithstanding anything herein to the contrary, in no event may any Award be granted under the Plan after the tenth (10^{th}) anniversary of the Effective Date (the "Expiration Date"). Any Awards that are outstanding on the Expiration Date shall remain in force according to the terms of the Plan and the applicable Award Agreement.

15.2 Changes in Common Stock or Assets of the Company, Acquisition or Liquidation of the Company and Other Corporate Events.

(a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the Shares of the Company's stock or the share price of the Company's stock other than an Equity Restructuring, the Administrator may make equitable adjustments, if any, to reflect such change with respect to: (i) the aggregate number and kind of Shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Sections 4.1 and 4.3 on the maximum number and kind of Shares that may be issued under the Plan and adjustments of the Award Limit); (ii) the number and kind of Shares (or other securities or property) subject to outstanding Awards; (iii) the number and kind of Shares (or other securities or property) for which automatic grants are subsequently to be made to new and continuing Non-Employee Directors pursuant to Section 5.6; (iv) the terms and conditions of any outstanding Awards (including, without limitation, any applicable performance targets or criteria with respect thereto); and (v) the grant or exercise price per share for any outstanding Awards under the Plan. Any adjustment affecting an Award intended as Performance-Based Compensation shall be made consistent with the requirements of Section 162(m) of the Code.

(b) In the event of any transaction or event described in Section 15.2(a) or any unusual or nonrecurring transactions or events affecting the Company, any Subsidiary of the Company, or the financial statements of the Company or any Subsidiary, or of changes in Applicable Law or accounting principles, the Administrator, in its sole discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event and automatically is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles, provided always that the Holder's rights will be changed to the extent necessary to comply with the Listing Rules applicable to a reorganization of capital at the time of the reorganization:

(i) To provide for either (A) termination of any such Award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Holder's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 15.2 the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Holder's rights, then such Award may be terminated by the Company without payment) or (B) the replacement of such Award with other rights or property selected by the Administrator, in its sole discretion, having an aggregate value not exceeding the amount that could have been attained upon the exercise of such Award or realization of the Holder's rights had such Award been currently exercisable or payable or fully vested;

(ii) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iii) To make adjustments in the number and type of Shares of the Company's stock (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Restricted Stock or Deferred Stock and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Awards and Awards which may be granted in the future;

(iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all Shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Program or Award Agreement; and

(v) To provide that the Award cannot vest, be exercised or become payable after such event.

(c) In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Section 15.2(a) and 15.2(b):

(i) The number and type of securities subject to each outstanding Award and the exercise price or grant price thereof, if applicable, shall be equitably adjusted; and/or

(ii) The Administrator shall make such equitable adjustments, if any, as the Administrator, in its sole discretion, may deem appropriate to reflect such Equity Restructuring with respect to the aggregate number and kind of Shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Sections 4.1 and 4.3 on the maximum number and kind of Shares that may be issued under the Plan and adjustments of the Award Limit). The adjustments provided under this Section 15.2(c) shall be nondiscretionary and shall be final and binding on the affected Holder and the Company.

(d) Notwithstanding any other provision of the Plan, in the event of a Change in Control, each outstanding Award will terminate upon the effective time of such Change in Control unless, in the sole discretion of the Administrator, provision is made in connection with the transaction for the continuation or assumption of such Award by, or for substitution of the equivalent awards of, the surviving or successor entity or a parent thereof. In the event of such termination:

(i) each outstanding Award that will terminate upon the effective time of the Change in Control shall become fully vested immediately before the effective time of the Change in Control; and

(ii) each Holder will be permitted, immediately before the Change in Control, to exercise or convert all portions of such Award that are then exercisable or convertible or which become exercisable or convertible upon or prior to the effective time of the Change in Control.

(e) The Administrator, in its sole discretion, may include such further provisions and limitations in any Award, agreement or certificate, as it may deem equitable and in the best interests of the Company that are not inconsistent with the provisions of the Plan.

(f) With respect to Awards which are granted to Covered Employees and are intended to qualify as Performance-Based Compensation, no adjustment or action described in this Section 15.2 or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause such Award to fail to so qualify as Performance-Based Compensation, unless the Administrator determines that the Award should not so qualify. No adjustment or action described in this Section 15.2 or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Plan to violate Section 422(b)(1) of the Code. Furthermore, no such adjustment or action shall be authorized to the extent such adjustment or action would result in short-swing profits liability under Section 16 or violate the exemptive conditions of Rule 16b-3 unless the Administrator determines that the Award is not to comply with such exemptive conditions.

(g) The existence of the Plan, the Program, the Award Agreement and the Awards granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, warrants or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(h) No action shall be taken under this Section 15.2 which shall result in a breach of any applicable Listing Rule, or (b) cause an Award to fail to be exempt from or comply with Section 409A of the Code or the Treasury Regulations thereunder.

(i) In the event of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the Shares or the share price of the Common Stock including any Equity Restructuring, for reasons of administrative convenience, the Administrator, in its sole discretion, may refuse to permit the exercise of any Award during a period of up to thirty (30) days prior to the consummation of any such transaction.

15.3 Approval of Plan by Stockholders. The Plan shall be submitted for the approval of the Company's stockholders within twelve (12) months after the date of the Board's initial adoption of the Plan. Upon the approval of the Plan by the Company's stockholders, the Prior Plan shall terminate and no additional awards shall be granted under the Prior Plan. If the Plan is not approved by the Company's stockholders, (i) the Plan will not become effective, (ii) no Awards shall be granted under the Plan, and (iii) the Prior Plan shall continue in full force and effect in accordance with its terms.

15.4 No Stockholders Rights. Except as otherwise provided herein, a Holder shall have none of the rights of a stockholder with respect to Shares covered by any Award until the Holder becomes the record owner of such Shares.

15.5 Paperless Administration. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Holder may be permitted through the use of such an automated system.

15.6 Effect of Plan upon Other Compensation Plans. The adoption of the Plan shall not affect any other compensation or incentive plans in effect for the Company or any Subsidiary. Nothing in the Plan shall be construed to limit the right of the Company or any Subsidiary: (a) to establish any other forms of incentives or compensation for Employees, Directors or Consultants of the Company or any Subsidiary, or (b) to grant or assume options or other rights or awards otherwise than under the Plan in connection with any proper corporate purpose including without limitation, the grant or assumption of options in connection with the acquisition by purchase, lease, merger, consolidation or otherwise, of the business, stock or assets of any corporation, partnership, limited liability company, firm or association.

15.7 Compliance with Laws. The Plan, the granting and vesting of Awards under the Plan and the issuance and delivery of Shares and the payment of money under the Plan or under Awards granted or awarded hereunder are subject to compliance with all Applicable Law (including but not limited to state, federal and foreign securities law and margin requirements), and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. Any securities delivered under the Plan shall be subject to such restrictions, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all Applicable Law. To the extent permitted by Applicable Law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to Applicable Law.

15.8 Titles and Headings, References to Sections of the Code or Exchange Act. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control. References to sections of the Code or the Exchange Act shall include any amendment or successor thereto.

15.9 Governing Law. The Plan and any agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of Delaware without regard to conflicts of laws thereof or of any other jurisdiction.

15.10 Listing Rules. While the Company remains subject to any Listing Rules, the Company and the Administrator shall not make any amendments to the Plan, issue any Awards or take any other action with regard to the Plan or any Award thereunder unless such action complies with the Listing Rules.

15.11 Section 409A. To the extent that the Administrator determines that any Award granted under the Plan is subject to Section 409A of the Code, the Program pursuant to which such Award is granted and the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A of the Code. To the extent applicable, the Plan, the Program and any Award Agreements shall be interpreted in accordance with Section 409A of the Code and 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 Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Administrator determines that any Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Administrator may adopt such amendments to the Plan and the applicable Program and Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Administrator determines are necessary or appropriate to (a) exempt the Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (b) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance and thereby avoid the application of any penalty taxes under such Section.

15.12 No Rights to Awards. No Eligible Individual or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Administrator is obligated to treat Eligible Individuals, Holders or any other persons uniformly.

15.13 Unfunded Status of Awards. The Plan is intended to be an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Holder pursuant to an Award, nothing contained in the Plan or any Program or Award Agreement shall give the Holder any rights that are greater than those of a general creditor of the Company or any Subsidiary.

15.14 Indemnification. To the extent allowable pursuant to Applicable Law, each member of the Committee or of the Board shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; provided he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

15.15 Relationship to other Benefits. No payment pursuant to the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Subsidiary except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

15.16 Expenses. The expenses of administering the Plan shall be borne by the Company and its Subsidiaries.

* * * * *

Exhibit 31.1

CERTIFICATION BY THE CHIEF EXECUTIVE OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Douglas Godshall, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of HeartWare International, 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2012

/s/ Douglas Godshall
Douglas Godshall
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION BY THE CHIEF FINANCIAL OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Peter F. McAree, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of HeartWare International, 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2012

/s/ Peter F. McAree
Peter F. McAree
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION BY THE CHIEF EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of HeartWare International, Inc. (the "Company") for the quarterly period ended June 30, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned President and Chief Executive Officer of the Company hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that based on his knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; 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: August 7, 2012

/s/ Douglas Godshall

Douglas Godshall
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION BY THE CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of HeartWare International, Inc. (the "Company") for the quarterly period ended June 30, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned Executive Vice President and Chief Financial Officer of the Company hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that based on his knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; 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: August 7, 2012

/s/ Peter F. McAree

Peter F. McAree
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

Audit • Tax • Advisory

Grant Thornton LLP
1301 International Parkway, Suite 300
Fort Lauderdale, FL 33323-2874

T 954.768.9900
F 954.768.9908

801 Brickell Avenue, Suite 2450
Miami, FL 33131-4944

T 305.341.8040
F 305.341.8099
www.GrantThornton.com

Report of Independent Registered Public Accounting Firm

Board of Directors and Stockholders
HeartWare International, Inc.

We have reviewed the accompanying condensed consolidated balance sheet of HeartWare International, Inc. (a Delaware Corporation) as of June 30, 2012, and the related condensed consolidated statements of operations and comprehensive loss for the three-month and six-month periods ended June 30, 2012 and 2011, the condensed consolidated statements of stockholders' equity for the six-month period ended June 30, 2012, and the condensed consolidated statements of cash flows for the six-month periods ended June 30, 2012 and 2011. These condensed consolidated financial statements are the responsibility of the Company's management.

We conducted our reviews in accordance with the standards of the Public Company Accounting Oversight Board (United States). A review of interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States), the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our reviews, we are not aware of any material modifications that should be made to the accompanying condensed consolidated financial statements in order for them to be in conformity with accounting principles generally accepted in the United States of America.

We have previously audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of the Company as of December 31, 2011, and the related consolidated statements of operations, comprehensive loss, stockholders' equity and cash flows for the year then ended (not presented herein); and in our report dated February 27, 2012, we expressed an unqualified opinion on those consolidated financial statements. In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of December 31, 2011, is fairly stated, in all material respects, in relation to the balance sheet from which it has been derived.

Grant Thornton LLP

Fort Lauderdale, Florida
August 8, 2012