

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2013

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-36083

**Applied Optoelectronics, Inc.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

76-0533927

(I.R.S. Employer Identification No.)

13115 Jess Pirtle Blvd.

Sugar Land, TX 77478

(Address of principal executive offices)

(281) 295-1800

(Registrant's telephone number)

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 ("Exchange Act") 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 S 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 during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes S No

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

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

As of November 7, 2013 there were 12,629,095 shares of the registrant's Common Stock outstanding.

**Applied Optoelectronics, Inc.**  
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**Part I. Financial Information**

**Item 1. Condensed Consolidated Financial Statements**

**Applied Optoelectronics, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(Unaudited, in thousands, except per share data)

	<u>September 30, 2013</u>	<u>December 31, 2012</u>
<b>ASSETS</b>		
Current Assets		
Cash and cash equivalents	\$ 7,325	\$ 10,723
Restricted cash	1,031	503
Accounts receivable - trade, net	17,043	13,525
Bank acceptance receivable	-	1,034
Inventories	16,421	12,493
Prepaid expenses and other current assets	3,765	968
Total current assets	<u>45,585</u>	<u>39,246</u>
Property, plant and equipment, net	27,125	24,838
Land use rights, net	957	674
Intangible assets, net	828	795
Other assets, net	1,439	195
<b>TOTAL ASSETS</b>	<u>\$ 75,934</u>	<u>\$ 65,748</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities		
Current portion of notes payable and long-term debt	\$ 12,095	\$ 13,900
Accounts payable	11,282	6,913
Bank acceptance payable	3,040	1,521
Accrued liabilities	3,557	3,243
Total current liabilities	<u>29,974</u>	<u>25,577</u>
Notes payable and long-term debt, less current portion	14,618	9,163
<b>TOTAL LIABILITIES</b>	<u>44,592</u>	<u>34,740</u>
Stockholders' equity (deficit):		
Redeemable Convertible Preferred Stock and Convertible Preferred Stock; 172,200 shares authorized; 5,547 shares issued and outstanding at December 31, 2012, no par value; 5,600 shares issued and outstanding at September 30, 2013, \$0.001 par value	105,801	105,367
Common Stock; 300,000 shares authorized; 266 shares issued and outstanding at December 31, 2012, no par value; 290 shares issued and outstanding at September 30, 2013, \$0.001 par value	1,222	1,074
Additional paid-in capital	4,801	4,468
Accumulated other comprehensive gain	2,320	2,016
Accumulated deficit	(82,802)	(81,917)
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<u>31,342</u>	<u>31,008</u>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<u>\$ 75,934</u>	<u>\$ 65,748</u>

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

**Applied Optoelectronics, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited, in thousands, except per share data)

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
Revenue, net	\$ 20,766	\$ 16,416	\$ 54,680	\$ 44,559
Cost of goods sold	14,445	11,743	38,327	31,074
Gross profit	6,321	4,673	16,353	13,485
Operating expenses				
Research and development	2,211	2,095	6,112	5,379
Sales and marketing	1,034	756	2,994	2,369
General and administrative	2,436	1,978	7,257	5,890
Total operating expenses	5,681	4,829	16,363	13,638
Income (loss) from operations	640	(156)	(10)	(153)
Other income (expense)				
Interest expense	(323)	(350)	(925)	(1,067)
Other income (expense), net	73	125	50	223
Total other expense	(250)	(225)	(875)	(844)
Income (loss) before income taxes	390	(381)	(885)	(997)
Income taxes	-	-	-	-
Net income (loss)	\$ 390	\$ (381)	\$ (885)	\$ (997)
Net income (loss) per share				
Basic	\$ 0.04	\$ (1.43)	\$ (3.24)	\$ (3.76)
Diluted	\$ 0.04	\$ (1.43)	\$ (3.24)	\$ (3.76)
Weighted average shares used to compute net income (loss) per share				
Basic	8,995	266	273	265
Diluted	9,155	266	273	265
Pro forma net income (loss) per share				
Basic	\$ 0.04		\$ (0.10)	
Diluted	\$ 0.04		\$ (0.10)	
Pro forma weighted average shares used to compute net income (loss) per share				
Basic	9,034		9,004	
Diluted	9,194		9,004	

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

**Applied Optoelectronics, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
**(Unaudited, in thousands)**

	<b>Three months ended September 30,</b>		<b>Nine months ended September 30,</b>	
	2013	2012	2013	2012
Net income (loss)	\$ 390	\$ (381)	\$ (885)	\$ (997)
Foreign currency translation adjustment, net of tax	66	(49)	304	(60)
Comprehensive income (loss)	<u>\$ 456</u>	<u>\$ (430)</u>	<u>\$ (581)</u>	<u>\$ (1,057)</u>

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

**Applied Optoelectronics, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited, in thousands)

	<b>Nine months ended September 30,</b>	
	<b>2013</b>	<b>2012</b>
<b>Operating activities:</b>		
Net loss	\$ (885)	\$ (997)
Adjustments to reconcile net loss to net cash used in operating activities:		
Provision for obsolete inventory	550	556
Depreciation and amortization	2,436	2,213
Gain (loss) on disposal of assets	–	36
Stock-based compensation and warrant expense	375	51
Changes in operating assets and liabilities:		
Accounts receivable	(3,446)	438
Bank acceptance receivable	1,036	(174)
Inventory	(4,389)	(1,588)
Other current assets	(2,886)	(933)
Accounts payable	4,350	(687)
Accrued liabilities	405	278
Net cash used in operating activities	<u>(2,454)</u>	<u>(807)</u>
<b>Investing activities:</b>		
Purchase of property, plant and equipment	(4,697)	(2,711)
Proceeds from disposal of equipment	–	138
Deposits and deferred charges	(37)	(41)
Purchase of intangible assets	(83)	(159)
Net cash used in investing activities	<u>(4,817)</u>	<u>(2,773)</u>
<b>Financing activities:</b>		
Proceeds from issuance of notes payable and long-term debt	2,851	845
Principal payments of long-term debt and notes payable	(192)	(427)
Proceeds from line of credit borrowings	16,159	4,466
Repayments of line of credit borrowings	(15,406)	(2,106)
Proceeds from bank acceptance payable	4,746	8,412
Repayments of bank acceptance payable	(3,282)	(8,885)
Repayments of shareholder loans	–	(150)
(Increase) decrease in restricted cash	(511)	(193)
Exercise of stock options	87	6
Exercise of warrants	494	–
Deferred offering costs	(1,251)	–
Issuance of preferred stock, net	–	10,234
Net cash provided by financing activities	<u>3,695</u>	<u>12,202</u>
Effect of exchange rate changes on cash	178	(59)
Net increase (decrease) in cash	<u>(3,398)</u>	<u>8,563</u>
Cash and cash equivalents at beginning of year	10,723	1,768
Cash and cash equivalents at end of year	<u>\$ 7,325</u>	<u>\$ 10,331</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for:		
Interest	959	1,122
Income taxes	2	–
Conversion of shareholders' loan to preferred stock	–	760

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

**Applied Optoelectronics, Inc. and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**Note 1. Description of Business**

*Business Overview*

Applied Optoelectronics, Inc., or AOI, was originally incorporated in Texas in February of 1997 and then converted to a Delaware corporation in March of 2013. AOI together with its wholly-owned subsidiaries are collectively referred to as the Company. The Company is a leading, vertically integrated provider of fiber-optic networking products, primarily for three networking end-markets: cable television, fiber-to-the-home and internet data centers. The Company designs and manufactures a wide range of optical communications products at varying levels of integration, from components, subassemblies and modules to complete turn-key equipment.

The Company has manufacturing and research and development facilities in all three of its U.S., Taiwan and China locations. At its corporate headquarters and manufacturing facilities in Sugar Land, Texas, the Company primarily manufactures lasers and laser components and performs research and development activities for the laser component products. The Company operates a division in Taipei, Taiwan that primarily manufactures transceivers and performs research and development activities for the transceiver products. The Company operates in Ningbo, China through its wholly-owned subsidiary Prime World International Holdings, Ltd. (incorporated in the British Virgin Islands), the sole parent of Global Technology, Inc. (incorporated in the People's Republic of China). Through Global Technology, the Company primarily manufactures Cable TV Broadband ("CATV") systems and equipment and performs research and development activities for the CATV products.

*Interim Financial Statements*

The condensed consolidated financial statements of the Company, as of September 30, 2013 and December 31, 2012 and for the three and nine months ended September 30, 2013 and 2012, have been prepared in accordance with the instructions on Form 10-Q pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). In accordance with those rules and regulations, the Company has omitted certain information and notes normally provided in the Company's annual consolidated financial statements. In the opinion of management, the condensed consolidated financial statements contain all adjustments, except as otherwise noted, necessary for the fair presentation of the Company's financial position and results of operations for the periods presented. The year-end condensed balance sheet data was derived from audited financial statements, but does not include all disclosures required by U.S. generally accepted accounting principles ("GAAP"). These condensed consolidated financial statements should be read in conjunction with the Consolidated Financial Statements and Notes thereto included in the Company's Registration Statement on Form S-1 that was effective on September 25, 2013 as filed with the SEC (the "Registration Statement"). The results of operations for the three and nine months ended September 30, 2013 are not necessarily indicative of the results expected for the entire fiscal year. All significant intercompany accounts and transactions have been eliminated.

*Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported. Actual results could differ from those estimates in the consolidated financial statements and accompanying notes. Significant estimates and assumptions that impact these financial statements and the accompanying notes relate to, among other things, allowance for doubtful accounts, valuation allowances for deferred tax assets, inventory reserve, stock-based compensation expense, estimated useful lives of property and equipment, and taxes.

**Note 2. Significant Accounting Policies**

There have been no changes in the Company's significant accounting policies for the three months ended September 30, 2013, as compared to the significant accounting policies described in its Registration Statement.

*Recent accounting pronouncements*

There have been no recent accounting pronouncements for the three months ended September 30, 2013, as compared to the recent accounting pronouncements described in its Registration Statement.

**Note 3. Fair Value of Financial Instruments**

The following table presents a summary of the Company's financial instruments measured at fair value on a recurring basis for the periods indicated (in thousands):

	As of September 30, 2013				As of December 31, 2012			
	(Level 1)	(Level 2)	(Level 3)	Total	(Level 1)	(Level 2)	(Level 3)	Total
<b>Assets:</b>								
Cash and cash equivalents	\$ 7,325	\$ –	\$ –	\$ 7,325	\$ 10,723	\$ –	\$ –	\$ 10,723
Restricted cash	1,031	–	–	1,031	503	–	–	503
Bank acceptance receivable	–	–	–	–	–	1,034	–	1,034
<b>Total assets</b>	<b>\$ 8,356</b>	<b>\$ –</b>	<b>\$ –</b>	<b>\$ 8,356</b>	<b>\$ 11,226</b>	<b>\$ 1,034</b>	<b>\$ –</b>	<b>\$ 12,260</b>
<b>Liabilities:</b>								
Interest rate swap	\$ –	\$ –	\$ –	\$ –	\$ –	\$ 11	\$ –	\$ 11
Bank acceptance payable	–	3,040	–	3,040	–	1,521	–	1,521
<b>Total liabilities</b>	<b>\$ –</b>	<b>\$ 3,040</b>	<b>\$ –</b>	<b>\$ 3,040</b>	<b>\$ –</b>	<b>\$ 1,532</b>	<b>\$ –</b>	<b>\$ 1,532</b>

The carrying value amounts of accounts receivable, prepaid expenses and other current assets, borrowings from our credit facility, accounts payable, accrued expenses and other current liabilities approximate fair value because of the short-term maturity of these instruments.

**Note 4. Earnings Per Share**

Basic net income (loss) per share has been computed using the weighted-average number of shares of common stock outstanding during the period. The Company's preferred shares that were outstanding prior to the completion of the Company's initial public offering had the right to participate in the Company's earnings and dividends; however, since there is not a contractual obligation for the preferred shareholders to share in losses, the preferred shares should not be included in loss periods, as their effect is anti-dilutive. Therefore, for those periods presented below that ended with a net loss, the Company has presented both basic and diluted loss per share excluding those preferred shares. For periods with net income, shares used in computing basic and diluted earnings per share include common shares assuming conversion of the preferred stock.

Diluted net income (loss) per share has been computed using the weighted-average number of shares of common stock and dilutive potential common shares from options and warrants outstanding during the period. In periods with net losses, normally dilutive shares become anti-dilutive, and therefore for those periods basic and dilutive earnings per share are the same.

The following table sets forth the computation of the basic and diluted net loss per share for the periods indicated (in thousands, except per share amounts):

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
<b>Numerator:</b>				
Net income (loss)	\$ 390	\$ (381)	\$ (885)	\$ (997)
<b>Denominator:</b>				
Weighted average shares used to compute net income (loss) per share				
Basic	8,995	266	273	265
Effective of dilutive options and warrants	160	–	–	–
<b>Diluted</b>	<b>9,155</b>	<b>266</b>	<b>273</b>	<b>265</b>
<b>Net income (loss) per share</b>				
Basic	\$ 0.04	\$ (1.43)	\$ (3.24)	\$ (3.76)
Diluted	\$ 0.04	\$ (1.43)	\$ (3.24)	\$ (3.76)

*Pro Forma earnings per share (unaudited)*

The Company's registration statement on Form S-1 was declared effective on September 25, 2013 by the SEC and the Company's common stock began trading on the NASDAQ Global Market ("NASDAQ"), on September 26, 2013. On October 1, 2013, the Company completed and closed its initial public offering (the "Offering"), selling 3,600,000 shares of common stock, at a price of \$10.00 per share, providing \$33.5 million in net proceeds after underwriting discounts and commissions. Accordingly, events that were to be triggered on completion of an Offering did not occur until October 1<sup>st</sup>, post-period. Because the Offering priced within the third quarter but closed post-period, the Company has presented Pro Forma share and earnings per share information, for comparative purposes only. This pro forma presentation presumes that there was a qualified Offering that was completed on the first day of trading on September 26, 2013. The following unaudited calculation of the numerator and denominator of basic and diluted earnings per share, or EPS gives effect to the automatic conversion of all outstanding shares of the Company's convertible preferred stock (using the as if-converted method) into common stock as though the conversion had occurred as of the beginning of the period or the original date of issuance, if later, together with the IPO shares that would have been issued using the weighted average shares outstanding (in thousands, except per share amounts):

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
<b>Numerator:</b>				
Net income (loss)	\$ 390	\$ (381)	\$ (885)	\$ (997)
<b>Denominator:</b>				
Number of shares used to compute net income (loss) per share				
Basic	8,995		8,965	
Effective of dilutive options and warrants	160		-	
Diluted	9,155		8,965	
Assumed issuance of shares in IPO to new investors	39		39	
Number of shares used to compute pro forma net income (loss) per share				
Basic	9,034		9,004	
Effective of dilutive options and warrants	160		-	
Diluted	9,194		9,004	
Pro forma net income (loss) per share				
Basic	\$ 0.04		\$ (0.10)	
Diluted	\$ 0.04		\$ (0.10)	

The following potentially dilutive securities were excluded from the computation of diluted net income (loss) per share as their effect would have been anti-dilutive (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
Employee stock options	1,347	412	1,484	412
Preferred stock warrants	10	89	33	89
	1,357	501	1,517	501

**Note 5. Inventory**

Inventories consist of the following for the periods indicated (in thousands):

	<b>September 30, 2013</b>	<b>December 31, 2012</b>
Raw materials	\$ 6,710	\$ 4,755
Work in process	6,539	4,434
Finished goods	3,172	3,304
	<u>\$ 16,421</u>	<u>\$ 12,493</u>

The lower of cost or market adjustment expensed for inventory for the three and nine months ended September 30, 2013 was \$0.1 million and \$0.5 million, respectively. For the three and nine months ended September 30, 2012, the lower of cost or market adjustment expensed for inventory was \$0.1 million and \$0.3 million, respectively.

**Note 6. Property, Plant & Equipment**

Property, plant and equipment consisted of the following for the periods indicated (in thousands):

	<b>September 30, 2013</b>	<b>December 31, 2012</b>
Land improvements	\$ 96	\$ 93
Building and improvements	15,560	15,239
Machinery and equipment	33,690	29,977
Furniture and fixtures	853	739
Computer equipment and software	3,183	2,851
Transportation equipment	188	173
	<u>53,570</u>	<u>49,072</u>
Less accumulated depreciation and amortization	<u>(27,178)</u>	<u>(24,967)</u>
	26,392	24,105
Land	733	733
Property, plant and equipment, net	<u>\$ 27,125</u>	<u>\$ 24,838</u>

For the three and nine months ended September 30, 2013, depreciation expense of property, plant and equipment was \$0.9 million and \$2.4 million, respectively.

**Note 7. Notes Payable and Long-Term Debt**

Notes payable and long-term debt consisted of the following for the periods indicated (in thousands):

	<u>September 30, 2013</u>	<u>December 31, 2012</u>
<b>Long-Term and Short-Term Debt</b>		
Term loan with a U.S. bank with monthly payments of principal and interest at prime plus 1.125% (floor rate: 4.375%), maturing May 3, 2014	\$ 67	\$ 141
Term loan with a U.S. bank with monthly payments of principal and interest at prime plus 0.75% (floor rate: 4%) or swap contract (fixed 5%), maturing November 15, 2014	3,103	3,181
Revolving line of credit with a U.S. bank up to \$10,500 with interest at prime plus 1.0% (floor rate: 4.25%), maturing November 15, 2014	9,360	8,637
Term loan with a U.S. bank with monthly payments of principal and interest at prime plus 1.25% (floor rate: 4.50%), maturing September 10, 2017	1,850	–
Revolving line of credit with a China bank up to \$12,074 with interest at 110% of China Prime rate which ranged from 4.10% to 6.60% in 2013 with various maturity dates from October 2013 to August 2014	11,089	10,668
Revolving line of credit with a China bank up to \$1,627 with 6.16% interest and various maturity dates from January 2014 to February 2014	266	–
Note payable to a finance company due in monthly installments with 9% interest, maturing October 31, 2013	–	38
Note payable to a finance company due in monthly installments with 4.95% interest, maturing July 30, 2015	978	398
Total	<u>26,713</u>	<u>23,063</u>
Less current portion	12,095	13,900
Long term portion	<u>\$ 14,618</u>	<u>\$ 9,163</u>
<b>Bank Acceptance Payable</b>		
Bank acceptance notes issued to vendors with a zero percent interest rate, a 30% guarantee deposit of \$997, and maturity dates ranging from October 2013 to January 2014	<u>\$ 3,040</u>	<u>\$ 1,521</u>

The U.S. bank loans and line of credit agreement require the Company to meet certain financial covenants including a minimum current ratio, minimum quarterly debt service coverage requirements, a minimum unrestricted cash balance as well as maximum debt to tangible net worth ratio and reporting requirements. Collateral for the U.S. bank loans and line of credit includes substantially all of the assets of the Company. As of September 30, 2013, the Company was in compliance with all of its financial and operational covenants associated with these loans. As of September 30, 2013, the Company had \$1.1 million of unused borrowing capacity.

On September 10, 2013, the Company's outstanding loan agreement with East West Bank was amended to add \$5.0 million of borrowing capability to the existing credit line, for the purpose of financing equipment. The additional equipment term loan allows the Company to draw up to the lesser of (i) \$5.0 million, or (ii) 90% of the costs of equipment purchased between March 31, 2013 and March 10, 2014. Through March 10, 2014, the Company is required to pay interest only on the then-outstanding balance, and then pay equal principal payments plus accrued interest monthly for the following 42 months. The interest rate for such equipment term loan is the bank's prime lending rate plus 1.25%, or as of September 30, 2013, a total of 4.5%. As of September 30, 2013, the Company drew \$1.85 million on this equipment line in reimbursement for capital equipment expenditures.

As of September 30, 2013, the Company's China subsidiary had a line of credit facility with China banks totaling \$13.7 million. As of September 30, 2013, a total of \$11.4 million was outstanding under various notes, each with its own maturity date and each renewing annually from December 2013 to August 2014. The notes that begin to mature in December 2013 are expected to be renewed on the same terms and with new one year terms. These loans have renewed each year for the past three years. While there can be no assurance of renewal as each loan matures, these loans are expected to renew this year as they have over the past periods. As of September 30, 2013, the Company had \$2.3 million of unused borrowing capacity.

In July 2013, the Company entered into a 24-month equipment financing agreement of \$1.0 million in Taiwan with a financing company. The financing agreement requires equipment collateral and is payable in monthly installment payments over 24 months, maturing in July 2015.

A customary business practice in China is to pay accounts payable with bank acceptance notes issued by a bank (so-called Bank Acceptances). From time to time the Company issues Bank Acceptances to its suppliers in China. These Bank Acceptances are non-interest bearing and are generally due within six months, and such Bank Acceptances may be redeemed with the issuing bank prior to maturity at a discount. As a condition of the Bank Acceptances lending arrangements, the Company is required to keep a compensating balance at the issuing bank that is a percentage of the total bank acceptances balance until the Bank Acceptances are paid by our China subsidiary. These balances are classified as restricted cash on our consolidated balance sheets. As of September 30, 2013, our restricted cash and Bank Acceptance payable totaled \$1.0 million and \$3.0 million respectively

#### Note 8. Accrued Liabilities

Accrued liabilities consisted of the following for the periods indicated (in thousands):

	<u>September 30, 2013</u>	<u>December 31, 2012</u>
Accrued payroll	\$ 2,003	\$ 1,631
Accrued employee benefits	447	429
Accrued property taxes	125	167
Accrued interest	70	74
Accrued payments	153	189
Accrued commission	100	69
Accrued professional fees	71	22
Accrued other	588	662
	<u>\$ 3,557</u>	<u>\$ 3,243</u>

#### Note 9. Other Income and Expense

Other income and expense consisted of the following for the periods indicated (in thousands):

	<u>Three months ended September 30,</u>		<u>Nine months ended September 30,</u>	
	<u>2013</u>	<u>2012</u>	<u>2013</u>	<u>2012</u>
Interest income	\$ 15	\$ 5	\$ 49	\$ 12
Unrealized foreign exchange gain (loss)	(65)	119	(256)	150
Realized foreign exchange gain (loss)	57	-	(8)	(1)
Government subsidy income	75	20	269	86
Other non-operating gain (loss)	(9)	(18)	(13)	14
Gain (loss) on disposal of assets	-	(1)	9	(38)
	<u>\$ 73</u>	<u>\$ 125</u>	<u>\$ 50</u>	<u>\$ 223</u>

#### Note 10. Stock-Based Compensation

The Company's board of directors and stockholders previously approved, the 1998 Share Incentive Plan, the 2000 Share Incentive Plan, the 2004 Share Incentive Plan and the 2006 Share Incentive Plan, (collectively the "Prior Plans"). As of September 30, 2013, the Company had options outstanding to purchase 725,277 shares of common stock under its Prior Plans with a weighted average exercise price of \$6.66. Following the Offering, no further awards will be granted under the Prior Plans. However, all outstanding awards under the Prior Plans will continue to exist and will continue to be governed by their existing terms.

On April 12, 2013, our board of directors adopted and approved the Company's 2013 Equity Incentive Plan, (the "2013 Plan"), and it was subsequently approved by the Company's stockholders on May 21, 2013. As of September 30, 2013, the Company had options outstanding to purchase 759,163 shares of common stock under the 2013 Plan with a weighted average exercise price of \$9.96.

The Company issues stock options to employees, consultants and non-employee directors. Stock option awards for the Prior Plans and the 2013 Plan generally vest over a four year period and have a maximum term of ten years. Stock options under these plans have been granted at the fair market value on the date of the grant. Nonqualified and Incentive Stock Options and restrictive stock units may be granted from these plans. The fair market value of the Company's stock has been historically determined by the board of directors and from time to time with the assistance of third party valuation specialists.

In 2010, 2011 and 2012, the Company had estimated the fair value of employee stock options at the date of the grant using the Black-Scholes option-pricing model with the following assumptions: expected volatility of 70%, risk free interest rate of 1.01%, 2.32% and 1.72%, respectively, expected term of 6.25 years, no expected dividend yield, and estimated forfeitures of 10%. For grants issued after September 25, 2013, the same factors were used except that the expected volatility of 52% was used. Prior to the Offering, there had been no public market for the Company's common stock. Therefore the expected volatility for options granted was derived from an analysis of reported data for a peer group of companies that issued options with similar terms. The expected volatility has been determined using an average of the expected volatility reported by this peer group of companies. The Company uses a risk free interest rate based on the 10-year Treasury as reported during the period. The expected term of options has been determined utilizing the simplified method which calculates a simple average based on vesting period and option life. The Company does not anticipate paying dividends in the near future. Estimated forfeitures were based on historical experience and future work force projections.

Employee stock-based compensation expenses recognized for three and nine months ended September 30, were as follows (in thousands):

	<b>Three months ended September 30,</b>		<b>Nine months ended September 30,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
Cost of sales	\$ 14	\$ 2	\$ 40	\$ 6
Research and development	12	2	37	6
Sales and marketing	11	1	31	6
General and administrative	98	10	267	33
	<u>\$ 135</u>	<u>\$ 15</u>	<u>\$ 375</u>	<u>\$ 51</u>

Options have been granted to the Company's employees under the Prior Plans and the 2013 Plan and generally become exercisable as to 25% of the shares on the first anniversary date following the vesting commencement date, generally the date of grant, and semi-annually thereafter. All options expire ten years after the date of grant. As of September 30, 2013, the Company had outstanding options to purchase 3,862 shares under the 1998 plan; 20,840 shares under the 2000 plan; 25,075 shares under the 2004 plan; 675,500 shares under the 2006 plan; and 759,163 shares under the 2013 plan.

The following is a summary of option activity during the nine month period ending September 30, 2013 (in thousands, except price data):

	<b>Number of shares</b>	<b>Exercise price</b>	<b>Weighted average exercise price</b>
Outstanding, December 31, 2012	419	3.00 - 9.00	5.935
Granted	1,097	7.50 - 9.96	9.207
Exercised	(14)	6.00	6.000
Forfeited	(13)	6.00 - 7.50	6.629
Expired	(5)	6.00 - 7.50	5.985
Outstanding, September 30, 2013	<u>1,484</u>	3.00 - 9.00	8.347
Exercisable, September 30, 2013	<u>277</u>	3.00 - 7.50	5.901
Vested and expected to vest	<u>1,244</u>	3.00 - 9.00	8.180

As of September 30, 2013, total compensation cost related to unvested stock options not yet recognized was \$5.5 million, which is expected to be expensed over a weighted-average period of 3.74 years. The aggregate intrinsic value of options outstanding and options exercisable as of September 30, 2013 was \$1.1 million.

## Note 11. Stockholders' Equity

### Common Stock

The Company had authorized the issuance of up to 300,000,000 shares of common stock, all of which have been designated voting common stock, under its Certificate of Incorporation as of September 30, 2013.

### Convertible Preferred Stock

The Company had authorized the issuance of up to 172,200,000 shares of preferred stock under the Company's Certificate of Incorporation as of September 30, 2013. As of September 30, 2013 and prior to the completion of the Offering, the number of authorized and issued shares and the conversion rate from a preferred share into a common share by series was as follows:

	Authorized shares	Issued shares	Carrying value	Conversion rate
	(in thousands, except for conversion rate)			
Series A (Redeemable)	4,900	160	\$ 7,105	1:3.1731
Series C	17,500	582	21,802	1:2.3107
Series D	11,800	380	14,184	1:2.5360
Series E	11,000	345	28,055	1:3.6186
Series F	82,000	2,702	19,662	1:1.2000
Series G	45,000	1,431	14,993	1:1.0000
	<u>172,200</u>	<u>5,600</u>	<u>\$ 105,801</u>	

The conversion, participation and redemption rights associated with the preferred stock are further described in Note N of the notes to the financial statements and within the section titled Description of Capital Stock of the Registration Statement.

### Warrants

As of September 30, 2013, we had outstanding warrants to purchase:

- 21,666 shares of our Series F preferred stock with a weighted average exercise price of \$11.5384 per share of which 13,333 shares are exercisable under a warrant issued to our U.S. lender with an exercise price of \$7.50 and 8,333 shares are exercisable under a warrant issued to our U.S. lender with an exercise price of \$18.00 per share. If these warrants have not been exercised prior to the closing of the Offering, then the warrants automatically adjust to be exercisable for an aggregate of 26,000 shares of common stock at a weighted average exercise price of \$9.6152 per share.
- 3,304 shares of our Series G preferred stock with an exercise price of \$18.00 per share. These warrants, if not exercised prior to the completion of the Offering, will expire.
- 6,667 shares of our Series G preferred stock with an exercise price of \$10.50 per share which are exercisable under a warrant issued to our U.S. lender. If this warrant has not been exercised prior to closing of the Offering, then pursuant to its terms, the warrant shall automatically adjust to be exercisable for 6,667 shares of common stock at \$10.50 per share.

For the nine months ended September 30, 2013, \$42,000 of expense was recorded related to these warrants. At September 30, 2013 \$31,000 of deferred compensation remains to be expensed for these warrants. During the nine month period ended September 30, 2013, warrants were exercised for 74,219 of common shares.

### Public Offering of Common Stock

On September 25, 2013, the Company sold 3.6 million shares of its common stock in its initial public offering at a price of \$10.00 per share, providing proceeds of \$33.5 million net of underwriting discounts and commissions. The Offering closed on October 1, 2013 and therefore the proceeds from the Offering and the issuance of common stock from the Offering are not reflected on the Company's balance sheet as of September 30, 2013.

## Note 12. Segment and Geographic Information

The Company operates in one reportable segment. The Company's Chief Executive Officer, who is considered to be the chief operating decision maker, manages the Company's operations as a whole and reviews financial information presented on a consolidated basis, accompanied by information about product revenue, for purposes of evaluating financial performance and allocating resources.

The following tables set forth the Company's revenue and asset information by geographic region. Revenue is classified based on the location of the Company's product manufacturing plants. Long-lived assets in the tables below comprise only property, plant, equipment and intangible assets (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
Revenues:				
United States	3,742	2,685	8,364	8,652
Taiwan	7,576	3,757	22,616	9,760
China	9,448	9,974	23,700	26,147
	<u>\$ 20,766</u>	<u>\$ 16,416</u>	<u>\$ 54,680</u>	<u>\$ 44,559</u>

	For the period ending	
	September 30, 2013	December 31, 2012
Long-lived assets:		
United States	9,105	9,009
Taiwan	4,860	3,738
China	14,945	13,560
	<u>\$ 28,910</u>	<u>\$ 26,307</u>

## Note 13. Subsequent Events

### *Public Offering of Common Stock*

On October 1, 2013, the Company completed its Offering and issued and sold 3,600,000 shares of common stock at a public offering price of \$10.00 per share for proceeds. The Company received proceeds of \$33.5 million, net of underwriting discounts and commissions. Expenses incurred by the Company for the Offering were approximately \$2.0 million and will be recorded against the proceeds received from the Offering. The Offering closed on October 1, 2013 and therefore the proceeds from the Offering and the issuance of the common stock are not reflected on the Company's balance sheet as of September 30, 2013.

On October 22, 2013, the Company's existing stockholders sold an aggregate of 540,000 shares of common stock, at a price of \$10.00 per share, before underwriting discount and commission, as a result of the underwriters' exercise of their over-allotment option to purchase additional shares.

### *Conversion of Preferred Stock to Common Stock*

On October 1, 2013, the Company filed with the Delaware Secretary of State an Amended and Restated Certificate of Incorporation that converted all of its then outstanding preferred stock to common stock. Immediately after conversion of the preferred stock, the company had 9,029,095 shares of common stock outstanding, prior to issuance of shares to new investors from the Offering. The Amended and Restated Certificate of Incorporation changed the authorized shares to provide for 45,000,000 shares of common stock, par value of \$0.001 per share, and 5,000,000 shares of preferred stock, par value \$0.001 per share.

### *Repayment of Debt*

On October 1, 2013, from the net proceeds received in the Offering, the Company paid \$9.4 million to East West Bank in reduction of the credit line and paid \$2.4 million to the China bank reducing the Chinese credit line.

### *Loan Amendment*

In November 2013, the company's outstanding loan agreement (the 11<sup>th</sup> amendment) with East West Bank was amended to reduce its revolving line of credit from \$10.5M to \$7.0M and modify certain monthly reporting covenants, including conversion of its line of credit to a non-formula revolving line of credit, permitting the company to maintain depository accounts with other US banks, and permitting loan agreements with third-party financial institutions and permitting the pledge of up to \$10 million of U.S. assets to secure Asia debt.

### *Taiwan Lease*

On August 28, 2013, the Company amended its two operating lease agreements with Admiral Overseas Corporation for its operation facility in Taiwan. These amendments extended the lease terms of both lease agreements, which cover office spaces located on the 4th, 6th and 7th floor of its operation facility in Taipei, Taiwan, from March 31, 2014 and April 9, 2014, to March 31, 2015. On September 11, 2013, the Company also entered into a lease agreement with Admiral Overseas Corporation to lease 12,366 square feet of office space, located on the 5th floor of the same building of its operation facility in Taipei, Taiwan. This lease agreement commenced on October 1, 2013 and terminates on March 31, 2015.

## 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 in conjunction with the unaudited condensed consolidated financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q for the period ended September 30, 2013 and the audited consolidated financial statements and notes thereto and management’s discussion and analysis of financial condition and results of operations for the fiscal year ended December 31, 2012 included in our Registration Statement on Form S-1 that was effective on September 25, 2013 and on file with the SEC. References to “Applied Optoelectronics” “we,” “our” and “us” are to Applied Optoelectronics, Inc. and its subsidiaries unless otherwise specified or the context otherwise requires.*

*This Quarterly Report on Form 10-Q contains “forward-looking statements” that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. The statements contained in this Quarterly Report that are not purely historical are 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. Terminology such as “believe,” “may,” “might,” “objective,” “estimate,” “continue,” “anticipate,” “intend,” “should,” “plan,” “expect,” “predict,” “potential,” “will” or the negative of these terms or other similar expressions is intended to identify forward-looking statements.*

*We have based these forward-looking statements largely on our current expectations and projections about future events and industry and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified in “Part II—Item 1A. Risk Factors” provided below, and those discussed in other documents we file with the SEC. Furthermore, such forward-looking statements speak only as of the date of this Quarterly Report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of this Quarterly Report.*

### Overview

We are a leading, vertically integrated provider of fiber-optic access networking products. We target three networking end-markets: Cable TV Broadband, or CATV, Fiber-to-the-Home, or FTTH and internet data centers. In designing products for our customers, we begin with the fundamental building blocks of lasers and laser components. From these foundational products, we design and manufacture optical communications products at varying levels of integration, from components, subassemblies and modules to complete turn-key equipment. We tailor our products to our customers’ needs and specifications, but leverage fundamental laser technology across our different products.

The three end markets we target are all driven by increasing bandwidth demand fueled by the growth of network-connected devices, video traffic, cloud computing and online social networking. To address this increased bandwidth demand, CATV and FTTH service providers are investing to enhance the capacity and capability of their networks. The trend of rising bandwidth consumption also impacts the internet data center market, as reflected in the shift to higher speed server connections. As a result of these trends, fiber-optic networking technology is becoming essential in all three of our target markets, as it is often the only economic way to deliver the required bandwidth.

Our vertically integrated manufacturing model provides us several advantages, including rapid product development, fast response times to customer requests and better control over product quality and manufacturing costs. The lasers we manufacture are proven to be reliable over time and highly tolerant of changes in temperature and humidity, making them well-suited to the CATV and FTTH markets where networking equipment is often installed outdoors.

We have three manufacturing sites: Sugar Land, Texas, Ningbo, China and Taipei, Taiwan. Our research and development functions are partnered with our manufacturing locations. In our U.S. facility, we manufacture our laser chips, sub-assemblies and components. We manufacture our laser chips only within our U.S. facility, where our laser R&D team is located. In our Taiwan location, we manufacture transceivers for the FTTH and internet data center markets, which incorporate our own laser chips and components made in the U.S. In our China facility we take advantage of lower labor costs and manufacture most of our CATV equipment systems, such as headend transmitters and outdoor nodes. Each facility conducts testing on the components, modules or subsystems it manufactures and each facility is certified to ISO 9001:2000.

Our sales model focuses on direct engagement and close coordination with our customers to determine product design, qualifications, performance through coordination of our sales, product engineering and manufacturing teams. Our strategy is to use our direct sales force to sell to key accounts within our markets increasing product penetration within those customers while also growing our overall customer base in certain international and domestic markets. We have direct sales personnel in each of our U.S., Taiwan and China locations focusing on a direct and local basis with our CATV, FTTH and internet data center customers. Throughout our sales cycle, we work closely with our customers to achieve design wins that we believe provides long-lasting relationships and promotes higher customer retention.

We have grown our revenue at a 36.4% CAGR between 2009 and 2012. In 2012, our revenue growth of 32.6% over the prior year was driven primarily by increasing OEM outsourcing in the CATV market and expansion of sales in the China markets. Growth in the first nine months of 2013 has been driven primarily by increasing revenue from our internet data center customers.

Our principal executive offices are located at 13115 Jess Pirtle Blvd., Sugar Land, TX 77478, and our telephone number is (281) 295-1800.

## Results of Operations

The following table set forth our consolidated results of operations for the periods presented and as a percentage of our revenue for those periods.

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
Revenue, net	100.0%	100.0%	100.0%	100.0%
Cost of goods sold	69.6%	71.5%	70.1%	69.7%
Gross profit	30.4%	28.5%	29.9%	30.3%
Operating expenses	0.0%	0.0%	0.0%	0.0%
Research and development	10.6%	12.8%	11.2%	12.1%
Sales and marketing	5.0%	4.6%	5.5%	5.3%
General and administrative	11.7%	12.0%	13.3%	13.2%
Total operating expenses	27.4%	29.4%	29.9%	30.6%
Income (loss) from operations	3.1%	-1.0%	0.0%	-0.3%
Other income (expense)	0.0%	0.0%	0.0%	0.0%
Interest expense	-1.6%	-2.1%	-1.7%	-2.4%
Other income (expense), net	0.4%	0.8%	0.1%	0.5%
Total other expense	-1.2%	-1.4%	-1.6%	-1.9%
Income (loss) before income taxes	1.9%	-2.3%	-1.6%	-2.2%
Income taxes	0.0%	0.0%	0.0%	0.0%
Net income (loss)	1.9%	-2.3%	-1.6%	-2.2%

## Comparison of Financial Results

### Revenue

We generate revenue through the sale of our products to equipment providers for the CATV, FTTH and internet data center markets. We derive a significant portion of our revenue from our top ten customers, and we anticipate that we will continue to do so for the foreseeable future. We also anticipate that our revenue derived from the FTTH and internet data center markets will increase as a percentage of our revenue as we further penetrate and extend our products into these markets. The following chart provides the revenue contribution from each of the markets we serve for the three months ended September 30, 2013 and 2012 and the nine months ended September 30, 2013 and 2012:

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
CATV	70.1%	82.4%	61.0%	82.1%
Data Center	15.5%	6.0%	24.6%	5.2%
FTTH	4.7%	4.3%	5.1%	4.9%
Other	9.7%	7.4%	9.3%	7.9%
	100.0%	100.0%	100.0%	100.0%

	Three months ended September 30,				Nine months ended September 30,			
	2013		2012		2013		2012	
	Amount	%	Amount	%	Amount	%	Amount	%
CATV	\$ 14,559	7.6%	\$ 13,530	7.6%	\$ 33,332	26.5%	\$ 36,565	26.5%
Data Center	3,216	229.2%	977	229.2%	13,476	487.2%	2,295	487.2%
FTTH	982	40.7%	698	40.7%	2,774	27.4%	2,178	27.4%
Other	2,009	65.9%	1,211	65.9%	5,098	44.8%	3,521	44.8%
Total Revenue	\$ 20,766	26.5%	\$ 16,416	26.5%	\$ 54,680	22.7%	\$ 44,559	22.7%

Revenues in the internet data center market were driven primarily by increasing sales to new customers acquired late in 2012. Revenues in the FTTH and other markets were driven primarily by the addition of new customers in the FTTH market and increasing sales to existing customers in the other markets. The decline in revenues in the CATV market in the nine months ended September 30, 2013 was a result of market-wide weakness in the first half of 2013, particularly in China, as well as delays in orders as a consequence of mergers among several of our CATV customers.

For the three months ended September 30, 2013 and the nine months ended September 30, 2013, our top ten customers represented 76.3% and 78.3% of our revenue, respectively.

### Cost of goods sold and gross margin

	Three months ended September 30,					
	2013		2012		Change	
	Amount	% of revenue	Amount	% of revenue	Amount	%
	(in thousands, except percentages)					
Cost of goods sold	\$ 14,445	69.6%	\$ 11,743	71.5%	\$ 2,702	23.0%
Gross margin		30.4%		28.5%		

	Nine months ended September 30,					
	2013		2012		Change	
	Amount	% of revenue	Amount	% of revenue	Amount	%
	(in thousands, except percentages)					
Cost of goods sold	\$ 38,327	70.1%	\$ 31,074	69.7%	\$ 7,253	23.3%
Gross margin		29.9%		30.3%		

Cost of goods sold increased by \$2.7 million, or 23.0%, from the three months ended September 30, 2012 to the three months ended September 30, 2013, primarily due to an increase in sales of \$4.3 million or 26% over the prior year.

Cost of goods sold increased by \$7.3 million for the nine months ended September 30, 2013 compared to the nine months ended September 30, 2012. This increase was primarily due to an increase in sales volume of \$10.1 million.

Within our markets, we sell similar products in different geographic regions at different prices, and therefore realize different gross margins among those similar products. The increase in gross margin from 28.5% to 30.4% for the three months ended September 30, 2013 was the result of a favorable product mix of markets and products. The decrease in gross margin for the nine months ended September 30, 2013 was primarily the result of an unfavorable product mix in the Asian market, leading to higher than normal direct labor and overhead charges.

#### *Operating expenses*

	<b>Three months ended September 30,</b>				<b>Change</b>	
	<b>2013</b>		<b>2012</b>			
	<b>Amount</b>	<b>% of revenue</b>	<b>Amount</b>	<b>% of revenue</b>	<b>Amount</b>	<b>%</b>
<b>(in thousands, except percentages)</b>						
Research and development	\$ 2,211	10.6%	\$ 2,095	12.8%	\$ 116	5.5%
Sales and marketing	1,034	5.0%	756	4.6%	278	36.8%
General and administrative	2,419	11.6%	1,963	12.0%	456	23.2%
Amortization of intangible assets	17	0.1%	15	0.1%	2	13.3%
<b>Total operating expenses</b>	<b>\$ 5,681</b>	<b>27.4%</b>	<b>\$ 4,829</b>	<b>29.4%</b>	<b>\$ 852</b>	<b>17.6%</b>

	<b>Nine months ended September 30,</b>				<b>Change</b>	
	<b>2013</b>		<b>2012</b>			
	<b>Amount</b>	<b>% of revenue</b>	<b>Amount</b>	<b>% of revenue</b>	<b>Amount</b>	<b>%</b>
<b>(in thousands, except percentages)</b>						
Research and development	\$ 6,112	11.2%	\$ 5,379	12.1%	\$ 733	13.6%
Sales and marketing	2,994	5.5%	2,369	5.3%	625	26.4%
General and administrative	7,206	13.2%	5,846	13.1%	1,360	23.3%
Amortization of intangible assets	51	0.1%	44	0.1%	7	15.9%
<b>Total operating expenses</b>	<b>\$ 16,363</b>	<b>29.9%</b>	<b>\$ 13,638</b>	<b>30.6%</b>	<b>\$ 2,725</b>	<b>20.0%</b>

#### *Research and development expense*

Research and development expense increased by \$0.1 million, or 5.5%, from the three months ended September 30, 2012 compared to the three months ended September 30, 2013. For the nine months ended September 30, 2013, expense increased \$0.7 million or 13.6% over the same period in 2012. The increase in both instances was primarily due to increases in personnel costs and R&D work order and project costs related to new product development, primarily for 40G transceivers in the data center market and DWDM transceivers in the FTTH market.

#### *Sales and marketing expense*

Sales and marketing expense increased by \$0.3 million, or 36.8%, from the three months ended September 30, 2012 compared to the three months ended September 30, 2013. For the nine months ended September 30, 2013, expense increased \$0.6 million or 26.4% over the same period in 2012. These increases were primarily due to an increase in commission expense and other marketing activities.

#### *General and administrative expense*

General and administrative expense increased by \$0.5 million, or 23.2%, from the three months ended September 30, 2012 compared to the three months ended September 30, 2013. For the nine months ended September 30, 2013, expense increased \$1.4 million or 23.3% over the same period in 2012. These increases were primarily due to an increase in personnel costs, professional fees and travel expenses.

Other income (expense), net

	Three months ended September 30,				Change	
	2013		2012			
	Amount	% of revenue	Amount	% of revenue	Amount	%
(in thousands, except percentages)						
Interest income	\$ 15	0.1%	\$ 5	0.0%	\$ 10	200.0%
Interest expense	(323)	(1.6%)	(350)	(2.1%)	27	(7.7%)
Other income (expense), net	58	0.3%	120	0.7%	(62)	(51.7%)
Total Other income (expense), net	<u>\$ (250)</u>	<u>(1.2%)</u>	<u>\$ (225)</u>	<u>(1.4%)</u>	<u>\$ (25)</u>	<u>11.1%</u>

	Nine months ended September 30,				Change	
	2013		2012			
	Amount	% of revenue	Amount	% of revenue	Amount	%
(in thousands, except percentages)						
Interest income	\$ 49	0.1%	\$ 12	0.0%	\$ 37	308.3%
Interest expense	(925)	(1.7%)	(1,067)	(2.4%)	142	(13.3%)
Other income (expense), net	1	0.0%	211	0.5%	(210)	(99.5%)
Total Other income (expense), net	<u>\$ (875)</u>	<u>(1.6%)</u>	<u>\$ (844)</u>	<u>(1.9%)</u>	<u>\$ (31)</u>	<u>3.7%</u>

Total other income (expense), net remained relatively unchanged from the three and nine months ended September 30, 2012 compared to the three and nine months ended September 30, 2013. Interest expense decreased overall for each of the periods due to the benefit of lower interest rates on relatively unchanged loan balances.

Other income (expense) increased due to government subsidies received in China offset by an unrealized foreign exchange loss recognized resulting from the depreciation of the Asia currencies against the U.S. dollar. We qualify as a high-tech enterprise and are paid subsidies from time to time based upon the revenue earned in China by the Chinese government to foster local high-tech manufacturing.

*Benefit from (provision for) income taxes*

Our effective tax rate was 0.0% for the three and nine months ended September 30, 2013, as we have historically not generated positive taxable income. Our net deferred tax assets are fully offset by a deferred tax valuation allowance.

## Liquidity and Capital Resources

Since inception, we have financed our operations through private sales of equity securities and cash generated from operations and from various lending arrangements. On September 25, 2013, we priced our initial public offering that provided \$33.5 million in net proceeds, after deducting underwriting discounts and commissions. However, the offering did not close until October 1, 2013 and therefore the net proceeds are not reflected on our balance sheet as of September 30, 2013. At September 30, 2013, our cash, cash equivalents and restricted cash totaled \$7.3 million. Cash and cash equivalents were held for working capital purposes and were invested primarily in money market funds. We do not enter into investments for trading or speculative purposes.

The table below sets forth selected cash flow data for the periods presented (in thousands):

	<u>Nine months ended September 30,</u>	
	<u>2013</u>	<u>2012</u>
Net cash provided by (used in) operating activities	\$ (2,454)	\$ (807)
Net cash used in investing activities	(4,817)	(2,773)
Net cash provided by financing activities	3,695	12,202
Effect of exchange rates on cash and cash equivalents	178	(59)
Net increase (decrease) in cash and cash equivalents	<u>\$ (3,398)</u>	<u>\$ 8,563</u>

### *Operating activities*

For the nine months ended September 30, 2013, net cash used in operating activities was \$2.5 million. Cash used in operating activities primarily related to an increase in accounts receivable from the sale of our products, an increase in inventory related to sales orders and a decrease in accounts payable to our suppliers. During the nine months ended September 30, 2013, we recognized a net loss of \$0.9 million. The net loss incorporated non-cash charges, including depreciation and amortization of \$2.4 million, stock-based compensation expenses of \$0.4 million and non-cash increases to our inventory reserve account of \$0.6 million.

For the nine months ended September 30, 2012, net cash used in operating activities was \$0.8 million. Cash used in operating activities primarily related to an increase in inventory related to sales orders and a decrease in accounts payable to our suppliers. During the nine months ended September 30, 2012, we recognized a net loss of \$1.0 million. The net loss incorporated non-cash charges, including depreciation and amortization of \$2.2 million and non-cash increases to our inventory reserve account of \$0.6 million.

### *Investing activities*

For the nine months ended September 30, 2013, net cash used in investing activities was \$4.8 million for the purchase of additional machinery and equipment to support new product development efforts and manufacturing activities.

For the nine months ended September 30, 2012, net cash used in investing activities was \$2.8 million for the purchase of additional machinery and equipment to support new product development efforts and manufacturing activities.

### *Financing activities*

Our financing activities consisted primarily of proceeds from the issuance of preferred stock and activity associated with our various lending arrangements.

For the nine months ended September 30, 2013, our financing activities provided \$3.7 million in cash. We received \$4.9 million in net borrowings associated with our bank loans and received \$0.6 million from the exercise of stock options and warrants. These increases were offset by an increase in our restricted cash by \$0.5 million, related to the compensating balances required for bank acceptance notes in China and \$1.3 million for expenses related to our initial public stock offering

For the nine months ended September 30, 2012, our financing activities provided \$12.2 million in cash. We received 10.2 million in cash from the issuance of preferred stock and \$2.3 million in net borrowings associated with our bank loans. These increases were offset by an increase in our restricted cash by \$0.2 million, related to the compensating balances required for bank acceptance notes in China.

### *Loans and commitments*

We have lending arrangements with several financial institutions, including a loan and security agreement with East West Bank in the U.S., several lines of credit arrangements for our China subsidiary and a financing agreement for our Taiwan location.

As of September 30, 2013, our loan and security agreement in the U.S. included a \$10.5 million revolving line of credit which matures on November 15, 2014. Also included with the same bank are three term loans with monthly payments of principal and interest that mature on November 15, 2014 and September 10, 2017. As of September 30, 2013, we had \$9.36 million outstanding under the revolving line of credit and \$3.1 million, and \$1.85 million outstanding on the term loans. Our loan and security agreement requires us to maintain certain financial covenants, including current ratio, and restricts our ability to incur additional debt or to engage in certain transactions and is secured by substantially all of our U.S. assets. As of September 30, 2013, we were in compliance with all covenants contained in this agreement.

As of September 30, 2013, our China subsidiary had a \$13.7 million line of credit facility with China banks. As of September 30, 2013, a total of \$11.4 million was outstanding under various notes, each with its own maturity date and each renewing annually from December 2013 to August 2014 with one-year terms. The notes that begin to mature in December 2013 are expected to be renewed on the same terms and with new one year terms. These loans have renewed each year for the past three years. While there can be no assurance of renewal as each loan matures, we expect these loans to renew this year as they have over the past periods.

As of September 30, 2013, our Taiwan location had a \$0.98 million equipment loan balance. The Company entered into a 24-month equipment financing agreement of \$1.0 million with a Taiwan financing company in July 2013. The financing agreement requires equipment collateral and is payable in monthly installment payments over 24 months, maturing in July 2015.

On September 10, 2013, our loan and security agreement in the U.S. was amended to add \$5.0 million of borrowing capability to the existing credit line, for the purpose of financing equipment. The additional equipment term loan allows us to draw up to the lesser of (i) \$5.0 million, or (ii) 90% of the costs of equipment purchased between March 31, 2013 and March 10, 2014. Through March 10, 2014, we are required to pay interest only on the then-outstanding balance, and then pay equal principal payments plus accrued interest monthly for the following 42 months. The interest rate for such equipment term loan is the bank's prime lending rate plus 1.25%, currently a total of 4.5%. As of September 30, 2013, we borrowed \$1.85 million under this loan agreement.

On October 1, 2013, the Company received \$33.5 million in net proceeds from the company's initial public offering and used \$11.8 million of those proceeds in October to reduce debt by repaying \$9.4 million to East West Bank and \$2.4 million to a China bank.

#### *Bank Acceptance Payable*

A customary business practice in China is to pay accounts payable with bank acceptance notes issued by a bank (so-called Bank Acceptances). From time to time we issue Bank Acceptances to our suppliers in China. These Bank Acceptances are non-interest bearing and are generally due within six months, and such Bank Acceptances may be redeemed with the issuing bank prior to maturity at a discount. As a condition of the Bank Acceptances lending arrangements, we are required to keep a compensating balance at the issuing bank that is a percentage of the total Bank Acceptances balance until the Bank Acceptances are paid by our China subsidiary. These balances are classified as restricted cash on our consolidated balance sheets. As of September 30, 2013, our restricted cash and Bank Acceptance payable totaled \$1.0 million and \$3.0 million, respectively.

#### *Future liquidity needs*

We believe that our existing cash and cash equivalents, and cash flows from our operating activities, will be sufficient to meet our anticipated cash needs for the next 12 to 24 months. Our future capital requirements will depend on many factors including our growth rate, the timing and extent of spending to support our research and development efforts, the expansion of our sales and marketing activities, the introduction of new and enhanced products, the costs to increase our manufacturing capacity and the continuing market acceptance of our products. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us, if at all. If we are unable to raise additional capital when desired, our business, operating results and financial condition would be adversely affected.

#### **Contractual Obligations and Commitments**

The following summarizes our contractual obligations as of September 30, 2013 (in thousands):

	<b>Payments due by period</b>				
	<b>Total</b>	<b>Less than 1 Year</b>	<b>1-3 Years</b>	<b>3-5 Years</b>	<b>More than 5 Years</b>
Bank acceptance payable and long-term debt <sup>(1)</sup>	\$ 29,753	\$ 15,135	\$ 14,618	\$ –	\$ –
Operating leases <sup>(2)</sup>	850	793	57	–	–
<b>Total commitments</b>	<b>\$ 30,603</b>	<b>\$ 15,928</b>	<b>\$ 14,675</b>	<b>\$ –</b>	<b>\$ –</b>

(1) We have several loan and security agreements in China and the U.S. that provide various credit facilities, including lines of credit, term loans and bank acceptance notes. The amount presented in the table represents the principal portion of the obligations.

(2) We have entered into various non-cancellable operating lease agreements for our offices in Taiwan and the U.S.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

#### ***Market Risks***

Market risk represents the risk of loss that may impact our financial statements through adverse changes in interest rates, foreign exchange rates and inflation. Our market risk exposure results primarily from fluctuations in foreign exchange rates. We manage our exposure to these market risks through our regular operating and financing activities. We have not historically attempted to reduce our market risks through hedging instruments; we may, however, do so in the future.

#### ***Interest Rate Fluctuation Risk***

Our cash equivalents consisted primarily of money market funds, and interest and non-interest bearing bank deposits. Our primary objectives are the safety of our principal balances and maintaining liquidity. We attempt to maximize the return on these balances without significantly increasing risk, but have little opportunity to do so given the short-term nature of our investments and current interest rate environments. We do not anticipate any material effect on our cash balances or investment portfolio due to fluctuations in interest rates.

We are exposed to market risk due to the possibility of changing interest rates associated with certain debt instruments. As of September 30, 2013, a portion of our U.S. debt bears a fixed rate of interest, and a portion of our U.S. debt bears a variable rate of interest that is based upon the prime rate. The debt subject to variable rates is subject to fluctuation in the prime rate of interest. As of September 30, 2013, our China debt was based on variable rates of interest when each term loan is drawn (but it is fixed for the term of that draw), and is therefore subject to fluctuations in market interest rates. As of September 30, 2013, we had not hedged our interest rate risk.

With respect to our interest expense for the nine months ended September 30, 2013, an increase of 1.0% in each of our interest rates would have resulted in an increase of \$0.3 million in our interest expense for such period.

#### ***Foreign Exchange Rates***

We operate on an international basis with a portion of our revenue and expenses being incurred in currencies other than the U.S. dollar. Fluctuations in the value of these foreign currencies in which we conduct our business relative to the U.S. dollar affects our results and will cause U.S. dollar translation of such currencies to vary from one period to another. We cannot predict the effect of exchange rate fluctuations upon our future operating results. The effect on our results of operations from currency fluctuations is reduced, however, because we have revenue and expenses in each of these foreign currencies. We maintain certain assets, including certain bank accounts, accounts receivables, land and building, in RMB and the NT dollar, which are sensitive to foreign currency exchange rate fluctuations. Certain of our current and long-term liabilities are denominated in these currencies. Additionally, the value of the RMB against the U.S. dollar and other currencies fluctuates and is affected by, among other things, changes in political and economic conditions in China. Under China's current exchange rate regime, the RMB may appreciate or depreciate significantly in value against the U.S. dollar in the medium to long term.

We use the U.S. dollar as our functional and reporting currency for our financial statements. All transactions in currencies other than the U.S. dollar during the year are re-measured at the exchange rates prevailing on the respective relevant dates of such transactions. Monetary assets and liabilities existing at the balance sheet date denominated in currencies other than the U.S. dollar are re-measured at the exchange rates prevailing on such date. Exchange differences are recorded in our consolidated income statement. The financial records of our China subsidiary and our Taiwan location are maintained in their respective local currencies, the RMB and the NT dollar, which are the functional currencies for our China subsidiary and our Taiwan location, respectively. Assets and liabilities are translated at the exchange rates at the balance sheet date, equity accounts are translated at historical exchange rates and revenues, expenses, gains and losses are translated using the average rate for the then current period using a monthly average. Translation adjustments are reported as cumulative translation adjustments and are shown as a separate component of accumulated other comprehensive income in our statement of stockholders' equity (deficit) and comprehensive income. Transaction gains and losses are recognized in our statements of operations in other income (expense).

During the nine months ended September 30, 2013, 8.0% of our revenue was denominated in RMB and 0.0% of our revenue was denominated in NT dollars. In the nine months ended September 30, 2013, 21.6% of our operating expenses were denominated in RMB and 26.9% of our operating expenses were denominated in NT dollars. Accordingly, fluctuations in exchange rates directly affect our cost of revenues and net income, and have a significant impact on our operating margins. If exchange rates for RMB and NT dollars for U.S. dollars were 1% higher during the nine months ended September 30, 2013, our operating expenses would have been higher by \$80,000.

As of September 30, 2013, we held the U.S. dollar equivalent of approximately \$1.7 million in RMB and \$0.1 million in NT dollars, included in cash and cash equivalents. With respect to our cash and cash equivalents as of September 30, 2012, a 1.0% change in the exchange rates between the RMB and the U.S. dollar or the NT dollar and the U.S. dollar would result in an immaterial change in our total cash and cash equivalents.

During the three months ended September 30, 2013 and 2012, we recognized foreign currency transaction losses of \$0.0 million and gains of \$0.1 million, respectively. During the nine months ended September 30, 2013 and 2012, we recognized foreign currency transaction losses of \$0.3 million and gains of \$0.1 million, respectively.

### ***Inflation***

We believe that the relatively low rate of inflation in the U.S. over the past few years has not had a significant impact on our sales or operating results or on the prices of raw materials. However, an increase in the rate of inflation in the future may have an adverse effect on our levels of gross profit if material prices rise and if sales prices for our products do not proportionately increase. Changes in the proportion of our operations in China or Taiwan may result in inflation having a more significant impact on our operating results in the future.

### **Item 4. Controls and Procedures**

The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2013. Based upon such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of such date.

### ***Changes in Internal Control over Financial Reporting***

There was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) identified in connection with management’s evaluation required by the Rules 13a-15(d) and 15d-15(d) under the Exchange Act that occurred during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **Part II. Other Information**

### **Item 1. Legal Proceedings**

As of September 30, 2013, we were not involved in any material pending legal proceedings.

### **Item 1A. Risk Factors**

***We have marked with an (\*) those risk factor descriptions that contain substantive changes relative to the descriptions included in the Risk Factors section of our Registration Statement on Form S-1, effective on September 25, 2013 and as filed with the SEC.***

## Risks Inherent in Our Business

***(\*) We are dependent on our key customers for a significant portion of our revenue and the loss of, or a significant reduction in orders from, any of our key customers would adversely impact our revenue and results of operations.***

We generate much of our revenue from a limited number of customers. In 2010, 2011, 2012 and in the nine months ended September 30, 2013, our top ten customers represented 80.5%, 76.6%, 77.6% and 78.3% of our revenue, respectively. In 2012, Cisco Systems, Inc. represented 33.2% of our revenue and Biogenomics Corp., a distributor, represented 11.2% of our total revenue. As a result, the loss of, or a significant reduction in orders from any of our key customers would materially and adversely affect our revenue and results of operations. We typically do not have long-term contracts with our customers and instead rely on recurring purchase orders. If our key customers do not continue to purchase our existing products or fail to purchase additional products from us, our revenue would decline and our results of operations would be adversely affected.

Adverse events affecting our key customers could also negatively affect our ability to retain their business and obtain new purchase orders, which could adversely affect our revenue and results of operations. For example, in recent years, there has been consolidation among various network equipment manufacturers and this trend is expected to continue. We are unable to predict the impact that industry consolidation would have on our existing or potential customers. For instance, following the completion of Arris Group Inc.'s acquisition of Motorola Mobility Holdings, Inc., changes in strategy or management may affect purchasing decisions and other strategic objectives involving our products that were pursued prior to that acquisition. We may not be able to offset any potential decline in revenue arising from the consolidation of our existing customers with revenue from new customers or additional revenue from the merged company.

***If our customers do not qualify our products for use on a timely basis, our results of operations may suffer.***

Prior to the sale of new products, our customers typically require us to obtain their approval and qualify our products for use in their applications. Additionally, new customers often audit our manufacturing facilities and perform other evaluations during this process. The qualification process involves product sampling and reliability testing and collaboration with our product management and engineering teams in the design and manufacturing stages. If we are unable to accurately predict the amount of time required to qualify our products with customers, or are unable to qualify our products with certain customers at all, then our ability to generate revenue could be delayed or our revenue would be lower than expected and we may not be able to recover the costs associated with the qualification process or with our product development efforts, which would have an adverse effect on our results of operations.

In addition, due to rapid technological changes in our markets, a customer may cancel or modify a design project before we have qualified our product or begun volume manufacturing of a qualified product. It is unlikely that we would be able to recover the expenses for cancelled or unutilized custom design projects. It is difficult to predict with any certainty whether our customers will delay or terminate product qualification or the frequency with which customers will cancel or modify their projects, but any such delay, cancellation or modification would have a negative effect on our results of operations.

Our ability to successfully qualify and scale capacity for new technologies and products is important to our ability to grow our business and market presence. If we are unable to qualify and sell any of our new products in volume, on time, or at all, our results of operations may be adversely affected.

***Customer demand is difficult to forecast accurately and, as a result, we may be unable to match production with customer demand.***

We make planning and spending decisions, including determining the levels of business that we will seek and accept, production schedules, component procurement commitments, personnel needs and other resource requirements, based on our estimates of product demand and customer requirements. Our products are typically purchased pursuant to individual purchase orders. While our customers may provide us with their demand forecasts, they are typically not contractually committed to buy any quantity of products beyond firm purchase orders. Furthermore, many of our customers may increase, decrease, cancel or delay purchase orders already in place without significant penalty. The short-term nature of commitments by our customers and the possibility of unexpected changes in demand for their products reduce our ability to accurately estimate future customer requirements. On occasion, customers may require rapid increases in production, which can strain our resources, cause our manufacturing to be negatively impacted by materials shortages, necessitate more onerous procurement commitments and reduce our gross margin. We may not have sufficient capacity at any given time to meet the volume demands of our customers, or one or more of our suppliers may not have sufficient capacity at any given time to meet our volume demands. If any of our major customers decrease, stop or delay purchasing our products for any reason, we will likely have excess manufacturing capacity or inventory and our business and results of operations would be harmed.

***We are subject to the cyclical nature of the markets in which we compete and any future downturn will likely reduce demand for our products and revenue.***

In each of our target markets, including the CATV market, our sales depend on the aggregate capital expenditures of service providers as they build out and upgrade their network infrastructure. These markets are highly cyclical and characterized by constant and rapid technological change, price erosion, evolving standards and wide fluctuations in product supply and demand. In the past, these markets have experienced significant downturns, often connected with, or in anticipation of, the maturation of product cycles. These downturns have been characterized by diminished product demand, production overcapacity, high inventory levels and accelerated erosion of average selling prices. Our historical results of operations have been subject to these cyclical fluctuations, and we may experience substantial period-to-period fluctuations in our future results of operations. Any future downturn in any of the markets in which we compete could significantly reduce the demand for our products and therefore may result in a significant reduction in our revenue. Our revenue and results of operations may be materially and adversely affected in the future due to changes in demand from individual customers or cyclical changes in any of the markets utilizing our products. We may not be able to accurately predict these cyclical fluctuations and the impact of these fluctuations may have on our revenue and operating results.

***(\* If the CATV market does not continue to develop as we expect, or if there is any downturn in this market, our business would be adversely affected.***

Historically, we have generated much of our revenue from the CATV market. In 2010, 2011 and 2012, the CATV market represented 81.4%, 81.4% and 78.6% of our revenue, respectively. For the three months and nine months ended September 30, 2013, the CATV market represented 70.1% and 61.0% of our revenue, respectively. In the CATV market, we are relying on expected increasing demand for bandwidth-intensive services and applications such as on-demand television programs, high-definition television channels, or HDTV, social media, peer-to-peer file sharing and online video creation and viewing from network service providers. Without network and bandwidth growth, the need for our products will not increase and may decline, adversely affecting our financial condition and results of operations. Although demand for broadband access is increasing, network and bandwidth growth may be limited by several factors, including an uncertain regulatory environment, high infrastructure costs to purchase and install equipment and uncertainty as to which competing content delivery solution, such as telecommunications, wireless or satellite, will gain the most widespread acceptance. If the trend of outsourcing for the design and manufacture of CATV equipment does not continue, or continues at a slower pace than currently expected, our customers' demand for our design and manufacturing services may not grow as quickly as expected. If expectations for the growth of the CATV market are not realized, our financial condition or results of operations will be adversely affected. In addition, if the CATV market is adversely impacted, whether due to competitive pressure from telecommunication service providers, regulatory changes, or otherwise, our business would be adversely affected. We may not be able to offset any potential decline in revenue from the CATV market with revenue from new customers in other markets.

***We have limited operating history in the FTTH and internet data center markets, and our business could be harmed if these markets do not develop as we expect.***

We have only recently begun offering products to the FTTH and internet data center markets. Our business in these markets is dependent on the deployment of our optical components, modules and subassemblies. In the FTTH market, we are relying on increasing demand for bandwidth-intensive services and telecommunications service providers' acceptance and deployment of WDM-PON as a technology supporting 1 gigabit per second service to the home. In the internet data center market, we are relying on the emergence of new data center providers and their adoption of open data center architectures that use a mix of systems and components from a variety of vendors, including non-traditional equipment vendors. Without network and bandwidth growth and adoption of our solutions by operators in these markets, we will not be able to sell our products in these markets in high volume or at our targeted margins, which would adversely affect our financial condition and results of operations. For example, WDM-PON technology may not be adopted by equipment and service providers in the FTTH market as rapidly as we expect or in the volumes we need to achieve acceptable margins, and data centers may elect to use larger vendors that require data center operators to purchase the optical modules for their systems from such larger vendors. Network and bandwidth growth may be limited by several factors, including an uncertain regulatory environment, high infrastructure costs to purchase and install equipment and uncertainty as to which competing content delivery solution, such as CATV, will gain the most widespread acceptance. In addition, as we enter new markets or expand our product offerings in existing markets, our margins may be adversely affected due to competition in those markets and commoditization of competing products. If our expectations for the growth of these markets are not realized, our financial condition or results of operations will be adversely affected.

***If we encounter manufacturing problems, we may lose sales and damage our customer relationships.***

We may experience delays, disruptions or quality control problems in our manufacturing operations. These and other factors may cause less than acceptable yields at our wafer fabrication facility. Manufacturing yields depend on a number of factors, including the quality of available raw materials, the degradation or change in equipment calibration and the rate and timing of the introduction of new products. Changes in manufacturing processes required as a result of changes in product specifications, changing customer needs and the introduction of new product lines may significantly reduce our manufacturing yields, resulting in low or negative margins on those products. In addition, we use an Molecular Beam Epitaxy, or MBE fabrication process to make our lasers, rather than Metal Organic Chemical Vapor Deposition, or MOCVD, the technique most commonly used in optical manufacturing by communications optics vendors, and our MBE fabrication process relies on custom-manufactured equipment. If our MBE fabrication facility in Sugar Land, Texas were to be damaged or destroyed for any reason, our manufacturing process would be severely disrupted. Any such manufacturing problems would likely delay product shipments to our customers, which would negatively affect our sales, competitive position and reputation. We may also experience delays in production, typically in February, during the Chinese New Year holiday when our facilities in China and Taiwan are closed.

***We must continually develop successful new products and enhance existing products, and if we fail to do so or if our release of new or enhanced products is delayed, our business may be harmed.***

The markets for our products are characterized by frequent new product introductions, changes in customer requirements and evolving industry standards, all with an underlying pressure to reduce cost and meet stringent reliability and qualification requirements. Our future performance will depend on our successful development, introduction and market acceptance of new and enhanced products that address these challenges. If we are unable to make our new or enhanced products commercially available on a timely basis, we may lose existing and potential customers and our financial results would suffer. In addition, due to the costs and length of research, development and manufacturing process cycles, we may not recognize revenue from new products until long after such expenditures, if at all, and our margins may decrease if our costs are higher than expected, adversely affecting our financial condition and results of operation. Although the length of our product development cycle varies widely by product and customer, it may take 18 months or longer before we receive our first order. As a result, we may incur significant expenses long before customers accept and purchase our products. Product development delays may result from numerous factors, including:

- modification of product specifications and customer requirements;
- unanticipated engineering complexities;
- difficulties in reallocating engineering resources and overcoming resource limitations; and
- rapidly changing technology or competitive product requirements.

The introduction of new products by us or our competitors could result in a slowdown in demand for our existing products and could result in a write-down in the value of our inventory. We have in the past experienced a slowdown in demand for existing products and delays in new product development, and such delays will likely occur in the future. To the extent we experience product development delays for any reason or we fail to qualify our products and obtain their approval for use, which we refer to as a design win, our competitive position would be adversely affected and our ability to grow our revenue would be impaired. Furthermore, our ability to enter a market with new products in a timely manner can be critical to our success because it is difficult to displace an existing supplier for a particular type of product once a customer has chosen a supplier, even if a later-to-market product provides better performance or cost efficiency.

The development of new, technologically advanced products is a complex and uncertain process requiring frequent innovation, highly-skilled engineering and development personnel and significant capital, as well as the accurate anticipation of technological and market trends. We cannot assure you that we will be able to identify, develop, manufacture, market or support new or enhanced products successfully or on a timely basis. Further, we cannot assure you that our new products will gain market acceptance or that we will be able to respond effectively to product introductions by competitors, technological changes or emerging industry standards. We also may not be able to develop the underlying core technologies necessary to create new products and enhancements, license these technologies from third parties, or remain competitive in our markets.

***Increasing costs and shifts in product mix may adversely impact our gross margins.***

Our gross margins on individual products and among products fluctuate over each product's life cycle. Our overall gross margins have fluctuated from period to period as a result of shifts in product mix, the introduction of new products, decreases in average selling prices and our ability to reduce product costs, and these fluctuations are expected to continue in the future. We may not be able to accurately predict our product mix from period to period, and as a result we may not be able to forecast accurately our overall gross margins. The rate of increase in our costs and expenses may exceed the rate of increase in our revenue, either of which would materially and adversely affect our business, our results of operations and our financial condition.

***Given the high fixed costs associated with our vertically integrated business, a reduction in demand for our products will likely adversely impact our gross profits and our results of operations.***

We have a high fixed cost base due to our vertically integrated business model. We may not be able to adjust these fixed costs quickly to adapt to rapidly changing market conditions. Our gross profit and gross margin are greatly affected by our sales volume and volatility on a quarterly basis and the corresponding absorption of fixed manufacturing overhead expenses. In addition, because we are a vertically integrated manufacturer, insufficient demand for our products may subject us to the risk of high inventory carrying costs and increased inventory obsolescence. Given our vertical integration, the rate at which we turn inventory has historically been low when compared to our cost of sales. We do not expect this to change significantly in the future and believe that we will have to maintain a relatively high level of inventory compared to our cost of sales. As a result, we continue to expect to have a significant amount of working capital invested in inventory. We may be required to write down inventory costs in the future and our high inventory costs may have an adverse effect on our gross profits and our results of operations.

***(\*) We have a history of losses which may continue in the future.***

We have a history of losses and we may incur additional losses in future periods. In the years ended December 31, 2010, 2011 and 2012 and in the nine months ended September 30, 2013, we experienced net losses of \$3.4 million, \$5.3 million, \$0.9 million, and \$0.9 million, respectively. As of December 31, 2012 and September 30, 2013, our accumulated deficit was \$81.9 million and \$82.8 million, respectively. These losses were due to expenditures made to expand our business, including expenditures for hiring additional research and development and sales and marketing personnel, and expenditures to expand and maintain our manufacturing facilities and research and development operations. We expect to continue to make significant expenditures related to our business, including expenditures for hiring additional research and development and sales and marketing personnel, and expenditures to maintain and expand our manufacturing facilities and research and development operations. In addition, as a public company, we will incur significant additional time demands and legal, accounting and other expenses that we did not incur as a private company. Our management and other personnel will need to devote a substantial amount of time to complying with the applicable rules and requirements of being a public company.

***Our financial results may vary significantly from quarter-to-quarter due to a number of factors, which may lead to volatility in our stock price.***

Our quarterly revenue and operating results have varied in the past and will likely continue to vary significantly from quarter to quarter. This variability may lead to volatility in our stock price as research analysts and investors respond to these quarterly fluctuations. These fluctuations are due to numerous factors, including:

- the timing, size and mix of sales of our products;
- fluctuations in demand for our products, including the increase, decrease, rescheduling or cancellation of significant customer orders;
- our ability to design, manufacture and deliver products to our customers in a timely and cost-effective manner and that meet customer requirements;
- new product introductions and enhancements by us or our competitors;
- the gain or loss of key customers;
- the rate at which our present and potential customers and end users adopt our technologies;
- changes in our pricing and sales policies or the pricing and sales policies of our competitors;
- quality control or yield problems in our manufacturing operations;
- length and variability of the sales cycles of our products;
- unanticipated increases in costs or expenses;
- the loss of key employees;
- different capital expenditure and budget cycles for our customers, affecting the timing of their spending for our products;
- political stability in the areas of the world in which we operate;
- fluctuations in foreign currency exchange rates;
- changes in accounting rules;
- the evolving and unpredictable nature of the markets for products incorporating our solutions; and
- general economic conditions and changes in such conditions specific to our target markets.

The foregoing factors are difficult to forecast, and these, as well as other factors, could materially adversely affect our quarterly and annual operating results. In addition, a significant amount of our operating expenses is relatively fixed in nature due to our internal manufacturing, research and development, sales and general administrative efforts. Any failure to adjust spending quickly enough to compensate for a revenue shortfall could magnify the adverse impact of such revenue shortfall on our results of operations. For these reasons, you should not rely on quarter-to-quarter comparisons of our results of operations as an indicator of future performance. Moreover, our operating results may not meet our announced guidance or the expectations of research analysts or investors, in which case the price of our common stock could decrease significantly. There can be no assurance that we will be able to successfully address these risks.

***We face intense competition which could negatively impact our results of operations and market share.***

The markets into which we sell our products are highly competitive. Our competitors range from large, international companies offering a wide range of products to smaller companies specializing in niche markets. Current and potential competitors may have substantially greater name recognition, financial, marketing, research and manufacturing resources than we do, and there can be no assurance that our current and future competitors will not be more successful than us in specific product lines or markets. Certain of our competitors may also have better-established relationships with our current or potential customers. Some of our competitors have more resources to develop or acquire new products and technologies and create market awareness for their products and technologies. In addition, some of our competitors have the financial resources to offer competitive products at below-market pricing levels that could prevent us from competing effectively and result in a loss of sales or market share or cause us to lower prices for our products. In recent years, there has been consolidation in our industry and we expect such consolidation to continue. Consolidation involving our competitors could result in even more intense competition. Network equipment manufacturers, who are our customers, and network service providers may decide to manufacture the optical subsystems incorporated into their network systems in-house instead of outsourcing such products to companies such as us. We also encounter potential customers that, because of existing relationships with our competitors, are committed to the products offered by our competitors.

***We depend on key personnel to develop and maintain our technology and manage our business in a rapidly changing market.***

The continued services of our executive officers and other key engineering, sales, marketing, manufacturing and support personnel is essential to our success. For example, our ability to achieve new design wins depends upon the experience and expertise of our engineers. Any of our key employees, including our Chief Executive Officer, Chief Financial Officer, Chief Strategy Officer, Senior Vice President of Network Equipment Module Business Unit and Asia General Manager, may resign at any time. We do not have key person life insurance policies covering any of our employees. To implement our business plan, we also intend to hire additional employees, particularly in the areas of engineering and manufacturing. Our ability to continue to attract and retain highly skilled employees is a critical factor in our success. Competition for highly skilled personnel is intense. We may not be successful in attracting, assimilating or retaining qualified personnel to satisfy our current or future needs. Our ability to develop, manufacture and sell our products, and thus our financial condition and results of operations, would be adversely affected if we are unable to retain existing personnel or hire additional qualified personnel.

***We depend on a limited number of suppliers and any supply interruption could have an adverse effect on our business.***

We depend on a limited number of suppliers for certain raw materials and components used in our products. Some of these suppliers could disrupt our business if they stop, decrease or delay shipments or if the materials or components they ship have quality or reliability issues. Some of the raw materials and components we use in our products are available only from a sole source or have been qualified only from a single supplier. Furthermore, other than our current suppliers, there are a limited number of entities from whom we could obtain certain materials and components. We may also face shortages if we experience increased demand for materials or components beyond what our qualified suppliers can deliver. Our inability to obtain sufficient quantities of critical materials or components could adversely affect our ability to meet demand for our products, adversely affecting our financial condition and results of operation.

We typically have not entered into long-term agreements with our suppliers and, therefore, our suppliers could stop supplying materials and components to us at any time or fail to supply adequate quantities of materials or components to us on a timely basis. It is difficult, costly, time consuming and, on short notice, sometimes impossible for us to identify and qualify new suppliers. Our customers generally restrict our ability to change the components in our products. For more critical components, any changes may require repeating the entire qualification process. Our reliance on a limited number of suppliers or a single qualified vendor may result in delivery and quality problems, and reduced control over product pricing, reliability and performance.

***Our products could contain defects that may cause us to incur significant costs or result in a loss of customers.***

Our products are complex and undergo quality testing as well as formal qualification by our customers. Our customers' testing procedures are limited to evaluating our products under likely and foreseeable failure scenarios and over varying amounts of time. For various reasons, such as the occurrence of performance problems that are unforeseeable in testing or that are detected only when products age or are operated under peak stress conditions, our products may fail to perform as expected long after customer acceptance. Failures could result from faulty components or design, problems in manufacturing or other unforeseen reasons. As a result, we could incur significant costs to repair or replace defective products under warranty, particularly when such failures occur in installed systems. Our products are typically embedded in, or deployed in conjunction with, our customers' products, which incorporate a variety of components, modules and subsystems and may be expected to interoperate with modules produced by third parties. As a result, not all defects are immediately detectable and when problems occur, it may be difficult to identify the source of the problem. While we have not experienced material failures in the past, we will continue to face this risk going forward because our products are widely deployed in many demanding environments and applications worldwide. In addition, we may in certain circumstances honor warranty claims after the warranty has expired or for problems not covered by warranty to maintain customer relationships. Any significant product failure could result in litigation, damages, repair costs and lost future sales of the affected product and other products, divert the attention of our engineering personnel from our product development efforts and cause significant customer relations problems, all of which would harm our business. Although we carry product liability insurance, this insurance may not adequately cover our costs arising from defects in our products or otherwise.

***(\*) We face a variety of risks associated with our international sales and operations.***

We currently derive, and expect to continue to derive, a significant portion of our revenue from international sales. For the nine months ended September 30, 2013, 26.0% of our revenue was derived from sales that occurred outside of the U.S.. In addition, a significant portion of our manufacturing operations is based in Ningbo, China and Taipei, Taiwan. Our international revenue and operations are subject to a number of material risks, including:

- difficulties in staffing, managing and supporting operations in more than one country;
- difficulties in enforcing agreements and collecting receivables through foreign legal systems;
- fewer legal protections for intellectual property in foreign jurisdictions;
- foreign and U.S. taxation issues and international trade barriers;
- difficulties in obtaining any necessary governmental authorizations for the export of our products to certain foreign jurisdictions;
- fluctuations in foreign economies;
- fluctuations in the value of foreign currencies and interest rates;
- trade and travel restrictions;
- domestic and international economic or political changes, hostilities and other disruptions in regions where we currently operate or may operate in the future;
- difficulties and increased expenses in complying with a variety of U.S. and foreign laws, regulations and trade standards, including the Foreign Corrupt Practices Act; and
- different and changing legal and regulatory requirements in the jurisdictions in which we currently operate or may operate in the future.

Negative developments in any of these factors in China or Taiwan or other countries could result in a reduction in demand for our products, the cancellation or delay of orders already placed, difficulties in producing and delivering our products, threats to our intellectual property, difficulty in collecting receivables, and a higher cost of doing business. Although we maintain certain compliance programs throughout the company, violations of U.S. and foreign laws and regulations may result in criminal or civil sanctions, including material monetary fines, penalties and other costs against us or our employees, and may have a material adverse effect on our business.

Our business operations conducted in China and Taiwan are important to our success. A substantial portion of our property, plant and equipment is located in China and Taiwan. We expect to make further investments in China and Taiwan in the future. Therefore, our business, financial condition, results of operations and prospects are subject to economic, political, legal, and social events and developments in China and Taiwan. China does not recognize the sovereignty of Taiwan. Although significant economic and cultural relations have been established during recent years between China and Taiwan, relations have often been strained and the government of China has previously threatened to use military force to gain control over Taiwan. Factors affecting military, political or economic conditions in China and Taiwan could have a material adverse effect on our financial condition and results of operations, as well as the market price and the liquidity of our common shares.

***In some instances, we rely on third parties to assist in selling our products, and the failure of those parties to perform as expected could reduce our future revenue.***

Although we primarily sell our products through direct sales, we also sell our products to some of our customers through third party sales representatives and distributors. Many of such third parties also market and sell products from our competitors. Our third party sales representatives and distributors may terminate their relationships with us at any time, or with short notice. Our future performance will also depend, in part, on our ability to attract additional third party sales representatives and distributors that will be able to market and support our products effectively, especially in markets in which we have not previously distributed our products. If our current third party sales representatives and distributors fail to perform as expected, our revenue and results of operations could be harmed.

***Failure to manage our growth effectively may adversely affect our financial condition and results of operations.***

Successful implementation of our business plan in our target markets requires effective planning and management. We plan to continue to expand the scope of our operations. We currently operate facilities in Sugar Land, Texas, Ningbo, China and Taipei, Taiwan. We currently manufacture our lasers using a proprietary process and customized equipment located only in our Sugar Land, Texas facility, and it will be costly to duplicate that facility to scale our laser manufacturing capacity or to mitigate the risks associated with operating a single facility. The challenges of managing our geographically dispersed operations have increased and will continue to increase the demand on our management systems and resources. Moreover, we are continuing to improve our financial and managerial controls, reporting systems and procedures. Any failure to manage our expansion and the resulting demands on our management systems and resources effectively may adversely affect our financial condition and results of operations.

***Our loan agreements contain restrictive covenants that may adversely affect our ability to conduct our business.***

We have lending arrangements with several financial institutions, including loan agreements with East West Bank in the U.S., and our China subsidiary has a line of credit arrangement. Our loan agreements governing our long-term debt obligations in the U.S. contain certain financial and operating covenants that limit our management's discretion with respect to certain business matters. Among other things, these covenants require us to maintain certain financial ratios and restrict our ability to incur additional debt, create liens or other encumbrances, change the nature of our business, pay dividends, sell or otherwise dispose of assets and merge or consolidate with other entities. These restrictions may limit our flexibility in responding to business opportunities, competitive developments and adverse economic or industry conditions. Any failure by us or our subsidiaries to comply with these agreements could harm our business, financial condition and operating results. In addition, our obligations under our U.S. loan agreements with East West Bank are secured by substantially all of our U.S. assets, including our intellectual property assets, our Sugar Land facility and our equity interests in our subsidiaries, which limits our ability to provide collateral for additional financing. A breach of any of covenants under our loan agreements, or a failure to pay interest or indebtedness when due under any of our credit facilities, could result in a variety of adverse consequences, including the acceleration of our indebtedness.

***We may not be able to obtain additional capital when desired, on favorable terms or at all.***

We operate in a market that makes our prospects difficult to evaluate and, to remain competitive, we will be required to make continued investments in capital equipment, facilities and technological improvements. We expect that substantial capital will be required to expand our manufacturing capacity and fund working capital for anticipated growth. If we do not generate sufficient cash flow from operations or otherwise have the capital resources to meet our future capital needs, we may need additional financing to implement our business strategy, which includes:

- expansion of research and development;
- expansion of manufacturing capabilities;
- hiring of additional technical, sales and other personnel; and
- acquisitions of complementary businesses.

If we raise additional funds through the issuance of our common stock or convertible securities, the ownership interests of our stockholders could be significantly diluted. These newly issued securities may have rights, preferences or privileges senior to those of existing stockholders. Additional financing may not, however, be available on terms favorable to us, or at all, if and when needed, and our ability to fund our operations, take advantage of unanticipated opportunities, develop or enhance our infrastructure or respond to competitive pressures could be significantly limited. If we cannot raise required capital when needed, we may be unable to meet the demands of existing and prospective customers, adversely affecting our sales and market opportunities and consequently our business, financial condition and results of operations.

***Future acquisitions may adversely affect our financial condition and results of operations.***

As part of our business strategy, we may pursue acquisitions of companies that we believe could enhance or complement our current product portfolio, augment our technology roadmap or diversify our revenue base. Acquisitions involve numerous risks, any of which could harm our business, including:

- difficulties integrating the acquired business;
- unanticipated costs, capital expenditures or liabilities or changes related to research in progress and product development;
- diversion of financial and management resources from our existing business;
- difficulties integrating the business relationships with suppliers and customers of the acquired business with our existing business relationships;
- risks associated with entering markets in which we have little or no prior experience; and
- potential loss of key employees, particularly those of the acquired organizations.

Acquisitions may also result in the recording of goodwill and other intangible assets subject to potential impairment in the future, adversely affecting our operating results. We may not achieve the anticipated benefits of an acquisition if we fail to evaluate it properly, and we may incur costs in excess of what we anticipate. A failure to evaluate and execute an acquisition appropriately or otherwise adequately address these risks may adversely affect our financial condition and results of operations.

***Our future results of operations may be subject to volatility as a result of exposure to fluctuations in currency exchange rates.***

We have significant foreign currency exposure, and are affected by fluctuations among the U.S. dollar, the Chinese renminbi, or RMB, and the New Taiwan, or NT, dollar because a substantial portion of our business is conducted in China and Taiwan. Our sales, raw materials, components and capital expenditures are denominated in U.S. dollars, RMB and NT dollars in varying amounts.

Foreign currency fluctuations may adversely affect our revenue and our costs and expenses, and hence our results of operations. The value of the NT dollar or the RMB against the U.S. dollar and other currencies may fluctuate and be affected by, among other things, changes in political and economic conditions. The RMB currency is no longer being pegged solely to the value of the U.S. dollar. While the international reaction to the RMB revaluation has generally been positive, there remains significant international pressure on the Chinese government to adopt an even more flexible currency policy, which may result in a further and more significant appreciation of the RMB against the U.S. dollar. In the long term, the RMB may appreciate or depreciate significantly in value against the U.S. dollar, depending upon the fluctuation of the basket of currencies against which it is currently valued, or it may be permitted to enter into a full float, which may also result in a significant appreciation or depreciation of the RMB against the U.S. dollar. In addition, our currency exchange variations may be magnified by Chinese exchange control regulations that restrict our ability to convert RMB into foreign currency.

Our sales in Europe are denominated in U.S. dollars, and fluctuations in the Euro or our customers' other local currencies relative to the U.S. dollar may impact our customers and affect our financial performance. If our customers' local currencies weaken against the U.S. dollar, we may need to lower our prices to remain competitive in our international markets which could have a material adverse effect on our margins. If our customers' local currencies strengthen against the U.S. dollar and if the local sales prices cannot be raised due to competitive pressures, we will experience a deterioration of our margins.

To date, we have not entered into any hedging transactions in an effort to reduce our exposure to foreign currency exchange risk. While we may decide to enter into hedging transactions in the future, the availability and effectiveness of these hedging transactions may be limited and we may not be able to successfully hedge our exposure.

***Natural disasters or other catastrophic events could harm our operations.***

Our operations in the U.S., China and Taiwan could be subject to significant risk of natural disasters, including earthquakes, hurricanes, typhoons, flooding and tornadoes, as well as other catastrophic events, such as epidemics, terrorist attacks or wars. For example, our corporate headquarters and wafer fabrication facility in Sugar Land, Texas, is located near Gulf of Mexico, an area that is susceptible to hurricanes. We use a proprietary MBE laser manufacturing process that requires customized equipment, and this process is currently conducted and located solely at our wafer fabrication facility in Sugar Land, Texas, such that a natural disaster, terrorist attack or other catastrophic event that affects that facility would materially harm our operations. In addition, our manufacturing facility in Taipei, Taiwan, is susceptible to typhoons, and our manufacturing facility in Ningbo, China, has from time to time, suffered electrical outages. Any disruption in our manufacturing facilities arising from these and other natural disasters or other catastrophic events could cause significant delays in the production or shipment of our products until we are able to shift production to different facilities or arrange for third parties to manufacture our products. We may not be able to obtain alternate capacity on favorable terms or at all. Our property insurance coverage with respect to natural disaster is limited and is subject to deductible and coverage limits. Such coverage may not be adequate or continue to be available at commercially reasonable rates and terms. The occurrence of any of these circumstances may adversely affect our financial condition and results of operation.

***If we fail to protect, or incur significant costs in defending, our intellectual property and other proprietary rights, our business and results of operations could be materially harmed.***

Our success depends on our ability to protect our intellectual property and other proprietary rights. We rely on a combination of patent, trademark, copyright, trade secret and unfair competition laws, as well as license agreements and other contractual provisions, to establish and protect our intellectual property and other proprietary rights. We have applied for patent registrations in the U.S. and in other foreign countries, some of which have been issued. In addition, we have registered certain trademarks in the U.S. We cannot guarantee that our pending applications will be approved by the applicable governmental authorities. Moreover, our existing and future patents and trademarks may not be sufficiently broad to protect our proprietary rights or may be held invalid or unenforceable in court. A failure to obtain patents or trademark registrations or a successful challenge to our registrations in the U.S. or other foreign countries may limit our ability to protect the intellectual property rights that these applications and registrations intended to cover.

Policing unauthorized use of our technology is difficult and we cannot be certain that the steps we have taken will prevent the misappropriation, unauthorized use or other infringement of our intellectual property rights. Further, we may not be able to effectively protect our intellectual property rights from misappropriation or other infringement in foreign countries where we have not applied for patent protections, and where effective patent, trademark, trade secret and other intellectual property laws may be unavailable, or may not protect our proprietary rights as fully as U.S. law. We may seek to secure comparable intellectual property protections in other countries. However, the level of protection afforded by patent and other laws in other countries may not be comparable to that afforded in the U.S.

We also attempt to protect our intellectual property, including our trade secrets and know-how, through the use of trade secret and other intellectual property laws, and contractual provisions. We enter into confidentiality and invention assignment agreements with our employees and independent consultants. We also use non-disclosure agreements with other third parties who may have access to our proprietary technologies and information. Such measures, however, provide only limited protection, and there can be no assurance that our confidentiality and non-disclosure agreements will not be breached, especially after our employees end their employment, and that our trade secrets will not otherwise become known by competitors or that we will have adequate remedies in the event of unauthorized use or disclosure of proprietary information. Unauthorized third parties may try to copy or reverse engineer our products or portions of our products, otherwise obtain and use our intellectual property, or may independently develop similar or equivalent trade secrets or know-how. If we fail to protect our intellectual property and other proprietary rights, or if such intellectual property and proprietary rights are infringed or misappropriated, our business, results of operations or financial condition could be materially harmed.

In the future, we may need to take legal actions to prevent third parties from infringing upon or misappropriating our intellectual property or from otherwise gaining access to our technology. Protecting and enforcing our intellectual property rights and determining their validity and scope could result in significant litigation costs and require significant time and attention from our technical and management personnel, which could significantly harm our business. We may not prevail in such proceedings, and an adverse outcome may adversely impact our competitive advantage or otherwise harm our financial condition and our business.

***We may be involved in intellectual property disputes in the future, which could divert management's attention, cause us to incur significant costs and prevent us from selling or using the challenged technology.***

Participants in the markets in which we sell our products have experienced frequent litigation regarding patent and other intellectual property rights. While we have a policy in place that is designed to reduce the risk of infringement of intellectual property rights of others and we have conducted a limited review of other companies' relevant patents, there can be no assurance that third parties will not assert infringement claims against us. We cannot be certain that our products would not be found infringing the intellectual property rights of others. Regardless of their merit, responding to such claims can be time consuming, divert management's attention and resources and may cause us to incur significant expenses. Intellectual property claims against us could force us to do one or more of the following:

- obtain from a third party claiming infringement a license to the relevant technology, which may not be available on reasonable terms, or at all;
- stop manufacturing, selling, incorporating or using our products that use the challenged intellectual property;
- pay substantial monetary damages; or
- expend significant resources to redesign the products that use the technology and to develop non-infringing technology.

Any of these actions could result in a substantial reduction in our revenue and could result in losses over an extended period of time. In any potential intellectual property dispute, our customers could also become the target of litigation. Because we often indemnify our customers for intellectual property claims made against them with respect to our products, any claims against our customers could trigger indemnification claims against us. These obligations could result in substantial expenses such as legal expenses, damages for past infringement or royalties for future use. Any indemnity claim could also adversely affect our relationships with our customers and result in substantial costs to us.

***If we fail to obtain the right to use the intellectual property rights of others that are necessary to operate our business, and to protect their intellectual property, our business and results of operations will be adversely affected.***

From time to time we may choose to or be required to license technology or intellectual property from third parties in connection with the development of our products. We cannot assure you that third party licenses will be available to us on commercially reasonable terms, if at all. Generally, a license, if granted, would include payments of up-front fees, ongoing royalties or both. These payments or other terms could have a significant adverse impact on our results of operations. Our inability to obtain a necessary third party license required for our product offerings or to develop new products and product enhancements could require us to substitute technology of lower quality or performance standards, or of greater cost, either of which could adversely affect our business. If we are not able to obtain licenses from third parties, if necessary, then we may also be subject to litigation to defend against infringement claims from these third parties. Our competitors may be able to obtain licenses or cross-license their technology on better terms than we can, which could put us at a competitive disadvantage.

***If we fail to maintain effective internal control over financial reporting in the future, the accuracy and timing of our financial reporting may be adversely affected.***

Preparing our consolidated financial statements involves a number of complex manual and automated processes, which are dependent upon individual data input or review and require significant management judgment. One or more of these elements may result in errors that may not be detected and could result in a material misstatement of our consolidated financial statements. We have not completed an evaluation of our internal control over financial reporting, such as would be required by Section 404 of the Sarbanes-Oxley Act, nor have we engaged our independent registered public accounting firm to perform an audit of our internal control over financial reporting. In addition, for so long as we qualify as an “emerging growth company” under the JOBS Act, which may be up to five years following our initial public offering, we will not have to provide an auditor’s attestation report on our internal controls in future annual reports on Form 10-K as otherwise required by Section 404(b) of the Sarbanes-Oxley Act. During the course of any evaluation, documentation or attestation, we or our independent registered public accounting firm may identify weaknesses and deficiencies that we may not otherwise identify in a timely manner or at all as a result of the deferred implementation of this additional level of review.

We have implemented internal controls that we believe provide reasonable assurance that we will be able to avoid accounting errors or material weaknesses in future periods. However, our internal controls cannot guarantee that no accounting errors exist or that all accounting errors, no matter how immaterial, will be detected because a control system, no matter how well designed and operated, can provide only reasonable, but not absolute assurance that the control system’s objectives will be met. If we are unable to implement and maintain effective internal control over financial reporting, our ability to accurately and timely report our financial results could be adversely impacted. This could result in late filings of our annual and quarterly reports under the Securities Exchange Act of 1934, or the Exchange Act, restatements of our consolidated financial statements, a decline in our stock price, suspension or delisting of our common stock by NASDAQ, or other material adverse effects on our business, reputation, results of operations or financial condition.

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

As of December 31, 2012, we had U.S. accumulated net operating losses, or NOL's, of approximately \$66.7 million for U.S. federal income tax purposes. We also had research and development credit carry-forwards totaling \$1.5 million as of December 31, 2012, which begin to expire in 2024. Under Section 382 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an "ownership change," the corporation's ability to use its pre-change NOL's, capital loss carry-forwards and other pre-change tax attributes to offset its post-change income may be limited. An ownership change is generally defined as a greater than 50% change in equity ownership by value over a 3-year period. Based upon an analysis of our equity ownership, we have experienced an ownership change and our NOL carryforwards are limited in dollar amount. As of December 31, 2012, of the total accumulated NOL, only \$38.7 million is available for utilization in 2013 and thereafter to shelter federal taxable income. Each year after 2013, an additional \$0.3 million is added to the total available NOL, until a maximum of \$64.1 million is reached. The amount of NOL available each year may decrease by the amount of NOL utilized and may increase by the amount of any operating losses incurred. Should we experience additional ownership changes, our NOL carryforwards may be further limited.

***Changes in our effective tax rate may adversely affect our results of operation and our business.***

We are subject to income taxes in the U.S. and other foreign jurisdictions, including China. We base our tax position on the anticipated nature and conduct of our business and our understanding of the tax laws of the countries in which we have assets or conduct activities. Our tax position may be reviewed or challenged by tax authorities. Moreover, the tax laws currently in effect may change, and such changes may have retroactive effect. We have inter-company arrangements in place providing for administrative and financing services and transfer pricing, which involve a significant degree of judgment and are often subject to close review by tax authorities. The tax authorities may challenge our positions related to these agreements. If the tax authorities successfully challenge our positions, our effective tax rate may increase, adversely affecting our results of operation and our business.

***Our manufacturing operations are subject to environmental regulation that could limit our growth or impose substantial costs, adversely affecting our financial condition and results of operations.***

Our properties, operations and products are subject to the environmental laws and regulations of the jurisdictions in which we operate and sell products. These laws and regulations govern, among other things, air emissions, wastewater discharges, the management and disposal of hazardous materials, the contamination of soil and groundwater, employee health and safety and the content, performance, packaging and disposal of products. Our failure to comply with current and future environmental laws and regulations, or the identification of contamination for which we are liable, could subject us to substantial costs, including fines, clean-up costs, third-party property damages or personal injury claims, and make significant investments to upgrade our facilities or curtail our operations. Liability under environmental, health and safety laws can be joint and several and without regard to fault or negligence. For example, pursuant to environmental laws and regulations, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act, or CERCLA, we may be liable for the full amount of any remediation-related costs at properties we currently own or formerly owned, such as our currently owned Sugar Land, Texas facility, or at properties at which we operated, as well as at properties we will own or operate in the future, and properties to which we have sent hazardous substances, whether or not we caused the contamination. Identification of presently unidentified environmental conditions, more vigorous enforcement by a governmental authority, enactment of more stringent legal requirements or other unanticipated events could give rise to adverse publicity, restrict our operations, affect the design or marketability of our products or otherwise cause us to incur material environmental costs, adversely affecting our financial condition and results of operations.

***Failure to comply with the U.S. Foreign Corrupt Practices Act could subject us to penalties and other adverse consequences.***

As a public company, we will be subject to the U.S. Foreign Corrupt Practices Act which generally prohibits U.S. companies from engaging in bribery or other prohibited payments to foreign officials for the purpose of obtaining or retaining business. In addition, we are required to maintain records that accurately and fairly present our transactions and have an adequate system of internal accounting controls. Foreign companies, including some that may compete with us, may not be subject to these prohibitions, and therefore may have a competitive advantage over us. If we are not successful in implementing and maintaining adequate preventative measures, we may be responsible for acts of our employees or other agents engaging in such conduct. We could suffer severe penalties and other consequences that may have a material adverse effect on our financial condition and results of operations.

***We are subject to governmental export and import controls that could subject us to liability or impair our ability to compete in international markets.***

We are subject to export and import control laws, trade regulations and other trade requirements that limit which products we sell and where and to whom we sell our products. Specifically, the Bureau of Industry and Security of the U.S. Department of Commerce is responsible for regulating the export of most commercial items that are so called dual-use goods that may have both commercial and military applications. A limited number of our products are exported by license under the Export Control Classification Number, or ECCN, of 5A991. Export Control Classification requirements are dependent upon an item's technical characteristics, the destination, the end-use, and the end-user, and other activities of the end-user. Should the regulations applicable to our products change, or the restrictions applicable to countries to which we ship our products change, then the export of our products to such countries could be restricted. As a result, our ability to export or sell our products to certain countries could be restricted, which could adversely affect our business, financial condition and results of operations. Changes in our products or any change in export or import regulations or related legislation, shift in approach to the enforcement or scope of existing regulations, or change in the countries, persons or technologies targeted by such regulations, could result in delayed or decreased sales of our products to existing or potential customers. In such event, our business and results of operations could be adversely affected.

***Rapidly changing standards and regulations could make our products obsolete, which would cause our revenue and results of operations to suffer.***

We design our products to conform to regulations established by governments and to standards set by industry standards bodies worldwide, such as The American National Standards Institute, the European Telecommunications Standards Institute, the International Telecommunications Union and the Institute of Electrical and Electronics Engineers, Inc. Various industry organizations are currently considering whether and to what extent to create standards applicable to our products. Because certain of our products are designed to conform to current specific industry standards, if competing or new standards emerge that are preferred by our customers, we would have to make significant expenditures to develop new products. If our customers adopt new or competing industry standards with which our products are not compatible, or the industry groups adopt standards or governments issue regulations with which our products are not compatible, our existing products would become less desirable to our customers and our revenue and results of operations would suffer.

***Customer demands and new regulations related to conflict-free minerals may adversely affect us.***

The Dodd-Frank Wall Street Reform and Consumer Protection Act imposes new disclosure requirements regarding the use of “conflict” minerals mined from the Democratic Republic of Congo and adjoining countries in products, whether or not these products are manufactured by third parties. These new requirements could affect the pricing, sourcing and availability of minerals used in the manufacture of our products. Certain of our customers are requiring additional information from us regarding the origin of our raw materials, and complying with these customer requirements may cause us to incur additional costs, such as costs related to determining the origin of any minerals used in our products. Our supply chain is complex and we may be unable to verify the origins for all metals used in our products. We may also encounter challenges with our customers and stockholders if we are unable to certify that our products are conflict free.

***Our charter documents, stock incentive plans and Delaware law could prevent a takeover that stockholders consider favorable and could also reduce the market price of our stock.***

Our amended and restated certificate of incorporation and our amended and restated bylaws and our stock incentive plans contain provisions that could delay or prevent a change in control of our company. These provisions could also make it more difficult for stockholders to elect directors and take other corporate actions. These provisions include:

- providing for a classified board of directors with staggered, three-year terms;
- not providing for cumulative voting in the election of directors;
- authorizing our board of directors to issue, without stockholder approval, preferred stock rights senior to those of common stock;
- prohibiting stockholder action by written consent;
- limiting the persons who may call special meetings of stockholders;
- requiring advance notification of stockholder nominations and proposals; and
- change of control provisions in our stock incentive plans, and the individual stock option agreements, which provide that a change of control may accelerate the vesting of the stock options issued under such plans.

In addition, the provisions of Section 203 of the Delaware General Corporate Law may prohibit large stockholders, in particular those owning 15% or more of our outstanding common stock, from engaging in certain business combinations without the approval of substantially all of our stockholders for a certain period of time.

These and other provisions in our amended and restated certificate of incorporation, our amended and restated bylaws and under Delaware law could discourage potential takeover attempts, reduce the price that investors might be willing to pay for shares of our common stock in the future and result in the market price being lower than it would be without these provisions.

***Some provisions of our named executive officers' agreements regarding change of control or separation of service contain obligations for us to make separation payments to them upon their termination.***

Certain provisions contained in our employment agreements with our named executive officers regarding change of control or separation of service may obligate us to make lump sum severance payments and related payments upon the termination of their employment with us, other than such executive officer's resignation without good reason or our termination of their employment as a result of their disability or for cause. In the event we are required to make these separation payments, it could have a material adverse effect on our results of operations for the fiscal period in which such payments are made.

***Our principal stockholders, executive officers and directors own a significant percentage of our stock and have significant control of our management and affairs, and they can take actions that may be against your best interests.***

As of October 31, 2013, our executive officers and directors, and entities that are affiliated with them, beneficially own an aggregate of approximately 15.5% of our outstanding common stock. As a result, these stockholders, acting together, may have significant influence over our management and affairs and matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, such as mergers, consolidations or the sale of substantially all of our assets. Consequently, this concentration of ownership may have the effect of delaying or preventing a change in control, including a merger, consolidation or other business combination involving us, or discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control, even if such a change in control would benefit our other stockholders.

***Our stock price could decline due to the large number of outstanding shares of our common stock eligible for future sale.***

Sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur, could cause the market price of our common stock to decline. These sales could also make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem appropriate.

As of November 7, 2013, we had an aggregate of 12,629,095 shares of common stock outstanding, assuming no exercise of outstanding options or warrants. The 3,600,000 shares sold pursuant to our initial public offering are immediately tradable without restriction. Of the remaining shares outstanding, approximately 8.8 million shares will be eligible for sale upon the expiration of lock-up agreements, subject in some cases to volume and other restrictions of Rule 144 under the Securities Act. The lock-up agreements expire 180 days after September 25, 2013, subject to potential extension in the event we release earning results or material news or a material event relating to us occurs near the end of the lock-up period and in the event that we cease to be an emerging growth company. Raymond James & Associates, Inc. and Piper Jaffray & Co., as representatives of the underwriters, may, in their sole discretion and at any time without notice, release all or any portion of the securities subject to lock-up agreements. We currently intend to register approximately 1.5 million shares of our common stock that have been issued or reserved for future issuance under our stock incentive plans.

#### **Risks Related to Our Operations in China**

***Adverse changes in economic and political policies in China, or Chinese laws or regulations could have a material adverse effect on business conditions and the overall economic growth of China, which could adversely affect our business.***

The Chinese economy differs from the economies of most developed countries in many respects, including the level of government involvement, level of development, growth rate, control of foreign exchange and allocation of resources. The Chinese economy has been transitioning from a planned economy to a more market-oriented economy. Despite reforms, the government continues to exercise significant control over China's economic growth by way of the allocation of resources, control over foreign currency-denominated obligations and monetary policy and provision of preferential treatment to particular industries or companies. In addition, the laws, regulations and legal requirements in China, including the laws that apply to foreign-invested enterprises, or FIEs, are subject to frequent changes. The interpretation and enforcement of such laws is uncertain. Protections of intellectual property rights and confidentiality in China may not be as effective as in the U.S. or other countries or regions with more developed legal systems. Any litigation in China may be protracted and result in substantial costs and diversion of resources and management attention. Any adverse changes to these laws, regulations and legal requirements or their interpretation or enforcement could have a material adverse effect on our business. Furthermore, while China's economy has experienced rapid growth in the past 20 years, growth has been uneven across different regions, among various economic sectors and over time. China has also in the past and may in the future experience economic downturns due to, for example, government austerity measures, changes in government policies relating to capital spending, limitations placed on the ability of commercial banks to make loans, reduced levels of exports and international trade, inflation, lack of financial liquidity, stock market volatility and global economic conditions. Any of these developments could contribute to a decline in business and consumer spending in addition to other adverse market conditions, which could adversely affect our business.

***The termination and expiration or unavailability of our preferential tax treatments in China may have a material adverse effect on our operating results.***

Prior to January 1, 2008, entities established in China were generally subject to a 30% state and 3% local enterprise income tax rate. In accordance with the China Income Tax Law for Enterprises with Foreign Investment and Foreign Enterprises, effective through December 31, 2007, our China subsidiary enjoyed preferential income tax rates. Effective January 1, 2008, the China Enterprise Income Tax Law, or the EIT law, imposes a single uniform income tax rate of 25% on all Chinese enterprises, including FIEs, and eliminates or modifies most of the tax exemptions, reductions and preferential treatment available under the previous tax laws and regulations. As a result, our China subsidiary may be subject to the uniform income tax rate of 25% unless we are able to qualify for preferential status. Currently, we have qualified for a preferential 15% tax rate that is available for new and high technology enterprises. The preferential rate applies to calendar years 2012, 2013 and 2014. We have not yet realized benefits from this reduction in tax rate because we have not yet generated taxable income in China. Any future increase in the enterprise income tax rate applicable to us or the expiration or other limitation of preferential tax rates available to us could increase our tax liabilities and reduce our net income.

***China regulation of loans and direct investment by offshore holding companies to China entities may delay or prevent us from making loans or additional capital contributions to our China subsidiary.***

Any loans that we may wish to make to our China subsidiary are subject to China regulations and approvals. For example, any loans to our China subsidiary to finance their activities cannot exceed statutory limits, must be registered with State Administration of Foreign Exchange, or SAFE, or its local counterpart, and must be approved by the relevant government authorities. Any capital contributions to our China subsidiary must be approved by the Ministry of Commerce or its local counterpart. In addition, under Circular 142, our China subsidiary, as a FIE, may not be able to convert our capital contributions to them into RMB for equity investments or acquisitions in China.

We cannot assure you that we will be able to obtain these government registrations or approvals on a timely basis, if at all, with respect to our future loans or capital contributions to our China subsidiary. If we fail to receive such registrations or approvals, our ability to capitalize our China subsidiary may be negatively affected, which could materially and adversely affect our liquidity and ability to fund and expand our business.

***Our China subsidiary is subject to Chinese labor laws and regulations and Chinese labor laws may increase our operating costs in China.***

The China Labor Contract Law, together with its implementing rules, provides increased rights to Chinese employees. Previously, an employer had discretionary power in deciding the probation period, not to exceed six months. Additionally, the employment contract could only be terminated for cause. Under these rules, the probation period varies depending on contract terms and the employment contract can only be terminated during the probation period for cause upon three days' notice. Additionally, an employer may not be able to terminate a contract during the probation period on the grounds of a material change of circumstances or a mass layoff. The new law also has specific provisions on conditions when an employer has to sign an employment contract with open-ended terms. If an employer fails to enter into an open-ended contract in certain circumstances, the employer must pay the employee twice their monthly wage beginning from the time the employer should have executed an open-ended contract. Additionally an employer must pay severance for nearly all terminations, including when an employer decides not to renew a fixed-term contract. These laws may increase our costs and reduce our flexibility.

***The turnover of direct labor in manufacturing industries in China is high, which could adversely affect our production, shipments and results of operations.***

Employee turnover of direct labor in the manufacturing sector in China is high and retention of such personnel is a challenge to companies located in or with operations in China. Although direct labor costs do not represent a high proportion of our overall manufacturing costs, direct labor is required for the manufacture of our products. If our direct labor turnover rates are higher than we expect, or we otherwise fail to adequately manage our direct labor turnover rates, then our results of operations could be adversely affected.

***We may have difficulty establishing and maintaining adequate management and financial controls over our China operations.***

Businesses in China have historically not adopted a western style of management and financial reporting concepts and practices, which includes strong corporate governance, internal controls and computer, financial and other control systems. Moreover, familiarity with U.S. GAAP principles and reporting procedures is less common in China. As a consequence, we may have difficulty finding accounting personnel experienced with U.S. GAAP, and we may have difficulty training and integrating our China-based accounting staff with our U.S.-based finance organization. As a result of these factors, we may experience difficulty in establishing management and financial controls over our China operations. These difficulties include collecting financial data and preparing financial statements, books of account and corporate records and instituting business practices that meet U.S. public-company reporting requirements. We may, in turn, experience difficulties in implementing and maintaining adequate internal controls as required under Section 404 of the Sarbanes-Oxley Act.

## **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

### **(a) Sales of Unregistered Securities**

During the period between July 1, 2013 and September 30, 2013, an aggregate of 6,161 shares of our common stock were issued to employees, consultants and directors upon exercise of stock options and 24,800 shares of Series F preferred stock was issued to investors for aggregate consideration of approximately \$0.2 million. Such sales were deemed to be exempt from registration under the Securities Act, in reliance on Section 4(2) of the Securities Act as transactions by an issuer not involving a public offering, Regulation S of the Securities Act or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions pursuant to compensation benefits plans and contracts relating to compensation.

### **(b) Use of Proceeds**

On September 25, 2013, our registration statement on Form S-1 (File No. 333-190591) for our initial public offering was declared effective by the Securities and Exchange Commission. The offering commenced on September 26, 2013. We sold 3,600,000 shares of our common stock at a price to the public of \$10.00 per share and the transaction was completed on October 1, 2013. Raymond James & Associates, Inc. and Piper Jaffray & Co. were the managing underwriters. We received net proceeds of \$31.5 million after deducting underwriting discounts and commissions of \$2.5 million and other offering expenses of approximately \$2.0 million. No such discounts, commissions or offering expenses were paid by us to directors, officers or persons owning ten percent or more of our common stock or to their associates, or to our affiliates.

On October 1, 2013 from the net proceeds, the Company paid \$9.4 million to East West Bank and \$2.4 million to the China bank to reduce its outstanding balance on such credit lines.

On October 22, 2013, the underwriters exercised their over-allotment option and selling stockholders sold 540,000 shares of common stock at the same price.

## **Item 3. Defaults Upon Senior Securities**

None.

## **Item 4. Mine Safety Disclosures**

Not applicable.

## **Item 5. Other Information**

On August 28, 2013, the Company amended its two operating lease agreements with Admiral Overseas Corporation for our operation facility in Taiwan. These amendments extended the lease terms of both lease agreements, which cover office spaces located on the 4th, 6th and 7th floor of our operation facility in Taipei, Taiwan, from March 31, 2014 and April 9, 2014, to March 31, 2015. On September 11, 2013, the Company also entered into a lease agreement with Admiral Overseas Corporation to lease 12,366 square feet of office space, located on the 5th floor of the same building of our operation facility in Taipei, Taiwan. This lease agreement commenced on October 1, 2013 and terminates on March 31, 2015.

## **Item 6. Exhibits**

See Exhibit Index on page 42.

## SIGNATURES

Pursuant to 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.

### APPLIED OPTOELECTRONICS, INC.

Date: November 14, 2013

By: /s/ James L. Dunn, Jr.,  
James L. Dunn, Jr.,  
*Chief Financial Officer*  
*(principal financial officer and*  
*principal accounting officer)*

EXHIBIT INDEX

<u>Number</u>	<u>Description</u>
3.1*	Amended and Restated Certificate of Incorporation, as currently in effect
3.2*	Amended and Restated Bylaws, as currently in effect
10.1*	2013 Equity Incentive Plan
10.2*	Translation of Chinese form of RMB Working Capital Loan Agreement between Global Technology Inc. and China Construction Bank
10.3*	Translation of Chinese lease agreement dated September 11, 2013 between the registrant and Admiral Overseas Corporation for space on 5F, No.700, Zhongjheng Rd., Zhonghe District, New Taipei City 23552, Taiwan (R.O.C.)
10.4*	Translation of Chinese Amendment to Office Lease Agreement dated August 28, 2013 between the registrant and Admiral Overseas Corporation for space on 4F, No.700, Zhongjheng Rd., Zhonghe District, New Taipei City 23552, Taiwan (R.O.C.)
10.5*	Translation of Chinese Amendment to Office Lease Agreement dated August 28, 2013 between the registrant and Admiral Overseas Corporation for space on 6-7F, No.700, Zhongjheng Rd., Zhonghe District, New Taipei City 23552, Taiwan (R.O.C.)
10.6*	Translation of Chinese form of USD Trust Receipt Loan Agreement between Global Technology Inc. and China Construction Bank
31.1*	Certification of Chief Executive Officer pursuant to Exchange Act Rule, 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\
31.2*	Certification of Chief Financial Officer pursuant to Exchange Act Rule, 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1*	Certification pursuant to 18 U.S.C. 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, by Chief Executive Officer and Chief Financial Officer
101.INS**	XBRL Instance Document.
101.SCH**	XBRL Taxonomy Extension Schema Document.
101.CAL**	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB**	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document.

\* Filed herewith.

\*\* XBRL (Extensible Business Reporting Language) information is furnished and not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Exchange Act of 1933, as amended, is deemed not filed for purpose of Section 18 of the Securities Exchange Act of 1934, as amended, and is not otherwise subject to liability under these Sections.

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**APPLIED OPTOELECTRONICS, INC.**

A Delaware corporation

Applied Optoelectronics, Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), hereby certifies as follows:

1. The name of the Corporation is Applied Optoelectronics, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was March 25, 2013 (the “**Original Certificate**”). The name under which the Corporation filed the Original Certificate was Applied Optoelectronics, Inc.
2. This Amended and Restated Certificate of Incorporation (the “**Certificate**”) amends, restates and integrates the provisions of the Original Certificate, as it has been subsequently amended (the “**Amended and Restated Certificate**”), and was duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (the “**DGCL**”).
3. The text of the Amended and Restated Certificate is hereby amended and restated in its entirety to provide as herein set forth in full.

ARTICLE I

The name of the Corporation is Applied Optoelectronics, Inc.

ARTICLE II

The address of the Corporation’s registered office in the State of Delaware is The Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV  
CAPITAL STOCK

The total number of shares of capital stock which the Corporation shall have authority to issue is 50,000,000, of which (i) 45,000,000 shares shall be a class designated as common stock, par value \$0.001 per share (the “**Common Stock**”), and (ii) 5,000,000 shares shall be a class designated as undesignated preferred stock, par value \$0.001 per share (the “**Undesignated Preferred Stock**”).

Except as otherwise provided in any certificate of designations of any series of Undesignated Preferred Stock, the number of authorized shares of the class of Common Stock or Undesignated Preferred Stock may from time to time be increased or decreased (but not below the number of shares of such class outstanding) by the affirmative vote of the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation irrespective of the provisions of Section 242(b)(2) of the DGCL.

The powers, preferences and rights of, and the qualifications, limitations and restrictions upon, each class or series of stock shall be determined in accordance with, or as set forth below in, this Article IV.

#### A. COMMON STOCK

Subject to all the rights, powers and preferences of the Undesignated Preferred Stock and except as provided by law or in this Certificate (or in any certificate of designations of any series of Undesignated Preferred Stock):

(a) the holders of the Common Stock shall have the exclusive right to vote for the election of directors of the Corporation (the “**Directors**”) and on all other matters requiring stockholder action, each outstanding share entitling the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate (or on any amendment to a certificate of designations of any series of Undesignated Preferred Stock) that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of Undesignated Preferred Stock if the holders of such affected series of Undesignated Preferred Stock are entitled to vote, either separately or together with the holders of one or more other such series, on such amendment pursuant to this Certificate (or pursuant to a certificate of designations of any series of Undesignated Preferred Stock) or pursuant to the DGCL;

(b) dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the Corporation legally available for the payment of dividends, but only when and as declared by the Board of Directors or any authorized committee thereof; and

(c) upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the net assets of the Corporation shall be distributed pro rata to the holders of the Common Stock.

## B. UNDESIGNATED PREFERRED STOCK

The Board of Directors or any authorized committee thereof is expressly authorized, to the fullest extent permitted by law, to provide by resolution or resolutions for, out of the unissued shares of Undesignated Preferred Stock, the issuance of the shares of Undesignated Preferred Stock in one or more series of such stock, and by filing a certificate of designations pursuant to applicable law of the State of Delaware, to establish or change from time to time the number of shares of each such series, and to fix the designations, powers, including voting powers, full or limited, or no voting powers, preferences and the relative, participating, optional or other special rights of the shares of each series and any qualifications, limitations and restrictions thereof.

### ARTICLE V STOCKHOLDER ACTION

1. Action without Meeting. Any action required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders and may not be taken or effected by a written consent of stockholders in lieu thereof.

2. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock, special meetings of the stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office, and special meetings of stockholders may not be called by any other person or persons. Only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders of the Corporation.

### ARTICLE VI DIRECTORS

1. General. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided herein or required by law.

2. Election of Directors. Election of Directors need not be by written ballot unless the By-laws of the Corporation (the "**By-laws**") shall so provide.

3. Number of Directors; Term of Office. The number of Directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The Directors, other than those who may be elected by the holders of any series of Undesignated Preferred Stock, shall be classified, with respect to the term for which they severally hold office, into three classes. The initial Class I Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2014, the initial Class II Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2015, and the initial Class III Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2016. At each annual meeting of stockholders, Directors elected to succeed those Directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. Notwithstanding the foregoing, the Directors elected to each class shall hold office until their successors are duly elected and qualified or until their earlier resignation, death or removal.

Notwithstanding the foregoing, whenever, pursuant to the provisions of Article IV of this Certificate, the holders of any one or more series of Undesignated Preferred Stock shall have the right, voting separately as a series or together with holders of other such series, to elect Directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate and any certificate of designations applicable to such series.

4. Vacancies. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors and to fill vacancies in the Board of Directors relating thereto, any and all vacancies in the Board of Directors, however occurring, including, without limitation, by reason of an increase in the size of the Board of Directors, or the death, resignation, disqualification or removal of a Director, shall be filled solely and exclusively by the affirmative vote of a majority of the remaining Directors then in office, even if less than a quorum of the Board of Directors, and not by the stockholders. Any Director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been duly elected and qualified or until his or her earlier resignation, death or removal. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors, when the number of Directors is increased or decreased, the Board of Directors shall, subject to Article VI.3 hereof, determine the class or classes to which the increased or decreased number of Directors shall be apportioned; provided, however, that no decrease in the number of Directors shall shorten the term of any incumbent Director. In the event of a vacancy in the Board of Directors, the remaining Directors, except as otherwise provided by law, shall exercise the powers of the full Board of Directors until the vacancy is filled.

5. Removal. Subject to the rights, if any, of any series of Undesignated Preferred Stock to elect Directors and to remove any Director whom the holders of any such series have the right to elect, any Director (including persons elected by Directors to fill vacancies in the Board of Directors) may be removed from office (i) only with cause and (ii) only by the affirmative vote of the holders of 66 2/3% or more of the outstanding shares of capital stock then entitled to vote at an election of Directors. At least forty-five (45) days prior to any annual or special meeting of stockholders at which it is proposed that any Director be removed from office, written notice of such proposed removal and the alleged grounds thereof shall be sent to the Director whose removal will be considered at the meeting.

ARTICLE VII  
LIMITATION OF LIABILITY

A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL or (d) for any transaction from which the Director derived an improper personal benefit. If the DGCL is amended after the effective date of this Certificate to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any amendment, repeal or modification of this Article VII by either of (i) the stockholders of the Corporation or (ii) an amendment to the DGCL, shall not adversely affect any right or protection existing at the time of such amendment, repeal or modification with respect to any acts or omissions occurring before such amendment, repeal or modification of a person serving as a Director at the time of such amendment, repeal or modification.

ARTICLE VIII  
EXCLUSIVE JURISDICTION OF DELAWARE COURTS

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's Certificate of Incorporation or By-laws, or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article VIII.

ARTICLE IX  
AMENDMENT OF BY-LAWS

1. Amendment by Directors. Except as otherwise provided by law, the By-laws of the Corporation may be amended or repealed by the Board of Directors by the affirmative vote of a majority of the Directors then in office.

2. Amendment by Stockholders. The By-laws of the Corporation may be amended or repealed at any annual meeting of stockholders, or special meeting of stockholders called for such purpose, by the affirmative vote of at least 66 2/3% of the outstanding shares of capital stock entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares of capital stock entitled to vote on such amendment or repeal, voting together as a single class.

ARTICLE X  
AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend or repeal this Certificate in the manner now or hereafter prescribed by statute and this Certificate, and all rights conferred upon stockholders herein are granted subject to this reservation. Whenever any vote of the holders of capital stock of the Corporation is required to amend or repeal any provision of this Certificate, and in addition to any other vote of holders of capital stock that is required by this Certificate or by law, such amendment or repeal shall require the affirmative vote of the majority of the outstanding shares of capital stock entitled to vote on such amendment or repeal, and the affirmative vote of the majority of the outstanding shares of each class entitled to vote thereon as a class, at a duly constituted meeting of stockholders called expressly for such purpose; provided, however, that the affirmative vote of not less than 66 2/3% of the outstanding shares of capital stock entitled to vote on such amendment or repeal, and the affirmative vote of not less than 66 2/3% of the outstanding shares of each class entitled to vote thereon as a class, shall be required to amend or repeal any provision of Article V, Article VI, Article VII, Article VIII, Article IX or Article X of this Certificate.

THIS AMENDED AND RESTATED CERTIFICATE OF INCORPORATION is executed as of this 1st day of October, 2013.

/s/ Lin, Chih-Hsiang (Thompson)  
Lin, Chih-Hsiang (Thompson)  
Chief Executive Officer and President

**AMENDED AND RESTATED**

**BY-LAWS**

**OF**

**APPLIED OPTOELECTRONICS, INC.**

(the “Corporation”)

ARTICLE I  
Stockholders

SECTION 1. Annual Meeting. The annual meeting of stockholders (any such meeting being referred to in these By-laws as an “**Annual Meeting**”) shall be held at the hour, date and place within or without the United States which is fixed by the Board of Directors, which time, date and place may subsequently be changed at any time by vote of the Board of Directors. If no Annual Meeting has been held for a period of thirteen (13) months after the Corporation’s last Annual Meeting, a special meeting in lieu thereof may be held, and such special meeting shall have, for the purposes of these By-laws or otherwise, all the force and effect of an Annual Meeting. Any and all references hereafter in these By-laws to an Annual Meeting or Annual Meetings also shall be deemed to refer to any special meeting(s) in lieu thereof.

SECTION 2. Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be brought before an Annual Meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this By-law, who is entitled to vote at the meeting, who is present (in person or by proxy) at the meeting and who complies with the notice procedures set forth in this By-law as to such nomination or business. For the avoidance of doubt, the foregoing clause (ii) shall be the exclusive means for a stockholder to bring nominations or business properly before an Annual Meeting (other than matters properly brought under Rule 14a-8 or Rule 14a-11 (or any successor rules) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)), and such stockholder must comply with the notice and other procedures set forth in Article I, Section 2(a)(2) and (3) of this By-law to bring such nominations or business properly before an Annual Meeting. In addition to the other requirements set forth in this By-law, for any proposal of business to be considered at an Annual Meeting, it must be a proper subject for action by stockholders of the Corporation under Delaware law.

(2) For nominations or other business to be properly brought before an Annual Meeting by a stockholder pursuant to clause (ii) of Article I, Section 2(a)(1) of this By-law, the stockholder must (i) have given Timely Notice (as defined below) thereof in writing to the Secretary of the Corporation, (ii) have provided any updates or supplements to such notice at the times and in the forms required by this By-law and (iii) together with the beneficial owner(s), if any, on whose behalf the nomination or business proposal is made, have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) required by this By-law. To be timely, a stockholder's written notice shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the one-year anniversary of the preceding year's Annual Meeting; provided, however, that in the event the Annual Meeting is first convened more than thirty (30) days before or more than sixty (60) days after such anniversary date, or if no Annual Meeting were held in the preceding year, notice by the stockholder to be timely must be received by the Secretary of the Corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made (such notice within such time periods shall be referred to as "**Timely Notice**"). Notwithstanding anything to the contrary provided herein, for the first Annual Meeting following the initial public offering of common stock of the Corporation, a stockholder's notice shall be timely if received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such Annual Meeting is first made or sent by the Corporation. Such stockholder's Timely Notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest in such business of each Proposing Person (as defined below);

(C) (i) the name and address of the stockholder giving the notice, as they appear on the Corporation's books, and the names and addresses of the other Proposing Persons (if any) and (ii) as to each Proposing Person, the following information: (a) the class or series and number of all shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially or of record by such Proposing Person or any of its affiliates or associates (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), including any shares of any class or series of capital stock of the Corporation as to which such Proposing Person or any of its affiliates or associates has a right to acquire beneficial ownership at any time in the future, (b) all Synthetic Equity Interests (as defined below) in which such Proposing Person or any of its affiliates or associates, directly or indirectly, holds an interest including a description of the material terms of each such Synthetic Equity Interest, including without limitation, identification of the counterparty to each such Synthetic Equity Interest and disclosure, for each such Synthetic Equity Interest, as to (x) whether or not such Synthetic Equity Interest conveys any voting rights, directly or indirectly, in such shares to such Proposing Person, (y) whether or not such Synthetic Equity Interest is required to be, or is capable of being, settled through delivery of such shares and (z) whether or not such Proposing Person and/or, to the extent known, the counterparty to such Synthetic Equity Interest has entered into other transactions that hedge or mitigate the economic effect of such Synthetic Equity Interest, (c) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to, directly or indirectly, vote any shares of any class or series of capital stock of the Corporation, (d) any rights to dividends or other distributions on the shares of any class or series of capital stock of the Corporation, directly or indirectly, owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, and (e) any performance-related fees (other than an asset based fee) that such Proposing Person, directly or indirectly, is entitled to based on any increase or decrease in the value of shares of any class or series of capital stock of the Corporation or any Synthetic Equity Interests (the disclosures to be made pursuant to the foregoing clauses (a) through (e) are referred to, collectively, as "**Material Ownership Interests**") and (iii) a description of the material terms of all agreements, arrangements or understandings (whether or not in writing) entered into by any Proposing Person or any of its affiliates or associates with any other person for the purpose of acquiring, holding, disposing or voting of any shares of any class or series of capital stock of the Corporation;

(D) (i) a description of all agreements, arrangements or understandings by and among any of the Proposing Persons, or by and among any Proposing Persons and any other person (including with any proposed nominee(s)), pertaining to the nomination(s) or other business proposed to be brought before the meeting of stockholders (which description shall identify the name of each other person who is party to such an agreement, arrangement or understanding), and (ii) identification of the names and addresses of other stockholders (including beneficial owners) known by any of the Proposing Persons to support such nominations or other business proposal(s), and to the extent known the class and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s); and

(E) a statement whether or not the stockholder giving the notice and/or the other Proposing Person(s), if any, will deliver a proxy statement and form of proxy to holders of, in the case of a business proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to approve the proposal or, in the case of a nomination or nominations, at least the percentage of voting power of all of the shares of capital stock of the Corporation reasonably believed by such Proposing Person to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder (such statement, the "**Solicitation Statement**").

For purposes of this Article I of these By-laws, the term "**Proposing Person**" shall mean the following persons: (i) the stockholder of record providing the notice of nominations or business proposed to be brought before a stockholders' meeting, and (ii) the beneficial owner(s), if different, on whose behalf the nominations or business proposed to be brought before a stockholders' meeting is made. For purposes of this Section 2 of Article I of these By-laws, the term "**Synthetic Equity Interest**" shall mean any transaction, agreement or arrangement (or series of transactions, agreements or arrangements), including, without limitation, any derivative, swap, hedge, repurchase or so-called "stock borrowing" agreement or arrangement, the purpose or effect of which is to, directly or indirectly: (a) give a person or entity economic benefit and/or risk similar to ownership of shares of any class or series of capital stock of the Corporation, in whole or in part, including due to the fact that such transaction, agreement or arrangement provides, directly or indirectly, the opportunity to profit or avoid a loss from any increase or decrease in the value of any shares of any class or series of capital stock of the Corporation, (b) mitigate loss to, reduce the economic risk of or manage the risk of share price changes for, any person or entity with respect to any shares of any class or series of capital stock of the Corporation, (c) otherwise provide in any manner the opportunity to profit or avoid a loss from any decrease in the value of any shares of any class or series of capital stock of the Corporation, or (d) increase or decrease the voting power of any person or entity with respect to any shares of any class or series of capital stock of the Corporation.

(3) A stockholder providing Timely Notice of nominations or business proposed to be brought before an Annual Meeting shall further update and supplement such notice, if necessary, so that the information (including, without limitation, the Material Ownership Interests information) provided or required to be provided in such notice pursuant to this By-law shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to such Annual Meeting, and such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the fifth (5th) business day after the record date for the Annual Meeting (in the case of the update and supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the Annual Meeting (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting).

(4) Notwithstanding anything in the second sentence of Article I, Section 2(a)(2) of this By-law to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with the second sentence of Article I, Section 2(a)(2), a stockholder's notice required by this By-law shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) General.

(1) Only such persons who are nominated in accordance with the provisions of this By-law or in accordance with Rule 14a-11 under the Exchange Act shall be eligible for election and to serve as directors and only such business shall be conducted at an Annual Meeting as shall have been brought before the meeting in accordance with the provisions of this By-law or in accordance with Rule 14a-8 under the Exchange Act. The Board of Directors or a designated committee thereof shall have the power to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the provisions of this By-law. If neither the Board of Directors nor such designated committee makes a determination as to whether any stockholder proposal or nomination was made in accordance with the provisions of this By-law, the presiding officer of the Annual Meeting shall have the power and duty to determine whether the stockholder proposal or nomination was made in accordance with the provisions of this By-law. If the Board of Directors or a designated committee thereof or the presiding officer, as applicable, determines that any stockholder proposal or nomination was not made in accordance with the provisions of this By-law, such proposal or nomination shall be disregarded and shall not be presented for action at the Annual Meeting.

(2) Except as otherwise required by law, nothing in this Article I, Section 2 shall obligate the Corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the Corporation or the Board of Directors information with respect to any nominee for director or any other matter of business submitted by a stockholder.

(3) Notwithstanding the foregoing provisions of this Article I, Section 2, if the nominating or proposing stockholder (or a qualified representative of the stockholder) does not appear at the Annual Meeting to present a nomination or any business, such nomination or business shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Article I, Section 2, to be considered a qualified representative of the proposing stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, to the presiding officer at the meeting of stockholders.

(4) For purposes of this By-law, “**public announcement**” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(5) Notwithstanding the foregoing provisions of this By-law, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this By-law. Nothing in this By-law shall be deemed to affect any rights of (i) stockholders to have nominations or proposals included in the Corporation’s proxy statement pursuant to Rule 14a-8 or Rule 14a-11 (or any successor rules), as applicable, under the Exchange Act and, to the extent required by such rule, have such nominations or proposals considered and voted on at an Annual Meeting or (ii) the holders of any series of Undesignated Preferred Stock to elect directors under specified circumstances.

### SECTION 3. Special Meetings.

(a) Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock, special meetings of the stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office.

(b) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors. The notice of such special meeting shall include the purpose for which the meeting is called. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder who is a stockholder of record of the Corporation at the time of giving of notice provided for in this paragraph, who shall be entitled to vote at the meeting, who is present (in person or by proxy) at the meeting and who complies with the notice and other procedures (including the content of such notice and the procedures to update and supplement such notice) applicable to nominations at Annual Meetings set forth in Article I, Section 2 of these By-laws; provided, however, that for such notice to be considered timely for purposes of this Section 3, such notice shall have been received by the Secretary at the principal executive offices of the Corporation no later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. If the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, the provisions of Article I, Section 2 of these By-laws applicable to director nominations at an Annual Meeting shall apply to this Section 3 as if such special meeting were an Annual Meeting (subject to the proviso included in the immediately preceding sentence). A person shall not be eligible for election or reelection as a director at a special meeting unless the person is nominated (i) by or at the direction of the Board of Directors or (ii) by a stockholder of record in accordance with the notice and other procedures set forth in this Article I.

(c) For the avoidance of doubt, notwithstanding the foregoing provisions of this Section 3, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 3. Nothing in this Section 3 shall be deemed to affect any rights of (i) stockholders to have proposals included in the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor rule) under the Exchange Act and, to the extent required by such rule, have such proposals considered and voted on at a special meeting of stockholders or (ii) the holders of any series of Undesignated Preferred Stock to elect directors under specified circumstances.

(d) Notwithstanding anything contained in this Section 3 to the contrary, if the proposing stockholder or its qualified representative (as such term is defined in Article I, Section 2(b)(3) of these By-Laws) does not appear at the special meeting of stockholders of the Corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

#### SECTION 4. Notice of Meetings; Adjournments.

(a) A notice of each Annual Meeting stating the hour, date and place, if any, of such Annual Meeting and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given not less than ten (10) days nor more than sixty (60) days before the Annual Meeting, to each stockholder entitled to vote thereat by delivering such notice to such stockholder or by mailing it, postage prepaid, addressed to such stockholder at the address of such stockholder as it appears on the Corporation's stock transfer books. Without limiting the manner by which notice may otherwise be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law ("DGCL").

(b) Notice of all special meetings of stockholders shall be given in the same manner as provided for Annual Meetings, except that the notice of all special meetings shall state the purpose or purposes for which the meeting has been called.

(c) Notice of an Annual Meeting or special meeting of stockholders need not be given to a stockholder if a waiver of notice is executed, or waiver of notice by electronic transmission is provided, before or after such meeting by such stockholder or if such stockholder attends such meeting, unless such attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

(d) The Board of Directors may postpone and reschedule any previously scheduled Annual Meeting or special meeting of stockholders and any record date with respect thereto, regardless of whether any notice or public disclosure with respect to any such meeting has been sent or made pursuant to Section 2 of this Article I of these By-laws or otherwise. In no event shall the public announcement of an adjournment, postponement or rescheduling of any previously scheduled meeting of stockholders commence a new time period for the giving of a stockholder's notice under this Article I of these By-laws.

(e) When any meeting is convened, the presiding officer may adjourn the meeting if (i) no quorum is present for the transaction of business, (ii) the Board of Directors determines that adjournment is necessary or appropriate to enable the stockholders to consider fully information which the Board of Directors determines has not been made sufficiently or timely available to stockholders, or (iii) the Board of Directors determines that adjournment is otherwise in the best interests of the Corporation. When any Annual Meeting or special meeting of stockholders is adjourned to another hour, date or place, notice need not be given of the adjourned meeting other than an announcement at the meeting at which the adjournment is taken of the hour, date and place, if any, to which the meeting is adjourned and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting; provided, however, that if the adjournment is for more than thirty (30) days from the meeting date, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting shall be given to each stockholder of record entitled to vote thereat and each stockholder who, by law or under the Certificate of Incorporation of the Corporation (as the same may hereafter be amended and/or restated, the "**Certificate**") or these By-laws, is entitled to such notice.

SECTION 5. Quorum. A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at any meeting of stockholders. If less than a quorum is present at a meeting, the holders of voting stock representing a majority of the voting power present at the meeting or the presiding officer may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice, except as provided in Section 4 of this Article I. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. The stockholders present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

SECTION 6. Voting and Proxies. Stockholders shall have one vote for each share of stock entitled to vote owned by them of record according to the stock ledger of the Corporation as of the record date, unless otherwise provided by law or by the Certificate. Stockholders may vote either (i) in person, (ii) by written proxy or (iii) by a transmission permitted by Section 212(c) of the DGCL. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission permitted by Section 212(c) of the DGCL may be substituted for or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. Proxies shall be filed in accordance with the procedures established for the meeting of stockholders. Except as otherwise limited therein or as otherwise provided by law, proxies authorizing a person to vote at a specific meeting shall entitle the persons authorized thereby to vote at any adjournment of such meeting, but they shall not be valid after final adjournment of such meeting. A proxy with respect to stock held in the name of two or more persons shall be valid if executed by or on behalf of any one of them unless at or prior to the exercise of the proxy the Corporation receives a specific written notice to the contrary from any one of them.

SECTION 7. Action at Meeting. When a quorum is present at any meeting of stockholders, any matter before any such meeting (other than an election of a director or directors) shall be decided by a majority of the votes properly cast for and against such matter, except where a larger vote is required by law, by the Certificate or by these By-laws. Any election of directors by stockholders shall be determined by a plurality of the votes properly cast on the election of directors.

SECTION 8. Stockholder Lists. The Secretary or an Assistant Secretary (or the Corporation's transfer agent or other person authorized by these By-laws or by law) shall prepare and make, at least ten (10) days before every Annual Meeting or special meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for a period of at least ten (10) days prior to the meeting in the manner provided by law. The list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law.

SECTION 9. Presiding Officer. The Board of Directors shall designate a representative to preside over all Annual Meetings or special meetings of stockholders, provided that if the Board of Directors does not so designate such a presiding officer, then the Chairman of the Board, if one is elected, shall preside over such meetings. If the Board of Directors does not so designate such a presiding officer and there is no Chairman of the Board or the Chairman of the Board is unable to so preside or is absent, then the Chief Executive Officer, if one is elected, shall preside over such meetings, provided further that if there is no Chief Executive Officer or the Chief Executive Officer is unable to so preside or is absent, then the President shall preside over such meetings. The presiding officer at any Annual Meeting or special meeting of stockholders shall have the power, among other things, to adjourn such meeting at any time and from time to time, subject to Sections 4 and 5 of this Article I. The order of business and all other matters of procedure at any meeting of the stockholders shall be determined by the presiding officer.

SECTION 10. Inspectors of Elections. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the presiding officer shall appoint one or more inspectors to act at the meeting. Any inspector may, but need not, be an officer, employee or agent of the Corporation. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall perform such duties as are required by the DGCL, including the counting of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. The presiding officer may review all determinations made by the inspectors, and in so doing the presiding officer shall be entitled to exercise his or her sole judgment and discretion and he or she shall not be bound by any determinations made by the inspectors. All determinations by the inspectors and, if applicable, the presiding officer, shall be subject to further review by any court of competent jurisdiction.

ARTICLE II  
Directors

SECTION 1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided by the Certificate or required by law.

SECTION 2. Number and Terms. The number of directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The directors shall hold office in the manner provided in the Certificate.

SECTION 3. Qualification. No director need be a stockholder of the Corporation.

SECTION 4. Vacancies. Vacancies in the Board of Directors shall be filled in the manner provided in the Certificate.

SECTION 5. Removal. Directors may be removed from office only in the manner provided in the Certificate.

SECTION 6. Resignation. A director may resign at any time by giving written notice to the Chairman of the Board, if one is elected, the President or the Secretary. A resignation shall be effective upon receipt, unless the resignation otherwise provides.

SECTION 7. Regular Meetings. The regular annual meeting of the Board of Directors shall be held, without notice other than this Section 7, on the same date and at the same place as the Annual Meeting following the close of such meeting of stockholders. Other regular meetings of the Board of Directors may be held at such hour, date and place as the Board of Directors may by resolution from time to time determine and publicize by means of reasonable notice given to any director who is not present at the meeting at which such resolution is adopted.

SECTION 8. Special Meetings. Special meetings of the Board of Directors may be called, orally or in writing, by or at the request of a majority of the directors, the Chairman of the Board, if one is elected, or the President. The person calling any such special meeting of the Board of Directors may fix the hour, date and place thereof.

SECTION 9. Notice of Meetings. Notice of the hour, date and place of all special meetings of the Board of Directors shall be given to each director by the Secretary or an Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the Chairman of the Board, if one is elected, or the President or such other officer designated by the Chairman of the Board, if one is elected, or the President. Notice of any special meeting of the Board of Directors shall be given to each director in person, by telephone, or by facsimile, electronic mail or other form of electronic communication, sent to his or her business or home address, at least twenty-four (24) hours in advance of the meeting, or by written notice mailed to his or her business or home address, at least forty-eight (48) hours in advance of the meeting. Such notice shall be deemed to be delivered when hand-delivered to such address, read to such director by telephone, deposited in the mail so addressed, with postage thereon prepaid if mailed, dispatched or transmitted if sent by facsimile transmission or by electronic mail or other form of electronic communications. A written waiver of notice signed before or after a meeting by a director and filed with the records of the meeting shall be deemed to be equivalent to notice of the meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because such meeting is not lawfully called or convened. Except as otherwise required by law, by the Certificate or by these By-laws, neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

SECTION 10. Quorum. At any meeting of the Board of Directors, a majority of the total number of directors shall constitute a quorum for the transaction of business, but if less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice. Any business which might have been transacted at the meeting as originally noticed may be transacted at such adjourned meeting at which a quorum is present. For purposes of this section, the total number of directors includes any unfilled vacancies on the Board of Directors.

SECTION 11. Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of the directors present shall constitute action by the Board of Directors, unless otherwise required by law, by the Certificate or by these By-laws.

SECTION 12. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the records of the meetings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such consent shall be treated as a resolution of the Board of Directors for all purposes.

SECTION 13. Manner of Participation. Directors may participate in meetings of the Board of Directors by means of conference telephone or other communications equipment by means of which all directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting for purposes of these By-laws.

SECTION 14. Presiding Director. The Board of Directors shall designate a representative to preside over all meetings of the Board of Directors, provided that if the Board of Directors does not so designate such a presiding director or such designated presiding director is unable to so preside or is absent, then the Chairman of the Board, if one is elected, shall preside over all meetings of the Board of Directors. If both the designated presiding director, if one is so designated, and the Chairman of the Board, if one is elected, are unable to preside or are absent, the Board of Directors shall designate an alternate representative to preside over a meeting of the Board of Directors.

SECTION 15. Committees. The Board of Directors, by vote of a majority of the directors then in office, may elect one or more committees, including, without limitation, a Compensation Committee, a Nominating & Corporate Governance Committee and an Audit Committee, and may delegate thereto some or all of its powers except those which by law, by the Certificate or by these By-laws may not be delegated. Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but unless otherwise provided by the Board of Directors or in such rules, its business shall be conducted so far as possible in the same manner as is provided by these By-laws for the Board of Directors. All members of such committees shall hold such offices at the pleasure of the Board of Directors. The Board of Directors may abolish any such committee at any time. Any committee to which the Board of Directors delegates any of its powers or duties shall keep records of its meetings and shall report its action to the Board of Directors.

SECTION 16. Compensation of Directors. Directors shall receive such compensation for their services as shall be determined by a majority of the Board of Directors, or a designated committee thereof.

### ARTICLE III Officers

SECTION 1. Enumeration. The officers of the Corporation shall consist of a President, a Treasurer, a Secretary and such other officers, including, without limitation, a Chairman of the Board of Directors, a Chief Executive Officer, a Chief Financial Officer and one or more Vice Presidents (including Executive Vice Presidents or Senior Vice Presidents), Assistant Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board of Directors may determine.

SECTION 2. Election. At the regular annual meeting of the Board of Directors following the Annual Meeting, the Board of Directors shall elect the President, the Treasurer and the Secretary. Other officers may be elected by the Board of Directors at such regular annual meeting of the Board of Directors or at any other regular or special meeting.

SECTION 3. Qualification. No officer need be a stockholder or a director. Any person may occupy more than one office of the Corporation at any time.

SECTION 4. Tenure. Except as otherwise provided by the Certificate or by these By-laws, each of the officers of the Corporation shall hold office until the regular annual meeting of the Board of Directors following the next Annual Meeting and until his or her successor is elected and qualified or until his or her earlier resignation or removal.

SECTION 5. Resignation. Any officer may resign by delivering his or her written resignation to the Corporation addressed to the President or the Secretary, and such resignation shall be effective upon receipt, unless the resignation otherwise provides.

SECTION 6. Removal. Except as otherwise provided by law, the Board of Directors may remove any officer with or without cause by the affirmative vote of a majority of the directors then in office.

SECTION 7. Absence or Disability. In the event of the absence or disability of any officer, the Board of Directors may designate another officer to act temporarily in place of such absent or disabled officer.

SECTION 8. Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

SECTION 9. President. The President shall, subject to the direction of the Board of Directors, have such powers and shall perform such duties as the Board of Directors may from time to time designate.

SECTION 10. Chairman of the Board. The Chairman of the Board, if one is elected, shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

SECTION 11. Chief Executive Officer. The Chief Executive Officer, if one is elected, shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

SECTION 12. Vice Presidents and Assistant Vice Presidents. Any Vice President (including any Executive Vice President or Senior Vice President) and any Assistant Vice President shall have such powers and shall perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

SECTION 13. Treasurer and Assistant Treasurers. The Treasurer shall, subject to the direction of the Board of Directors and except as the Board of Directors or the Chief Executive Officer may otherwise provide, have general charge of the financial affairs of the Corporation and shall cause to be kept accurate books of account. The Treasurer shall have custody of all funds, securities, and valuable documents of the Corporation. He or she shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. Any Assistant Treasurer shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

SECTION 14. Secretary and Assistant Secretaries. The Secretary shall record all the proceedings of the meetings of the stockholders and the Board of Directors (including committees of the Board of Directors) in books kept for that purpose. In his or her absence from any such meeting, a temporary secretary chosen at the meeting shall record the proceedings thereof. The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the Corporation). The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary shall have authority to affix it to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or that of an Assistant Secretary. The Secretary shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. In the absence of the Secretary, any Assistant Secretary may perform his or her duties and responsibilities. Any Assistant Secretary shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

SECTION 15. Other Powers and Duties. Subject to these By-laws and to such limitations as the Board of Directors may from time to time prescribe, the officers of the Corporation shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as from time to time may be conferred by the Board of Directors or the Chief Executive Officer.

#### ARTICLE IV Capital Stock

SECTION 1. Certificates of Stock. Each stockholder shall be entitled to a certificate of the capital stock of the Corporation in such form as may from time to time be prescribed by the Board of Directors. Such certificate shall be signed by the Chairman of the Board, the President, the Chief Executive Officer or a Vice President, and by the Chief Financial Officer, the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary. The Corporation seal and the signatures by the Corporation's officers, the transfer agent or the registrar may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law. Notwithstanding anything to the contrary provided in these Bylaws, the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares (except that the foregoing shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation), and by the approval and adoption of these Bylaws the Board of Directors has determined that all classes or series of the Corporation's stock may be uncertificated, whether upon original issuance, re-issuance, or subsequent transfer.

SECTION 2. Transfers. Subject to any restrictions on transfer and unless otherwise provided by the Board of Directors, shares of stock that are represented by a certificate may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate theretofore properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Shares of stock that are not represented by a certificate may be transferred on the books of the Corporation by submitting to the Corporation or its transfer agent such evidence of transfer and following such other procedures as the Corporation or its transfer agent may require.

SECTION 3. Record Holders. Except as may otherwise be required by law, by the Certificate or by these By-laws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these By-laws.

SECTION 4. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (a) in the case of determination of stockholders entitled to vote at any meeting of stockholders, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting and (b) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (ii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 5. Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock of the Corporation, a duplicate certificate may be issued in place thereof, upon such terms as the Board of Directors may prescribe.

ARTICLE V  
Indemnification

SECTION 1. Definitions. For purposes of this Article:

(a) **“Corporate Status”** describes the status of a person who is serving or has served (i) as a Director of the Corporation, (ii) as an Officer of the Corporation, (iii) as a Non-Officer Employee of the Corporation, or (iv) as a director, partner, trustee, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, foundation, association, organization or other legal entity which such person is or was serving at the request of the Corporation. For purposes of this Section 1(a), a Director, Officer or Non-Officer Employee of the Corporation who is serving or has served as a director, partner, trustee, officer, employee or agent of a Subsidiary shall be deemed to be serving at the request of the Corporation. Notwithstanding the foregoing, “Corporate Status” shall not include the status of a person who is serving or has served as a director, officer, employee or agent of a constituent corporation absorbed in a merger or consolidation transaction with the Corporation with respect to such person’s activities prior to said transaction, unless specifically authorized by the Board of Directors or the stockholders of the Corporation;

(b) **“Director”** means any person who serves or has served the Corporation as a director on the Board of Directors of the Corporation;

(c) **“Disinterested Director”** means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director of the Corporation who is not and was not a party to such Proceeding;

(d) **“Expenses”** means all attorneys’ fees, retainers, court costs, transcript costs, fees of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), travel expenses, duplicating costs, printing and binding costs, costs of preparation of demonstrative evidence and other courtroom presentation aids and devices, costs incurred in connection with document review, organization, imaging and computerization, telephone charges, postage, delivery service fees, and all other disbursements, costs or expenses of the type customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or otherwise participating in, a Proceeding;

(e) **“Liabilities”** means judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement;

(f) **“Non-Officer Employee”** means any person who serves or has served as an employee or agent of the Corporation, but who is not or was not a Director or Officer;

(g) **“Officer”** means any person who serves or has served the Corporation as an officer of the Corporation appointed by the Board of Directors of the Corporation;

(h) **“Proceeding”** means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, inquiry, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative, arbitral or investigative; and

(i) **“Subsidiary”** shall mean any corporation, partnership, limited liability company, joint venture, trust or other entity of which the Corporation owns (either directly or through or together with another Subsidiary of the Corporation) either (i) a general partner, managing member or other similar interest or (ii) (A) fifty percent (50%) or more of the voting power of the voting capital equity interests of such corporation, partnership, limited liability company, joint venture or other entity, or (B) fifty percent (50%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other entity.

**SECTION 2. Indemnification of Directors and Officers.**

(a) Subject to the operation of Section 4 of this Article V of these By-laws, each Director and Officer shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), and to the extent authorized in this Section 2.

(1) Actions, Suits and Proceedings Other than By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses and Liabilities that are incurred or paid by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein (other than an action by or in the right of the Corporation), which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(2) Actions, Suits and Proceedings By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses that are incurred by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein by or in the right of the Corporation, which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made under this Section 2(a)(2) in respect of any claim, issue or matter as to which such Director or Officer shall have been finally adjudged by a court of competent jurisdiction to be liable to the Corporation, unless, and only to the extent that, the Court of Chancery or another court in which such Proceeding was brought shall determine upon application that, despite adjudication of liability, but in view of all the circumstances of the case, such Director or Officer is fairly and reasonably entitled to indemnification for such Expenses that such court deems proper.

(3) Survival of Rights. The rights of indemnification provided by Section 2 shall continue as to a Director or Officer after he or she has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors, administrators and personal representatives.

(4) Actions by Directors or Officers. Notwithstanding the foregoing, the Corporation shall indemnify any Director or Officer seeking indemnification in connection with a Proceeding initiated by such Director or Officer only if such Proceeding (including any parts of such Proceeding not initiated by such Director or Officer) was authorized in advance by the Board of Directors of the Corporation, unless such Proceeding was brought to enforce such Officer's or Director's rights to indemnification or, in the case of Directors, advancement of Expenses under these By-laws in accordance with the provisions set forth herein.

SECTION 3. Indemnification of Non-Officer Employees. Subject to the operation of Section 4 of this Article V of these By-laws, each Non-Officer Employee may, in the discretion of the Board of Directors of the Corporation, be indemnified by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against any or all Expenses and Liabilities that are incurred by such Non-Officer Employee or on such Non-Officer Employee's behalf in connection with any threatened, pending or completed Proceeding, or any claim, issue or matter therein, which such Non-Officer Employee is, or is threatened to be made, a party to or participant in by reason of such Non-Officer Employee's Corporate Status, if such Non-Officer Employee acted in good faith and in a manner such Non-Officer Employee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 3 shall exist as to a Non-Officer Employee after he or she has ceased to be a Non-Officer Employee and shall inure to the benefit of his or her heirs, personal representatives, executors and administrators. Notwithstanding the foregoing, the Corporation may indemnify any Non-Officer Employee seeking indemnification in connection with a Proceeding initiated by such Non-Officer Employee only if such Proceeding was authorized in advance by the Board of Directors of the Corporation.

SECTION 4. Determination. Unless ordered by a court, no indemnification shall be provided pursuant to this Article V to a Director, to an Officer or to a Non-Officer Employee unless a determination shall have been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal Proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made by (a) a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (b) a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum), (c) if there are no such Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

SECTION 5. Advancement of Expenses to Directors Prior to Final Disposition.

(a) The Corporation shall advance all Expenses incurred by or on behalf of any Director in connection with any Proceeding in which such Director is involved by reason of such Director's Corporate Status within thirty (30) days after the receipt by the Corporation of a written statement from such Director requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Director and shall be preceded or accompanied by an undertaking by or on behalf of such Director to repay any Expenses so advanced if it shall ultimately be determined that such Director is not entitled to be indemnified against such Expenses. Notwithstanding the foregoing, the Corporation shall advance all Expenses incurred by or on behalf of any Director seeking advancement of expenses hereunder in connection with a Proceeding initiated by such Director only if such Proceeding (including any parts of such Proceeding not initiated by such Director) was (i) authorized by the Board of Directors of the Corporation, or (ii) brought to enforce such Director's rights to indemnification or advancement of Expenses under these By-laws.

(b) If a claim for advancement of Expenses hereunder by a Director is not paid in full by the Corporation within thirty (30) days after receipt by the Corporation of documentation of Expenses and the required undertaking, such Director may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and if successful in whole or in part, such Director shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such advancement of Expenses under this Article V shall not be a defense to an action brought by a Director for recovery of the unpaid amount of an advancement claim and shall not create a presumption that such advancement is not permissible. The burden of proving that a Director is not entitled to an advancement of expenses shall be on the Corporation.

(c) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Director has not met any applicable standard for indemnification set forth in the DGCL.

SECTION 6. Advancement of Expenses to Officers and Non-Officer Employees Prior to Final Disposition.

(a) The Corporation may, at the discretion of the Board of Directors of the Corporation, advance any or all Expenses incurred by or on behalf of any Officer or any Non-Officer Employee in connection with any Proceeding in which such person is involved by reason of his or her Corporate Status as an Officer or Non-Officer Employee upon the receipt by the Corporation of a statement or statements from such Officer or Non-Officer Employee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Officer or Non-Officer Employee and shall be preceded or accompanied by an undertaking by or on behalf of such person to repay any Expenses so advanced if it shall ultimately be determined that such Officer or Non-Officer Employee is not entitled to be indemnified against such Expenses.

(b) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Officer or Non-Officer Employee has not met any applicable standard for indemnification set forth in the DGCL.

SECTION 7. Contractual Nature of Rights.

(a) The provisions of this Article V shall be deemed to be a contract between the Corporation and each Director and Officer entitled to the benefits hereof at any time while this Article V is in effect, in consideration of such person's past or current and any future performance of services for the Corporation. Neither amendment, repeal or modification of any provision of this Article V nor the adoption of any provision of the Certificate of Incorporation inconsistent with this Article V shall eliminate or reduce any right conferred by this Article V in respect of any act or omission occurring, or any cause of action or claim that accrues or arises or any state of facts existing, at the time of or before such amendment, repeal, modification or adoption of an inconsistent provision (even in the case of a proceeding based on such a state of facts that is commenced after such time), and all rights to indemnification and advancement of Expenses granted herein or arising out of any act or omission shall vest at the time of the act or omission in question, regardless of when or if any proceeding with respect to such act or omission is commenced. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article V shall continue notwithstanding that the person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

(b) If a claim for indemnification hereunder by a Director or Officer is not paid in full by the Corporation within sixty (60) days after receipt by the Corporation of a written claim for indemnification, such Director or Officer may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, such Director or Officer shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such indemnification under this Article V shall not be a defense to an action brought by a Director or Officer for recovery of the unpaid amount of an indemnification claim and shall not create a presumption that such indemnification is not permissible. The burden of proving that a Director or Officer is not entitled to indemnification shall be on the Corporation.

(c) In any suit brought by a Director or Officer to enforce a right to indemnification hereunder, it shall be a defense that such Director or Officer has not met any applicable standard for indemnification set forth in the DGCL.

SECTION 8. Non-Exclusivity of Rights. The rights to indemnification and to advancement of Expenses set forth in this Article V shall not be exclusive of any other right which any Director, Officer, or Non-Officer Employee may have or hereafter acquire under any statute, provision of the Certificate or these By-laws, agreement, vote of stockholders or Disinterested Directors or otherwise.

SECTION 9. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, Officer or Non-Officer Employee against any liability of any character asserted against or incurred by the Corporation or any such Director, Officer or Non-Officer Employee, or arising out of any such person's Corporate Status, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL or the provisions of this Article V.

SECTION 10. Other Indemnification. The Corporation's obligation, if any, to indemnify or provide advancement of Expenses to any person under this Article V as a result of such person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or enterprise (the "**Primary Indemnitor**"). Any indemnification or advancement of Expenses under this Article V owed by the Corporation as a result of a person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall only be in excess of, and shall be secondary to, the indemnification or advancement of Expenses available from the applicable Primary Indemnitor(s) and any applicable insurance policies.

ARTICLE VI  
Miscellaneous Provisions

SECTION 1. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

SECTION 2. Seal. The Board of Directors shall have power to adopt and alter the seal of the Corporation.

SECTION 3. Execution of Instruments. All deeds, leases, transfers, contracts, bonds, notes and other obligations to be entered into by the Corporation in the ordinary course of its business without director action may be executed on behalf of the Corporation by the Chairman of the Board, if one is elected, the President, the Chief Executive Officer, the Chief Financial Officer or the Treasurer or any other officer, employee or agent of the Corporation as the Board of Directors or the executive committee of the Board may authorize.

SECTION 4. Voting of Securities. Unless the Board of Directors otherwise provides, the Chairman of the Board, if one is elected, the President or the Treasurer may waive notice of and act on behalf of the Corporation, or appoint another person or persons to act as proxy or attorney in fact for the Corporation with or without discretionary power and/or power of substitution, at any meeting of stockholders or shareholders of any other corporation or organization, any of whose securities are held by the Corporation.

SECTION 5. Resident Agent. The Board of Directors may appoint a resident agent upon whom legal process may be served in any action or proceeding against the Corporation.

SECTION 6. Corporate Records. The original or attested copies of the Certificate, By-laws and records of all meetings of the incorporators, stockholders and the Board of Directors and the stock transfer books, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, may be kept outside the State of Delaware and shall be kept at the principal office of the Corporation, at an office of its counsel, at an office of its transfer agent or at such other place or places as may be designated from time to time by the Board of Directors.

SECTION 7. Certificate. All references in these By-laws to the Certificate shall be deemed to refer to the Amended and Restated Certificate of Incorporation of the Corporation, as amended and/or restated and in effect from time to time.

SECTION 8. Amendment of By-laws.

(a) Amendment by Directors. Except as provided otherwise by law, these By-laws may be amended or repealed by the Board of Directors by the affirmative vote of a majority of the directors then in office.

(b) Amendment by Stockholders. These By-laws may be amended or repealed at any Annual Meeting, or special meeting of stockholders called for such purpose in accordance with these By-Laws, by the affirmative vote of at least 66 2/3% of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class. Notwithstanding the foregoing, stockholder approval shall not be required unless mandated by the Certificate, these By-laws, or other applicable law.

SECTION 9. Notices. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

SECTION 10. Waivers. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in such a waiver.

Approved May 1, 2013 but effective as of October 1, 2013.

APPLIED OPTOELECTRONICS, INC.  
2013 EQUITY INCENTIVE PLAN

1. Purpose of the Plan. The purpose of the Plan is to: (i) attract and retain the best available personnel for positions of substantial responsibility, (ii) provide additional incentive to Employees, Directors and Consultants, and (iii) promote the success of the Company's business. The Plan permits the grant of Incentive Stock Options, Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Units, Performance Shares, and Other Stock Based Awards.

2. Definition. As used in this Plan, the following definitions shall apply:

(a) "**Administrator**" means the Board or any of its Committees that shall be administering the Plan, in accordance with Section 4 of the Plan.

(b) "**Applicable Laws**" means the requirements relating to the administration of equity-based awards or equity compensation plans under U.S. federal and state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Awards are, or shall be, granted under the Plan.

(c) "**Award**" means, individually or collectively, a grant under the Plan of Options, SARs, Restricted Stock, Restricted Stock Units, Performance Units, Performance Shares or Other Stock Based Awards.

(d) "**Award Agreement**" means the written or electronic agreement setting forth the terms and provisions applicable to each Award granted under the Plan. The Award Agreement is subject to the terms and conditions of the Plan.

(e) "**Awarded Stock**" means the Common Stock subject to an Award.

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

(g) "**Change in Control**" means, except as otherwise provided in the Award Agreement, the occurrence of any of the following events:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding voting securities;

(ii) the sale or disposition by the Company of all or substantially all of the Company's assets other than (A) the sale or disposition of all or substantially all of the assets of the Company to a person or persons who beneficially own, directly or indirectly, at least 50% or more of the combined voting power of the outstanding voting securities of the Company at the time of the sale or (B) pursuant to a spin-off type transaction, directly or indirectly, of such assets to the Company's stockholders;

(iii) A change in the composition of the Board occurring within a two-year period as a result of which fewer than a majority of the directors are Incumbent Directors. "Incumbent Directors" are directors who either (A) are Directors as of the effective date of the Plan, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); or

(iv) a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least 50% of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(h) "**Code**" means the Internal Revenue Code of 1986, as amended, and the U.S. Treasury regulations promulgated thereunder. Any reference to a section of the Code shall be a reference to any successor or amended section of the Code.

(i) "**Committee**" means a committee of Directors or other individuals satisfying Applicable Laws appointed by the Board in accordance with Section 4 of the Plan.

(j) "**Common Stock**" means the Common Stock of the Company, or in the case of Performance Units, Restricted Stock Units, and certain Other Stock Based Awards, the cash equivalent thereof, as applicable.

(k) "**Company**" means Applied Optoelectronics, Inc., a Delaware corporation, and any successor to Applied Optoelectronics, Inc.

(l) "**Consultant**" means any person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services to such entity.

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

(n) "**Disability**" means total and permanent disability as defined in Section 22(e)(3) of the Code, provided that in the case of Awards other than Incentive Stock Options, the Administrator in its sole discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Administrator from time to time.

(o) "**Dividend Equivalent**" means a credit, made at the sole discretion of the Administrator, to the account of a Participant in an amount equal to the value of dividends paid on one Share for each Share represented by an Award held by such Participant. Under no circumstances shall the payment of a Dividend Equivalent be made contingent on the exercise of an Option or Stock Appreciation Right.

(p) "**Employee**" means any person, including officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

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

(r) "**Exchange Program**" means a program under which (i) outstanding Awards are surrendered or cancelled in exchange for Awards of the same type (which may have lower exercise prices and different terms), Awards of a different type, and/or cash, and/or (ii) the exercise price of an outstanding Award is reduced. The terms and conditions of any Exchange Program shall be determined by the Administrator in its sole discretion.

(s) **"Fair Market Value"** means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the NASDAQ Global Select Market, the NASDAQ Global Market (formerly the NASDAQ National Market) or the NASDAQ Capital Market (formerly the NASDAQ SmallCap Market) of the NASDAQ Stock Market, the Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for the day of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock for the day of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined in good faith by the Administrator.

(iv) Notwithstanding the preceding, for federal, state, and local income tax reporting purposes and for such other purposes as the Administrator deems appropriate, the Fair Market Value shall be determined by the Administrator in accordance with uniform and nondiscriminatory standards adopted by it from time to time.

(t) **"Incentive Stock Option"** means an Option intended to qualify and receive favorable tax treatment as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable Award Agreement.

(u) **"Nonstatutory Stock Option"** means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

(v) **"Option"** means an option to purchase Common Stock granted pursuant to the Plan.

(w) **"Other Stock Based Awards"** means any other awards not specifically described in the Plan that are valued in whole or in part by reference to, or are otherwise based on, Shares and are created by the Administrator pursuant to Section 12.

(x) **"Outside Director"** means an "outside director" within the meaning of Section 162(m) of the Code.

(y) **"Parent"** means a "parent corporation" with respect to the Company, whether now or hereafter existing, as defined in Section 424(e) of the Code.

(z) **"Participant"** means a Service Provider who has been granted an Award under the Plan.

(aa) **"Performance Goals"** means goals which have been established by the Committee in connection with an Award and are based on one or more of the following criteria, as determined by the Committee in its absolute and sole discretion: net income; cash flow; cash flow on investment; pre-tax or post-tax profit levels or earnings; operating income or earnings; return on investment; earned value added; expense reduction levels; free cash flow; free cash flow per share; earnings per share; net earnings per share; net earnings from continuing operations; sales growth; sales volume; economic profit; expense reduction; controlled expenses; return on assets; return on net assets; return on equity; return on capital; return on sales; return on invested capital; organic revenue; growth in managed assets; total shareholder return; stock price; stock price appreciation; EBITA; adjusted EBITA; EBITDA; adjusted EBITDA; return in excess of cost of capital; profit in excess of cost of capital; net operating profit after tax; operating margin; profit margin; adjusted revenue; revenue; net revenue; operating revenue; net cash provided by operating activities; net cash provided by operating activities per share; cash conversion percentage; new sales; net new sales; cancellations; gross margin; gross margin percentage; revenue before deferral; regulatory body approval for commercialization of a product; implementation or completion of critical projects; research; in-licensing; out-licensing; product development; government relations; compliance; mergers; and acquisitions or sales of assets or subsidiaries.

(bb) **"Performance Period"** means the time period during which the Performance Goals or performance objectives must be met.

(cc) **"Performance Share"** means Shares issued pursuant to a Performance Share Award under Section 10 of the Plan.

(dd) **"Performance Unit"** means, pursuant to Section 10 of the Plan, an unfunded and unsecured promise to deliver Shares, cash or other securities equal to the value set forth in the Award Agreement.

(ee) **"Period of Restriction"** means the period during which the transfer of Shares of Restricted Stock are subject to restrictions and therefore, the Shares are subject to a substantial risk of forfeiture. Such restrictions may be based on the passage of time, the achievement of Performance Goals or other target levels of performance, or the occurrence of other events as determined by the Administrator.

(ff) **"Plan"** means this 2013 Equity Incentive Plan. The Plan was approved by the Board on April 12, 2013 and by the Company's stockholders on May 21, 2013.

(gg) **"Prior Plans"** means the Company's 1998 Share Incentive Plan, 2000 Share Incentive Plan, 2004 Share Incentive Plan and 2006 Incentive Share Plan.

(hh) **"Restricted Stock"** means Shares issued pursuant to a Restricted Stock Award under Section 8 or issued pursuant to the early exercise of an Option.

(ii) **"Restricted Stock Unit"** means, pursuant to Sections 4 and 11 of the Plan, an unfunded and unsecured promise to deliver Shares, cash or other securities equal in value to the Fair Market Value of one Share in the Company on the date of vesting or settlement, or as otherwise set forth in the Award Agreement.

(jj) **"Rule 16b-3"** means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(kk) "**Section 16(b)**" means Section 16(b) of the Exchange Act.

(ll) "**Service Provider**" means an Employee, Director or Consultant.

(mm) "**Share**" means a share of Common Stock, as adjusted in accordance with Section 15 of the Plan.

(nn) "**Stock Appreciation Right**" or "**SAR**" means, pursuant to Section 9 of the Plan, an unfunded and unsecured promise to deliver Shares, cash or other securities equal in value to the difference between the Fair Market Value of a Share as of the date such SAR is exercised/settled and the Fair Market Value of a Share as of the date such SAR was granted, or as otherwise set forth in the Award Agreement.

(oo) "**Subsidiary**" means a "subsidiary corporation" with respect to the Company, whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan.

(a) Stock Subject to the Plan. Subject to the provisions of Section 15 of the Plan, the maximum aggregate number of Shares that may be issued pursuant to all Awards under the Plan is 24,000,000 Shares, representing the remaining shares available for issuance under the Prior Plans, plus the amount of outstanding Common Stock subject to Lapsed Awards (defined below) under the Prior Plans. The maximum number of Shares that may be subject to Incentive Stock Option treatment is 24,000,000. The maximum aggregate number of Shares that may be issued pursuant to all awards under the Plan shall increase annually on the first day of each fiscal year following the adoption of the Plan by the number of Shares equal to the lesser of (i) two percent of the total issued and outstanding common shares of the Company on the first day of such fiscal year (ii) 10,000,000 Shares or (iii) such lesser amount determined by the Board. Shares shall not be deemed to have been issued pursuant to the Plan with respect to any portion of an Award that is settled in cash. Upon payment in Shares pursuant to the exercise of an Award, the number of Shares available for issuance under the Plan shall be reduced only by the number of Shares actually issued in such payment. If a Participant pays the exercise price (or purchase price, if applicable) of an Award through the tender of Shares, or if Shares are tendered or withheld to satisfy any Company withholding obligations, the number of Shares so tendered or withheld shall again be available for issuance pursuant to future Awards under the Plan.

(b) Lapsed Awards. If any outstanding Award expires or is terminated or canceled without having been exercised or settled in full, or if Shares acquired pursuant to an Award subject to forfeiture or repurchase are forfeited or repurchased by the Company, the Shares allocable to the terminated portion of the Award or the forfeited or repurchased Shares shall again be available for grant under the Plan (the "**Lapsed Awards**"). Similarly, the shares subject to Lapsed Awards under the Prior Plans shall add to the maximum number of Shares that are available for grant under Section 3(a) of the Plan.

(c) Share Reserve. The Company, during the term of the Plan, shall at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

4. Administration of the Plan.

(a) Procedure.

(i) Multiple Administrative Bodies. Different Committees with respect to different groups of Service Providers may administer the Plan.

(ii) Section 162(m). To the extent that the Administrator determines it to be desirable and necessary to qualify Awards granted under this Plan as "performance-based compensation" within the meaning of Section 162(m) of the Code, the Plan shall be administered by a Committee of two or more Outside Directors.

(iii) Rule 16b-3. If a transaction is intended to be exempt under Rule 16b-3 of the Exchange Act, it shall be structured to satisfy the requirements for exemption under Rule 16b-3.

(iv) Other Administration. Other than as provided above, the Plan shall be administered by (A) the Board or (B) a Committee constituted to satisfy Applicable Laws.

(v) Delegation of Authority for Day-to-Day Administration. Except to the extent prohibited by Applicable Law, the Administrator may delegate to one or more individuals the day-to-day administration of the Plan and any of the functions assigned to it in this Plan. Such delegation may be revoked at any time.

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

- (i) determine the Fair Market Value of Awards;
- (ii) select the Service Providers to whom Awards may be granted under this Plan;
- (iii) determine the number of Shares to be covered by each Award granted under this Plan;
- (iv) approve forms of Award Agreements for use under the Plan;
- (v) determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted under this Plan, including but not limited to, the exercise price, the time or times when Awards may be exercised (which may be based on Performance Goals or other performance criteria), any vesting acceleration or waiver of forfeiture or repurchase restrictions, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) reduce, with or without Participant consent, the exercise price of any Award to the then current Fair Market Value (or a higher value) if the Fair Market Value of the Common Stock covered by such Award shall have declined since the date the Award was granted;

- (vii) institute an Exchange Program;
- (viii) construe and interpret the terms of the Plan and Awards granted pursuant to the Plan;
- (ix) prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans;

(x) amend the terms of any outstanding Award, including the discretionary authority to extend the post-termination exercise period of Awards and accelerate the satisfaction of any vesting criteria or waiver of forfeiture or repurchase restrictions, provided that any amendment that would adversely affect the Participant's rights under an outstanding Award shall not be made without the Participant's written consent. Notwithstanding the foregoing, an amendment shall not be treated as adversely affecting the rights of the Participant if the amendment causes an Incentive Stock Option to become a Nonstatutory Stock Option or if the amendment is made to the minimum extent necessary to avoid the adverse tax consequences of Section 409A of the Code.

(xi) allow Participants to satisfy withholding tax obligations by electing to have the Company withhold from the Shares or cash to be issued upon exercise or vesting of an Award that number of Shares or cash having a Fair Market Value equal to the minimum amount required to be withheld. The Fair Market Value of any Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined, and all elections by a Participant to have Shares or cash withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

(xii) authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award previously granted by the Administrator;

(xiii) allow a Participant to defer the receipt of the payment of cash or the delivery of Shares that would otherwise be due to the Participant under an Award;

(xiv) determine whether Awards shall be settled in Shares, cash or in a combination of Shares and cash;

(xv) determine whether Awards shall be adjusted for Dividend Equivalents;

(xvi) create Other Stock Based Awards for issuance under the Plan;

(xvii) establish a program whereby Service Providers designated by the Administrator can reduce compensation otherwise payable in cash in exchange for Awards under the Plan;

(xviii) impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by a Participant or other subsequent transfers by the Participant of any Shares issued as a result of or under an Award, including without limitation, (A) restrictions under an insider trading policy, and (B) restrictions as to the use of a specified brokerage firm for such resales or other transfers;

(xix) establish one or more programs under the Plan to permit selected Participants the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of Performance Goals or other performance criteria, or other event that absent the election, would entitle the Participant to payment or receipt of Shares or other consideration under an Award; and

(xx) make all other determinations that the Administrator deems necessary or advisable for administering the Plan.

The express grant in the Plan of any specific power to the Administrator shall not be construed as limiting any power or authority of the Administrator. However, the Administrator may not exercise any right or power reserved to the Board.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations, actions and interpretations shall be final, conclusive and binding on all persons having an interest in the Plan.

(d) Indemnification. The Company shall defend and indemnify members of the Board, officers and Employees of the Company or of a Parent or Subsidiary whom authority to act for the Board, the Administrator or the Company is delegated ("**Indemnitees**") to the maximum extent permitted by law against (i) all reasonable expenses, including reasonable attorneys' fees incurred in connection with the defense of any claim, investigation, action, suit or proceeding, or in connection with any appeal therein (collectively, a "**Claim**"), to which any of them is a party by reason of any action taken or failure to act in connection with the Plan, or in connection with any Award granted under the Plan; and (ii) all amounts required to be paid by them in settlement the Claim (provided the settlement is approved by the Company) or required to be paid by them in satisfaction of a judgment in any Claim. However, no person shall be entitled to indemnification to the extent he is determined in such Claim to be liable for gross negligence, bad faith or intentional misconduct. In addition, to be entitled to indemnification, the Indemnitee must, within 30 days after written notice of the Claim, offer the Company, in writing, the opportunity, at the Company's expense, to defend the Claim. The right to indemnification shall be in addition to all other rights of indemnification available to the Indemnitee.

5. Eligibility. Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Units, Performance Shares, and Other Stock Based Awards may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

6. Limitations.

(a) \$100,000 Limitation for Incentive Stock Options. Each Option shall be designated in the Award Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds \$100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Options with respect to such Shares are granted.

(b) Special Annual Limits. Subject to Section 15 of the Plan, the maximum number of Shares that may be subject to Options or Stock Appreciation Rights granted to any Service Provider in any calendar year shall equal 18,000,000 Shares and contain an exercise price equal to the Fair Market Value of the Common Stock as of the date of grant. Subject to Section 15 of the Plan, the maximum number of Shares that may be subject to Restricted Stock, Restricted Stock Units, Performance Shares, Performance Units and Other Stock Based Awards, Other Stock Based Awards granted to any Service Provider in any calendar year shall equal 18,000,000 Shares. Subject to Section 15 of the Plan, the maximum dollar amount that may be subject to cash awards granted to any Service Provider in any calendar year shall equal \$5,000,000.

7. Options.

(a) Term of Option. The term of each Option shall be stated in the Award Agreement. In the case of an Incentive Stock Option, the term shall be 10 years from the date of grant or such shorter term as may be provided in the Award Agreement. Moreover, in the case of an Incentive Stock Option granted to a Participant who, at the time the Incentive Stock Option is granted, owns stock representing more than 10% of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option shall be five years from the date of grant or such shorter term as may be provided in the Award Agreement.

(b) Option Exercise Price and Consideration.

(i) Exercise Price. The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, subject to the following:

(1) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than 10% of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any Employee other than an Employee described in paragraph (A) immediately above, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(2) In the case of a Nonstatutory Stock Option, the per Share exercise price shall be determined by the Administrator, but shall not be less than Fair Market Value per Share on the date of grant.

(3) Notwithstanding the foregoing, Options may be granted with a per Share exercise price of less than 100% of the Fair Market Value per Share on the date of grant pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code.

(ii) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions that must be satisfied before the Option may be exercised. The Administrator, in its sole discretion, may accelerate the satisfaction of such conditions at any time.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall determine the acceptable form of consideration at the time of grant. Such consideration, to the extent permitted by Applicable Laws, may consist entirely of:

(i) cash;

(ii) check;

(iii) other Shares which meet the conditions established by the Administrator to avoid adverse accounting consequences (as determined by the Administrator);

(iv) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan;

(v) a reduction in the amount of any Company liability to the Participant, including any liability attributable to the Participant's participation in any Company-sponsored deferred compensation program or arrangement;

- (vi) any combination of the foregoing methods of payment; or
  - (vii) any other consideration and method of payment for the issuance of Shares permitted by Applicable Laws.
- (d) Exercise of Option.

(i) Procedure for Exercise; Rights as a Stockholder. Any Option granted under this Plan shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Award Agreement. An Option shall be deemed exercised when the Company receives: (x) written or electronic notice of exercise (in accordance with the Award Agreement) from the person entitled to exercise the Option, and (y) full payment for the Shares with respect to which the Option is exercised (including provision for any applicable tax withholding). Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Participant or, if requested by the Participant, in the name of the Participant and his spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Awarded Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 15 of the Plan or the applicable Award Agreement. Exercising an Option in any manner shall decrease the number of Shares thereafter available for sale under the Option, by the number of Shares as to which the Option is exercised.

(ii) Termination of Relationship as a Service Provider. If a Participant ceases to be a Service Provider, other than upon the Participant's death or Disability, the Participant may exercise his Option within such period of time as is specified in the Award Agreement to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Option shall remain exercisable for 30 days following the Participant's termination after which the Option shall terminate. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If the Participant does not exercise his Option as to all of the vested Shares within the time specified by the Award Agreement, the Option shall terminate, and the remaining Shares covered by the Option shall revert to the Plan.

(iii) Disability of Participant. If a Participant ceases to be a Service Provider as a result of his Disability, the Participant may exercise his Option, to the extent vested, within the time specified in the Award Agreement (but in no event later than the expiration of the term of the Option as set forth in the Award Agreement). If no time for exercise of the Option on Disability is specified in the Award Agreement, the Option shall remain exercisable for 24 months following the Participant's termination for Disability. Unless otherwise provided by the Administrator, on the date of termination for Disability, the unvested portion of the Option shall revert to the Plan. If after termination for Disability, the Participant does not exercise his Option as to all of the vested Shares within the time specified by the Award Agreement, the Option shall terminate and the remaining Shares covered by such Option shall revert to the Plan.

(iv) Death of Participant. If a Participant dies while a Service Provider, the Option, to the extent vested, may be exercised within the time specified in the Award Agreement (but in no event may the Option be exercised later than the expiration of the term of the Option as set forth in the Award Agreement), by the beneficiary designated by the Participant prior to his death; provided that such designation must be acceptable to the Administrator. If no beneficiary has been designated by the Participant, then the Option may be exercised by the personal representative of the Participant's estate, or by the persons to whom the Option is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. If the Award Agreement does not specify a time within which the Option must be exercised following a Participant's death, it shall be exercisable for 24 months following his death. Unless otherwise provided by the Administrator, if at the time of death, the Participant is not vested as to his entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. If the Option is not exercised as to all of the vested Shares within the time specified by the Administrator, the Option shall terminate, and the remaining Shares covered by such Option shall revert to the Plan.

8. Restricted Stock.

(a) Grant of Restricted Stock. Subject to the terms and provisions of the Plan, the Administrator, at any time and from time to time, may grant Shares of Restricted Stock to Service Providers in such amounts as the Administrator, in its sole discretion, shall determine.

(b) Restricted Stock Agreement. Each Award of Restricted Stock shall be evidenced by an Award Agreement that shall specify the Period of Restriction, the number of Shares granted, and such other terms and conditions as the Administrator, in its sole discretion, shall determine. Unless the Administrator determines otherwise, Shares of Restricted Stock shall be held by the Company as escrow agent until the restrictions on the Shares have lapsed.

(c) Removal of Restrictions. Except as otherwise provided in this Section 8, Shares of Restricted Stock covered by each Award made under the Plan shall be released from escrow as soon as practical after the last day of the Period of Restriction. The Administrator, in its sole discretion, may accelerate the time at which any restrictions shall lapse or be removed.

(d) Voting Rights. During the Period of Restriction, Service Providers holding Shares of Restricted Stock may exercise full voting rights with respect to those Shares, unless the Administrator determines otherwise.

(e) Dividends and Other Distributions. During the Period of Restriction, Service Providers holding Shares of Restricted Stock shall be entitled to receive all dividends and other distributions paid with respect to such Shares unless otherwise provided in the Award Agreement. If any dividends or distributions are paid in Shares, the Shares shall be subject to the same restrictions on transferability and forfeitability as the Shares of Restricted Stock with respect to which they were paid.

(f) Return of Restricted Stock to Company. On the date set forth in the Award Agreement, the Restricted Stock for which restrictions have not lapsed shall revert to the Company and again shall become available for grant under the Plan.

9. Stock Appreciation Rights

(a) Grant of SARs. Subject to the terms and conditions of the Plan, a SAR may be granted to Service Providers at any time and from time to time as shall be determined by the Administrator, in its sole discretion. The Administrator shall have complete discretion to determine the number of SARs granted to any Service Provider. The Administrator, subject to the provisions of the Plan, shall have complete discretion to determine the terms and conditions of SARs granted under the Plan, including the sole discretion to accelerate exercisability at any time.

(b) SAR Agreement. Each SAR grant shall be evidenced by an Award Agreement that shall specify the exercise price, the term, the conditions of exercise, and such other terms and conditions as the Administrator, in its sole discretion, shall determine.

(c) Expiration of SARs. A SAR granted under the Plan shall expire upon the date determined by the Administrator, in its sole discretion, as set forth in the Award Agreement. Notwithstanding the foregoing, the rules of Sections 7(d)(ii), 7(d)(iii) and 7(d)(iv) shall also apply to SARs.

(d) Payment of SAR Amount. Upon exercise of a SAR, a Participant shall be entitled to receive payment from the Company in an amount determined by multiplying:

(i) The difference between the Fair Market Value of a Share on the date of exercise over the exercise price; times

(ii) The number of Shares with respect to which the SAR is exercised.

(iii) At the sole discretion of the Administrator, the payment upon the exercise of a SAR may be in cash, in Shares of equivalent value, or in some combination thereof.

10. Performance Units and Performance Shares.

(a) Grant of Performance Units and Performance Shares. Subject to the terms and conditions of the Plan, Performance Units and Performance Shares may be granted to Service Providers at any time and from time to time, as shall be determined by the Administrator in its sole discretion. The Administrator shall have complete discretion in determining the number of Performance Units and Performance Shares granted to each Service Provider.

(b) Value of Performance Units and Performance Shares. Each Performance Unit shall have an initial value established by the Administrator on or before the date of grant. Each Performance Share shall have an initial value equal to the Fair Market Value of a Share on the date of grant.

(c) Performance Objectives and Other Terms. The Administrator shall set Performance Goals or other performance objectives in its sole discretion which, depending on the extent to which they are met, shall determine the number or value of Performance Units and Performance Shares that shall be paid out to the Participant. Each award of Performance Units or Performance Shares shall be evidenced by an Award Agreement that shall specify the Performance Period and such other terms and conditions as the Administrator in its sole discretion shall determine. The Administrator may set Performance Goals or performance objectives based upon the achievement of Company-wide, divisional, or individual goals (including solely continued service), applicable federal or state securities laws, or any other basis determined by the Administrator in its sole discretion.

(d) Earning of Performance Units and Performance Shares. After the applicable Performance Period has ended, the holder of Performance Units or Performance Shares shall be entitled to receive a payout of the number of Performance Units or Performance Shares earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding Performance Goals or performance objectives have been achieved. After the grant of Performance Units or Performance Shares, the Administrator, in its sole discretion, may reduce or waive any performance objectives for the Performance Unit or Performance Share.

(e) Form and Timing of Payment of Performance Units and Performance Shares. Payment of earned Performance Units and Performance Shares shall be made after the expiration of the applicable Performance Period at the time determined by the Administrator. The Administrator, in its sole discretion, may pay earned Performance Units and Performance Shares in the form of cash, in Shares (which have an aggregate Fair Market Value equal to the value of the earned Performance Units or Performance Shares, as applicable, at the close of the applicable Performance Period) or in a combination of cash and Shares.

(f) Cancellation of Performance Units or Performance Shares. On the date set forth in the Award Agreement, all unearned or unvested Performance Units and Performance Shares shall be forfeited to the Company, and again shall be available for grant under the Plan.

11. Restricted Stock Units. Restricted Stock Units shall consist of a Restricted Stock, Performance Share or Performance Unit Award that the Administrator, in its sole discretion permits to be paid out in a lump sum, installments or on a deferred basis, in accordance with rules and procedures established by the Administrator

12. Other Stock Based Awards. Other Stock Based Awards may be granted either alone, in addition to, or in tandem with, other Awards granted under the Plan and/or cash awards made outside of the Plan. The Administrator shall have authority to determine the Service Providers to whom and the time or times at which Other Stock Based Awards shall be made, the amount of such Other Stock Based Awards, and all other conditions of the Other Stock Based Awards, including any dividend or voting rights and whether the Award should be paid in cash.

13. Leaves of Absence. Unless the Administrator provides otherwise, vesting of Awards granted under this Plan shall be suspended during any unpaid leave of absence and shall resume on the date the Participant returns to work on a regular schedule as determined by the Company; provided, however, that no vesting credit shall be awarded for the time vesting has been suspended during such leave of absence. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, or any Subsidiary. For purposes of Incentive Stock Options, no leave of absence may exceed 90 days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not guaranteed by statute or contract, then at the end of three months following the expiration of the leave of absence, any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

14. Non-Transferability of Awards. Unless determined otherwise by the Administrator, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by shall or by the laws of descent or distribution and may be exercised, during the lifetime of the Participant, only by the Participant. If the Administrator makes an Award transferable, such Award shall contain such additional terms and conditions as the Administrator deems appropriate.

15. Adjustments; Dissolution or Liquidation; Change in Control.

(a) Adjustments. In the event of any change in the outstanding Shares of Common Stock by reason of any stock split, stock dividend or other non-recurring dividends or distributions, recapitalization, merger, consolidation, spin-off, combination, repurchase or exchange of stock, reorganization, liquidation, dissolution or other similar corporate transaction that affects the Common Stock, an adjustment shall be made, as the Administrator deems necessary or appropriate, in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan. Such adjustment may include an adjustment to the number and class of Shares which may be delivered under the Plan, the number, class and price of Shares subject to outstanding Awards, the number and class of Shares issuable pursuant to Options, and the numerical limits in Sections 3 and 6(b). Notwithstanding the preceding, the number of Shares subject to any Award always shall be a whole number.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Participant as soon as practical prior to the effective date of the proposed transaction. The Administrator, in its sole discretion, may provide for a Participant to have the right to exercise his Award, to the extent applicable, until 10 days prior to the transaction as to all of the Awarded Stock covered thereby, including Shares as to which the Award would not otherwise be exercisable. In addition, the Administrator may provide that any Company repurchase option or forfeiture rights applicable to any Award shall lapse 100%, and that any Award vesting shall accelerate 100%, provided the proposed dissolution or liquidation takes place at the time and in the manner contemplated. To the extent it has not been previously exercised or vested, an Award shall terminate immediately prior to the consummation of such proposed action.

(c) Change in Control. This Section 15(c) shall apply except to the extent otherwise provided in the Award Agreement.

(i) Stock Options and SARs. In the event of a Change in Control, each outstanding Option and SAR shall be assumed or an equivalent option or SAR substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. Unless determined otherwise by the Administrator, if the successor corporation refuses to assume or substitute for the Option or SAR, the Participant shall fully vest in and have the right to exercise the Option or SAR as to all of the Awarded Stock, including Shares as to which it would not otherwise be vested or exercisable. If an Option or SAR is not assumed or substituted on the Change in Control, the Administrator shall notify the Participant in writing or electronically that the Option or SAR shall be exercisable, to the extent vested, for a period of up to 15 days from the date of such notice, and the Option or SAR shall terminate upon the expiration of such period. For the purposes of this Section 15(c)(i), the Option or SAR shall be considered assumed if, following the Change in Control, the option or SAR confers the right to purchase or receive, for each Share of Awarded Stock subject to the Option or SAR immediately prior to the Change in Control, the consideration (whether securities, cash, or property) received in the Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares). However, if the consideration received in the Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option or SAR, for each share of Awarded Stock subject to the Option or SAR, to be solely common stock of the successor corporation or its Parent equal in Fair Market Value to the per share consideration received by holders of Common Stock in the Change in Control. Notwithstanding anything in this Plan to the contrary, an Award that vests, is earned, or is paid-out upon the satisfaction of one or more performance objectives shall not be considered assumed if the Company or its successor modifies any of the performance objectives without the Participant's consent; provided, however, a modification to performance objectives only to reflect the successor corporation's post-Change in Control corporate structure shall not be deemed to invalidate an otherwise valid Award assumption.

(ii) Restricted Stock, Performance Shares, Performance Units, Restricted Stock Units and Other Stock Based Awards. In the event of a Change in Control, each outstanding Award of Restricted Stock, Restricted Stock Unit, Performance Share, Performance Unit, and Other Stock Based Award shall be assumed or an equivalent Restricted Stock, Restricted Stock Unit, Performance Share, Performance Unit, and Other Stock Based Award shall be substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. Unless determined otherwise by the Administrator, if the successor corporation refuses to assume or substitute for the Award, the Participant shall fully vest in the Award, including as to Shares or Units that would not otherwise be vested, all applicable restrictions shall lapse, and all performance objectives and other vesting criteria shall be deemed achieved at targeted levels. For the purposes of this Section 15(c)(ii), an Award of Restricted Stock, Restricted Stock Units, Performance Shares, Performance Units, and Other Stock Based Awards shall be considered assumed if, following the Change in Control, the award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the Change in Control (and if a Restricted Stock Unit or Performance Unit, for each Share as determined based on the then current value of the unit), the consideration (whether stock, cash, or other securities or property) received in the Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares). However, if the consideration received in the Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide that the consideration to be received for each Share (and if a Restricted Stock Unit or Performance Unit, for each Share as determined based on the then current value of the unit) be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the Change in Control. Notwithstanding anything in this Plan to the contrary, an Award that vests, is earned, or is paid-out upon the satisfaction of one or more performance objectives shall not be considered assumed if the Company or its successor modifies any of the performance objectives without the Participant's consent; provided, however, a modification to the performance objectives only to reflect the successor corporation's post-Change in Control corporate structure shall not be deemed to invalidate an otherwise valid Award assumption.

(iii) Outside Director Awards. Notwithstanding any provision of Sections 15(c)(i) or 15(c)(ii) to the contrary, with respect to Awards granted to an Outside Director that are assumed or substituted for, if on the date of or following the assumption or substitution, the Participant's status as a Director or a director of the successor corporation, as applicable, is terminated other than upon a voluntary resignation by the Participant, then the Participant shall fully vest in and have the right to exercise his Options and Stock Appreciation Rights as to all of the Award, including Shares as to which such Awards would not otherwise be vested or exercisable, and all restrictions on Restricted Stock and Restricted Stock Units, as applicable, shall lapse, and, with respect to Performance Shares, Performance Units, and Other Stock Based Awards, all performance goals and other vesting criteria shall be deemed achieved at target levels and all other terms and conditions met.

16. Date of Grant. The date of grant of an Award shall be, for all purposes, the date on which the Administrator makes the determination granting such Award, or a later date as is determined by the Administrator. Notice of the determination shall be provided to each Participant within a reasonable time after the date of such grant.

17. Stockholder Approval and Term of Plan. The Plan became effective on September 26, 2013 and thereafter shall continue in effect for a term of ten years unless terminated earlier under Section 18 of the Plan.

18. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval. The Company shall obtain stockholder approval of any Plan amendment to the extent necessary to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension, or termination of the Plan shall materially or adversely impair the rights of any Participant, unless otherwise mutually agreed upon by the Participant and the Administrator, which agreement must be in writing and signed by the Participant and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it under this Plan with respect to Awards granted under the Plan prior to the date of termination.

19. Conditions upon issuance of shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Award unless the exercise of the Award and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise or receipt of an Award, the Company may require the person exercising or receiving the Award to represent and warrant at the time of any such exercise or receipt that the Shares are being purchased only for investment and without any present intention to sell or distribute the Shares if, in the opinion of counsel for the Company, such a representation is required.

(c) Taxes. No Shares shall be delivered under the Plan to any Participant or other person until the Participant or other person has made arrangements acceptable to the Administrator for the satisfaction of any non-U.S., U.S.-federal, U.S.-state, or local income and employment tax withholding obligations, including, without limitation, obligations incident to the receipt of Shares. Upon exercise or vesting of an Award, the Company shall withhold or collect from the Participant an amount sufficient to satisfy such tax obligations, including, but not limited to, by surrender of the whole number of Shares covered by the Award sufficient to satisfy the minimum applicable tax withholding obligations incident to the exercise or vesting of an Award.

20. Severability. Notwithstanding any contrary provision of the Plan or an Award to the contrary, if any one or more of the provisions (or any part thereof) of this Plan or the Awards shall be held invalid, illegal, or unenforceable in any respect, such provision shall be modified so as to make it valid, legal, and enforceable, and the validity, legality, and enforceability of the remaining provisions (or any part thereof) of the Plan or Award, as applicable, shall not in any way be affected or impaired thereby.

21. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

22. No Rights to Awards. No eligible Service Provider or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Administrator shall be obligated to treat Participants or any other person uniformly.

23. No Stockholder Rights. Except as otherwise provided in an Award Agreement, a Participant shall have none of the rights of a stockholder with respect to Shares covered by an Award until the Participant becomes the record owner of the Shares.

24. Fractional Shares. No fractional Shares shall be issued and the Administrator shall determine, in its sole discretion, whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding up or down as appropriate.

25. Governing Law. The Plan, all Award Agreements, and all related matters, shall be governed by the laws of the State of Texas, without regard to choice of law principles that direct the application of the laws of another state.

26. No Effect on Terms of Employment or Consulting Relationship. The Plan shall not confer upon any Participant any right as a Service Provider, nor shall it interfere in any way with his right or the right of the Company or a Parent or Subsidiary to terminate the Participant's service at any time, with or without cause, and with or without notice.

27. Unfunded Obligation. This Section 27 shall only apply to Awards that are not settled in Shares. Participants shall have the status of general unsecured creditors of the Company. Any amounts payable to Participants pursuant to the Plan shall be unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974, as amended. Neither the Company nor any Parent or Subsidiary shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations under this Plan. Any investments or the creation or maintenance of any trust for any Participant account shall not create or constitute a trust or fiduciary relationship between the Administrator, the Company or any Parent or Subsidiary and Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's creditors in any assets of the Company or Parent or Subsidiary. The Participants shall have no claim against the Company or any Parent or Subsidiary for any changes in the value of any assets that may be invested or reinvested by the Company with respect to the Plan.

28. Section 409A. It is the intention of the Company that no Award shall be "deferred compensation" subject to Section 409A of the Code, unless and to the extent that the Administrator specifically determines otherwise, and the Plan and the terms and conditions of all Awards shall be interpreted accordingly. The following rules shall apply to Awards intended to be subject to Section 409A of the Code ("409A Awards"):

(a) Any distribution of a 409A Award following a separation from service that would be subject to Section 409A(a)(2)(A)(i) of the Code as a distribution following a separation from service of a "specified employee" (as defined under Section 409A(a)(2)(B)(i) of the Code) shall occur no earlier than the expiration of the six-month period following such separation from service.

(b) In the case of a 409A Award providing for distribution or settlement upon vesting or lapse of a risk of forfeiture, if the time of such distribution or settlement is not otherwise specified in the Plan or Award Agreement or other governing document, the distribution or settlement shall be made no later than March 15 of the calendar year following the calendar year in which such 409A Award vested or the risk of forfeiture lapsed.

(c) In the case of any distribution of any other 409A Award, if the timing of such distribution is not otherwise specified in the Plan or Award Agreement or other governing document, the distribution shall be made not later than the end of the calendar year during which the settlement of the 409A Award is specified to occur.

29. Construction. Headings in this Plan are included for convenience and shall not be considered in the interpretation of the Plan. References to sections are to Sections of this Plan unless otherwise indicated. Pronouns shall be construed to include the masculine, feminine, neutral, singular or plural as the identity of the antecedent may require. This Plan shall be construed according to its fair meaning and shall not be strictly construed against the Company.

\* \* \* \* \*

**Exhibit 10.2**

Contract No.: 1230

between

**GLOBAL TECHNOLOGY INC.**

as Borrower

and

**CHINA CONSTRUCTION BANK - NINGBO YINZHOU BRANCH**

as Lender

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**RMB WORKING CAPITAL LOAN AGREEMENT**

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This **RMB Loan Agreement** (the “**Contract**”) is entered into in order for the company’s daily operation expense [, including material purchase payment and employee’s salary], by and between:

**GLOBAL TECHNOLOGY INC.**, located at NO.\_88, QIUSHI RD, WANGCHUN INDUSTRIAL PART, NINGBO, CHINA, P.C.315176 with CHIH-HSIANG LIN as its legal representative and its fax number 88133820 and its telephone number 574-88133818 as borrower (“**Party A**”); and

**CHINA CONSTRUCTION BANK - NINGBO YINZHOU BRANCH**, located at TAIKANG ZHONG RD S. COMMERCIAL AREA 2ND FL, GUOHUA INT’L BLDG NO. 500, 315040 with ● as its principal officer and its fax number being 87370029 and its telephone number being 87374267, as lender (“**Party B**”).

**WHEREAS**

- (1) Party A wishes to apply to Party B for a loan, and Party B agrees to extend to Party A such loan.
- (2) NOW THEREFORE upon consultation in accordance with applicable laws and regulations, both parties hereto agree as follows:

**1. LOAN AMOUNT**

The amount of the loan that Party B provides to Party A hereunder shall be RMB\_[see Schedule A] (the “**Loan**”).

**2. PURPOSE OF THE LOAN AND SOURCES OF FUNDS FOR REPAYMENT**

Party A shall utilize the loan for the purpose of the routine production operation.

The information relating to specific purposes of such loan under the Contract and sources of funds for repayment shall be determined in Schedule 1 “**Loan Information**”.

**3. TERM OF THE LOAN**

The term of the Loan shall be 12 months, commencing from [see Schedule A] and expiring on [see Schedule A] (the “**Term**”).

Where the above commencement date is inconsistent with the date set forth on the loan-to deposit certificate (the “**LDC**” or “Loan Receipt”, the date set forth on the LDC for the first advance of the Loan shall be the commencement date of the Term and the expiry date of the Term shall be adjusted accordingly. The LDC shall constitute an integral part of the Contract and have the equal legal force as the Contract.

**4. INTEREST RATE ON THE LOAN, DEFAULT INTEREST RATE, INTEREST CALCULATION AND SETTLEMENT**

4.1 Interest Rate on the Loan (the “**Loan Rate**”)

The Loan Rate hereunder shall be an annual rate set forth in item (2) below:

- (1) a fixed interest rate of % which shall remain the same during the Term;
- (2) [See Schedule A] on the date when interest commences to accrue (the “**Interest Commencement Date**”). Such interest rate shall remain the same during the Term; or

- (3) a floating interest rate equal to \_\_\_ (100% a floating percentage of \_\_\_ %) (the “**Floating Percentage**”) of the Base Rate (as defined below) on the date when interest commences to accrue (the “**Interest Commencement Date**”). The Loan Rate shall, during the period between the Interest Commencement Date and the date when all the principal amount and interest accrued thereon under the Contract have been fully repaid, be adjusted once every \_\_\_ months in accordance with the Base Rate on the interest rate adjustment date and the Floating Percentage. The interest rate adjustment date shall be a date corresponding to the Interest Commencement Date in the month when such interest is adjusted. If there is no such a date corresponding to the Interest Commencement Date in such month, the adjustment date for the interest rate shall be the last day of such month.

#### 4.2 Default Interest Rate

- (1) If Party A does not use the Loan hereunder for purposes set forth herein (“**Misappropriation**”), the default interest rate on such Loan shall be (100% plus 100%) of the Loan Rate. If the Loan Rate is adjusted according to Article 4.1 (3) above, the default interest rate shall be adjusted in accordance with the adjusted Loan Rate and the upward floating percentage set out in this Article 4.2 (1).
- (2) The default interest rate on overdue Loan shall be (100% plus 50 %) of the Loan Rate. If the Loan Rate is adjusted according to Article 4.1 (3) above, such default interest rate shall be adjusted in accordance with the adjusted Loan Rate and the upward floating percentage set out in this Article 4.2 (2).
- (3) If Misappropriation and overdue payment occur concurrently, the default interest shall be calculated and compounded in accordance with the higher of the two default interest rates provided for in Articles 4.2(1) and 4.2(2) herein.

#### 4.3 The Interest Commencement Date provided in this Article 4 refers to the date on which the proceeds of the first advance have been deposited into the loan disbursement account designated in Article 6 (the “**Loan Disbursement Account**”).

For the first advance of the Loan, the Base Rate refers to the lending interest rate quoted by the People’s Bank of China (the “**PBOC**”) on the Interest Commencement Date for loans with the same tenor and within the same category. If the lending interest rate on other advances of the Loan is adjusted in accordance with Article 4.1 (3), the Base Rate refers to the lending interest rate quoted by the PBOC on the interest rate adjustment date for loans with the same tenor and within the same category. If the PBOC no longer publishes such lending interest rate, the Base Rate shall mean, unless agreed otherwise between the parties, the lending interest rate with the same tenor and within the same category generally accepted by the banking industry on the interest rate adjustment date or an interest rate commonly used for a loan with the same tenor and within the same category.

#### 4.4 The interest on the Loan shall commence to accrue as of the date when such Loan proceeds have been deposited into the Loan Disbursement Account designated by Party A. Interest on the Loan shall be computed daily with the daily interest rate equal to 1/360 of the annual interest rate. If Party A can not pay interest on the interest settlement date as provided herein, the interest shall be compounded as of the date immediately following the applicable interest settlement date.

4.5 Interest Settlement

- (1) For a loan subject to a fixed interest rate, the interest accrued thereon shall be calculated in accordance with the agreed fixed interest rate. For a loan subject to a floating interest rate, the interest accrued thereon shall be calculated in accordance with the interest rate determined for each interest rate floating period. If the interest rate has been adjusted more than once during a single interest settlement period, the interest during each interest rate floating period shall be calculated first and the total interest accrued during such interest settlement period shall be the aggregate amount of all the interest accrued during each interest rate floating period within such interest settlement period.
- (2) The interest accrued on the Loan hereunder shall be settled in accordance with (i) of the following:
  - (i) on a monthly basis and the interest settlement date shall be the 20<sup>th</sup> day of each month;
  - (ii) on a quarterly basis and the interest settlement date shall be the 20<sup>th</sup> day of the last month of the relevant quarter;
  - (iii) other method: \_\_\_\_\_.

5. ADVANCE AND DRAWDOWN

5.1 Conditions Precedent to Advance

Unless Party B waives all or part of the following conditions, Party B shall be obligated to advance any amount of the Loan only if all the following conditions continuously remain satisfied:

- (1) Party A has completed all the approval, registration, delivery, insurance and other statutory procedures in relation to the Loan hereunder;
- (2) the security has become and remains effective, if a security is established for the Contract;
- (3) Party A has opened the bank accounts for drawdown and debt service purposes as Party B requests;
- (4) Party A has not triggered any event of default hereunder;
- (5) no event has occurred that may adversely impact Party B's rights as a creditor;
- (6) the advance to be made by Party B is not prohibited or restricted by any laws, regulations, rules or competent authorities; and
- (7) the financial indicators of Party A shall, at all time, continue to meet the requirements specified in Schedule 2 Terms relating to Mandatory Financial Indicators;
- (8) Party A has submitted such materials as required in this Contract before any loan drawdown;
- (9) the materials submitted by Party A are legal, authenticated, complete, accurate, valid and be in accordance with other requirements of Party B;
- (10) Other conditions  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.2 Drawdown Schedule

“Drawdown” referred to in this Contract shall mean disbursements by Party B of the funds to the Loan Disbursement Account in accordance with Party A’s Application and this Contract.

The drawdown schedule hereunder shall be item [see Schedule A] of the following:

(1) The drawdown schedule shall be as follows:

	Drawdown Date (mm/dd/yyyy)	Amount
(i)		
(ii)		
(iii)		
(iv)		
(v)		
(vi)		

(2) The drawdown schedule shall be as follows:

- (i) from [                    ] to [                    ], Amount\_\_\_\_\_;  
(mm/dd/yyyy) (mm/dd/yyyy)
- (ii) from [                    ] to [                    ], Amount\_\_\_\_\_;  
(mm/dd/yyyy) (mm/dd/yyyy)
- (iii) from [                    ] to [                    ], Amount\_\_\_\_\_;  
(mm/dd/yyyy) (mm/dd/yyyy)
- (iv) from [                    ] to [                    ], Amount\_\_\_\_\_;  
(mm/dd/yyyy) (mm/dd/yyyy)
- (v) from [                    ] to [                    ], Amount\_\_\_\_\_;  
(mm/dd/yyyy) (mm/dd/yyyy)
- (vi) from [                    ] to [                    ], Amount\_\_\_\_\_;  
(mm/dd/yyyy) (mm/dd/yyyy)

(3) from time to time, as required by Party A.

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.3 Party A shall draw the Loan in accordance with the drawdown schedule under Article 5.2. Without Party B's written consent, Party A shall not accelerate, postpone or cancel any drawdown of the Loan.

5.4 If Party A draws the Loan in installments, the expiration date of the Term shall be determined in accordance with Article 3 hereunder.

5.5 Materials required to be submitted by Party A

In respect of materials required to be submitted by Party A, the Parties agree that Item A applies [choose A or B];

A.

Situation NO. 1

Where the situation described in Item (1) [choose (1) or (2)] arises

(1) the amount of any particular drawdown is more than RMB TEN million and the amount of any scheduled payment out of such drawdown is more than RMB TEN million;

(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Party A shall submit to Party B the following materials no later than ONE working days before the date of such drawdown:

(1) the LDC signed by Party A and payment/settlement certificate(s) signed by Party A;

(2) materials related to the underlying transactions (including without limitation goods/services/monetary contracts and/or invoices and other documents in writing or electronic form that are capable of evidencing the particular purposes of the loan drawdown);

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And other materials required by Party B (including without limitation business license, letter of authorization, articles of association, resolutions of Shareholders' meeting /Board of directors of Party A's counterparty).

Situation NO. 2

If Party B determines, after reviewing the aforementioned materials, that Party may initiate the payment in accordance with Article 5.7 of this Contract, or a situation other than Situation NO. 1 arises, Party A shall submit to Party B the following materials no later than ONE working days before the date of such drawdown

- (1) The drawdown schedule corresponding to the proposed loan drawdown (The drawdown schedule being in the form of Schedule 3)
- (2) LDC signed by Party A;

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And other materials required by Party B (including without limitation business license, letter of authorization, articles of association, resolutions of Shareholders' meeting/Board of directors of Party A 's counterparty).

B.

Party A shall submit to Party B the following materials no later than ONE working days before the date of such drawdown regardless of the amount of any particular drawdown:

- (1) the LDC signed by Party A and payment/settlement certificate (s) signed by Party A;
- (2) related to the underlying transactions (including without limitation goods/services/monetary contracts and/or invoices and other documents in writing or electronic form that are capable of evidencing the particular purposes of the loan drawdown);

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And other materials required by Party B (including without limitation business license, letter of authorization, articles of association, resolutions of Shareholders' meeting/Board of directors of Party A 's counterparty).

5.6 Entrusted Payment through Party B

- (1) Situations where Entrusted Payment applies to Party B

If the situation described in (i) arises, Entrusted Payment shall apply, i.e. Party A hereby irrevocably entrusts Party B to pay the amount of the drawdown to Party A's counterparty. Party A shall not pay such amount directly to such counterparty or any other third party.

(i) the amount of any particular drawdown is more than RMB TEN million and the amount of any scheduled payment out of such drawdown is more than RMB TEN million, and Party B determines, after reviewing the materials submitted by Party A, that recipient of the payment is specific and identifiable;

(ii) Entrusted Payment applies regardless of the amount of any particular drawdown;

(iii) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) In the case of entrusted payment, Party B deposits the amount of the loan drawdown in the Loan Disbursement Account and pays such amount through Loan Disbursement Account to the account designated by Party A's counterparty. Party A shall not dispose of the loan drawdown in any way (including without limitation account transfer or withdrawal of cash).

(3) Party B will make prima facie examination of the documents submitted by Party A regarding payment amount, time of payment, recipient of payment, means of payment, and related accounts Party B will pay the drawdown amount to Party A's counterparty if Party B determines at its discretion that it is satisfied with the abovementioned prima facie examination. The obligations of Party B relating to entrusted payment shall be extinguished once the drawdown amount is paid into the account of Party A's counterparty (the information of such account shall be provided by Party A). Party A shall check and verify the status of payment within one working day after the date of payment and shall notify Party B in case of failure of payment. Party A shall guarantee that there is consistency between documents/information regarding recipient of payment, utilization of the loan and materials related to underlying documents.

(4) There is no warranty or representation by Party B in respect of the truthfulness or legality or compliance with regulations of the underlying transactions although Party B has made the above-mentioned prima facie examination of the payment documents. Nor shall Party B be implicated in any dispute between Party A and Party A's counterparty or any third party. Nor shall Party B be liable for any obligations or liabilities of Party A. Party A shall compensate Party B for any and all losses incurred by Party B resulting from Party B's activities relating to Entrusted Payment.

(5) Where there is a failure or delay in payment of the drawdown amount to the account of Party A's counterparty and such failure or delay is caused by incompleteness, untruthfulness or inaccuracy of the documents submitted by Party A, or by violation of permitted utilization of loan or by information discrepancy or by other reasons but not by Party B's fault, the following applies:

(i) Party A shall be liable for all the consequences including without limitation all losses caused by the above mentioned failure or delay. Party B shall not be liable in any way and shall be compensated by Party A for any losses resulting therefrom;

- (ii) Party A shall not dispose of any of such drawdown amount in anyway (including without limitation account transfer or withdrawal of cash);
- (iii) Party A shall resubmit materials, make corrections and/or perform other activities as instructed by Party B within ONE working days;

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Party B may accelerate the maturity of such loan drawdown if Party A is in breach of any of the above provisions.

- (6) Party A shall be liable for any and all risks, liabilities and losses caused by any failure or error or delay in payment which does not result from Party B's fault. Party B shall not be liable in any way and shall be compensated by Party A for any losses resulting therefrom.

#### 5.7 Payment on Party A's own initiative

Where situation other than that described in Article 5.6 (1) arises, Party A may initiate the payment at its own discretion. i.e. Party B may deposit the drawdown amount to the Loan Disbursement Account as instructed by Party A's application for loan drawdown, Party A may then pay such amount directly to the recipient. Party A shall guarantee the conformity between the recipient, utilization of loan and the underlying transaction documents.

- 5.8 The obligations of Party B to advance loans shall be extinguished once the loan amount is deposited into the Loan Disbursement Account regardless of entrusted payment or not. Party A shall ensure the Loan Disbursement Account remain in normal status (including without limitation not subject to freezing by competent authorities). Party A shall bear all risks, liabilities and losses including without limitation freezing and mandatory transfer by competent authorities. Party A shall compensate Party B for any losses resulting therefrom.

#### 5.9 Change of means of payment

Party B is entitled to change the means of payment if any of the following circumstances arises, including without limitation re-determining the situations where Entrusted Payment applies, (e.g. changing the threshold amount for Entrusted Payment) and changing the means of payment in respect of any particular drawdown:

- (1) Any event of default by Party A arises;
- (2) There arises any event that may adversely impact Party B's rights as a creditor;
- (3) Other circumstances where Party B deems necessary to change the means of payment.

Where Party B changes the means of payment, Party A shall resubmit the materials or perform other activities as required by this Contract and Party B.

**6. USE AND SUPERVISION OF ACCOUNTS**

6.1 Loan Disbursement Account

The Loan Disbursement Account herein shall be determined in accordance with (2):

- (1) within working days from the date of coming into effect of this Contract and before the date of first drawdown, Party A shall open an account within Party B for the sole purpose of the disbursement and payment of all loan amount under this Contract.
- (2) other account opened by Party A within Party B (Account Number: 33101995038050503008).

6.2 Account to collect sale proceeds

- (1) within ONE working days from the date of coming into effect of this Contract, Party A shall open an account within Party B for the purpose of collecting sale proceeds or designate an existing account within Party B as such (Account Number: 33101995038050503008).
- (2) Party A shall, on a monthly basis (choose “monthly” or “quarterly”), submit a report to Party B on the incoming and outgoing amounts of such account. Party A shall submit such report for the immediately preceding month or quarter (as the case may be) within the first FIVE working days of each month or quarter.
- (3) Party B is entitled to manage the incoming and outgoing amounts of such account. In particular, such account shall be in compliance with (vi) (one or more of the following requirements may be selected):

(i) average balances of such account:

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(ii) time for incoming payment being deposited into such account:

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(iii) percentage of the overall sale proceeds of Party A that are to be deposited into such account:

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(iv) amount limit for any particular outgoing payment of such account:

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(v) amount limit for daily outgoing payment (s) of such account:

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(vi) restrictions on internet-banking functions of such account:

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(vii) no outgoing payment shall be made without Party B's prior consent;

(viii) Such account shall be used only for the purposes of collecting sale proceeds and repaying the loan, and not for any other purpose;

(iii) \_\_\_\_\_

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(x) other requirements by Party B;

(xi) A separate Account Management Agreement signed by both Parties shall be complied with.

**7. REPAYMENT**

7.1 General Principles for Repayment

Party A shall repay the Loan in accordance with the following principles: Party B has the right to apply Party A's repayment first towards payment of any expense which shall be borne by Party A as provided hereunder but has been advanced by Party B and the expenses incurred by Party B for realizing its creditor's rights. Party B shall apply the balance of such repayment in the order of interest first and then principal adhering to the principle that the interest shall be fully repaid concurrently with the repayment in full of all the principal amounts.

For any advance of which the principal has become due but unpaid for more than ninety days, or any advance on which the interest has become due but unpaid for more than ninety days, or any advance otherwise provided by the laws, regulations or rules, Party B may first apply Party A's repayment towards those payments of expenses set out in the first paragraph of this article. Then Party B may apply the balance of such repayment towards payment in the order of principal first and then interest.

7.2 Payment of Interest

Party A shall pay due interest to Party B on the interest settlement date. The first interest payment date shall be the first interest settlement date after the release of an advance. All the interest and principal amounts outstanding shall be paid in full on the last repayment date.

7.3 Schedule for Repayment of the Principal

The repayment schedule hereunder shall be determined in accordance with item [see Schedule A] below:

(1) The repayment schedule shall be as follows:

	Repayment Date(mm/dd/yyyy)	Amount
(i)		
(ii)		
(iii)		
(iv)		
(v)		
(vi)		
(2)	_____	
	_____	
	_____	

7.4 Repayment Method

Party A shall deposit sufficient amount into the Account to collect sale processor other account at Party B before the repayment date provided hereunder and transfer such amount to repay the Loan (Party B may also debit such amount from such account to repay the Loan), or transfer such amount from another bank account of Party A to repay the Loan.

7.5 Prepayment

Party A may prepay the principals in full or in part upon approval by Party B of a written application submitted to Party B THIRTY working days in advance.  
The interest accrued on the principals to be prepaid shall be calculated on the basis of the actual number of days lapsed and the Loan Rate provided herein.

If Party B approves the prepayment by Party A, Party B shall have the right to charge Party A the compensation fee in an amount to be determined in accordance with the (1) of the following methods:

(1) compensation fee = amount of the principal prepaid × number of months remaining until the scheduled repayment date (the “**Remaining Period**”) ×   1  %; provided, however, that the part of the Remaining Period that falls short of a month shall be calculated as a full month; or

(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If Party A is required to repay the Loan in installments and prepays part of the principal, the prepaid amount shall be applied in the reverse order of the repayment schedule. After any partial prepayment, the outstanding Loan shall still be subject to the Loan Rate provided herein.

## 8. PARTY A’S RIGHTS AND OBLIGATIONS

### 8.1 Party A’s Rights

Party A has the rights to:

- (1) request Party B to release each advance of the Loan as provided hereunder;
- (2) utilize the Loan for the purposes provided for hereunder;
- (3) apply to Party B for extension of the Term hereunder provided that it has satisfied all the conditions as Party B requests;
- (4) require Party B to keep confidential the relevant financial information and manufacturing and operating trade secrets furnished by Party A except provided otherwise by law, regulations and rules, or required otherwise by the competent authorities, or agreed otherwise between the both parties hereto;
- (5) reject Party B or its employees asking for bribe; it shall have the right to lodge complaint with the competent authority about such misconduct and any other act of Party B that may violate the laws and regulations relating to the lending interest rate and service charges.

### 8.2 Party A’s Obligations

- (1) Party A shall draw the Loan and repay the principal and interest in full as provided herein, and bear the expenses and fees as provided herein;
- (2) Party A shall provide its financial, accounting as well as manufacturing and operating information and other materials as the Party B may request, and among other things, on or before the TWENTY working day of the first month of each quarter, Party A shall provide to Party B with the balance sheet and the profit and loss statement (or the income and expenditure statement, if Party A is a public institution) up to the end of the preceding quarter, and shall provide the cash flow statement at the end of each year in a timely fashion. Party A shall be responsible for the legality, truthfulness, accuracy, completeness and validity of the information it provides, and shall not provide false information or conceal material facts with respect to its financial and operation status;

- (3) In case of any change in Party A's name, legal representative (or principal officer), registered address, business scope, registered capital, articles of association or any other registration with local industrial and commercial authority, or there arises any circumstances that may adversely affect Party A's capability to repay the indebtedness or may endanger Party B's rights as a creditor, Party A shall notify Party B in writing of the same with relevant documents together with such notification evidencing the changes within 3 working days thereafter;
- (4) Party A shall utilize the Loan in accordance with the purposes as provided herein, and shall not misappropriate the Loan or utilize the Loan to carry out any transactions in violation of the laws and regulations, nor for investments in fixed assets, or equity or other areas, nor for production or operations prohibited by the state, nor for repaying the indebtedness incurred as a result of Party A's investments in fixed assets or equity etc.; Party A shall cooperate with Party B in its inspection of Party A's manufacturing, operating and financial activities and utilization of the Loan herein, and shall be subject to the requirements of Party B relating to loan management; Party A shall not try to evade its repayment obligations owing to Party B by means of withdrawing capital it has injected, transferring assets or entering into related-party transactions. Further, Party A shall not attempt to obtain loans or credit facilities from Party B by using dummy contracts with its related parties or by pledging such rights as notes receivable or accounts receivable without actual underlying transactions or by applying to Party B for discounting the same; Party A shall be in compliance with the provisions relating to means of payment and shall not evade Entrusted Payment by way of dividing a larger-amount payment into payments in smaller amounts;
- (5) Party A shall comply with the regulations relating to environmental protection, if the Loan hereunder shall be utilized for manufacturing or project construction;
- (6) Without Party B's consent, Party A shall not mortgage or pledge any assets acquired by utilizing the Loan hereunder for the benefit of a third party before full repayment of the principals and interest accrued thereon;
- (7) If Party A qualifies as a group customer, it shall promptly report to Party B any related-party transactions involving more than 10% of Party A's net assets, including (i) the relationship among all the parties to such transaction; (ii) the transaction and its nature; (iii) the transaction amount or the relevant ratio; and (iv) pricing policy (also applicable to the transactions with no price or merely nominal price);
- (8) Party A shall not carry out merger, split-up, transfer of shares, outward investment, substantial increase of debt financing or other activities of importance without Party B's prior written consent. For the avoidance of doubt, such consent shall not impair Party B's rights to take remedial measures if Party B determines at a later time that such activities of Party A may endanger Party B's rights as a creditor;
- (9) In the case of payment at Party A's own initiative, Party A shall submit reports to Party B on the use and payment of loan amounts on a monthly basis. Party A shall submit such report for the immediately preceding month within the first TEN working days of each month, together with a list of actual uses of loan amounts, until the date of repayment of all the loan. Such report shall be in the form attached in Schedule 4.

**9. PARTY B'S RIGHTS AND OBLIGATIONS**

- 9.1 Party B is entitled to request Party A to repay the principal, interest accrued thereon and expenses when due, to manage and control the payment of loan amounts, to monitor on a real-time basis overall cash flows of Party A and to accelerate the maturity of the loan considering the status of collection of sale proceeds of Party A. Party B may exercise any other rights hereunder and demand Party A to perform any other obligations hereunder.
- 9.2 Party B is entitled to engage in Party A's large-amount financing (The total amount of such financing shall be more than RMB SEVENTY-FOUR MILLION or Foreign Exchange equivalent), sale of assets, merger, split-up, stock-company restructuring, bankruptcy, liquidation and other activities for the purpose of protecting Party B's rights. The way(s) of engagement shall be (1)(multiple choices are allowed)
- (1) Party A shall seek Party B's prior written consent before carrying out any of the above activities;
- (2) Party B is entitled to arrange for Party A's large-amount financings;
- (3) the sale price and buyer of the assets shall be in compliance with the following:
- \_\_\_\_\_
- \_\_\_\_\_
- (4) \_\_\_\_\_
- \_\_\_\_\_
- (5) other ways Party B deems fit.
- 9.3 Party B shall advance the Loan as provided herein unless the delay or failure in advancing the Loan is caused by any reason attributable to Party A or any other reason that can not be attributed to Party B.
- 9.4 Party B shall keep confidential the relevant financial documents and manufacturing and operating trade secrets furnished by Party A except otherwise provided by the laws, regulations and rules, or required by the competent authorities, or agreed between the parties hereto.
- 9.5 Party B shall not bribe Party A or its employees, nor request any bribe or accept any bribe offered by Party A.
- 9.6 Party B shall not engage in any activity which is dishonest or will be detrimental to Party A's lawful interests.

## 10. DEFAULT AND REMEDY

### 10.1 Events of Default by Party B and Liabilities

- (1) If Party B does not advance the Loan as provided herein without justifiable reason, Party A may request Party B to advance the Loan in accordance with the Contract.
- (2) If Party B charges any interest or fee which is prohibited by the laws or regulations, Party A may request Party B to refund the interest or fee charged.

### 10.2 Events of Default by Party A

The events of default by Party A shall include:

- (1) Party A breaches any statutory obligation or any contractual obligation hereunder; and
- (2) Party A has repudiated its obligations hereunder expressly or by its conduct.

### 10.3 Events that may Adversely Impact Creditor's Rights

- (1) the occurrence of any of the following events upon Party A which Party B believes may adversely impact its creditor's rights:

contracting, trustee (receiver) being appointed, lease, shareholding restructuring, decrease of its registered capital, investment, joint operation, mergers and acquisitions, acquisition and restructuring, division, joint venture, shares transfer, substantial increase of debt financing, applying for (or subject to an application for) temporary cessation of operation or dissolution, revocation, applying for (or subject to an application for) bankruptcy, change of controlling shareholders/actual controllers, transfer of material assets, suspension of production or operation, significant penalty imposed by regulatory authorities, cancellation of registration, revocation of business license, involvement in material legal proceedings, severe deterioration in operation and financial condition, deterioration of credit standing, legal representative/principal officer being unable to perform their duties;

- (2) the occurrence of any of the following events which Party B believes may adversely impact its creditor's rights:

Party A fails to repay any other due debts, including such debts owed to any other branch or organization of China Construction Bank or to any other third party; Party A transfers assets at a low price or for free; Party A relieves or waives any debt of a third party; Party A fails to exercise its creditor's rights or any other rights; or Party A provides security for a third party; financial indicators of Party A fail to meet, on a continuous basis, the requirements specified in Schedule2; there are unusual fluctuations in any of Party A's accounts (including without limitation account to collect sale proceeds and other account subject to Party B's supervision); there are grave cross-defaults by Party A; profit-making capability of Party A's core business is undesirable; there is irregularity in the use of loan;

- (3) Party A's shareholder manipulates the independence status of Party A as a legal person or the limited liability status of the shareholder in order to evade debts, and Party B believes this manipulation may adversely impact its creditor's rights;
- (4) any of the conditions precedent to advance the Loan has not been satisfied continuously;
- (5) the occurrence of any of the following events upon the guarantor which Party B believes may adversely impact its creditor's rights:
  - (i) the guarantor breaches any provision of the guarantee contract, or any of the representations and warranties it has made proves to be false, wrong or incomplete;
  - (ii) contracting, trustee (receiver) being appointed, lease, shareholding restructuring, decrease of its registered capital, investment, joint operation, mergers and acquisitions, acquisition and restructuring, division, joint venture, shares transfer, substantial increase of debt financing, applying for (or subject to an application for) temporary cessation of operation or dissolution, revocation, applying for (or subject to an application for) bankruptcy, change of controlling shareholders/actual controllers, transfer of material assets, transfer of assets at a low price or for free, relieving or waiving any debt of a third party; failure to exercise its creditor's rights or any other rights, suspension of production or operation, significant penalty imposed by regulatory authorities, cancellation of registration, revocation of business license, involvement in material legal proceedings, severe deterioration in operation and financial condition, deterioration of credit standing, legal representative/principal officer's inability to perform their duties, which may adversely impact its capability as a guarantor;
  - (iii) other events in which the guarantor has lost or may lose its capability as guarantor.
- (6) the occurrence of any of the following events on the mortgage or pledge which Party B believes may adversely impact its creditor's rights:
  - (i) the mortgaged or pledged property is damaged, destroyed or its value is reduced as a result of a third-party's action, expropriation, confiscation, eminent domain or redevelopment and relocation by the government, market change, or any other reason;
  - (ii) the mortgaged or pledged property has been seized, impounded, frozen, mandatorily debited, put on lien, sold by auction, subject to administration order by a government authority, or a dispute over the ownership of the mortgaged or pledged property occurs;
  - (iii) the mortgagor or pledgor breaches any provision of the mortgage/pledge contract, or any of the representations and warranties it has made proves to be false, wrong or incomplete;

- (iv) other events that may adversely impact Party B's ability to realize its mortgage or pledge.
- (7) the security is not effected, becomes ineffective, invalid, or is rescinded or terminated, or the security provider defaults or repudiates its obligations expressly or by conduct, or the security provider has lost its capability to perform its obligations as a security provider in whole or in part, or the value of the collateral is reduced, which Party B believes may adversely impact its creditor's rights; or
- (8) other events which Party B believes may adversely impact its creditor's rights.

#### 10.4 Party B's Remedy

Upon occurrence of any event under Article 10.2 or 10.3, Party B may exercise one or more of the following rights:

- (1) to stop advancing the Loan;
- (2) to request for more conditions precedent for loan advance and payment;
- (3) to change the means of payment of loan in accordance with this Contract;
- (4) to declare the Loan immediately due and payable, and request Party A to repay immediately all the due and undue principal, interest and fees;
- (5) if Party A fails to make any drawdown in accordance with the Contract, Party B may hold Party A liable to pay a penalty equal to 0 % of the Loan proceeds not drawn and may reject Party A's request for drawing such Loan;
- (6) if Party A utilizes any part of the Loan for any purpose other than as provided herein, interest on the misappropriated amount shall be calculated and compounded for the period from the date of the misappropriation to the date when all the principal and interest have been fully paid in accordance with the relevant default interest rate and the interest settlement method as provided herein;
- (7) if any principal is overdue, the interest on such principal and on any overdue interest (including whole or part of the principal and interest which have been accelerated), shall be calculated and compounded for the period from the first date such principal becomes overdue to the date when all the principal and interest have been fully paid, in accordance with the relevant default interest rate and the interest settlement method as provided herein;

"Overdue" herein means that Party A fails to repay the Loan on the repayment date or, in case of repayment in installments, fails to repay the relevant installments in accordance with the repayment schedule as provided herein.

Before any principal is overdue, the overdue interest shall be compounded in accordance with the interest rate and the interest settlement method as provided herein;

- (8) other remedies, including but not limited to:
- (i) to debit Party A's accounts at China Construction Bank in RMB or other currencies with corresponding amount without prior notice to Party A;
  - (ii) to exercise its rights under the security interest;
  - (iii) to request Party A to provide new security satisfactory to Party B for all the debts of Party A hereunder;
  - (iv) to decline Party A's request to dispose of its deposits of corresponding amount, within any account opened with any branch of China Construction Bank (including without limitation the account to collect sale proceeds);
  - (v) to terminate the Contract.

## 11. MISCELLANEOUS

### 11.1 Cost Allocation

- (1) all costs and expenses incurred as a result of Party A's breach of any provision in this Contract, including without limitation court fees, arbitration fees, property preservation fees, travel expenses, enforcement expenses, valuation/appraisal fees, auction fees, notary fees, service fees, public announcement costs, legal fees, shall be borne by Party A.
- (2) in respect of other fees the parties agree as follows:

### 11.2 Use of Party A's Information

Party A agrees that Party B is entitled to inquire about Party A's creditworthiness with the Credit Database or relevant authorities established or approved by the People's Bank of China and the Credit Reference Agency, and that Party B is entitled to provide Party A's information to such Credit Database. Party A further agrees that Party B may reasonably use and disclose Party A's information for business purpose.

### 11.3 Collection by Public Announcement

In the event that Party A fails to repay on time any principal or interest or breaches any other contractual obligations hereunder, Party B is entitled to report to relevant authorities and demand repayments by means of public announcement via press.

### 11.4 Party B's Record as Evidence

Unless there is reliable and definitive evidence to the contrary, Party B's internal records of principal, interest, expenses and repayment, receipts, vouchers made or retained by Party B during the course of drawdown, repayment and interest payment, and records and vouchers relating to the collections by Party B shall constitute valid evidence of the creditor-debtor relationship between the two parties. Party A shall not raise any objection merely because the above records, receipts, vouchers are made or retained by Party B.

11.5 No Waivers

Party B's rights hereunder shall not prejudice or exclude any other rights Party B is entitled to under applicable laws, regulations and other contracts. No forbearance, extension of time limit, preferential treatment or delay in exercising any right hereunder shall be deemed to constitute a waiver of rights and interests hereunder or permit or recognition of any breach of the Contract. Nor shall it restrict, prevent or interfere with the continuous exercise of such right at a later time or any other right, nor shall the foregoing cause Party B to be liable in any way to the Borrower.

11.6 If Party A owes Party B any other due and payable debts in addition to the debts hereunder, Party B may debit any of Party A's account at China Construction Bank in RMB or other currencies and may choose to repay any of the due and payable debts in the order it deems appropriate. Party A agrees not to raise any objection with respect thereto.

11.7 In the event of any change to the address or other contact information, Party A shall promptly notify Party B of such change in writing. Party A shall be liable for any loss caused by its failure of giving prompt notice of such change.

11.8 Direct Debit Right

Party B is entitled to debit, without prior notice to Party A, any account of Party A at China Construction Bank in RMB or other currencies to pay all amounts payable under the Contract. Party A shall assist Party B to complete any procedures for foreign exchange settlement or sale, and Party A shall bear the risk of exchange rate fluctuation.

11.9 Dispute Resolution

Any dispute arising from the performance of the Contract may be settled by consultation. If the dispute cannot be resolved through consultation, such dispute shall be submitted to (1) [please select from below]:

- (1) the People's court within the jurisdiction where Party B is located.
- (2) [name of the arbitration committee] for arbitration at \_\_\_\_ [place of arbitration] in accordance with the then prevailing arbitration rules. The arbitration award shall be final and binding on both Party A and Party B.

The undisputed provisions shall remain enforceable during the process of litigation or arbitration.

11.10 Effectiveness of the Contract

The Contract shall become effective upon:

- (1) execution by the legal representative/(principal officer) or authorized representative of Party A and being affixed with the company chop of Party A; and
- (2) execution by the principal officer or authorized representative of Party B and being affixed with the company chop of Party B. All Schedules of this Contract shall constitute integral parts of this Contract and shall be equally binding.

11.11 The Contract shall be executed in \_\_\_\_\_ counterparts.

11.12 Other Provisions:

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**12. REPRESENTATIONS**

- 12.1 Party A clearly understands the business scope and authorization limit of Party B.
- 12.2 Party A has read the Contract. Party B, at Party A's request, has explained the terms of the Contract, and Party A fully understands their meanings and corresponding legal consequences.
- 12.3 The execution and performance of the Contract by Party A is in compliance with laws, administrative regulations, rules and Party A's articles of association (or its other internal constitutional documents) and has been approved by its internal competent organization and/or the competent governmental authorities.
- 12.4 Party A carries out production and operation in compliance with laws and regulations.
- 12.5 Party A has the capability to keep its business going and has the legitimate sources to repay the loan.
- 12.6 Party A warrants that the loan amount requested under this Contract is no more than necessary to meet the real needs of Party A for the purposes specified herein.
- 12.7 Both Party A and its controlling shareholder have good financial standing and have no record of gross misconducts.
- 12.8 Party A agrees that Party B has the right to instruct other branches of China Construction Bank to advance loan under this Contract and to exercise or perform the rights and obligations hereunder.
- 12.9 Party A represents that, at the time of execution of this Contract, there exists no action or event that violates any applicable laws, regulations or rules in relation to environmental protection, energy saving and emission/pollution reduction (the "Environmental Laws"). Party A further warrants that it shall strictly comply with such Environmental Law after the execution of this Contract. If any of the above representations or warranties is untrue, or Party A defaults on any of the above undertakings, or there is any potential risk of energy dissipation or pollution by Party A, Party B is entitled to stop advancing loans, to declare an acceleration of the principal and interest not yet due hereunder, or adopt other remedial measures provided hereunder or permitted by laws.

**Party A** (Company Chop)

By the legal representative (principal officer) or authorized representative:

Signature: \_\_\_\_\_

Date:

**Party B** (Company Chop)

By the principal officer or authorized representative:

Signature: \_\_\_\_\_

Date:

**Loan Information**

1. Specific purposes of the loan:

This Loan is used for company's daily operation expense, including material purchase payment and employee's salary.

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Party A shall not change the purpose of the loan without Party B's written consent.

2. Sources of funds for loan repayment:

Company's proceeds of sales.

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Party A guarantees the truthfulness and legality of such sources of funds and the steadiness and adequacy of cash flows of such sources.

3. Miscellaneous

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Schedule 2

**Mandatory Financial Indicators**

The Financial indicators of Party A shall on a continuous basis meet the following requirements:

Maximum Monthly Capital/Debt \_\_\_\_\_ 65%

Minimum Current Ratio: \_\_\_\_\_ 100%

Minimum liquidity Ratio: \_\_\_\_\_ 60%

Maximum contingency liability/Capital \_\_\_\_\_ 30%

Maximum accumulated long term investment/Capital \_\_\_\_\_ 30%

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Party B has the right to change unilaterally such requirements as to mandatory indicators provided that FIVE working-day advanced notice is issued to Party A.

**Schedule 3**

**Schedule for Loan Drawdown**

Contract Number				
Date of Drawdown				
No.	Proposed Purpose	Proposed Payment Amount	Proposed Recipient (if any)	Notes
1				
2				
...				
...				
Total	RMB (CAPITALIZE WORDS)			
Name of the Borrower (company seal):				

**Schedule 4**

**Consolidated report on payment at Party A's initiative**

Contract Number					
Date of Delivery					
NO.	Actual purpose of the Loan	Recipient	Amount	Evidencing Materials	Whether or not in compliance with the purpose specified in this Contract
1					
2					
.....					
total	RMB (CAPITALIZE WORDS)				
Name of the Borrower (company seal):					
Internal review	Relationship Manager (signature):				
	Officer in charge of reviewing loan advances and payments (signature):				

<b>Loan Commencement Date</b>	<b>Loan Expiration Date</b>	<b>Loan Amount</b>	<b>Loan Rate</b>	<b>Drawdown Schedule</b>	<b>Schedule for Repayment</b>
December 5, 2012	December 4, 2013	5,000,000 RMB	A fixed interest rate equal to 110% of the Base Rate	Option 1: On December 5, 2012 for 5,000,000 RMB	Option 1: On December 4, 2013 in the amount of 5,000,000 RMB
December 18, 2012	December 17, 2013	5,000,000 RMB	A fixed interest rate equal to 110% of the Base Rate	Option 1: On December 18, 2012 for 5,000,000 RMB	Option 1: On December 17, 2013 in the amount of 5,000,000 RMB
January 10, 2013	January 9, 2014	9,000,000 RMB	A fixed interest rate equal to 110% of the Base Rate	Option 1: On January 10, 2013 for 9,000,000 RMB	Option 1: On January 9, 2014 in the amount of 9,000,000 RMB
January 22, 2013	January 21, 2014	10,000,000 RMB	A fixed interest rate equal to 110% of the Base Rate	Option 1: On January 22, 2013 for TEN MILLION RMB	Option 1: On January 21, 2014 in the amount of 10,000,000 RMB
February 19, 2013	February 28, 2014	10,000,000 RMB	A fixed interest rate equal to 110% of the Base Rate	Option 1: On February 13, 2013 for TEN MILLION RMB	Option 1: On February 18, 2014 in the amount of 10,000,000 RMB
March 7, 2013	March 6, 2014	9,000,000 RMB	A fixed interest rate equal to 108% of the Base Rate	Option 1: On March 7, 2013 for 9,000,000 RMB	Option 1: On March 6, 2014 in the amount of 9,000,000 RMB
April 2, 2013	April 1, 2014	4,000,000 RMB	A fixed interest rate equal to 108% of the Base Rate	Option 1: On April 2, 2013 for 9,000,000 RMB	Option 1: On April 1, 2014 in the amount of 4,000,000 RMB
April 19, 2013	April 18, 2014	4,000,000 RMB	A fixed interest rate equal to 108% of the Base Rate	Option 1: On April 19, 2013 for 4,000,000 RMB	Option 1: On April 18, 2014 in the amount of 4,000,000 RMB
August 26, 2013	August 25, 2014	2,000,000 RMB	A fixed interest rate equal to 108% of the Base Rate	Option 1: On August 26, 2013 for 2,000,000 RMB	Option 1: On August 25, 2014 in the amount of 2,000,000 RMB

**OFFICE LEASE AGREEMENT**

Whereas this Office Lease Agreement (the “**Lease Agreement**”) is made by and between the undersigned:

**LANDLORD:** Admiral Overseas Corporation (hereafter referred to as Party A); and

**TENANT:** Applied Optoelectronics Incorporated (AOI) Taiwan (hereafter referred to as Party B).

The above two parties agree to the terms and conditions set forth below:

**I. LEASED PREMISES:** The four units owned by Party A at 5F., No. 700, Zhongzheng Rd., Zhonghe Dist., New Taipei City, 5F-6~5F-8 (the scope of the leased premises is shown in the attached graph) with a space of 347.53 pings (covering the leased premises and amortized public facilities), plus one parking slot (No. 1582) at B2 floor.

**II. LEASE PERIOD:**

1. The Lease Period is from October 01, 2013 to March 31, 2015, and the tenant/landlord relationship shall terminate when the lease expires.
2. If Party B wishes to renew the lease, Party B shall notify Party A in writing three (3) months prior to expiration of the Lease Agreement, and upon Party A's consent both parties may negotiate for a new Lease Agreement allowing for Party B to continue the use of the Lease Premises after expiration of the said Lease Agreement. If both parties fail to enter into a new Lease Agreement upon expiration of the Lease Agreement, the tenant/landlord relationship will be deemed terminated. If Party B otherwise continues to occupy and use the Leased Premises after the expiration of the Lease Agreement, it shall pay Party A based on the daily rental fee calculated according to the Lease Agreement previously expired plus 5% of such daily rental fee for each day of the occupying of the Leased Premises, and is not allowed to claim any rights arising out of the application of non fixed-term leases such as month-to-month leases as prescribed by Article 451 of the Civil Code.

**III. PREMISES HANDOVER:** Party A shall respectively hand over the control over the Leased Premises in its commercially suitable condition to Party B on the day the Lease Agreement becomes effective.

#### IV. RENTAL:

1. Rent for the units of the Leased Premises shall be calculated starting on November 01, 2013, whereas the parking slot rent shall be calculated starting from October 01, 2013. The rent of the leased premises shall be paid on a monthly basis. The rent for the units of the Leased Premises is 312,777 NT Dollars per month and the parking slot rent is 5,000 NT Dollars per month. Total rent for the Leased Premises will be 318,277 NT Dollars per month. The aforesaid total rent includes all applicable taxes.
2. Upon executing the Lease Agreement, Party B shall deliver checks identified to be cashed on first days of all months in the Lease Period identified, with an aforesaid amount of monthly rent as described in the preceding paragraph and payable to Party A to Party A. After cashing the check each month, Party A shall issue a receipt to Party B, and the receipt will be considered as proof of rent payment.
3. If any check issued by Party B for the rent payment bounces, the rent for that the corresponding month shall be deemed unpaid by Party B.
4. In case of any delay in rent payment from Party B, Party B shall pay a 20% annual interest on the deferred rent calculated on the daily basis to Party A. If rent payment is late for more than 15 days, in addition to the aforesaid interest, Party B will pay a penalty the same as the daily rent in amount for each day of the overdue exceeding the 15-day threshold. Party A then will have the right to terminate the Lease Agreement.
5. Rent for the units of the Leased Premises from date the control over the units of the Leased Premises is handed to the date immediately prior to the date on which the Lease Agreement becomes effective and from March 17, 2015 to March 31, 2015 (the "**Rent Exemption Period**") will be waived. However, during the Rent Exemption Period, Party B is still obligated to pay the rent for the parking slots. In the case that Party B fails to make the rent payment during the term of the Lease Period or there is any early termination of the Lease Agreement attributable to the fault/default by Party B, the benefit of such waiver during the aforementioned period will be forfeited. If Party B fails to make the rent payment or causes the Lease Agreement to be terminated prior to its expiration, in addition to being held accountable for any penalty specified in this Lease Agreement, Party B shall also be liable for any rent for the units waived in the Rent Exemption Period.

**V. SECURITY DEPOSIT:**

1. When executing the Lease Agreement, Party B shall pay 954,831 NT Dollars to Party A as a security deposit. If during the Lease Period Party B breaches or defaults the Lease Agreement such as failing to pay the monthly rent, failing to pay the interest on any deferred rent payment, failing to pay the penalty or damaging Party A as the result, Party A may deduct for any amounts owed from the security deposit. If the security deposit is deducted at any point during the Lease Period, Party B will be obligated to make up the deficiency.
2. If Party B does not renew the lease upon the expiration of the Lease Agreement or when the Lease Agreement becomes terminated without Party B faulting or defaulting, Party A shall return the security deposit without interest to Party B when Party B vacates the Leased Premises (including the relocation of the registered business address, the dissolution of the corporate existence or the relocation of the factory). However, in the event that Party B needs to terminate the Lease Agreement prior to its expiration, Party B will need to process the early termination subject to Article 15, Section 1 of the Lease Agreement and Party A is not obligated to return the aforesaid security deposit.

**VI. IMPROVEMENT, SAFETY MAINTENANCE AND REPAIR OF THE LEASED PREMISES:**

1. Within the Lease Period, Party B shall obtain Party A's approval before performing any renovation, partition and equipment installation of the Leased Premises at Party B's own expense. However, any above-mentioned performance in no event shall cause any damages to the building structure, safety equipment or exterior appearance.
2. If Party B needs to use any vacant space or utilize the building's public area or glass outer walls outside of the Leased Premises to place any advertising signs or boards, Party B will need to submit such request to to the building's Administrative Committee for approval.

3. The safety equipment inside the Leased Premises shall be maintained by Party B during the Lease Period, and storage of combustible, contraband or hazardous articles is strictly prohibited.
4. During the Lease Period, other than the structural damages as described in Article 1 of the Lease Agreement, Party A shall bear all the obligation and costs to maintain the condition of the Leased Premises. That said, Party B shall be responsible for the maintenance or improvement of any air-conditioning equipment, fire safety and electric power equipment inside the Leased Premises, disregarding whether the original installation or repair was made by Party A.
5. Party B shall be responsible for repair of other public areas or facilities. Party B may submit such repair or maintenance request directly to the building's Administrative Committee. Party A shall not be held accountable for any maintenance other than as set forth in Article 1 of the Lease Agreement.
6. During the Lease Period, Party B shall use the Leased Premises with the precautionous obligation that a prudent tenant shall have. In case of any cause attributable to Party B (including Party B's employees, users and clients) leading to the damages to the Leased Premises, Party B shall be responsible for repair.
7. The condition of the Leased Premises at the time it is handed over to Party B will be shown by photos attached herein as Appendix 1.

**VII. RETURN OF THE LEASED PREMISES:**

1. If Party B does not renew the Lease Agreement after expiration or when the Lease Agreement is terminated, Party B shall return the Leased Premises to Party A on the expiration or termination day. In case of any delay in returning the Leased Premises, Party A may, at its discretion, enter and recover the Leased Premises to which Party B shall have no objection.
2. After the Lease Agreement expires or the Lease Agreement is terminated, Party B shall unconditionally remove all installed equipment or removable fixtures and restore the Leased Premises to their original condition before returning the Leased Premises to Party A. Party B shall not cause any damage to the building and or existing equipment. In addition, Party A is not obligated to purchase or provide any compensation for any renovation or improvements performed by Party B.
3. If Party B does not vacate the Leased Premises and leaves behind any removable fixtures, equipment and articles in the Leased Premises after expiration or termination of the Lease Agreement, Party A may dispose the items left on the site as waste, and restore the Leased Premises to its original condition, for which all incurred expenses related to such disposal will be borne by Party B.

#### **VIII. RESTRICTIONS ON USE OF THE LEASED PREMISES:**

1. Party B shall abide by the regulations set forth by the Building Management Act. If any violation by Party B results in Party A's loss, Party B shall be liable for the loss.
2. Party B bears the responsibility for securing any operational permit or business license required by Party B. Party A will provide any necessary assistance by supplying any requisite documents for Party B's application. If Party B has registered its official registered place of business to the address of the Leased Premises, Party B agrees to amend such registration upon the expiration or termination of the Lease Agreement.
3. Without the consent or approval of Party A, Party B shall not transfer, assign, lease, sublease or lend the Leased Premises to any third parties for occupancy or use.
4. The permitted use of the Lease Premises will be that of office and manufacturing. Party B shall follow any local law or regulations regarding the permitted use. In the event that Party B does not use the Leased Premises as indicated in this Section and that violates a law that causes a legal authority to shut down business operations, such event shall not constitute the ground for Party B to terminate this Lease Agreement. Party B will still be liable for the remaining term of the Lease Agreement.
5. Party B shall not use the Leased Premises as a launching pad to engage illegal businesses and activities.
6. When executing the Lease Agreement, Party B has been made aware of the current public safety and fire safety condition of the Leased Premises' public areas and the existence of the relevant emergency exits, and has accepted the condition as is. Unless any subsequent events occur during the Lease Period that causes the current building to endanger the safety and health/welfare of the occupants or critically undermines any emergency evacuation of the occupants, this Lease Agreement may not be subject to early termination by Party B as the result. In the event that Party B chooses to terminate this Leased Otherwise, Party B shall continue to fulfill its obligation as specified in Article 15, Section 1 of the Lease Agreement.

**IX. ABANDONMENT OF INTEREST:** During the Lease Period, if Party A decides to secure a security interest on the Leased Premises from a financial institution, Party B shall agree to abandon its interest as a lessee of the Leased Premises if the security interest holder decides to exercise its interest and early terminates the Lease Agreement. Any losses incurred by Party B (including relocation fee and equipment residual value) will be borne by Party A. Party A shall compensate Party B for the losses (the aforesaid equipment residual value refers to the value left from the book value of the equipment deducting the accumulated depreciation). At the same time, Party A shall return the security deposit without interest and all the remaining pre-dated checks received for purpose of rent payment to Party B.

**X. TAXES:**

1. All land or property taxes shall be paid by Party A.
2. Any utilities fees incurred during the renovation or improvement during the Rent Exemption Period shall be paid by Party B.
3. The building administrative fee and parking slot cleaning fee incurred during the Lease Period, including the period in which rent was exempted as specified in this Lease Agreement shall be paid by Party B. These fees shall be collected by Party A to be paid to the building's administrative committee. According to current resident regulations, the monthly building administrative fee is 45 NT Dollars per ping and the parking slot cleaning fee is 350 NT Dollars. Accordingly, the Leased Premises will incur a monthly building administrative fee of 15,639 NT Dollars and monthly parking slot cleaning fee of 350 NT Dollars, totaling in 15,989 NT Dollars per month, subject to any adjustment. Any overpayment will be refunded to Party B and any deficiency will be paid by Party B.
4. According to the building administrative fee and parking slot cleaning fee prescribed in the preceding paragraph, Party B shall upon the execution of the Lease Agreement, issue pre-dated checks for all fees payable on the beginning day of each monthly period during the Lease Period and deliver them to Party A. After cashing the checks each month, Party A will pay the aforesaid fees to the administrative committee for Party B and use the receipt issued by the administrative committee as the evidence of Party B's payment of the building administrative fee and parking slot cleaning fee. In the event that Party B fails to provide the aforesaid checks to Party A or the pre-dated checks bounce, the Lease Agreement will be deemed terminated.

5. Any administrative expenses and business taxes incurred from Party B's business operation shall be paid by Party B.
6. Party A shall carry fire insurance for the building of the Leased Premises, whereas Party B shall purchase fire insurance on its own for any improvements and business equipment within the Leased Premises.
7. If the nature of Party B's business requires Party B to purchase accident liability insurance under the law, which results in an increase of fire insurance premium for other tenants, Party B shall pay for the increase in premium on behalf of all other tenants.

**XI. EQUIPMENT IMPROVEMENT:**

1. Any fumes, exhaust gas and sewage produced from Party B's business operations shall be filtered and disposed by Party B before being discharged. The discharge shall meet the standards prescribed by environmental protection regulations. In the event the discharge creates pollution to the building, Party B shall be responsible for any cleanup to maintain the environmental quality of the building.
2. The fire safety and other related preventive equipment required by Party B in its business operations shall be purchased and installed by Party B.

**XII. PUBLIC SAFETY INSPECTION, CERTIFICATION AND DECLARATION:** Party B shall allow for any public safety inspection, certification and declaration for the exclusive part of the Leased Premises in accordance with the "Regulations for Inspecting and Reporting Buildings Public Security" during the Lease Period at its own expense. If any process requires Party A to provide any certification or documents, Party A shall be cooperative in providing all necessary documentation. In the event that Party B fails to comply with any required regulations or declarations, Party B shall be responsible for all the related liabilities.

**XIII. FIRE SAFETY EQUIPMENT INSPECTION, REPAIR AND DECLARATION:** Party B shall perform periodical inspections, repairs and declarations of the public fire safety equipment for the Leased Premises in accordance with the “Standards for Fire Safety Equipment Inspection, Repair and Declaration at a Variety of Sites” during the Lease Period at its expense. In the case that Party B does not perform the inspection and repair at any specified time as required, or the inspection/repair result does not comply with the regulations, Party B shall be responsible for all the related liabilities.

**XIV. DEFAULT PANALTIES:**

1. In the event that either party violates the Lease Agreement and still fails to remedy such violation within the time limit after receiving the demand notice from the other party, the non-violating party may terminate the Lease Agreement. In addition to paying an amount equivalent to three months of the rental to the non-violating party as the default fine, the violating party shall also compensate the non-violating party for all other resulting losses/consequential damages.
2. In the case that the Leased Premises has been damaged and unusable, the Lease Agreement shall be ipso facto terminated. If the cause of the damage is attributable to Party B, Party B shall pay the default fine and compensate for the damage as prescribed by the preceding paragraph.
3. In the event that Party B refuses to return the Leased Premises after the Lease Agreement expires or the Lease Agreement is terminated, it shall pay Party A a punitive default fine calculated on a daily basis by doubling the daily rent of the last month preceding to the expiration of the Lease Agreement or the termination of the Lease Agreement from the day following the expiration of the Lease Agreement, or the termination of the Lease Agreement until the day the Leased Premises is returned.

**XV. EARLY TERMINATION SPECIAL CLAUSES:**

1. If any party wishes to terminate the Lease Agreement prior to the expiration of the Lease Agreement, the terminating party shall notify the other party in writing three months in advance. Unless otherwise specified in the Lease Agreement, both parties agree to the following:
  - (1) If the early termination is proposed by Party B:
    - i. Party B shall pay all rent and expenses for the period occupied. Party A will be entitled to keeping the security deposit because of Party B’s early termination as a variety of a default. However, Party A shall return any pre-dated checks for any remaining time in the Lease Period to Party B.

- ii. Party B shall forfeit its right to waiver of rent during the Rent Exemption Period as stipulated in Paragraph 5 of Article 4, and shall pay Party A the rent for the Rental Exemption Period.
  - iii. If Party B has registered its official registered business address at the Leased Premises address, Party B shall promptly amend the registration when the Lease Agreement is terminated.
- (2) If the early termination is proposed by Party A:
- i. Party A shall return the security deposit to Party B when Party B vacates the Leased Premises. In addition, Party A shall also pay a default fine equal to two times the security deposit to Party B as compensation.
  - ii. When Party B vacates the Leased Premises, Party A shall return all remaining pre-dated checks for the remaining time in the Lease Period to Party B.
2. Prior to the termination of the Lease Agreement, Party B shall comply with the Lease Agreement to pay for any rent, utilities, administrative fee, common area electric bill, air-conditioner utilization fee, parking slot cleaning fee, gas fee, the fee to reissue the cards to access to the building and the Leased Premises such as those used in vehicles and the entrance into the Leased Premises (to replace the damaged or lost one), any expenses incurred to amend or register official business address and any expenses for restoring the Leased Premises to the condition at the time this Lease Agreement is entered. On the other hand, Party A may exercise its right to directly deduct the amount required to be paid by Party B as specified in this Section from the security deposit in accordance with Sections 1–(1) and (2) of this Article.
3. Unless otherwise specified in the Lease Agreement, either party shall not request the other party to provide any additional subsidy, compensation or payments of any kind.

**XVI. SPECIAL CLAUSES FOR MAINTENANCE AND REPAIR OF AIR CONDITIONING EQUIPMENT:** During the Lease Period, Party A shall hire workers to periodically maintain and repair the air conditioning equipment required for use within the Leased Premises, for which the cost of maintenance is 1,680 NT Dollars per air conditioner unit annually. The Leased Premises is equipped with 30 air conditioner units, and therefore the total maintenance and repair fees incurred during the Lease Period for the air conditioner units shall be 100,800 NT Dollars. According to Paragraph 4 of Article 6, such amount shall all be paid by Party B to Party A upon the execution of the Lease Agreement. In the event that Party B fails to make the payment or the check delivered to Party A for such payment bounces, the Lease Agreement shall be deemed agreed to be terminated.

**XVII. AGREED GOVERNING VENUE:** Both Party A and Party B are all willing to perform the Lease Agreement in good faith. In the event any disputes arise from the Lease Agreement leading to litigation, all court costs and attorney fees shall be paid by the breaching party. Both parties agree that the Taiwan Taipei District Court shall be the court of competent jurisdiction for the first instance.

**XVIII. NOTICE DELIVERY ADDRESSES:** Party A's office for execution of the Lease Agreement shall be the place for the delivery of any notices in relation to the Lease Agreement. Party B's address for delivery of notice shall be the location of the Leased Premises. Once the notice is delivered to any of the aforesaid addresses, no matter whether the recipient refuses to receive the notice or does not receive the notice for any reasons, the notice shall be deemed to be lawfully delivered, to which both parties shall have no objection.

**XIX. MISCELLANEOUS:** Any matters not covered by the Lease Agreement shall be supplemented by both parties in writing. The Lease Agreement is made in two copies, and both Party A and Party B shall retain one copy each as proof.

The undersigned:

Party A: Admiral Overseas Corporation

Person in charge: Li, Chao-Hsiung

/s/ Li, Chao-Hsiung

Business registration No.: 33115502

Address: 12F-3, No. 716, Zhongzheng Rd., Zhonghe Dist., New Taipei City

TEL: (02) 82273006

Party B: Applied Optoelectronics Incorporated (AOI) Taiwan

Person in charge: Lin, Chih-Hsiang

/s/ Lin, Chih-Hsiang

Business registration No.: 28410552

Address: 6F-1, No. 700, Zhongzheng Rd., Zhonghe Dist., New Taipei City

TEL: (02) 82279189

Date: September 11, 2013

## Exhibit 10.4

### AMENDMENT TO OFFICE LEASE AGREEMENT

Whereas this Office Lease Agreement is made by and between the undersigned on December 22, 2011, which has been attached hereto as exhibit 1 (hereinafter referred to as "4<sup>th</sup> Floor Lease"):

**LANDLORD:** Admiral Overseas Corporation (hereafter referred to as Party A); and

**TENANT:** Applied Optoelectronics Incorporated (AOI) Taiwan (hereafter referred to as Party B).

**LEASED PREMISES:** The 4<sup>th</sup> Floor Lease is entered between Party A and Party B for four units owned by Party A at 4F., No. 700, Zhongzheng Rd., Zhonghe Dist., New Taipei City, 4F-6~4F-8 plus three parking slots (Nos. 1575, 1578, and 1579) at B2 floor.

Both Parties now agree to amend the 4<sup>th</sup> Floor Lease as follows:

1. Extend the 4<sup>th</sup> Floor Lease to be expired on March 31, 2015;
2. At the time this amendment is entered, Party B issues 12 checks covering the rents from April 10, 2014 to March 31, 2015 and administrative fees and parking slot cleaning fees for the extension period; the 12 checks are payable to Party A, with one check payable to Party A on April 10, 2014 at the amount of 247,270 NT Dollars and the remaining eleven checks payable to Party A covering the period from May 1, 2014 to March 31, 2015 at the amount of 353,242 NT Dollars each;
3. Party B also issue another check for air conditioner maintenance covering the period from April 10, 2014 to March 31, 2015 payable to Party A on April 10, 2014 at the amount of 50,400 NT Dollars;
4. Unspecified matters in this amendment remains intact pursuant to the 4<sup>th</sup> Floor Lease; and
5. This amendment is made in two copies, and both Party A and Party B shall retain one copy each as proof.

The undersigned:

Party A: Admiral Overseas Corporation  
Person in charge: Li, Chao-Hsiung  
/s/ Li, Chao-Hsiung  
Business registration No.: 33115502  
Address: 12F-3, No. 716, Zhongzheng Rd., Zhonghe Dist., New Taipei City  
TEL: (02) 82273006

Party B: Applied Optoelectronics Incorporated (AOI) Taiwan  
Person in charge: Lin, Chih-Hsiang  
/s/ Lin, Chih-Hsiang  
Business registration No.: 28410552  
Address: 6F-1, No. 700, Zhongzheng Rd., Zhonghe Dist., New Taipei City  
TEL: (02) 82279189

Date: August 28, 2013

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## Exhibit 10.5

### AMENDMENT TO OFFICE LEASE AGREEMENT

Whereas this Office Lease Agreement is made by and between the undersigned on April 20, 2012, which has been attached hereto as exhibit 1 (hereinafter referred to as "6-7<sup>th</sup> Floor Lease"):

**LANDLORD:** Admiral Overseas Corporation (hereafter referred to as Party A); and

**TENANT:** Applied Optoelectronics Incorporated (AOI) Taiwan (hereafter referred to as Party B).

**LEASED PREMISES:** The 6-7<sup>th</sup> Floor Lease is entered between Party A and Party B for four units owned by Party A at 4F., No. 700, Zhongzheng Rd., Zhonghe Dist., New Taipei City, 6F-1~6F-5 and 7F-1~7F-5 plus six parking slots (Nos. 1482, 1484, 1576, 1577, 1580, and 1581) at B2 floor.

Both Parties now agree to amend the 4<sup>th</sup> Floor Lease as follows:

1. Extend the 4<sup>th</sup> Floor Lease to be expired on March 31, 2015;
2. At the time this amendment is entered, Party B issues twelve (12) checks covering the rents from April 1, 2014 to March 31, 2015 and administrative fees and parking slot cleaning fees for the extension period; the 12 checks are payable to Party A, with the twelve checks each payable to Party A for the period from April 1, 2014 to March 31, 2015 at the amount of 838,801 NT Dollars each;
3. Party B also issue another check for air conditioner maintenance covering the period from April 1, 2014 to March 31, 2015 payable to Party A on April 1, 2014 at the amount of 107,520 NT Dollars;
4. Unspecified matters in this amendment remains intact pursuant to the 6-7<sup>th</sup> Floor Lease; and
5. This amendment is made in two copies, and both Party A and Party B shall retain one copy each as proof.

The undersigned:

Party A: Admiral Overseas Corporation  
Person in charge: Li, Chao-Hsiung  
/s/ Li, Chao-Hsiung  
Business registration No.: 33115502  
Address: 12F-3, No. 716, Zhongzheng Rd., Zhonghe Dist., New Taipei City  
TEL: (02) 82273006

Party B: Applied Optoelectronics Incorporated (AOI) Taiwan  
Person in charge: Lin, Chih-Hsiang  
/s/ Lin, Chih-Hsiang  
Business registration No.: 28410552  
Address: 6F-1, No. 700, Zhongzheng Rd., Zhonghe Dist., New Taipei City  
TEL: (02) 82279189

Date: August 28, 2013

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Dated [                      ]

between

**GLOBAL TECHNOLOGY INC.**

and

CHINA CONSTRUCTION BANK **NINGBOYINZHOU SUB-BRANCH**

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TRUST RECEIPT LOAN CONTRACT

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This **Trust Receipt Loan Contract** (the “**Contract**”) is entered into on [See **Schedule A**] by and between:

- (i) **GLOBAL TECHNOLOGY INC.**,, located at NO.88, QIUSHI RD, WANGCHUN INDUSTRIAL PART, NINGBO, CHINA, P.C.315176 with CHIH-HSIANG LIN as its legal representative (or principal officer) and its fax number being 88133820 and its telephone number being 88133818 (“**Party A**”); and
- (ii) **CHINA CONSTRUCTION BANK NINGBOYINZHOU SUB-BRANCH**, located at TAIKANG MIDDLE RD S.COMMERCIAL AREA 2ND FL,GUOHUA INTL BLDG NO.500, 315100 with WANGHONGWEI as its principal officer and its fax number being 87370029 and its telephone number being 87374267as lender (“**Party B**”).

**Whereas**

The documents (goods) under the letter of credit/imports on cash on delivery (T/T)/inward collection will arrive (have arrived), Party A applies to Party B for trust receipt loan and Party B approves the application. The parties enter into this Contract through discussion for mutual observance.

1. Trust Receipt Facilities

- 1.1 The trust receipt loan referred to herein means a short term financing extended by Party B to Party A upon the application of Party A for outward payment on the due date of the letter of credit/imports on cash on delivery (T/T)/inward collection.

Information of the letter of credit:

Letter of credit No.: \_\_\_\_\_

Currency and amount (in words): \_\_\_\_\_

Currency and amount (in words) of invoice/draft: \_\_\_\_\_

Information of the inward collection:

Inward Collection No.: \_\_\_\_\_

Currency and amount (in words) of invoice/draft: \_\_\_\_\_

Information of imports on cash on delivery

No. of import contract: \_\_\_\_\_

Currency and amount (in words) of invoice/draft: \_\_\_\_\_

Invoice No.: \_\_\_\_\_

- 1.2 Amount of the trust receipt loan (currency, in words): [See **Schedule A**]
- 1.3 Term of the trust receipt loan: days, from [See **Schedule A**] to [See **Schedule A**].

2. Interest rate, accrual and settlement of interest

2.1 The interest rate hereunder shall be annual rate, being (1) below:

- (1) The interest rate hereunder shall be fixed, i.e. [See Schedule A], which shall remain unchanged during the term of the loan;
- (2) The interest rate hereunder shall be floating, i.e. \_\_\_\_--month LIBOR+ a spread of \_\_\_\_BPs\_, which shall be adjusted once every \_\_\_\_ month(s).

LIBOR means the interbank offered rate of the foregoing term and currency published by British Bankers' Association (BBA) as provided by financial telecommunication terminals such as Reuters at 11:00am (London time) 2 banking days prior to the date of the loan drawdown or the date of interest rate adjustment.

- (3) The interest rate hereunder shall be floating, i.e. \_\_\_\_--month HIBOR+ a spread of \_\_\_\_BPs\_, which shall be adjusted once every \_\_\_\_ month(s).

HIBOR means the interbank offered rate of the foregoing term and currency published by Hong Kong Association of Banks (HKAB) as provided by financial telecommunication terminals such as Reuters at 11:30 am (Hong Kong time) 2 banking days prior to the date of the loan drawdown or the date of interest rate adjustment.

2.2 The interest shall accrue from the date when Party B advances the loan, which shall be the value date of the loan. The interest hereunder shall accrue daily. The daily interest rate for loans in Hong Kong dollar or British pound shall be calculated with 365 days as a year. The daily interest rate for loans in other currencies shall be calculated with 360 days as a year. The term of interest rate shall include the first day of the interest period but exclude the last day.

2.3 Settlement of Interest

2.3.1 For loans carrying fixed interest rate, the interest shall be settled at the fixed interest rate agreed. For loans with floating interest rate, the interest shall be calculated at the interest rate determined for the then current floating interest period. Where the floating interest period is shorter than the period of interest settlement, the interest of the floating interest periods shall be calculated first, then such interest shall be summed up on the interest settlement date.

2.3.2 The interest hereunder shall be settled by method (2) below:

- (1) settled [ ](monthly/quarterly/semiannually) on the date corresponding to the value date in the month, where there is not such a corresponding date, the last day of the month shall be the date corresponding to the value date.

(2) the interest shall be paid in a lump sum along with the repayment of the principal upon the maturity of the loan.

(3) \_\_\_\_\_

3. Conditions Precedent to the Extension of the Trust Receipt Loan

Except as fully or partially waived by Party B, Party B shall be obligated to extend the trust receipt loan only after the satisfaction of all following conditions:

- (1) Party A has completed approval, registration, delivery, insurance and other legal procedures relating to the loan hereunder in accordance with relevant laws, regulations and rules;
- (2) Party A has provided relevant documents meeting the requirements of Party B;
- (3) Party A has issued a trust receipt as requested by Party B;
- (4) security meeting the requirements of Party B has become and remains effective;
- (5) Party A is not in violation of any provision herein;
- (6) other conditions

4. REPAYMENT

4.1 Principles of Repayment

The proceeds received by Party A from disposal of the documents and the goods represented thereby under the letter of credit/inward collection/imports on cash on delivery shall be first applied to repay the trust receipt loan, and any deficiency shall be paid by Party A with other funds.

4.2 Payment of Interest

Party A shall pay the interest to Party B on the date of interest settlement. The first interest payment date shall be the first interest settlement date after the loan drawdown. All outstanding interest shall be paid off along with the last repayment of the principal.

### 4.3 Mode of Repayment

4.3.1 Party A shall pay the principal and interest in the following way (2):

- (1) the principal shall be repaid in a lump sum upon its maturity, i.e. the interest shall be paid in installments during the term of the loan and the principal shall be repaid in a lump sum upon maturity.
- (2) the principal and interest shall be paid in a lump sum upon the maturity of the facility.
- (3) \_\_\_\_\_

4.3.2 Party A shall deposit money sufficient to pay the due amounts in the account opened with Party B prior to the repayment date agreed herein and shall take initiative to transfer the same for repayment (Party B shall also be entitled to debit such account for the repayment), or shall transfer amount from any other account to repay the loan on the date of repayment agreed herein.

### 4.4 Prepayment

Party A shall have the right to prepay the principal and interest.

When Party A makes a prepayment, the interest shall be calculated at the interest rate agreed herein and on the basis of the actual days of the facility. After the prepayment, all outstanding liabilities shall still be subject to the provisions herein.

## 5. Rights and Obligations of the Parties

5.1 Party A shall have the right to request Party B to extend a trust receipt loan as agreed herein.

5.2 Party B shall keep the business secret of Party A confidential in accordance with the laws, except as otherwise provided by the laws, regulations or rules, or as otherwise required by competent authorities, or as otherwise agreed by the parties.

5.3 Party A's RMB and foreign currency account settlements hereunder shall be carried out through the accounts opened with Party B.

5.4 Party B acquires the ownership of the documents and the goods represented thereby on the date when Party A issues the trust receipt or when Party B honors to pay/makes payment (whichever is earlier).

5.5 After Party A has issued the trust receipt to Party B, Party B shall deliver the documents to Party A.

- 5.6 Party B, being the trustor and beneficiary, shall have the beneficiary's right to the disposal by Party A of the trust property.
- 5.7 Party A, acting as the trustee, shall hold for the benefit of Party B the documents and the goods represented thereby under the letter of credit/inward collection/imports on cash on delivery covered by this Contract, and shall be responsible for unloading, storing, producing, processing, transporting and selling the goods.
- The proceeds received by Party A from the sales of such goods shall be applied to repay the trust receipt loan, and any deficiency shall be paid by Party A with other funds.
- 5.8 All costs and expenses arising from the disposal of the goods and the goods shall be borne by Party A.
- 5.9 After the goods under the letter of credit/inward collection/imports on cash on delivery covered by this Contract are sold, Party B is entitled to collect the payment for such goods from the buyer without a prior notice to Party A.
- 5.10 If Party B makes any special requirements, Party A shall dispose of the goods as required by Party B.
- 5.11 The documents and the goods represented thereby as well as related interests (including without limitation any unsold goods, any rights against buyers as a result of sales of the goods, payment received by virtue of sales of the goods and insurance compensation) hereunder shall be the trust property of Party B and independent of Party A. In case Party A is dissolved, cancelled or becomes bankrupt, or any creditor of Party A makes any claims against the trust property, Party A is obligated to declare to court or third parties that the foregoing trust property falls outside its ownership and therefore is not subject to liquidation or bankruptcy. Any rights acquired by Party A relating to management and disposal of the documents and the goods represented thereby shall not be used to offset any debts arising from Party A's self-owned properties.
- 5.12 Before the principal, interest and expenses of the trust receipt loan have been fully paid off, Party A shall not mortgage or pledge the documents and the goods represented thereby with any other party or cause the goods to be subject to any lien.
- 5.13 Upon the request of Party B, Party A shall deliver to Party B relevant documents of the goods or warehouse the goods as instructed by Party B and produce a warehouse receipt with Party B as the addressee/beneficiary.
- 5.14 Upon the request of Party B, Party A shall take out fire and other usual insurances from reputable insurers in an amount sufficiently covering the goods, and shall hold as trustee on Party B's behalf and shall, at Party B's request, deliver to Party B the insurance policy or insurance agreement under which Party B is the beneficiary or the beneficiary's rights have been transferred to Party B by endorsement. The insurance premiums and expenses shall be borne by Party A. In the event of any claim in respect of the goods under the policy, Party A shall immediately inform Party B thereof and shall immediately deliver to Party B all insurance compensations Party A has received.

- 5.15 Party B shall have the right to decide and inspect the transport mode, location and mode of the storage and the coverage of insurance of the goods. Party A guarantees to provide assistance to Party B, including allowing Party B's representative the access to the warehouses and premises Party A owns, possesses or manages. Upon Party B's request, Party A shall execute all documents necessary to facilitate Party B's taking delivery of the goods and making claims.
- 5.16 Party B shall have the right to inspect and supervise the sales of the goods and payment collection thereof under the letter of credit/inward collection/imports on cash on delivery hereunder, Party A shall provide relevant information to Party B promptly upon the request of Party B.
- 5.17 Party A shall inform Party B in writing of any change to its business registration items such as legal representative (principal officer), domicile or operation premises, registered capital or articles of association etc. within \_\_\_\_ working days upon such change.
- 5.18 Party A guarantees not to enter into any contract with any third party that will prejudice Party B's interests hereunder.
- 5.19 Party B may terminate the trust at any time. Upon the request of Party B, Party A shall immediately return to Party B all title documents, evidences and other documents or the goods thereunder.
- 5.20 In case Party A fails to dispose of the trust property as required by Party B, Party B shall be entitled to terminate the trust and repossess the trust property to dispose of them at its own discretion.
- 5.21 In the event of any dispute or fraud in relation to the contracts underlying the letter of credit/inward collection/imports on cash on delivery (T/T), Party A shall pay the principal, interest and related expenses as agreed hereunder regardless of whether such dispute or fraud has been settled.
- 5.22 Party A shall not try to evade its obligations owing to Party B by means of withdrawing capital it has injected, transferring assets or entering into related-party transactions. Further, Party A shall not attempt to obtain loans or credit facilities from Party B by using dummy contracts with its related parties or by pledging such rights as notes receivable or accounts receivable without actual underlying transactions or by applying to Party B for discounting the same.
- 5.23 If Party A qualifies as a group customer, it shall promptly report to Party B any related-party transactions involving more than 10% of Party A's net assets, including (1) the relationship among all the parties to such transaction; (2) the transaction and its nature; (3) the transaction amount or the relevant ratio; and (4) pricing policy (also applicable to the transactions with no price or merely nominal price).

6. Liabilities for Breach

6.1 Breach by Party A and Events that May Adversely Impact Party B's Rights

6.1.1 Party A breaches any provision hereunder or has repudiated its obligations hereunder expressly or by its conduct.

6.1.2 Any one of the following events occurs and Party B believes that its rights hereunder might be adversely impacted : contracting, trustee(receiver) being appointed, lease, shareholding restructuring, decrease of its registered capital, investment, joint operation, mergers and acquisitions, acquisition and restructuring, division, joint venture, applying for (or subject to an application for) temporary cessation of operation or dissolution, revocation, applying for (or subject to an application for) bankruptcy, change of controlling shareholders/actual controllers, transfer of material assets, suspension of production or operation, significant penalty imposed by regulatory authorities, cancellation of registration, revocation of business license, involvement in material legal proceedings, severe deterioration in operation and financial condition, legal representative/principal officer being unable to perform their duties; Party A fails to repay any other due debts, including such debts owed to any other branch or organization of China Construction Bank or to any other third party; Party A transfers assets at a low price or for free; Party A relieves or waives any debt of a third party; Party A fails to exercise its creditor's rights or any other rights; or Party A provides security for a third party; Party A's shareholder manipulates the independence status of Party A as a legal person or the limited liability status of the shareholder in order to evade debts or Party A fails to provide, as requested by Party B, proof evidencing the independence of Party A's properties from those of its shareholders; the security is not effected, becomes ineffective, invalid, or is rescinded or terminated, or the security provider defaults or repudiates its obligations expressly or by conduct, or the security provider has lost its capability to perform its obligations as a security provider in whole or in part, or the value of the collateral is reduced, or other events occur which may adversely impact Party B 's rights hereunder.

6.2 Party B is entitled to take any one or more following actions in the event of any one of the situations set out in Article 6.1:

6.2.1 to declare the Loan immediately due and payable, and request Party A to repay immediately all the due and undue principal, interest and fees;

6.2.2 Before any principal is overdue, the overdue interest shall be compounded in accordance with the interest rate and the interest settlement method as provided herein;

if any principal is overdue, the interest on such principal and on any overdue interest (including whole or part of the principal and interest which have been accelerated), shall be calculated and compounded for the period from the first date such principal becomes overdue to the date when all the principal and interest have been fully paid, in accordance with the relevant default interest rate and the interest settlement method as provided herein; Where it is agreed herein that the principal and interest shall be paid together in a lump sum upon the maturity, for the principal and interest that are overdue (including whole or part of the principal and interest which have been accelerated), interest and compound interest shall be calculated at the following overdue interest rate and shall be paid on quarterly basis, the overdue interest rate being **[See Schedule A]**;

“Overdue” herein means that Party A fails to repay the Loan on the repayment date.

6.2.3 to dispose of the documents under the letter of credit/inward collection/imports on cash on delivery hereunder and the goods represented thereby.

6.2.4 to request Party A to provide security satisfying the requirements of Party B.

6.2.5 to exercise the right of security.

6.2.6 to take other remedies permitted by the law.

## 7. MISCELLANEOUS

### 7.1 Cost Allocation

Unless otherwise agreed by the parties, the expenses in association with the legal service, insurance, valuation/appraisal, registration, custody, authentication and notarization arising in connection with the Contract or the security relating to the Contract shall be borne by Party A.

All the expenses incurred by Party B regarding realization of its creditor's rights, such as court fees, arbitration fees, property preservation fees, travel expenses, enforcement expenses, valuation/appraisal fees, auction fees, notary fees, service fees, public announcement costs, legal fees, etc, shall be borne by Party A.

### 7.2 Direct Debit Right

Party B is entitled to debit, without prior notice to Party A, any account of Party A at China Construction Bank in RMB or other currencies to pay all amounts payable under the Contract. Party A shall assist Party B to complete any procedures for foreign exchange settlement or sale, and Party A shall bear the risk of exchange rate fluctuation.

### 7.3 Use of Party A's Information

Party A agrees that Party B is entitled to inquire about Party A's creditworthiness with the Credit Database or relevant authorities established or approved by the People's Bank of China and the Credit Reference Agency, and that Party B is entitled to provide Party A's information to such Credit Database. Party A further agrees that Party B may reasonably use and disclose Party A's information for business purpose.

### 7.4 Collection by Public Announcement

In the event that Party A fails to repay on time any principal or interest or breaches any other contractual obligations hereunder, Party B is entitled to report to relevant authorities and demand repayments by means of public announcement via press.

### 7.5 Party B's Record as Evidence

Unless there is reliable and definitive evidence to the contrary, Party B's internal records of principal, interest, expenses and repayment, receipts, vouchers made or retained by Party B during the course of drawdown, repayment and interest payment, and records and vouchers relating to the collections by Party B shall constitute valid evidence of the creditor-debtor relationship between the two parties. Party A shall not raise any objection merely because the above records, receipts, vouchers are made or retained by Party B.

### 7.6 No Waivers

Party B's rights hereunder shall not prejudice or exclude any other rights Party B is entitled to under applicable laws, regulations and other contracts. No forbearance, extension of time limit, preferential treatment or delay in exercising any right hereunder shall be deemed to constitute a waiver of rights and interests hereunder or permit or recognition of any breach of the Contract. Nor shall it restrict, prevent or interfere with the continuous exercise of such right at a later time or any other right, nor shall the foregoing cause Party B to be liable in any way to Party A.

- 7.7 If Party A owes Party B any other due and payable debts in addition to the debts hereunder, Party B may debit any of Party A's account at China Construction Bank in RMB or other currencies and may choose to repay any of the due and payable debts in the order it deems appropriate. Party A agrees not to raise any objection with respect thereto.
- 7.8 In the event of any change to the address or other contact information, Party A shall promptly notify Party B of such change in writing. Party A shall be liable for any loss caused by its failure of giving prompt notice of such change.
- 7.9 The Contract shall be interpreted in the light of the purpose of the Contract, the words and sentences used herein, relevant clauses and paragraphs, usage of trade and international practices and on the basis of good faith so as to reveal the real meaning of the contract clauses.
- 7.10 The Application for Trust Receipt Loan and other documents shall be annexes hereto and integral parts of this Contract.
- 7.11 Dispute Resolution

Any dispute arising from the performance of the Contract may be settled by consultation. If the dispute can not be resolved through consultation, such dispute shall be submitted to (1), [please select from below]:

(1) the People's court within the jurisdiction where Party B is located.

(2) \_\_\_\_\_ [name of the arbitration committee] for arbitration at \_\_\_\_\_ [place of arbitration] in accordance with the then prevailing arbitration rules. The arbitration award shall be final and binding on both Party A and Party B.

The undisputed provisions shall remain enforceable during the process of litigation or arbitration.

7.12 Effectiveness of the Contract

The Contract shall become effective upon:

signing by the legal representative/(principal officer) or authorized representative of Party A and being affixed with the company chop of Party A; and

signing by the principal officer or authorized representative of Party B and being affixed with the company chop of Party B.

7.13 The Contract shall be executed in three counterparts.

7.14 Other Provisions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

8. REPRESENTATIONS

- 8.1 Party A clearly understands the business scope and authorization limit of Party B.
- 8.2 Party A has read the Contract. Party B, at Party A's request, has explained the terms of the Contract, and Party A fully understands their meanings and corresponding legal consequences.
- 8.3 The execution and performance of the Contract by Party A is in compliance with laws, administrative regulations, rules and Party A's articles of association (or its other internal constitutional documents) and has been approved by its internal competent organization and/or the competent governmental authorities.
- 8.4 Party A represents that, at the time of execution of this Contract, there exists no action or event that violates any applicable laws, regulations or rules in relation to environmental protection, energy saving and emission/pollution reduction (the "Environmental Laws"). Party A further warrants that it shall strictly comply with such Environmental Laws after the execution of this Contract. If any of the above representations or warranties is untrue, or Party A defaults on any of the above undertakings, or there is any potential risk of energy dissipation or pollution by Party A, Party B is entitled to stop advancing loans, to declare an acceleration of the principal and interest not yet due hereunder, or adopt other remedial measures provided hereunder or permitted by laws.

Party A (Official seal):  
Legal Representative (Principal Officer) or Authorized Representative (signature): \_\_\_\_\_  
Date: \_\_\_\_\_

Party B (Official seal):  
Principal Officer or Authorized Representative (signature): \_\_\_\_\_  
Date: \_\_\_\_\_

<b>Loan Commencement Date</b>	<b>Loan Expiration Date</b>	<b>Loan Amount</b>	<b>Loan Rate</b>	<b>Schedule for Repayment</b>
June 13, 2013	October 11, 2013	63,000 USD	A fixed interest rate of 4.1195%, equal to LIBOR plus 230 basis points and 150 basis points of service charge	Option 2: Lump sum of principal and interest upon its maturity.
June 20, 2013	October 18, 2013	64,639.15 USD	A fixed interest rate of 4.1189%, equal to LIBOR plus 230 basis points and 150 basis points of service charge	Option 2: Lump sum of principal and interest upon its maturity.
July 2, 2013	October 30, 2013	337,540.31 USD	A fixed interest rate of 4.2134%, equal to LIBOR plus 230 basis points and 150 basis points of service charge	Option 2: Lump sum of principal and interest upon its maturity.
July 22, 2013	November 19, 2013	295,000 USD	A fixed interest rate of 4.1975%, equal to LIBOR plus 230 basis points and 150 basis points of service charge	Option 2: Lump sum of principal and interest upon its maturity.
August 2, 2013	November 29, 2013	343,831.80 USD	A fixed interest rate of 4.3059%, equal to LIBOR plus 230 basis points and 150 basis points of service charge	Option 2: Lump sum of principal and interest upon its maturity.
August 16, 2013	December 13, 2013	117,289.35 USD	A fixed interest rate of 4.1035%, equal to LIBOR plus 230 basis points and 150 basis points of service charge	Option 2: Lump sum of principal and interest upon its maturity.
September 3, 2013	December 27, 2013	178,751.85 USD	A fixed interest rate of 4.1055%, equal to LIBOR plus 230 basis points and 150 basis points of service charge	Option 2: Lump sum of principal and interest upon its maturity.
September 13, 2013	January 10, 2014	255,142.40 USD	A fixed interest rate of 4.0999%, equal to LIBOR plus 230 basis points and 150 basis points of service charge	Option 2: Lump sum of principal and interest upon its maturity.

**CERTIFICATION**

I, Chih-Hsiang (Thompson) Lin, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Applied Optoelectronics, 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)) 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) 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

(c) 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: November 14, 2013

/s/ Chih-Hsiang (Thompson) Lin

Chih-Hsiang (Thompson) Lin

President, Chief Executive Officer

**CERTIFICATION**

I, James L. Dunn, Jr., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Applied Optoelectronics, 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)) 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) 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

(c) 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: November 14, 2013

/s/ James L. Dunn, Jr.

\_\_\_\_\_

James L. Dunn, Jr.

Chief Financial Officer and Senior Vice President

## CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the U.S. Code (18 U.S.C. § 1350), Chih-Hsiang (Thompson) Lin, President and Chief Executive Officer of Applied Optoelectronics, Inc. (the "Company"), and James L. Dunn, Jr., Chief Financial Officer and Senior Vice President of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2013, to which this Certification is attached as Exhibit 32.1 (the "Quarterly Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned have set their hands hereto as of the 14<sup>th</sup> day of November, 2013.

/s/ Chih-Hsiang (Thompson) Lin  
Chih-Hsiang (Thompson) Lin  
President and Chief Executive Officer

/s/ James L. Dunn, Jr.  
James L. Dunn, Jr.  
Chief Financial Officer and  
Senior Vice President

This certification accompanies the Quarterly Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Applied Optoelectronics, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Quarterly Report), irrespective of any general incorporation language contained in such filing.