

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

**FORM 8-K**

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

Date of Report (Date of earliest event reported): November 12, 2021

**The Oncology Institute, Inc.**  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

001-39248  
(Commission  
File Number)

84-3562323  
(I.R.S. Employer  
Identification No.)

18000 Studebaker Rd, Suite 800  
Cerritos, California  
(Address of principal executive offices)

90703  
(Zip Code)

(213) 760-1328  
(Registrant's telephone number, including area code)

DFP Healthcare Acquisitions Corp.  
345 Park Avenue South  
New York, New York 10010  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	TOI	New York Stock Exchange
Warrants to purchase common stock	TOIIW	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## INTRODUCTORY NOTE

Unless the context otherwise requires, “we,” “us,” “our,” “TOI” and the “Company” refer to The Oncology Institute, Inc., a Delaware corporation (f/k/a DFP Healthcare Acquisitions Corp., a Delaware corporation), and its consolidated subsidiaries following the Closing (as defined below). Unless the context otherwise requires, references to “DFP” refer to DFP Healthcare Acquisitions Corp., a Delaware corporation, prior to the Closing. All references herein to the “Board” refer to the board of directors of the Company.

Terms used in this Current Report on Form 8-K (this “Report”) but not defined herein, or for which definitions are not otherwise incorporated by reference herein, shall have the meaning given to such terms in the Proxy Statement/Prospectus (as defined below) in the section entitled “Certain Defined Terms” beginning on page iv thereof, and such definitions are incorporated herein by reference.

### ***Merger Transaction***

On November 12, 2021, (the “Closing Date”), DFP Healthcare Acquisitions Corp., a Delaware corporation (“DFP”), completed the previously announced business combination pursuant to that certain and Plan of Merger, dated June 28, 2021, by and among DFP, Orion Merger Sub I, Inc., a Delaware corporation and a direct, wholly owned subsidiary of DFP (“First Merger Sub”), Orion Merger Sub II, LLC, a Delaware limited liability company and a direct, wholly owned subsidiary of DFP (“Second Merger Sub”) and TOI Parent, Inc., a Delaware corporation (“Old TOI”) (as it may be amended and/or restated from time to time, the “Merger Agreement”). As contemplated by the Merger Agreement, immediately prior to the effective time of the First Merger (the “Effective Time”), Old TOI caused each share of Old TOI preferred stock, par value \$0.001 per share (“Old TOI Preferred Stock”) issued and outstanding as of such time to be automatically converted into 10 shares of common stock of Old TOI, par value \$0.001 per share (“Old TOI Common Stock”, and such conversion, the “Conversion”). After giving effect to the Conversion, no shares of TOI Preferred Stock remained issued and outstanding.

At the Effective Time, (i) the First Merger Sub merged with and into Old TOI (the “First Merger”), with Old TOI being the surviving corporation and (ii) immediately following the First Merger, Old TOI merged with and into the Second Merger Sub (the “Second Merger”), with the Second Merger Sub being the surviving entity and a wholly owned subsidiary of DFP (the First Merger and Second Merger together, the “Business Combination”). Upon the closing of the Business Combination, DFP changed its name to “The Oncology Institute, Inc.” (“TOI”). TOI will continue the existing business operations of Old TOI as a publicly traded company.

Following the closing of the Business Combination (the “Closing”), TOI will issue to eligible holders of securities of TOI up to 12,500,000 additional shares of TOI Common Stock, par value \$0.0001 per share (“TOI Common Stock”) in the aggregate (the “Earnout Shares”). The Earnout Shares will be earned in two tranches of 5,000,000 and 7,500,000 Earnout Shares, respectively, upon TOI achieving a price per share of TOI Common Stock of \$12.50 during the two-year period following the Closing or a per share stock price of \$15.00 during the three-year period following the Closing, in each case, as its last reported sales price per share for any 20 trading days within any 30 consecutive trading day period within the applicable earnout period; provided, that (i) if one or both of the share price triggers has not been achieved prior to the end of the three-year period following the Closing, (ii) TOI enters into a definitive agreement that would result in a change of control and (iii) the price per share of TOI Common Stock in such transaction is equal to or greater than one or both of the share price triggers that have not been satisfied during the applicable earnout period, then, the applicable share price trigger that has not been satisfied will be deemed to have been satisfied and earned at the Closing of such transaction as if such share price trigger had been achieved. Holders of Company Options will be issued their pro rata share of the Earnout Shares at Closing, in the form of restricted stock, subject to forfeiture if the Earnout Shares are not earned by the end of the applicable earnout periods. All other Earnout Shares will be issued only if and when the Earnout Shares are earned as described above.

Concurrently with the execution of the Merger Agreement, DFP entered into a Stockholder Support Agreement (the “Stockholder Support Agreement”) with Old TOI, DFP Sponsor LLC (the “Sponsor”) and certain of DFP’s directors and officers (together with the Sponsor, the “Subject Stockholders”), pursuant to which, among other things described in the proxy/prospectus on Form S-4 incorporated by reference herein, the Subject Stockholders agreed to subject 20% of the shares of DFP Class B common stock, par value \$0.0001 per share (the “DFP Class B Common Stock”), held by the Subject Stockholders (the “Subject Shares”) and 20% of the Private Placement Warrants held by the Sponsor (the “Subject Warrants,” and, together with the Subject Shares, the “Subject Securities”) to forfeiture. The number of Subject Shares and Subject Warrants to be forfeited was determined by multiplying the Subject Warrants and the Subject Warrants, as applicable, by a fraction, the numerator of which is (i) the total number of shares of DFP Class A Common Stock redeemed by DFP’s stockholders prior to the closing, and the denominator of which is (ii) the total number of shares of DFP Class A Common Stock issued and outstanding as of June 28, 2021 (excluding such shares of DFP Class A Common Stock beneficially owned by the Subject Stockholders).

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## ***PIPE Investment***

As previously announced, concurrently with the execution of the Merger Agreement, DFP entered into subscription agreements (the “Subscription Agreements”) with certain institutional and accredited investors (collectively, the “PIPE Investors”), including Deerfield Private Design Fund IV, L.P. (“Deerfield Fund IV”) and Deerfield Partners, L.P. (“Deerfield Partners,” and, together with Deerfield Fund IV, the “Deerfield Funds”), pursuant to which the PIPE Investors agreed to purchase, an aggregate of 27.5 million shares of DFP Class A Common Stock at a purchase price of \$10.00 per share, for aggregate proceeds of \$275,000,000 (the “PIPE Investment”). Following the Deerfield Exchange described in the proxy statement/prospectus on Form S-4 incorporated by reference herein (the “Proxy Statement/Prospectus”), for every 100 shares of DFP Class A Common Stock to be purchased by the Deerfield Funds, the Deerfield Funds had the option to instead purchase one share of Series A Common Equivalent Preferred Stock (as defined in the Proxy Statement/Prospectus) at a purchase price of \$1,000 per share. The PIPE Investment was consummated substantially concurrently with the Closing.

### **Item 1.01. Entry into a Material Definitive Agreement.**

#### ***Registration Rights Agreement***

On November 12, 2021, in connection with the consummation of the Business Combination and as contemplated by the Merger Agreement, DFP, Sponsor, the Deerfield Funds and the other parties thereto, entered into the Registration Rights Agreement (the “Registration Rights Agreement”). The material terms of the Registration Rights Agreement are described in the section of the Proxy Statement/Prospectus beginning on page 99 titled “*The Business Combination Proposal—New Registration Rights Agreement.*” Such description is qualified in its entirety by the text of the Registration Rights Agreement, which is included as Exhibit 10.1 to this Report and is incorporated herein by reference.

### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

The disclosure set forth in the “*Introductory Note –Merger Transaction*” above is incorporated into this Item 2.01 by reference.

A special meeting of DFP stockholders was held on November 12, 2021 (the “Special Meeting”), where the DFP stockholders considered and approved, among other matters, a proposal to adopt the Merger Agreement

Prior to the Special meeting, holders of 17,120,363 Class A ordinary shares of DFP exercised their right to redeem those shares for cash at a price of approximately \$10.00 per share, for an aggregate of \$171,203,630 (the “Redemptions”). Immediately after giving effect to the Redemptions and prior to the transactions contemplated in the Exchange Agreement, there were 5,789,637 shares of TOI common stock and 5,750,000 TOI Public Warrants outstanding. Upon the consummation of the Business Combination, DFP’s ordinary shares, warrants and units ceased trading on the Nasdaq Capital Market (“Nasdaq”), and TOI’s common stock and warrants began trading on November 15, 2021 on the Nasdaq under the symbols “TOI” and “TOIHW,” respectively. Immediately after giving effect to the Business Combination and the PIPE Investment, (1) DFP’s public shareholders owned approximately 1.2% of the outstanding TOI common stock, (2) Old TOI equity holders (without taking into account any public shares held by Old TOI equity holders prior to the consummation of the Business Combination) owned approximately 70.6% of the outstanding TOI common stock, (3) the Sponsor and related parties (including the Sponsor Related PIPE Investors) collectively owned approximately 4.5% of the outstanding TOI common stock and (4) the third party PIPE investors owned approximately 23.5% of the outstanding TOI common stock.

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## FORM 10 INFORMATION

Item 2.01(f) of Form 8-K provides that if the predecessor registrant was a “shell company” (as such term is defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), as DFP was immediately before the Business Combination, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10. As a result of the consummation of the Business Combination, and as discussed below in Item 5.06 of this Report, the Company has ceased to be a shell company. Accordingly, the Company is providing the information below that would be included in a Form 10 if it were to file a Form 10. Please note that the information provided below relates to the combined company after the consummation of the Business Combination, unless otherwise specifically indicated or the context otherwise requires.

### Cautionary Note Regarding Forward-Looking Statements

This Report contains statements that are forward-looking and as such are not historical facts. This includes, without limitation, statements regarding the financial position, business strategy and the plans and objectives of management for future operations. These statements constitute projections, forecasts and forward-looking statements, and are not guarantees of performance. Such statements can be identified by the fact that they do not relate strictly to historical or current facts. When used in this Report, words such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “strive,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. When TOI discusses its strategies or plans it is making projections, forecasts or forward-looking statements. Such statements are based on the beliefs of, as well as assumptions made by and information currently available to, TOI’s management.

- the projected financial information, anticipated growth rate, and market opportunity of TOI;
  - the ability to maintain the listing of TOI common stock and TOI warrants on Nasdaq;
  - our public securities’ potential liquidity and trading;
  - our ability to raise financing in the future;
  - our success in retaining or recruiting, or changes required in, our officers, key employees or directors;
  - the impact of the regulatory environment and complexities with compliance related to such environment;
  - factors relating to the business, operations and financial performance of TOI, including:
    - the impact of the COVID-19 pandemic;
    - the ability of TOI to maintain an effective system of internal controls over financial reporting;
    - the ability of TOI to grow market share in its existing markets or any new markets it may enter;
    - the ability of TOI to respond to general economic conditions;
    - the ability of TOI to manage its growth effectively;
    - the ability of TOI to achieve and maintain profitability in the future;
    - the ability of TOI to attract new patients;
    - continued reimbursement from third-party payors; and
    - other factors detailed under the section titled “Risk Factors” beginning on page 45 of the Proxy Statement/Prospectus and incorporated herein by reference.
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The foregoing list of factors is not exhaustive. You should carefully consider the foregoing factors and the other risks and uncertainties described in the “*Risk Factors*” section of the other documents filed by TOI from time to time with the SEC. The forward-looking statements contained in this Report and in any document incorporated by reference are based on current expectations and beliefs concerning future developments and their potential effects on TOI. There can be no assurance that future developments affecting TOI will be those that TOI has anticipated. TOI undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

### ***Business***

TOI’s business is described in the Proxy Statement/Prospectus in the section titled “*Business of TOI*” beginning on page 182, which is incorporated herein by reference.

### ***Risk Factors***

The risks associated with TOI’s business are described in the Proxy Statement/Prospectus in the section titled “*Risk Factors*” beginning on page 45 and are incorporated herein by reference. A summary of the risks associated with TOI’s business is also included on pages 41-42 of the Proxy Statement/Prospectus under the heading “*Summary Risk Factors*” and are incorporated herein by reference.

### ***Financial Information***

The (i) audited consolidated financial statements of Old TOI as of and for the years ended December 31, 2020 and 2019 included in the Proxy Statement/Prospectus beginning on page F-73 of the Proxy Statement/Prospectus and (ii) unaudited condensed consolidated financial statements of Old TOI as of and for the periods ended September 30, 2021 and 2020 are set forth in Exhibit 99.1 hereto and are incorporated herein by reference.

The unaudited pro forma condensed combined financial information of DFP and Old TOI as of and for the nine months ended September 30, 2021 and as of and for the year ended December 31, 2020 is set forth in Exhibit 99.2 hereto and is incorporated herein by reference.

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

*The following discussion and analysis provides information that our management believes is relevant to an assessment and understanding of TOI's consolidated results of operations and financial condition. The discussion should be read together with "Selected Historical Financial and Operating Data", the historical audited annual statements for the years ended December 31, 2020 and 2019, and the related notes that are included elsewhere in this Report and the historical unaudited interim statements for the nine months ended September 30, 2021 and 2020, and the related notes that are included elsewhere in this Report. The discussion and analysis should also be read together with the pro forma financial information as of and for the year ended December 31, 2020 (and for the nine months ended September 30, 2021). See "Unaudited Pro Forma Condensed Combined Financial Information." This discussion may contain forward-looking statements based upon current expectations that involve risks and uncertainties. TOI's actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under "Risk Factors" or in other parts of this Report.*

### **Overview**

We are a leading value-based oncology company that manages community-based oncology practices that serve patients at 62 clinic locations across 10 markets and four states throughout the United States, which are staffed with 90 oncologists and advanced practice providers. 48 of these clinics are staffed with 79 providers employed by our affiliated physician-owned professional entities, which we refer to as the TOI PCs, through which we have provided care for more than 46,000 patients in 2020 and managed a population of approximately 1.6 million patients under value-based agreements as of September 30, 2021. We also provide management services on behalf of 14 clinic locations owned by independent oncology practices. Our mission is to heal and empower cancer patients through compassion, innovation, and state-of-the-art medical care.

Our managed clinics provide a range of medical oncology services, including physician services, in-house infusion and dispensary, clinical trial services, innovative programs like outpatient stem cell transplants and transfusions, along with 24/7 patient support. Many of our services, such as managing clinical trials, palliative care programs and stem cell transplants, are traditionally accessed through academic and tertiary care settings, while the TOI PCs bring these services to patients in a community setting. As scientific research progresses and more treatment options become available, cancer care is shifting from acute care episodes to chronic disease management. With this shift, it is increasingly important for high-quality, high-value cancer care to be available in a local community setting to all patients in need.

As a value-based oncology company, we seek to deliver both better quality care and lower cost of care. We work to accomplish this goal by reducing wasteful, inefficient or counterproductive care that drives up costs but does not improve outcomes. We believe payors and employers are aligned with the value-based model due to its enhanced access, improved outcomes, and lower costs. Patients under our affiliated providers' care can benefit from evidence-based and personalized care plans, gain access to sub-specialized care in convenient community locations, and lower out-of-pocket costs. We believe our affiliated providers enjoy the stability and predictability of a large multi-state practice, are not incentivized or pressured to overtreat when it may be inconsistent with a patient's goals of care, and can focus on practicing outstanding evidence-based medicine, rather than business building.

### **The Business Combination**

On June 28, 2021, DFP, First Merger Sub and Second Merger Sub entered into the Merger Agreement with Old TOI. The Merger Agreement provides for, (i) the First Merger Sub will merge with and into Old TOI, with Old TOI being the surviving corporation and (ii) immediately following the First Merger, Old TOI will merge with and into the Second Merger Sub, with the Second Merger Sub being the surviving entity and a wholly owned subsidiary of DFP.

On November 12, 2021, the Business Combination closed. DFP was renamed "The Oncology Institute, Inc." and the TOI Common Stock and the Public Warrants continued to be listed on Nasdaq under the ticker symbols "TOI" and "TOIHW," respectively.

The Business Combination is accounted for as a reverse recapitalization in accordance with U.S. GAAP. Under this method of accounting, DFP is treated as the "acquired" company for accounting purposes and the Business Combination is treated as the equivalent of Old TOI issuing stock for the net assets of DFP, accompanied by a recapitalization. The net assets of DFP is stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the Business Combination were those of Old TOI. The most significant changes in TOI's future reported financial position and results are a net increase in cash (as compared to our consolidated balance sheet at September 30, 2021) of \$127,402. The total estimated transaction costs for the Business Combination are approximately \$40,000. In addition, deferred underwriter fees related to DFP's initial public offering of \$6,300 were paid at the close of the Business Combination. See "Unaudited Pro Forma Combined Financial Information." New TOI's cash on hand after giving effect to these transactions will be used for general corporate purposes, general and administrative matters, and capital expenditures. New TOI may also use the proceeds for the acquisition of, or investment in, technologies, solutions, or businesses that complement its business.

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## **Public Company Costs**

Subsequent to the Business Combination, New TOI is expected to continue as an SEC-registered and Nasdaq-listed company. We expect to hire additional staff and implement new processes and procedures to address public company requirements. We also expect to incur substantial additional expenses for, among other things, directors' and officers' liability insurance, director fees, and additional internal and external costs for investor relations, accounting, audit, legal and other functions.

## **Impact of COVID-19**

The measures to contain the spread and impact of COVID-19 and other developments related to COVID-19 have affected the way in which we conduct our day-to-day business. We have followed U.S. guidance to protect our employees and operations during the pandemic and implemented a partially remote environment for our business. We cannot predict the ongoing impacts of the COVID-19 pandemic or the distribution of vaccines on our business or operations, but we will continue to actively monitor the related issues and may take further actions that alter our business operations, including as may be required by federal, state, local or foreign authorities or that we determine are in the best interests of our employees, payors, partners and stockholders. As a result of the COVID-19 pandemic, federal and state governments have passed legislation, promulgated regulations, and taken other administrative actions intended to assist healthcare providers in providing care to COVID-19 and other patients during the public health emergency. Sources of relief include the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), which was enacted on March 27, 2020, the Paycheck Protection Program and Health Care Enhancement Act (the "PPPHE Act"), which was enacted on April 24, 2020, and the Consolidated Appropriations Act, 2021 (the "CAA"), which was enacted on December 27, 2020. In addition, the CARES Act provides for an expansion of the Medicare Accelerated and Advance Payment Program whereby inpatient acute care hospitals and other eligible providers were able to request accelerated payment of up to 100% of their Medicare payment amount for a six-month period to be repaid through withholding of future Medicare fee-for-service payments. Various other state and local programs also exist to provide relief, either independently or through distribution of monies received via the CARES Act. During 2021 and 2020, we obtained loans of \$4,993 pursuant to the PPPHE Act; \$2,727 under the Accelerated and Advance Payment Program; and \$2,001 from Provider Relief Funding under the CARES Act.

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## Key Factors Affecting our Performance

### Our Patients

Through the TOI PCs, we serve adult and senior cancer patients in markets that have Medicare Advantage (“MA”) plans. We plan to leverage our long-established, strong relationships with payors to continue to build out our network and increase access to cancer patients in adjacent markets, while at the same time, decreasing oncology care costs for both patients and payors. We seek to provide high quality and lower cost care delivery through the following capabilities:

- a recruiting process focused on selecting physicians that want to practice evidence-based medicine;
- technology-enabled care pathways ensuring adherence to evidence-based clinical protocols;
- strong clinical culture and physician oversight;
- care management to prevent unnecessary hospitalizations;
- care delivered in community clinics versus hospital setting;
- clinically appropriate integration of palliative care and hospice aligned with patients’ goals for care;
- access to clinical trials providing cutting-edge treatment options at low or no cost to patients or payors; and
- appropriate provider training on clinical documentation to ensure proper risk adjustment and reimbursement for complex patients

### Key Business Metrics

In addition to our financial information, we review a number of operating and financial metrics, including the following key metrics, to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans, and make strategic decisions.

<i>(dollars in thousands)</i>	Three Months Ended September 30,		Nine Months Ended September 30,		Year Ended December 31,	
	2021	2020	2021	2020	2020	2019
Clinics <sup>(1)(2)</sup>	62	55	62	55	54	53
Markets <sup>(1)</sup>	10	7	10	7	7	7
Lives under value-based contracts (millions) <sup>(1)</sup>	1.6	1.2	1.6	1.2	1.3	1.1
Adjusted EBITDA	\$ 110	\$ 1,353	\$ 522	\$ 4	\$ 5,773	\$ 4,760

(1) At period end

(2) Includes independent oncology practices to which we provide limited management services, but do not bear the operating costs

We define adjusted EBITDA as net income (loss) excluding depreciation and amortization, interest and income tax expense, stock-based compensation and unusual or non-recurring charges. We include adjusted EBITDA because it is an important measure upon which our management uses to assess the results of operations, to evaluate factors and trends affecting our business, and to plan and forecast future periods. We also consider adjusted EBITDA to be an important measure because it helps illustrate underlying trends in our business and our historical operating performance on a more consistent basis.

Adjusted EBITDA is “non-GAAP” financial measure within the meaning of Item 10 of Regulation S-K promulgated by the SEC. We believe that this measure provides an additional way of viewing aspects of our operations that, when viewed with the GAAP results, provides a more complete understanding of our results of operations and the factors and trends affecting our business. However, non-GAAP financial measures should be considered a supplement to, and not as a substitute for, or superior to, the corresponding measures calculated in accordance with U.S. GAAP. Non-GAAP financial measures used by us may differ from the non-GAAP measures used by other companies, including our competitors.

We encourage investors and others to review our financial information in its entirety, not to rely on any single financial measure.



The following table provides a reconciliation of net income (loss), the most closely comparable GAAP financial measure, to Adjusted EBITDA:

<i>(dollars in thousands)</i>	<b>Three Months Ended</b>		<b>Change</b>	
	<b>September 30</b>			
	<b>2021</b>	<b>2020</b>	<b>\$</b>	<b>%</b>
Net loss	\$ (2,980)	\$ (676)	\$ (2,304)	341%
Depreciation and amortization	850	792	58	7%
Interest expense	78	107	(29)	(27)%
Income tax expense (benefit)	799	(23)	822	(3,574)%
Board and management fees	106	160	(54)	(34)%
Non-cash addbacks <sup>(1)</sup>	99	49	50	102%
Stock-based compensation	59	36	23	64%
Acquisition-related costs <sup>(2)</sup>	71	–	71	N/A
Consulting and legal fees <sup>(3)</sup>	221	344	(123)	(36)%
Other, net <sup>(4)</sup>	807	564	243	43%
<b>Adjusted EBITDA</b>	<b>\$ 110</b>	<b>\$ 1,353</b>	<b>\$ (1,243)</b>	<b>(92)%</b>

(1) Non-cash addbacks were primarily comprised of deferred rent and tenant improvement allowances during the three months ended September 30, 2021 and 2020, respectively.

(2) Acquisition-related costs were comprised of consulting and legal fees incurred to perform due diligence, execute, and integrate acquisitions.

(3) Consulting and legal fees were comprised of a subset of the Company's total consulting and legal fees during the three months ended September 30, 2021 and 2020, and related to certain advisory projects, software implementations, and legal fees for debt financing and predecessor litigation matters.

(4) Other, net is comprised of severance expenses resulting from cost rationalization programs, as well as temporary labor and recruiting expenses to build out corporate infrastructure during the three months ended September 30, 2021 and 2020, respectively.

<i>(dollars in thousands)</i>	Nine Months Ended September 30		Change	
	2021	2020	\$	%
Net loss	\$ (771)	\$ (9,504)	\$ 8,733	(92)%
Depreciation and amortization	2,421	2,388	33	1%
Interest expense	260	259	1	—%
Income tax expense (benefit)	1,797	(298)	2,095	(703)%
Board and management fees	314	470	(156)	(33)%
Non-cash addbacks <sup>(1)</sup>	(5,642)	7,661	(13,303)	(174)%
Stock-based compensation	152	112	40	36%
Acquisition-related costs <sup>(2)</sup>	268	281	(13)	(5)%
Consulting and legal fees <sup>(3)</sup>	1,151	676	475	70%
Other, net <sup>(4)</sup>	572	1,895	(1,323)	(70)%
<b>Adjusted EBITDA</b>	<b>\$ 522</b>	<b>\$ 3,940</b>	<b>\$ (3,418)</b>	<b>(87)%</b>

(1) Non-cash addbacks were primarily comprised of a \$5,037 gain on extinguishment of COVID-19-related loans and net bad debt recoveries of \$667, partially offset by deferred rent and tenant improvement allowances, and a \$7,500 impairment of notes receivable (as described further below), partially offset by deferred rent and tenant improvement allowances, during the nine months ended September 30, 2021 and 2020, respectively.

(2) Acquisition-related costs were comprised of consulting and legal fees incurred to perform due diligence, execute, and integrate acquisitions.

(3) Consulting and legal fees were comprised of a subset of the Company's total consulting and legal fees during the nine months ended September 30, 2021 and 2020, and related to certain advisory projects and software implementations, and discrete legal fees related to debt financing and predecessor litigation matters.

(4) Other, net is comprised of severance expenses resulting from cost rationalization programs as well as temporary labor and recruiting expenses to build out corporate infrastructure during the nine months ended September 30, 2021 and 2020, respectively. During both periods, respectively, such expenses were partially offset by \$1,022 and \$978 of stimulus funds received under the CARES Act.

<i>(dollars in thousands)</i>	Year Ended December 31		Change	
	2020	2019	\$	%
Net loss	\$ (14,316)	\$ (4,021)	\$ (10,295)	256%
Depreciation and amortization	3,178	2,942	236	8%
Interest expense	347	3	344	11,467%
Income tax (benefit) expense	(498)	1,383	(1,881)	(136)%
Board and management fees	620	815	(195)	(24)%
Non-cash addbacks <sup>(1)</sup>	11,972	624	11,348	1,819%
Stock-based compensation	151	93	58	62%
Acquisition-related costs <sup>(2)</sup>	374	—	374	N/A
Consulting and legal fees <sup>(3)</sup>	1,494	—	1,494	N/A
Other, net <sup>(4)</sup>	2,451	2,921	(470)	(16)%
<b>Adjusted EBITDA</b>	<b>\$ 5,773</b>	<b>\$ 4,760</b>	<b>\$ 1,013</b>	<b>21%</b>

(1) During the year ended December 31, 2020, non-cash addbacks were primarily comprised of a \$7,500 impairment of notes receivable (as described further below), \$4,233 of bad debts write-offs, and \$239 of other miscellaneous charges. During the year ended December 31, 2019, non-cash addbacks were primarily comprised of \$184 of deferred rent and tenant improvement allowances and \$440 of other miscellaneous expenses.

(2) Acquisition-related costs were comprised of consulting and legal fees incurred to perform due diligence, execute and integrate acquisitions.

(3) Consulting and legal fees were a subset of the Company's total consulting and legal fees during the year ended December 31, 2020 and December 31, 2019, and related to certain advisory projects, software implementations, and discrete legal fees related to debt financing and predecessor litigation matters.

(4) Other, net is comprised of severance expenses resulting from cost rationalization programs and individually insignificant charges during the years ended December 31, 2020 and December 31, 2019, respectively. During the year ended December 31, 2020, such expenses were partially offset by \$978 of stimulus funds received under the CARES Act.

## Components of Results of Operations

### Revenue

We receive payments from the following sources for services rendered: (i) commercial insurers; (ii) pharmacy benefit managers ("PBMs"), (iii) the federal government under the Medicare program administered by the Centers for Medicare and Medicaid Services ("CMS"); (iv) state governments under Medicaid and other programs; (v) other third-party payors and managed care organizations (e.g., risk bearing organizations and independent practice associations ("IPAs")); and (vi) individual patients and clients.

Revenue primarily consists of capitation revenue, fee-for-service ("FFS") revenue, dispensary revenue, and clinical trials revenue. Capitation and FFS revenue comprise the revenues within the Company's patient services segment and are presented together in the results of operations. The following paragraphs provide a summary of the principal forms of our billing arrangements and how revenue is recognized for each type of revenue.

### ***Capitation***

Capitation revenues consist primarily of fees for medical services provided by the TOI PCs to our patients under a capitated arrangement with various managed care organizations. Capitation revenue is paid monthly based on the number of enrollees by the contracted managed care organization (per member per month or “PMPM”). Capitation contracts generally have a legal term of one year or longer. Payments in capitation contracts are variable since they primarily include PMPM fees associated with unspecified membership that fluctuates throughout the term of the contract; however, based on our experience, our total underlying membership generally increases over time as penetration of MA products grows. Certain contracts include terms for a capitation deduction where the cost of out-of-network referrals of members are deducted from the future payment. Revenue is recognized in the month services are rendered on the basis of the transaction price established at that time.

### ***Fee-for-Service Revenue***

FFS revenue represents revenue earned under contracts in which we bill and collect for medical services rendered by the TOI PCs’ employed physicians. The terms for FFS contracts are short in duration and only last for the period over which services are rendered (typically, one day). FFS revenue consists of fees for medical services provided to patients. As specialist providers, our FFS revenue is dependent on referrals from other physicians, such as primary care physicians. Our affiliated providers build trusted, professional relationships with these physicians and their associated medical groups, which can lead to recurring FFS volume; however, this volume is subject to numerous factors we cannot control and can fluctuate over time. We also receive FFS revenue for capitated patients that receive medical services which are excluded from our capitation contracts. Under the FFS arrangements, third-party payors and patients are billed for patient care services provided by the TOI PCs. Payments for services provided are generally less than billed charges. We record revenue net of an allowance for contractual adjustments, which represents the net revenue expected to be collected from third-party payors (including managed care, commercial, and governmental payors such as Medicare and Medicaid), and patients. These expected collections are based on fees and negotiated payment rates in the case of third-party payors, the specific benefits provided for under each patient’s healthcare plan, mandated payment rates in the case of Medicare and Medicaid programs, and historical cash collections (net of recoveries). The recognition of net revenue (gross charges less contractual allowances) from such services is dependent on certain factors, such as the proper completion of medical charts following a patient visit, the forwarding of such charts to our billing center for medical coding and entering into our billing system, and the verification of each patient’s submission or representation at the time services are rendered as to the payor(s) responsible for payment of such services. Revenue is recorded on the date the services are rendered based on the information known at the time of entering of such information into our billing systems as well as an estimate of the revenue associated with medical services.

### ***Dispensary***

Oral prescription drugs prescribed by doctors to their patients are sold directly through the TOI PCs’ dispensaries. Revenue for the prescriptions is based on fee schedules set by various PBMs and other third-party payors. The fee schedule is often subject to direct and indirect remuneration (“DIR”) fees, which are based primarily on pre-established metrics. DIR fees may be assessed in the periods after payments are received against future payments. We recognize revenue, deducted by estimated DIR fees, at the time the patient takes possession of the oral drug.

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### ***Clinical Trials Revenue***

The TOI PCs also enter into contracts to perform clinical research trials. The terms for clinical trial contracts last many months as the clinical research is performed. Each contract represents a single, integrated set of research activities that are satisfied over time as the output of results from the trial is captured for the trial sponsor to review. Under the clinical trial contracts, the TOI PCs receive a fixed payment for administrative, set-up, and close-down fees; a fixed amount for each patient site visit; and certain expense reimbursements. We recognize revenue for these arrangements on the fees earned to date based on the state of the trial, as established under contract with the customer.

### **Operating Expenses**

#### ***Cost of Services***

Cost of services primarily includes chemotherapy drug costs, clinician salaries and benefits, and medical supplies. Clinicians include oncologists, advanced practice providers such as physician assistants and nurse practitioners, and registered nurses employed by the TOI PCs.

#### ***Dispensary Cost***

Dispensary cost primarily includes the cost of oral medications dispensed in the TOI PCs' clinic locations.

#### ***Selling, general and administrative expense***

Selling, general and administrative expenses include employee-related expenses, including both clinic and field support staff as well as central administrative and corporate staff. These expenses include salaries and related costs and stock-based compensation for our executives and physicians. Our selling, general and administrative expenses also includes occupancy costs, technology infrastructure, operations, clinical and quality support, finance, legal, human resources, and business development. We expect our general and administrative expenses to increase over time following the consummation of the Business Combination due to the additional legal, accounting, insurance, investor relations and other costs that we will incur as a public company, as well as other costs associated with continuing to grow our business. We also expect our selling, general and administrative expenses to increase in absolute dollars in the foreseeable future. However, we anticipate selling, general and administrative expenses to decrease as a percentage of revenue over the long term, although they may fluctuate as a percentage of revenue from period to period due to the timing and amount of these expenses.

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## Results of Operations

The following table sets forth our consolidated statements of operations data expressed as a percentage of total revenues for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,		Year Ended December 31,	
	2021	2020	2021	2020	2020	2019
Revenue						
Patient services	63.1%	62.8%	61.3%	62.8%	62.3%	62.9%
Dispensary	34.3%	34.2%	35.4%	33.5%	34.1%	32.1%
Clinical trials & other	2.6%	3.0%	3.3%	3.7%	3.6%	5.0%
Total operating revenue	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Operating expenses						
Direct costs – patient services	48.6%	51.0%	47.8%	52.6%	51.1%	52.2%
Direct costs – dispensary	29.2%	28.4%	30.3%	28.1%	28.7%	28.0%
Direct costs – clinical trials & other	0.3%	0.4%	0.3%	0.6%	0.5%	0.6%
Selling, general and administrative expense	24.4%	20.1%	23.3%	19.4%	22.3%	19.1%
Depreciation and amortization	1.6%	1.7%	1.6%	1.7%	1.7%	1.9%
Total operating expenses	104.1%	101.6%	103.3%	102.4%	104.3%	101.8%
Loss from operations	(4.1)%	(1.6)%	(3.3)%	(2.4)%	(4.3)%	(1.8)%
Other non-operating (income) expense						
Interest expense	0.1%	0.2%	0.2%	0.2%	0.2%	—%
Gain on debt extinguishment	—%	—%	(3.4)%	—%	—%	—%
Other, net	(0.1)%	(0.3)%	(0.7)%	4.6%	3.3%	—%
Total other non-operating (income) expense	—%	(0.1)%	(3.9)%	4.8%	3.5%	—%
Loss before provision for income taxes	(4.1)%	(1.5)%	0.6%	(7.2)%	(7.8)%	(1.8)%
Income tax (expense) benefit	(1.5)%	—%	(1.2)%	0.2%	0.3%	(0.9)%
Net loss	(5.6)%	(1.5)%	(0.6)%	(7.0)%	(7.5)%	(2.7)%

## Comparison of the Three and Nine Months Ended September 30, 2021 and 2020

### Revenue

<i>(dollars in thousands)</i>	Three Months Ended September 30,		Change	
	2021	2020	\$	%
Patient services	\$ 32,967	\$ 29,664	\$ 3,303	11.1%
Dispensary	17,918	16,163	1,755	10.9%
Clinical trials & other	1,390	1,423	(33)	(2.3)%
Total operating revenue	\$ 52,275	\$ 47,250	\$ 5,025	10.6%

<i>(dollars in thousands)</i>	Nine Months Ended September 30,		Change	
	2021	2020	\$	%
Patient services	\$ 92,376	\$ 86,986	\$ 5,390	6.2%
Dispensary	53,318	46,347	6,971	15.0%
Clinical trials & other	5,005	5,216	(211)	(4.0)%
Total operating revenue	\$ 150,699	\$ 138,549	\$ 12,150	8.8%

### Patient services

The increase in patient services revenue for the three months ended September 30, 2021 as compared to the three months ended September 30, 2020 was primarily due to a 14.8% increase in revenue related to capitated contracts. This increase in capitated revenue was partially offset by a decline in our FFS revenue of 3.7%, as a result of transitioning several FFS contracts to capitation.

The increase in patient services revenue for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 was primarily due to a 15.1% increase in revenue related to capitated contracts that began in the fourth quarter of 2020 and continued throughout 2021. This increase in capitated revenue was partially offset by a decline in our FFS revenue of 8.9%, as a result of transitioning several FFS contracts to capitation.

### Dispensary

The increase in dispensary revenue for the three months ended September 30, 2021 as compared to the three months ended September 30, 2020 was primarily due to a 13.4% increase in the average revenue per fill.

The increase in dispensary revenue for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 was primarily due to a 2.0% increase in the number of prescriptions filled and a 12.8% increase in the average revenue per fill.

### Clinical trials & other

The decrease in clinical trials and other revenue for the three months ended September 30, 2021 as compared to the three months ended September 30, 2020 was comprised of various miscellaneous sources of revenue, none of which are individually significant.

The decrease in clinical trials and other revenue for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 was primarily due to a 16.2% decline in clinical trial revenue resulting from fewer visits due to COVID-19 restrictions and precautions being taken by our patients. This decline was partially offset by a 7.5% increase related to a profit sharing bonus received for one of our capitated contracts and an increase in various miscellaneous sources of revenue, none of which are individually significant.

## Operating Expenses

<i>(dollars in thousands)</i>	Three Months Ended September 30,		Change	
	2021	2020	\$	%
Direct costs – patient services	\$ 25,391	\$ 24,078	\$ 1,313	5.5%
Direct costs – dispensary	15,279	13,432	1,847	13.8%
Direct costs – clinical trials & other	182	166	16	9.6%
Selling, general and administrative expense	12,729	9,492	3,237	34.1%
Depreciation and amortization	850	792	58	7.3%
Total operating expenses	<u>\$ 54,431</u>	<u>\$ 47,960</u>	<u>\$ 6,471</u>	<u>13.5%</u>

<i>(dollars in thousands)</i>	Nine Months Ended September 30,		Change	
	2021	2020	\$	%
Direct costs – patient services	\$ 72,051	\$ 72,830	\$ (779)	(1.1)%
Direct costs – dispensary	45,639	38,896	6,743	17.3%
Direct costs – clinical trials & other	494	787	(293)	(37.2)%
Selling, general and administrative expense	35,120	26,862	8,258	30.7%
Depreciation and amortization	2,422	2,388	34	1.4%
Total operating expenses	<u>\$ 155,726</u>	<u>\$ 141,763</u>	<u>\$ 13,963</u>	<u>9.8%</u>

### Patient services cost

The increase in patient services cost for the three months ended September 30, 2021 as compared to the three months ended September 30, 2020 was primarily due to a 3.4% increase in intravenous drug costs, driven by our patient mix and volume, as well as 2.3% increase in clinical payroll costs due to the growth in clinic count.

The decrease in patient services cost for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 was primarily due to a 1.0% decline in intravenous drug costs, driven by our patient mix and volume.

### Dispensary cost

The increase in dispensary cost for the three months ended September 30, 2021 as compared to the three months ended September 30, 2020 was primarily due to a 16.3% increase in the average cost of the prescriptions filled.

The increase in dispensary cost for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 was primarily due to an increase of 2.0% in the number of prescriptions filled and an increase of 15.1% in the average cost of the prescriptions filled.

### Selling, general and administrative expense

The increase in selling, general and administrative expense for the three and nine months ended September 30, 2021 as compared to the three and nine months ended September 30, 2020 was primarily driven by an increase in salaries and benefits of 15.5% and 16.1% respectively, due to the growth in our management and corporate team. The remainder of the increases were primarily to support the continued growth of our business. These increased costs were offset by bad debt recoveries on our FFS accounts receivable of 2.5% of total selling, general and administrative expenses for the nine months ended September 30, 2021, due to better collections than anticipated.



## Other Expenses

<i>(dollars in thousands)</i>	Three Months Ended September 30,		Change	
	2021	2020	\$	%
Interest expense	\$ 78	\$ 107	\$ (29)	27.1%
Gain on debt extinguishment	—	—	—	—%
Other, net	(53)	(119)	66	(55.5)%
Total other non-operating (income) expense	<u>\$ 25</u>	<u>\$ (12)</u>	<u>\$ 37</u>	<u>(308.3)%</u>

<i>(dollars in thousands)</i>	Nine Months Ended September 30,		Change	
	2021	2020	\$	%
Interest expense	\$ 260	\$ 259	\$ 1	0.4%
Gain on debt extinguishment	(5,186)	—	\$ (5,186)	(100.0)%
Other, net	(1,126)	6,328	(7,454)	(117.8)%
Total other non-operating (income) expense	<u>\$ (6,052)</u>	<u>\$ 6,587</u>	<u>\$ (12,639)</u>	<u>(191.9)%</u>

### Interest expense

The decrease in interest expense for the three months ended September 30, 2021 as compared to the three months ended September 30, 2020 was due to the decline in our term loan balance due to scheduled amortization payments.

### Gain on debt extinguishment

The increase in gain on debt extinguishment for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 was a result of all PPPHCE Act loans being forgiven during Q2 2021. The gain includes the loan balance and related accrued interest.

### Other, net

The increase in other, net for the three months ended September 30, 2021 as compared to the three months ended September 30, 2020 was driven by a decline in various miscellaneous expenses, none of which are individually significant, that occurred during the three months ended September 30, 2020.

The decrease in other, net for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 was primarily due to a loan provided in Q1 2020 to an independent oncology practice relating to the management services agreement entered into by the Company, pursuant to which we provide certain management services to the oncology practice, including value-based contracting services. Under the terms of the loan, the loan is to be forgiven in equal installments over five years as long as the management services agreement with the Company remains in effect. Given the probability of forgiveness is likely, we fully impaired the loan in the first quarter of 2020.

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## Comparison of 2020 and 2019

### Revenue

<i>(dollars in thousands)</i>	Year Ended December 31,		Change	
	2020	2019	\$	%
Patient services	\$ 116,817	\$ 97,625	\$ 19,192	19.7%
Dispensary	63,890	49,954	13,936	27.9%
Clinical trials & other	6,808	7,826	(1,018)	(13.0)%
Total operating revenue	<u>\$ 187,515</u>	<u>\$ 155,405</u>	<u>\$ 32,110</u>	<u>20.7%</u>

#### Patient services

The increase in patient services revenue was due to a 14.3% increase in our FFS revenue and 6.3% increase in capitated revenue, both of which resulted from new contract wins and an increase in the number of clinics.

#### Dispensary

The increase in dispensary revenue was primarily due to a 30.6% increase in the number of prescriptions filled and an increase of 27.9% in the average revenue per fill.

#### Clinical trials & other

The decrease in clinical trial and other revenue was primarily due to a 12.5% decline in clinical trial visits, resulting from COVID-19 restrictions and precautions being taken by our patients.

### Operating Expenses

<i>(dollars in thousands)</i>	Year Ended December 31,		Change	
	2020	2019	\$	%
Direct costs – patient services	\$ 95,747	\$ 81,053	\$ 14,694	18.1%
Direct costs – dispensary	53,907	43,456	10,451	24.0%
Direct costs – clinical trials & other	982	955	27	2.8%
Selling, general and administrative expense	41,897	29,644	12,253	41.3%
Depreciation and amortization	3,178	2,942	236	8.0%
Total operating expenses	<u>\$ 195,711</u>	<u>\$ 158,050</u>	<u>\$ 37,661</u>	<u>23.8%</u>

#### Patient services cost

The increase in patient services cost was attributed to increases in intravenous drug costs of 11.1%, resulting from patient mix, as well as a 4.8% increase in clinical payroll resulting from new contract wins and increases in the number of clinics. The remaining increase in patient services cost is due to various, individually insignificant direct expenses

#### Dispensary cost

The increase in dispensary cost was due to a 30.6% increase in the number of prescriptions filled, and a 24.0% increase in the average cost of the prescriptions filled. This cost increased slower than dispensary revenues.

#### Selling, general and administrative expenses

The increase in selling, general and administrative expenses was driven by an increase in salaries and benefits of 16.7% due to the growth in our management and corporate team and an increase in bad debt expense of 13.2% due to a write-down of our FFS accounts receivable. The remainder of the increases were primarily to support the continued growth of our business.

## Other Expenses

(dollars in thousands)	Year Ended December 31,		Change	
	2020	2019	\$	%
Interest expense	\$ 347	\$ 3	\$ 344	11,466.7%
Other, net	6,271	(10)	6,281	(62,810.0)%
<b>Total other non-operating expense (income)</b>	<b>\$ 6,618</b>	<b>\$ (7)</b>	<b>\$ 6,625</b>	<b>(94,642.9)%</b>

### Interest expense

The increase in interest expense was driven primarily by interest on the term loan that was entered into in February 2020. Prior to that, the Company did not have any indebtedness.

### Other, net

The increase in other, net was driven primarily by a loan provided to an independent oncology practice relating to the management services agreement entered into by the Company, pursuant to which we provide certain management services to the oncology practice, including value-based contracting services. Under the terms of the loan, the loan is to be forgiven in equal installments over five years as long as the management services agreement with the Company remains in effect. Given the probability of forgiveness is likely the Company fully impaired the loan in 2020. This impairment was offset by 15.6% in stimulus funds received as part of the CARES Act that the TOI PCs are not obligated to repay.

## Liquidity and Capital Resources

### General

To date, we have financed our operations principally through private placements of our equity securities and payments received from various payors. On February 26, 2020, we entered into a credit agreement with MUFG Union Bank (“Credit Agreement”), which allows us to borrow up to an aggregate principal amount of \$10,000 in the form of term loans, revolving credit commitments, and a letter of credit facility. The term loans and the Revolver bears interest at base rate plus the applicable margin or LIBOR rate plus the applicable margin. As of September 30, 2021, we had \$11,532 of cash and \$5,125 outstanding under our Credit Agreement.

We may incur operating losses and generate negative cash flows from operations for the foreseeable future due to the investments we intend to continue to make in expanding our operations and sales and marketing and due to additional general and administrative expenses we expect to incur in connection with operating as a public company. As a result, we may require additional capital resources to execute strategic initiatives to grow our business.

We believe that following the Business Combination, our cash and cash equivalents will be sufficient to fund our operating and capital needs for at least the next 12 months. Our assessment of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement and involves risks and uncertainties. Our actual results could vary because of, and our future capital requirements will depend on, many factors, including our growth rate, the timing and extent of spending to open or acquire new clinics and expand into new markets and the expansion of sales and marketing activities. We may in the future enter into arrangements to acquire or invest in complementary businesses, services and technologies, including intellectual property rights. We have based this estimate on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect. We may be required to seek additional equity or debt financing. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital when desired, or if we cannot expand our operations or otherwise capitalize on our business opportunities because we lack sufficient capital, our business, results of operations, and financial condition would be adversely affected.

## Cash Flows

The following table presents a summary of our consolidated cash flows from operating, investing, and financing activities for the periods indicated.

<i>(dollars in thousands)</i>	<b>Nine Months Ended</b>		<b>Change</b>	
	<b>September 30,</b>			
	<b>2021</b>	<b>2020</b>	<b>\$</b>	<b>%</b>
Net cash (used in) provided by operating activities	\$ (9,345)	\$ 1,384	\$ (10,729)	(775.2)%
Net cash used in investing activities	(3,003)	(8,486)	5,483	(64.6)%
Net cash provided by financing activities	17,882	11,937	5,945	49.8%
Net increase in cash	5,534	4,835	699	14.5%
Cash at beginning of period	5,998	2,446	3,552	145.2%
<b>Cash at end of period</b>	<b>\$ 11,532</b>	<b>\$ 7,281</b>	<b>\$ 4,251</b>	<b>58.4%</b>

<i>(dollars in thousands)</i>	<b>Year Ended</b>		<b>Change</b>	
	<b>December 31,</b>			
	<b>2020</b>	<b>2019</b>	<b>\$</b>	<b>%</b>
Net cash provided by (used in) operating activities	\$ 508	\$ 3,615	\$ (3,107)	(85.9)%
Net cash (used in) provided by investing activities	(8,844)	(1,205)	(7,639)	633.9%
Net cash provided by (used in) financing activities	11,887	(2)	11,889	(594,450.0)%
Net increase (decrease) in cash	3,551	2,408	1,143	47.5%
Cash at beginning of year	2,446	37	2,409	6,510.8%
<b>Cash at end of year</b>	<b>\$ 5,997</b>	<b>\$ 2,445</b>	<b>\$ 3,552</b>	<b>145.3%</b>

### Operating Activities

Significant changes impacting net cash used in operating activities for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 were as follows:

- net income improved \$8,733 during the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 primarily due to the gain extinguishment of debt and bad debt recoveries in the second quarter of 2021 and the impairment on the note receivable of \$7,500 in the first quarter of 2020 offset by a \$2,649 change in deferred taxes;
- cash provided by accounts payable, accrued expenses and income taxes payable increased \$5,013 for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 primarily due to a growth in accounts payable as a result of the growth in our business;
- cash used by accounts receivable increased \$52 for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 due to the growth in our business;
- cash used by inventory increased \$557 for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 due to the growth in our business; and
- cash used by prepaid and other current assets increased \$8,080 for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 due to costs incurred in association with the SPAC transaction that are deferred until the transaction closes.

Significant changes impacting net cash used in operating activities for the year ended December 31, 2020 as compared to the year ended December 31, 2019 were as follows:

- net loss increased \$10,300 from 2020 as compared to 2019 primarily due to the impairment on the note receivable of \$7,500, an increase in bad debt expense of \$3,906 and an increase in deferred income taxes;
- cash provided by accounts payable and accrued expenses increased \$670 for 2020 as compared to 2019 due to increases in cost of services and selling, general and administrative expenses;
- cash used by accounts receivable increased \$2,433 for 2020 as compared to 2019 due to an increase in revenues; and
- cash used by prepaid expenses and other current assets increased \$1,135 for 2020 as compared to 2019 due to an increase in software projects used to support the growth of the Company.

### ***Investing Activities***

Net cash used in investing activities decreased for the nine months ended September 30, 2021 as compared to the nine months ended September 30, 2020 due to the issuance of a \$7,500 note receivable in the first quarter of 2020, offset by increases in purchases of property and equipment of \$1,140 due to new clinic build-outs and existing clinic remodels and cash used for acquisitions of \$677.

Net cash used in investing activities increased in 2020 as compared to 2019 due to the issuance of a \$7,500 note receivable and cash used for acquisitions of \$150.

### ***Financing Activities***

Net cash from financing activities primarily relates to borrowings under our Credit Agreement, principal payments on the Credit Agreement, and capital raises. As of September 30, 2021, we have borrowed \$7,500 in the form of a term loan and made principal payments of \$2,375.

### **Contractual Obligations and Commitments**

Our principal commitments consist of the Credit Agreement, operating leases and capital leases. Based on the results of the current quarter, we will be in violation of the senior leverage ratio covenant within the Credit Agreement, however, we will pay the remaining principal and interest in the upcoming quarter.

We are subject to certain outside claims and litigation arising out of the ordinary course of business.

### **Off-Balance Sheet Arrangements**

We did not have any off-balance sheet arrangements as of September 30, 2021.

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## **JOBS Act**

We qualify as an “emerging growth company,” as defined in Section 2(a) of the Securities Act of 1933, as modified by the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”), and may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies, but any such election to opt out is irrevocable. We have elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of our financial statements with another public company that is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

## **Critical Accounting Policies**

We prepare our financial statements in accordance with U.S. GAAP, which requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates under different assumptions or conditions.

## **Variable Interest Entities**

We consolidate entities for which we have a variable interest and are determined to be the primary beneficiary. The Company holds variable interests in the TOI PCs, comprised of The Oncology Institute, A Professional Corporation (“TOI CA”) and The Oncology Institute FL, LLC (“TOI FL”), which the Company cannot legally own due to jurisdictional laws governing the corporate practice of medicine. The TOI PCs employ physicians and other clinicians in order to provide professional services to patients of our managed clinics, and under substantially similar MSAs, we serve as the exclusive manager and administrator of the TOI PCs’ non-medical functions and services. The TOI PCs are considered variable interest entities (“VIEs”) as they do not have sufficient equity to finance their activities without additional financial support from the Company. An enterprise having a controlling financial interest in a VIE must consolidate the VIE if it has both power and benefits — that is, it has (1) the power to direct the activities of a VIE that most significantly impacts the VIE’s economic performance (power), and (2) the obligation to absorb the losses of the VIE that potentially could be significant to the VIE or the right to receive benefits from the VIE that potentially could be significant to the VIE (benefits). We have the power to control all financial activities of the TOI PCs, the rights to receive substantially all benefits from the VIEs, and appropriately consolidates the TOI PCs. Revenues, expenses, and income from the TOI PCs are included in the consolidated amounts as presented on the consolidated statements of operations.

## **Business Combinations**

We account for all transactions that represent business combinations using the acquisition method of accounting. As such, the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquired entity are recognized and measured at their fair values on the date we obtain control. Such fair values that are not finalized for reporting periods following the acquisition date are estimated and recorded as provisional amounts. Adjustments to these provisional amounts during the measurement period are recorded when identified. Goodwill is determined as the excess of the fair value of the consideration exchanged in the acquisition over the fair value of the net assets acquired.

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## **Segment Reporting**

We present the financial statements by segment in accordance with the relevant accounting literature to provide investors with transparency into how the chief operating decision maker (“CODM”) manages the business. Our CODM is our Chief Executive Officer. The CODM reviews financial information and allocates resources across three operating segments: dispensary, patient care, and clinical trials & other.

## **Revenue Recognition**

We recognize consolidated revenue based upon the principle of the transfer of control of our goods and services to customers in an amount that reflects the consideration we expect to be entitled. This principle is achieved through applying the following five-step approach:

1. Identification of the contract, or contracts, with a customer.
2. Identification of the performance obligations in the contract.
3. Determination of the transaction price.
4. Allocation of the transaction price to the performance obligations in the contract.
5. Recognition of revenue when, or as, we satisfy a performance obligation.

Consolidated revenue primarily consists of capitation revenue, fee-for-service (FFS) revenue, dispensary revenue, and clinical trials revenue. Revenue is recognized in the period in which services are rendered or the period in which the TOI PCs are obligated to provide services. The form of billing and related risk of collection for such services may vary by type of revenue and the payor. The following paragraphs provide a summary of the principal forms of billing arrangements and how revenue is recognized for each.

### ***Capitation***

Capitation contracts have a single performance obligation that is a stand ready obligation to perform specified healthcare services to the population of enrolled members and constitutes a series for the provision of managed healthcare services for the term of the contract, which is deemed to be one month since the mix of patient-customers can and do change month over month. The transaction price for capitation contracts is variable as it primarily includes PMPM fees associated with unspecified membership that fluctuates throughout the term of the contract. Further, we adjust the transaction price for capitation deductions based on historical experience. Revenue is recognized in the month services are rendered on the basis of the transaction price established at that time. If subsequent information resolves uncertainties related to the transaction price, adjustments will be recognized in the period they are resolved. When payment has been received but services have not yet been rendered, the payment is recognized as a contract liability.

### ***Fee For Service***

FFS revenue consists of fees for medical services actually provided to patients. These medical services are distinct since the patient can benefit from the medical services on their own. Each service constitutes a single performance obligation for which the patient accepts and receives the benefit of the medical services as they are performed.

The transaction price from FFS arrangements is variable in nature because fees are based on patient encounters, credits due to patients, and reimbursement of provider costs, all of which can vary from period to period. We estimate the transaction price using the most likely methodology and amounts are only included in the net transaction price to the extent that it is probable that a significant reversal of cumulative revenue will not occur once any uncertainty is resolved. As a practical expedient, the Company adopted a portfolio approach to determine the transaction price for the medical services provided under FFS arrangements. Under this approach, the Company bifurcated the types of services provided and grouped health plans with similar fees and negotiated payment rates.

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At these levels, portfolios share the characteristics conducive to ensuring that the results do not materially differ from the standard applied to individual patient contracts related to each medical service provided.

Revenue is recorded on the date the services are rendered based on the information known at the time of entering of such information into our billing systems as well as an estimate of the revenue associated with medical services. When the performance obligation is not satisfied, the billing is recognized as a contract liability.

### ***Dispensary***

Dispensed prescriptions that are filled and delivered to the patient are considered a distinct performance obligation. The transaction price for the prescriptions is based on fee schedules set by PBMs and other third-party payors. The fee schedule is often subject to DIR fees, which are based primarily on pre-established metrics. DIR fees may be assessed in periods after payments are received against future payments. We estimate DIR fees to arrive at the transaction price for prescriptions. Revenue is recognized based on the transaction at the time the patient takes possession of the oral drug.

### ***Clinical Research***

Clinical research contracts represent a single, integrated set of research activities and thus are a single performance obligation. The performance obligation is satisfied over time as the output is captured in data and documentation that is available for the customer to consume over the course of arrangement and furthers progress of the clinical trial. We have elected to recognize revenue for clinical trials using the 'as-invoiced' practical expedient. The customer is invoiced periodically based on the progress of the trial such that each invoice captures the revenue earned to date based on the state of the trial as established under contract with the customer.

### ***Direct Costs of Sales***

Direct cost of sales primarily consists of wages paid to clinical personnel and other health professionals, oral and IV drug costs, and other medical supplies used to provide patient care. Costs for clinical personnel wages are expensed as incurred and costs for inventory and medical supplies are expensed when used, generally by applying the specific identification method.

### ***Leases***

Lease agreements are evaluated to determine whether they are capital or operating leases. Capital leases are capitalized at the lower of the net present value of the total amount payable under the leasing agreement (excluding finance charges) or the fair market value of the leased asset. Capital lease assets are depreciated on a straight-line basis, over a period consistent with our normal depreciation policy for tangible fixed assets. We allocate each lease payment between a reduction of the lease obligation and interest expense using the effective interest method. Rent expense for operating leases, which may include free rent or fixed escalation amounts in addition to minimum lease payments, is recognized on a straight-line basis over the duration of the lease term. We report the current and long-term portions of capital lease obligations within accrued expenses and other current liabilities and other non-current liabilities, respectively, on the consolidated balance sheets.

### ***Goodwill and Intangible Assets***

Goodwill is not amortized but is required to be evaluated for impairment at the same time every year. We perform annual testing of impairment for goodwill in the fourth quarter of each year. When impairment indicators are identified, we compare the reporting unit's fair value to its carrying amount, including goodwill. An impairment loss is recognized as the difference, if any, between the reporting unit's carrying amount and its fair value to the extent the difference does not exceed the total amount of goodwill allocated to the reporting unit.

Finite-lived intangible assets are stated at acquisition-date fair value. Intangible assets are amortized using the straight-line method. Finite-lived intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When circumstances indicate that recoverability may be impaired, we assess its ability to recover the carrying value of the asset group from the expected future pre-tax cash flows (undiscounted and without interest charges) of the related operations. If these cash flows are less than the carrying value of such asset, an impairment loss is recognized for the difference between estimated fair value and carrying value. Fair value is determined based on appropriate valuation techniques.

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## Debt

We account for debt net of debt issuance costs. Debt issuance costs are capitalized, netted against the related debt for presentation purposes, and amortized to interest expense over the terms of the related debt using the effective interest method.

### Recent Accounting Pronouncements

In February 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update No. 2016-02, Leases (Topic 842) (“ASU 2016-02”), which amends the existing accounting standards for leases. The new standard requires lessees to record a right-of-use (“ROU”) asset and a corresponding lease liability on the balance sheet (with the exception of short-term leases), whereas under current accounting standards our lease portfolio consists primarily of operating leases and is not recognized on its consolidated balance sheets. We will adopt ASC 842 effective January 1, 2022, using the alternative modified transition method and will record a cumulative-effect adjustment to the opening balance of retained earnings as of that date. Prior periods will not be restated. We believe the largest impact will be on the consolidated balance sheets for the accounting of facilities-related leases, which represents a majority of its operating leases it has entered into as a lessee. These leases will be recognized under the new standard as ROU assets and operating lease liabilities. We will also provide expanded disclosures for its leasing arrangements. The results of operations are not expected to significantly change after adoption of the new standard.

In June 2016, the FASB issued Accounting Standards Update 2016-13, Measurement of Credit Losses on Financial Instruments (“ASU 2016-13”), which changes the way entities recognize impairment of many financial assets by requiring immediate recognition of estimated credit losses expected to occur over their remaining life, instead of when incurred. In November 2018, the FASB issued Accounting Standard Update 2018-19, Codification Improvements to Topic 326, Financial Instruments — Credit Losses (“ASU 2018-19”), which amends Subtopic 326-20 (created by ASU 2016-13) to explicitly state that operating lease receivables are not in the scope of Subtopic 326-20. Additionally, in April 2019, the FASB issued Accounting Standard Update 2019-04, Codification Improvements to Topic 326, Financial Instruments — Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments (“ASU 2019-04”), in May 2019, the FASB issued Accounting Standards Update 2019-05, Financial Instruments — Credit Losses (Topic 326): Targeted Transition Relief (“ASU 2019-05”), and in November 2019, the FASB issued Accounting Standards Update 2019-10, Financial Instruments — Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates, and ASU 2019-11, Codification Improvements to Topic 326, Financial Instruments — Credit Losses (“ASU 2019-10”), to provide further clarifications on certain aspects of ASU 2016-13 and to extend the nonpublic entity effective date of ASU 2016-13. The changes (as amended) are effective for us for annual and interim periods in fiscal years beginning after December 15, 2022. The entity may early adopt ASU 2016-13, as amended, for annual and interim periods in fiscal years beginning after December 15, 2018. While we expect our allowance for credit losses to increase upon adoption of ASU 2016-13, we do not expect the adoption of ASU 2016-13 to have a material effect on our consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, Simplifying the Accounting for Income Taxes (“ASU 2019-12”), which amends ASC 740, Income Taxes. This new standard is intended to simplify accounting for income taxes by removing certain exceptions to the general principles in ASC 740 and amending existing guidance to improve consistent application of ASC 740. The new standard is effective for us beginning January 1, 2022. The guidance in the new standard has various elements, some of which are applied on a prospective basis and others on a retrospective basis with earlier application permitted. We are currently evaluating the effect of this ASU on our condensed consolidated financial statements and related disclosures.

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### Quantitative and Qualitative Disclosures about Market Risk

Management's discussion and analysis of the quantitative and qualitative disclosures about market risk is included in the Proxy Statement/Prospectus in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations of TOI—Quantitative and Qualitative Disclosures about Market Risk" beginning on page 197, which is incorporated herein by reference.

### Properties

The Company's facilities are described in the Proxy Statement/Prospectus in the section titled "Business of TOI—Properties" on page 196 and is incorporated herein by reference.

### Security Ownership of Certain Beneficial Owners and Management

The following table sets forth the beneficial ownership of Common Stock following the consummation of the Business Combination and the PIPE Investment by:

- each person who is known to be the beneficial owner of more than 5% of shares of Common Stock;
- each of TOI's current named executive officers and directors; and
- all current executive officers and directors of TOI as a group.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days.

Unless otherwise indicated, TOI believes that all persons named in the table below have sole voting and investment power with respect to the voting securities beneficially owned by them.

Name and Address of Beneficial Owner <sup>(1)</sup>	Number of Shares	% of Ownership
<b>5% Holders</b>		
TOI HC I, LLC <sup>(1)</sup>	15,662,794	21.0%
M33 Growth I L.P. <sup>(2)</sup>	15,256,383	20.5%
FMR LLC <sup>(3)</sup>	12,000,000	16.1%
Jimmy Holdings, Inc. <sup>(4)</sup>	7,642,253	10.2%
FOG Ventures Investments, LLC <sup>(5)</sup>	4,634,908	6.2%
OncologyCare Partners, LLC <sup>(6)</sup>	4,109,771	5.5%
<b>Directors and Executive Officers <sup>(7)</sup></b>		
Brad Hively <sup>(8)</sup>	922,516	1.7%
Daniel Virnich <sup>(9)</sup>	425,089	*
Scott Dalglish <sup>(10)</sup>	215,403	*
Yale Podnos <sup>(11)</sup>	64,527	*
Richard Barasch <sup>(12)</sup>	85,113	*
Karen Johnson	—	—
Mohit Kaushal <sup>(13)</sup>	25,534	*
Anne McGeorge	—	—
Ravi Sarin <sup>(6)</sup>	4,109,771	5.6%
All directors and executive officers as a group (10 individuals)	5,202,539	6.6%

\* Less than one percent

- (1) Havencrest Healthcare Partners, L.P. (“Havencrest”) and its general partner, Havencrest Healthcare Partners GP, LLC (“Havencrest GP”) indirectly have the power to control TOI HC, LLC and may be deemed to have beneficial ownership of the shares directly held by TOI HC I, LLC. Each of Havencrest and Havencrest GP expressly disclaim beneficial ownership of such securities to the extent of their pecuniary interest therein. The business address for TOI HC I, LLC, Havencrest, and Havencrest GP is 2100 McKinney Ave., #1760, Dallas TX 75201.
- (2) Consists of (i) 13,703,803 shares of Common Stock held by M33 Growth I L.P. (“M33”) and (ii) 1,552,580 shares of Common Stock held by TOI M, LLC (“TOI M”). M33 Growth I GP LLC is the general partner of M33. Michael Anello, Gabriel Ling and Brian Shortsleeve serve as the managers of M33 Growth I GP LLC. As a result, Mr. Anello, Mr. Ling and Mr. Shortsleeve indirectly have the power to control M33 and may be deemed to have indirect beneficial ownership of the securities held by M33. M33 is a member of TOI M and Mr. Ling serves as the manager of TOI M. As a result, Mr. Ling has the power to control TOI M and may be deemed to have indirect beneficial ownership of the securities held by TOI M. The business address of each of M33 and TOI M is 888 Boylston Street, Suite 500, Boston, MA 02199.
- (3) Consists of (i) 373,842 shares of New TOI Common Stock to be owned by Fidelity Capital Trust: Fidelity Stock Selector Small Cap Fund; (ii) 1,126,158 shares of New TOI Common Stock to be owned by Fidelity Securities Fund: Fidelity Series Small Cap Opportunities Fund; (iii) 112,536 shares of New TOI Common Stock owned by Variable Insurance Products Fund III: VIP Growth Opportunities Portfolio; (iv) 814,767 shares of New TOI Common Stock to be owned by Fidelity Advisor Series I: Fidelity Advisor Growth Opportunities Fund; (v) 28,268 shares of New TOI Common Stock to be owned by Fidelity Advisor Series I: Fidelity Advisor Series Growth Opportunities Fund; (vi) 11,405 shares of New TOI Common Stock to be owned by Fidelity U.S. Growth Opportunities Investment Trust by its manager Fidelity Investments Canada ULC; (vii) 33,024 shares of New TOI Common Stock to be owned by Fidelity NorthStar Fund - Sub D by its manager Fidelity Investments Canada ULC; (viii) 2,232,581 shares of New TOI Common Stock to be owned by Fidelity Select Portfolios: Select Health Care Portfolio; (ix) 1,472,782 shares of New TOI Common Stock to be owned by Fidelity Advisor Series VII: Fidelity Advisor Health Care Fund; (x) 761,936 shares of New TOI Common Stock to be owned by Fidelity Central Investment Portfolios LLC: Fidelity U.S. Equity Central Fund — Health Care Sub; (xi) 282,701 shares of New TOI Common Stock to be owned by Variable Insurance Products Fund IV: VIP Health Care Portfolio; (xii) 377,375 shares of New TOI Common Stock to be owned by Fidelity Mt. Vernon Street Trust: Fidelity Series Growth Company Fund; (xiii) 1,815,080 shares of New TOI Common Stock to be owned by Fidelity Mt. Vernon Street Trust: Fidelity Growth Company Fund; (xiv) 2,110,757 shares of New TOI Common Stock to be owned by Fidelity Growth Company Commingled Pool, By: Fidelity Management Trust Company, as Trustee; and (xv) 446,788 shares of New TOI Common Stock to be owned by Fidelity Mt. Vernon Street Trust : Fidelity Growth Company K6 Fund. These accounts are managed by direct or indirect subsidiaries of FMR LLC. Abigail P. Johnson is a Director, the Chairman, the Chief Executive Officer and the President of FMR LLC.

Members of the Johnson family, including Abigail P. Johnson, are the predominant owners, directly or through trusts, of Series B voting common shares of FMR LLC, representing 49% of the voting power of FMR LLC. The Johnson family group and all other Series B shareholders have entered into a shareholders’ voting agreement under which all Series B voting common shares will be voted in accordance with the majority vote of Series B voting common shares. Accordingly, through their ownership of voting common shares and the execution of the shareholders’ voting agreement, members of the Johnson family may be deemed, under the Investment Company Act of 1940, to form a controlling group with respect to FMR LLC.

- (4) Jimmy Holdings, Inc. has voting and non-voting securities. Richy Agajanian controls the voting power of the voting securities of Jimmy Holdings, Inc., and, as a result of such control, may be deemed to have indirect beneficial ownership of the securities held by Jimmy Holdings, Inc. The business address for Jimmy Holdings, Inc. is 2810 Pinckard Ave., Redondo Beach, CA 90278.
  - (5) Dan Murillo, as principal of FOG Ventures Investments, LLC, directly or indirectly has the power to control FOG Ventures Investments, LLC. As a result, Mr. Murillo may be deemed to have indirect beneficial ownership of the securities held by FOG Ventures Investments, LLC. The business address for FOG Ventures Investments, LLC is 19300 S Hamilton Ave, Ste. 285, Gardena, CA 90248.
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- (6) OncologyCare Holdings, LLC is the manager of OncologyCare Partners, LLC, and Ravi Sarin formerly served as the managing member of OncologyCare Partners, LLC and continues to have the ability to influence the vote and disposition of the shares in certain circumstances, and thus may be deemed to indirectly beneficially own the shares, except to the extent of his pecuniary interest therein.
- (7) Unless indicated otherwise, the address of each stockholder is 18000 Studebaker Rd., Suite 800, Cerritos, CA 90703.
- (8) Consists of (i) 141,380 shares received in connection with the Business Combination and representing restricted earn-out shares subject to forfeiture and unvested until such time the Issuer's stock price reaches \$12.50 per share for 20 days within any 30 consecutive trading days for the two-year period following the closing of the Business Combination, subject to continued employment at such time, (ii) 212,070 shares received in connection with the Business Combination and representing restricted earn-out shares subject to forfeiture and unvested until such time the Issuer's stock price reaches \$15.00 per share for 20 days within any 30 consecutive trading days for the three-year period following the closing of the Business Combination, subject to continued employment at such time and (iii) 591,954 shares of common stock issuable upon exercise of stock options held by Mr. Hively that are exercisable within 60 days of the Closing Date.
- (9) Consists of (i) 78,094 shares received in connection with the Business Combination and representing restricted earn-out shares subject to forfeiture and unvested until such time the Issuer's stock price reaches \$12.50 per share for 20 days within any 30 consecutive trading days for the two-year period following the closing of the Business Combination, subject to continued employment at such time, (ii) 195,236 shares received in connection with the Business Combination and representing restricted earn-out shares subject to forfeiture and unvested until such time the Issuer's stock price reaches \$15.00 per share for 20 days within any 30 consecutive trading days for the three-year period following the closing of the Business Combination, subject to continued employment at such time and (iii) 245,909 shares of common stock issuable upon exercise of stock options held by Mr. Virnich that are exercisable within 60 days of the Closing Date.
- (10) Consists of (i) 47,566 shares received in connection with the Business Combination and representing restricted earn-out shares subject to forfeiture and unvested until such time the Issuer's stock price reaches \$12.50 per share for 20 days within any 30 consecutive trading days for the two-year period following the closing of the Business Combination, subject to continued employment at such time, (ii) 118,916 shares received in connection with the Business Combination and representing restricted earn-out shares subject to forfeiture and unvested until such time the Issuer's stock price reaches \$15.00 per share for 20 days within any 30 consecutive trading days for the three-year period following the closing of the Business Combination, subject to continued employment at such time and (iii) 106,234 shares of common stock issuable upon exercise of stock options held by Mr. Dalgleish that are exercisable within 60 days of the Closing Date.
- (11) Consists of (i) 11,359 shares received in connection with the Business Combination and representing restricted earn-out shares subject to forfeiture and unvested until such time the Issuer's stock price reaches \$12.50 per share for 20 days within any 30 consecutive trading days for the two-year period following the closing of the Business Combination, subject to continued employment at such time, (ii) 17,039 shares received in connection with the Business Combination and representing restricted earn-out shares subject to forfeiture and unvested until such time the Issuer's stock price reaches \$15.00 per share for 20 days within any 30 consecutive trading days for the three-year period following the closing of the Business Combination, subject to continued employment at such time and (iii) 38,024 shares of common stock issuable upon exercise of stock options held by Mr. Podnos that are exercisable within 60 days of the Closing Date.
- (12) Represents shares held by Mr. Barasch prior to the consummation of the Business Combination, after giving effect to forfeitures pursuant to the Stockholder Support Agreement, dated as of June 28, 2021, by and among DFP, TOI and the Sponsor.
- (13) Represents shares held by Mr. Kaushal prior to the consummation of the Business Combination, after giving effect to forfeitures pursuant to the Stockholder Support Agreement, dated as of June 28, 2021, by and among DFP, TOI and the Sponsor.

#### ***Directors and Executive Officers***

Upon the consummation of the transactions contemplated by the Merger Agreement and documents related thereto, and in accordance with the terms of the Merger Agreement, each executive officer of DFP ceased serving in such capacities, and both Dr. Jennifer Carter and Dr. Gregory Sorensen ceased serving on DFP's board of directors.

Brad Hively, Richard Barasch, Karen Johnson, Mohit Kaushal, Anne McGeorge, Maeve O'Meara and Ravi Sarin were appointed as directors of TOI by the stockholders of DFP, to serve until the end of their respective terms and until their successors are elected and qualified. The Board has appointed Richard Barasch to serve as Chairperson of the Board. Anne McGeorge, Maeve O'Meara and Ravi Sarin were appointed to serve on TOI's audit committee with Anne McGeorge serving as the chair and Ms. McGeorge, Ms. O'Meara and Mr. Sarin each qualifying as an audit committee financial expert, as such term is defined in Item 407(d)(5) of Regulation S-K.

Brad Hively was appointed as TOI's Chief Executive Officer, Daniel Virnich was appointed as TOI's Chief Operating Officer, Scott Dalgleish was appointed as TOI's Chief Financial Officer, and Mark Huppelsheuser was appointed as TOI's General Counsel.

TOI's directors and executive officers after the consummation of the Business Combination are described in the Proxy Statement/Prospectus in the section titled "*New TOI Management After the Business Combination*" beginning on page 243, and that information is incorporated herein by reference.

Additionally, interlocks and insider participation information regarding TOI's executive officers is described in the Proxy Statement/Prospectus in the section titled "*New TOI Management After the Business Combination—Compensation Committee Interlocks and Insider Participation*" beginning on page 248 and that information is incorporated herein by reference.

#### ***Executive Compensation***

The executive compensation of Old TOI's executive officers is described in the Proxy Statement/Prospectus in the section titled "*TOI Parent, Inc.'s Executive and Director Compensation*" beginning on page 249 and that information is incorporated herein by reference.

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### ***Director Compensation***

The compensation of Old TOI's directors is described in the Proxy Statement/Prospectus in the section titled "*TOI Parent, Inc.'s Executive and Director Compensation*" beginning on page 249 and that information is incorporated herein by reference.

### ***Certain Relationships and Related Transactions***

Certain relationships and related party transactions of TOI are described in the Proxy Statement/Prospectus in the section titled "*Certain Relationships and Related Party Transactions*" beginning on page 255 and are incorporated herein by reference.

### ***Director Independence***

Certain relationships and related party transactions of TOI are described in the Proxy Statement/Prospectus in the section titled "*New TOI Management After the Business Combination—Director Independence*" on page 246 and are incorporated herein by reference.

### ***Legal Proceedings***

Reference is made to the disclosure regarding legal proceedings in the section of the Proxy Statement/Prospectus titled "*Business of TOI—Legal Proceedings*" beginning on page 196, which is incorporated herein by reference.

### ***Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters***

Shares of TOI's common stock and TOI's warrants commenced trading on the Nasdaq under the symbols "TOI" and "TOIHW," respectively, on November 15, 2021, in lieu of the Class A common stock, warrants and units of DFP. TOI has not paid any cash dividends on its shares of common stock to date. It is the present intention of the Board to retain all earnings, if any, for use in TOI's business operations and, accordingly, TOI's board does not anticipate declaring any dividends in the foreseeable future. The payment of cash dividends in the future will be dependent upon TOI's revenues and earnings, if any, capital requirements and general financial condition. The payment of any cash dividends is within the discretion of the Board. Further, the ability of TOI to declare dividends may be limited by the terms of financing or other agreements entered into by it or its subsidiaries from time to time.

Information respecting DFP's Class A common stock, warrants and units and related stockholder matters are described in the Proxy Statement/Prospectus in the section titled "*Dividend Policy*" on page 40 and such information is incorporated herein by reference.

### ***Recent Sales of Unregistered Securities***

Reference is made to the disclosure set forth below under Item 3.02 of this Report concerning the issuance and sale by TOI of certain unregistered securities, which is incorporated herein by reference.

### ***Description of Registrant's Securities***

The description of TOI's securities is contained in the Proxy Statement/Prospectus in the section titled "*Description of New TOI Securities*" beginning on page 215 and is incorporated herein by reference.

### ***Indemnification of Directors and Officers***

The indemnification of TOI's directors and officers is set forth in the Proxy Statement/Prospectus in the section titled "*Description of New TOI Securities—Limitations on Liability and Indemnification of Officers and Directors*" beginning on page 224 and is incorporated herein by reference.

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### **Item 3.02. Unregistered Sales of Equity Securities.**

At the Closing, TOI consummated the PIPE Investment. The disclosure under Item 2.01 of this Report relating to the PIPE Investment is incorporated into this Item 3.02 by reference.

TOI issued the foregoing securities under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and/or Rule 506 of Regulation D promulgated under the Securities Act, as a transaction not requiring registration under Section 5 of the Securities Act. The parties receiving the securities represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution, and appropriate restrictive legends were affixed to the certificates representing the securities (or reflected in restricted book entry with TOI’s transfer agent). The parties also had adequate access, through business or other relationships, to information about TOI.

### **Item 3.03. Material Modification to Rights of Security Holders.**

The information set forth in Item 5.03 to this Report is incorporated herein by reference.

### **Item 4.01. Changes in Registrant’s Certifying Accountant.**

For accounting purposes, the Transactions are treated as a reverse acquisition and, as such, the historical financial statements of the accounting acquirer, TOI, which have been audited by BDO USA, LLP, will become the historical financial statements of the Company. In a reverse acquisition, a change of accountants is presumed to have occurred unless the same accountant audited the pre-transaction financial statements of both the legal acquirer and the accounting acquirer, and such change is generally presumed to occur on the date the reverse acquisition is completed.

(a) Dismissal of independent registered public accounting firm.

On November 14, 2021, the Audit Committee of the Board dismissed WithumSmith+Brown, PC (“Withum”), DFP’s independent registered public accounting firm prior to the business combination, as the Company’s independent registered public accounting firm effective following the filing of the Company’s Quarterly Report on Form 10-Q for the three months and nine months ended September 30, 2021, which consists only of the accounts of the pre-Business Combination special purpose acquisition company, DFP.

The report of Withum on DFP’s, the Company’s legal predecessor, balance sheet as of December 31, 2020 and the statements of operations, changes in stockholders’ equity and cash flows for the period from November 1, 2019 (inception) to December 31, 2020, did not contain an adverse opinion or a disclaimer of opinion, and was not qualified or modified as to uncertainties, audit scope or accounting principles.

During the period from November 1, 2019 (inception) to December 31, 2020 and subsequent interim period through November 12, 2021, there were no disagreements between the Company and Withum on any matter of accounting principles or practices, financial disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Withum, would have caused it to make reference to the subject matter of the disagreements in its reports on DFP’s financial statements for such period.

During the period from November 1, 2019 (inception) to December 31, 2020 and subsequent interim period through November 12, 2021, there were no “reportable events” (as defined in Item 304(a)(1)(v) of Regulation S-K under the Exchange Act).

The Company has provided Withum with a copy of the foregoing disclosures and has requested that Withum furnish the Company with a letter addressed to the SEC stating whether it agrees with the statements made by the Company set forth above. A copy of Withum’s letter, dated November 18, 2021, is filed as Exhibit 16.1 to this Report.

(b) Disclosures regarding the new independent auditor.

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On November 14, 2021, the Board approved the engagement of BDO USA, LLP (“BDO”) and intends to appoint BDO as the Company’s independent registered public accounting firm to audit the Company’s consolidated financial statements for the year ending December 31, 2021. BDO served as independent registered public accounting firm of Old TOI prior to the Business Combination. During the years ended December 31, 2020 and 2019, the period from September 20, 2018 through December 31, 2018, and subsequent interim period through November 12, 2021 (successor periods) and for the period from January 1, 2018 through September 19, 2018 (predecessor period), neither the Company nor anyone on the Company’s behalf consulted with BDO with respect to (i) the application of accounting principles to a specified transaction, either completed or proposed, the type of audit opinion that might be rendered on our financial statements, and neither a written report nor oral advice was provided to us that BDO concluded was an important factor considered by us in reaching a decision as to any accounting, auditing or financial reporting issue, or (ii) any other matter that was the subject of a disagreement or a reportable event (each as defined above).

**Item 5.01. Changes in Control of Registrant.**

The information set forth above under Item 1.01 and Item 2.01 of this Report is incorporated herein by reference.

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

The information set forth in the sections titled “*Directors and Executive Officers*”, “*Executive Compensation*”, “*Director Compensation*” and “*Certain Relationships and Related Transactions*” in Item 2.01 of this Report is incorporated herein by reference.

**2021 Equity Incentive Plan**

At the Special Meeting, the DFP stockholders considered and approved the The Oncology Institute, Inc. 2021 Incentive Award Plan (the “2021 Plan”). 2021 Plan was previously approved, subject to stockholder approval, by DFP’s board of directors and subsequently ratified by the Board on November 14, 2021. The 2021 Plan became effective immediately upon the Closing.

A summary of the terms of the 2021 Plan is set forth in the Proxy Statement/Prospectus in the section titled “*Incentive Plan Proposal*” beginning on page 140 of the Proxy Statement/Prospectus, which is incorporated herein by reference. Such summary and the foregoing description are qualified in their entirety by reference to the text of the 2021 Plan, a copy of which is attached hereto as Exhibit 10.2 and incorporated herein by reference.

**2021 Employee Stock Purchase Plan**

At the Special Meeting, the DFP stockholders considered and approved the The Oncology Institute, Inc. 2021 Employee Stock Purchase Plan (the “ESPP”). The ESPP was previously approved, subject to stockholder approval, by DFP’s board of directors and subsequently ratified by the Board on November 14, 2021. The ESPP became effective immediately upon the Closing.

A summary of the terms of the ESPP is set forth in the Proxy Statement/Prospectus in the section titled “*The ESPP Proposal*” beginning on page 145 of the Proxy Statement/Prospectus, which is incorporated herein by reference. Such summary and the foregoing description are qualified in their entirety by reference to the text of the ESPP, a copy of which is attached hereto as Exhibit 10.3 and incorporated herein by reference.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

At the Special Meeting, the DFP stockholders considered and approved, among other things, the proposals set forth in the Proxy Statement/Prospectus in the sections titled “*The Charter Proposal*” and “*The Advisory Charter Proposals*” beginning on pages 128 and 134 respectively of the Proxy Statement/Prospectus (the “*Charter Proposal*”).

The Amended and Restated Certificate of Incorporation of TOI (the “Certificate of Incorporation”), which became effective upon filing with the Secretary of State of the State of Delaware on November 12, 2021, includes the amendments proposed by the Charter Proposal.

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On November 12, 2021, the Board approved and adopted the Amended and Restated Bylaws of TOI (the “Bylaws”), which became effective as of the Effective Time.

Copies of the Certificate of Incorporation and the Bylaws are attached hereto as Exhibit 3.1 and Exhibit 3.2, respectively, and are incorporated herein by reference.

The description of the Certificate of Incorporation and the general effect of the Certificate of Incorporation and the Bylaws upon the rights of holders of TOI’s capital stock are included in the Proxy Statement/Prospectus under the sections titled “*The Charter Proposal*,” “*The Advisory Charter Proposals*,” “*Comparison of Stockholder Rights*” and “*Description of New TOI Securities*” beginning on pages 128, 134, 226 and 215, respectively, of the Proxy Statement/Prospectus, which are incorporated herein by reference.

**Item 5.05. Amendments to the Registrant’s Code of Ethics, or Waiver of a Provision of the Code of Ethics.**

In connection with the Business Combination, on November 14, 2021, TOI’s board of directors approved and adopted a new Code of Ethics and Conduct applicable to all employees, officers and directors of TOI. A copy of the Code of Business Conduct and Ethics can be found at <https://investors.theoncologyinstitute.com/corporate-governance/governance-documents>. The above description of the Code of Ethics and Conduct does not purport to be complete and is qualified in its entirety by reference to the full text of the Code of Ethics and Conduct.

**Item 5.06. Change in Shell Company Status.**

As a result of the Business Combination, the Company ceased being a shell company. Reference is made to the disclosure in the Proxy Statement/Prospectus in the section titled “*The Business Combination Proposal*” beginning on page 96, which is incorporated herein by reference. Further, the information set forth in the Introductory Note and under Item 2.01 of this Report is incorporated herein by reference.

**Item 8.01. Other Events.**

On November 15, 2021, TOI issued a press release announcing the start of trading. A copy of the press release is filed hereto as Exhibit 99.3 and incorporated herein by reference.

As a result of the Business Combination, TOI became the successor issuer to DFP. Pursuant to Rule 12g-3(a) under the Exchange Act, TOI’s common stock and warrants are deemed registered under Section 12(b) of the Exchange Act.

**Item 9.01. Financial Statements and Exhibits.**

(a) Financial statements of businesses acquired.

The (i) audited consolidated financial statements of Old TOI as of and for the years ended December 31, 2020 and 2019 included in the Proxy Statement/Prospectus beginning on page F-73 of the Proxy Statement/Prospectus and (ii) unaudited condensed consolidated financial statements of Old TOI as of and for the periods ended September 30, 2021 and 2020 are set forth in Exhibit 99.1 hereto and are incorporated herein by reference.

(b) Pro forma financial information.

The unaudited pro forma condensed combined financial information of DFP and Old TOI as of and for the nine months ended September 30, 2021 and as of and for the year ended December 31, 2020 is set forth in Exhibit 99.2 hereto and is incorporated herein by reference.

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(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
<a href="#"><u>2.1†</u></a>	<a href="#"><u>Merger Agreement, dated as of June 28, 2021, by and among DFP, Merger Sub I, Merger Sub II, and TOI (incorporated by reference to Exhibit 2.1 to the Registration Statement on Form S-4 (File No. 333-258152) filed on October 20, 2021).</u></a>
<a href="#"><u>3.1</u></a>	<a href="#"><u>Amended and Restated Certificate of Incorporation of The Oncology Institute, Inc.</u></a>
<a href="#"><u>3.2</u></a>	<a href="#"><u>Amended and Restated Bylaws of The Oncology Institute, Inc.</u></a>
4.1	Specimen Common Stock Certificate of The Oncology Institute, Inc.
<a href="#"><u>4.1</u></a>	<a href="#"><u>Warrant Agreement, dated March 10, 2020, by and between DFP and Continental Stock Transfer &amp; Trust Company, as warrant agent (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 001-39248), filed with the SEC on March 13, 2020.</u></a>
<a href="#"><u>10.1</u></a>	<a href="#"><u>Amended and Restated Registration Rights Agreement by and among DFP Healthcare Acquisitions Corp, DFP Sponsor LLC and certain other parties thereto.</u></a>
<a href="#"><u>10.2</u></a>	<a href="#"><u>The Oncology Institute, Inc. 2021 Incentive Award Plan</u></a>
10.3	The Oncology Institute, Inc. Employee Stock Purchase Plan
14.1	The Oncology Institute Code of Ethics and Conduct
<a href="#"><u>16.1</u></a>	<a href="#"><u>Response Letter from WithumSmith + Brown, P.C.</u></a>
<a href="#"><u>99.1</u></a>	<a href="#"><u>Unaudited condensed consolidated financial statements of Old TOI as of and for the periods ended September 30, 2021 and 2020.</u></a>
<a href="#"><u>99.2</u></a>	<a href="#"><u>Unaudited pro forma condensed combined financial information of DFP and Old TOI as of and for the nine months ended September 30, 2021 and as of and for the year ended December 31, 2020.</u></a>
99.3	Press Release dated November 15, 2021.

† The annexes, schedules, and certain exhibits to this Exhibit have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Registrant hereby agrees to furnish supplementally a copy of any omitted annex, schedule or exhibit to the SEC upon request.

+ Indicates a management contract or compensatory plan.

# Certain portions of this exhibit (indicated by “[\*\*\*]”) have been omitted pursuant to Regulation S-K, Item 601(b)(10).

**SIGNATURE**

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 hereunto duly authorized.

The Oncology Institute, Inc.

Date: November 18, 2021

By: /s/ Brad Hively

Name: Brad Hively

Title: Chief Executive Officer

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**THIRD AMENDED AND RESTATED CERTIFICATE OF  
INCORPORATION OF  
DFP HEALTHCARE ACQUISITIONS CORP.**

**November 12, 2021**

\*\*\*\*\*

DFP Healthcare Acquisitions Corp., a corporation organized and existing under the laws of the state of Delaware (the "Corporation"), does hereby certify as follows:

1. The original certificate of incorporation of the Corporation was filed with the Secretary of State of Delaware (the "Secretary of State") on November 1, 2019 (the "Original Certificate of Incorporation"). The name under which the Original Certificate of Incorporation was filed is "DFP Healthcare Acquisitions Corp."
2. The Corporation's First Amended and Restated Certificate of Incorporation, which amended and restated the provisions of the Original Certificate of Incorporation, was duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, as amended from time to time (the "DGCL"), and was filed with the Secretary of State on December 30, 2019 (as amended, the "First A&R Certificate").
3. Amendment No. 1 to the First A&R Certificate was duly adopted in accordance with Sections 228, 242 and 245 of the DGCL and was filed with the Secretary of State on February 19, 2020.
4. The Second Amended and Restated Certificate of Incorporation (the "Second A&R Certificate"), which both restates and amends the provisions of the First A&R Certificate, was duly adopted in accordance with Sections 228, 242 and 245 DGCL, and was filed with the Secretary of State on March 10, 2020.
5. This Third Amended and Restated Certificate of Incorporation (this "Third A&R Certificate of Incorporation") was duly adopted by the Board of Directors of the Corporation and the stockholders of the Corporation in accordance with Sections 242 and 245 of the DGCL.
6. This Third A&R Certificate of Incorporation shall become effective upon filing with the Secretary of State.
7. The Second A&R Certificate is being amended and restated in connection with the transactions contemplated by that certain Agreement and Plan of Merger, dated as of June 28, 2021, by and among the Corporation, Orion Merger Sub I, Inc., Orion Merger Sub II, LLC and TOI Parent Inc. (as amended, modified, supplemented or waived from time to time, the "Merger Agreement"). As part of the transactions contemplated by the Merger Agreement, all of the shares of the Class B Common Stock of the Corporation were converted on a 1-for-1 basis into shares of Class A Common Stock of the Corporation such that, at the effectiveness of this Third A&R Certificate of Incorporation, only Class A Common Stock remains outstanding. All Class A Common Stock issued and outstanding prior to the effectiveness of this Third A&R Certificate of Incorporation and all Class A Common Stock issued as part of the Merger Agreement and the Subscription Agreements contemplated by the Merger Agreement shall be Common Stock for all purposes of this Third A&R Certificate of Incorporation. This Third A&R Certificate of Incorporation hereby amends and restates the provisions of the Second A&R Certificate to read in its entirety as follows:

**ARTICLE I  
NAME**

The name of the corporation is The Oncology Institute, Inc. (the "Corporation").

**ARTICLE II  
REGISTERED OFFICE AND AGENT**

The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, County of New Castle, State of Delaware, 19808, and the name of the Corporation's registered agent at such address is Corporation Service Company.

**ARTICLE III PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL") as it now exists or may hereafter be amended and supplemented.

**ARTICLE IV AUTHORIZED CAPITAL**

The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of capital stock that the Corporation shall have authority to issue is 510,000,000. The total number of shares of Common Stock that the Corporation is authorized to issue is 500,000,000, having a par value of \$0.0001 per share, and the total number of shares of Preferred Stock that the Corporation is authorized to issue is 10,000,000, having a par value of \$0.0001 per share.

**ARTICLE V CAPITAL STOCK**

The designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation are as follows:

A. COMMON STOCK.

1. General. The voting, dividend, liquidation and other rights and powers of the Common Stock are subject to and qualified by the rights, powers and preferences of any series of Preferred Stock as may be designated by the Board of Directors of the Corporation (the "Board of Directors") and outstanding from time to time.

2. Voting. Except as otherwise provided herein or expressly required by law, each holder of Common Stock, as such, shall be entitled to vote on each matter submitted to a vote of stockholders and shall be entitled to one vote for each share of Common Stock held of record by such holder as of the record date for determining stockholders entitled to vote on such matter. Except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Third A&R Certificate of Incorporation (including any Certificate of Designation (as defined below)) that relates solely to the rights, powers, preferences (or the qualifications, limitations or restrictions thereof) or other terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Third A&R Certificate of Incorporation (including any Certificate of Designation) or pursuant to the DGCL.

Subject to the rights of any holders of any outstanding series of Preferred Stock, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

3. Dividends. Subject to applicable law and the rights and preferences of any holders of any outstanding series of Preferred Stock, the holders of Common Stock, as such, shall be entitled to the payment of dividends on the Common Stock when, as and if declared by the Board of Directors in accordance with applicable law.

4. Liquidation. Subject to the rights and preferences of any holders of any shares of any outstanding series of Preferred Stock, in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the funds and assets of the Corporation that may be legally distributed to the Corporation's stockholders shall be distributed among the holders of the then outstanding Common Stock pro rata in accordance with the number of shares of Common Stock held by each such holder.

5. Transfer Rights. Subject to applicable law and the transfer restrictions set forth in Article VII of the bylaws of the Corporation (as such Bylaws may be amended from time to time, the "Bylaws"), shares of Common Stock and the rights and obligations associated therewith shall be fully transferable to any transferee.

#### B. PREFERRED STOCK

Shares of Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the creation and issuance of such series adopted by the Board of Directors as hereinafter provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designation relating thereto in accordance with the DGCL (a "Certificate of Designation"), to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, and to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series as shall be stated and expressed in such resolutions, all to the fullest extent now or hereafter permitted by the DGCL. Without limiting the generality of the foregoing, the resolution or resolutions providing for the creation and issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law and this Third A&R Certificate of Incorporation (including any Certificate of Designation). Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Third A&R Certificate of Incorporation (including any Certificate of Designation).

The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

### **ARTICLE VI BOARD OF DIRECTORS**

For the management of the business and for the conduct of the affairs of the Corporation it is further provided that:

A. Except as otherwise expressly provided by the DGCL or this Third A&R Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors that shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted from time to time by the Board of Directors in accordance with the Bylaws.

B. Subject to the special rights of the holders of one or more outstanding series of Preferred Stock to elect directors, the Board of Directors or any individual director may be removed from office at any time, with or without cause and only by the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote at an election of directors.

C. Subject to the special rights of the holders of one or more outstanding series of Preferred Stock to elect directors, except as otherwise provided by law, any vacancies on the Board of Directors resulting from death, resignation, disqualification, retirement, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall be filled exclusively by the affirmative vote of a majority of the directors then in office, even though less than a quorum, or by a sole remaining director (other than any directors elected by the separate vote of one or more outstanding series of Preferred Stock), and shall not be filled by the stockholders. Any director appointed in accordance with the preceding sentence shall hold office until the expiration of the term or until his or her earlier death, resignation, retirement, disqualification, or removal.

D. Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Third A&R Certificate of Incorporation (including any Certificate of Designation). Notwithstanding anything to the contrary in this Article VI, the number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to paragraph B of this Article VI, and the total number of directors constituting the whole Board of Directors shall be automatically adjusted accordingly. Except as otherwise provided in the Certificate of Designation(s) in respect of one or more series of Preferred Stock, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such Certificate of Designation(s), the terms of office of all such additional directors elected by the holders of such series of Preferred Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

E. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws, subject to the power of the stockholders of the Corporation entitled to vote with respect thereto to adopt, amend or repeal the Bylaws. The stockholders of the Corporation shall also have the power to adopt, amend or repeal the Bylaws; provided, that in addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Third A&R Certificate of Incorporation (including any Certificate of Designation in respect of one or more series of Preferred Stock) or the Bylaws of the Corporation, the adoption, amendment or repeal of the Bylaws of the Corporation by the stockholders of the Corporation shall require the affirmative vote of the holders of at least two-thirds of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote generally in an election of directors; provided, further, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the Board of Directors that would have been valid if such Bylaws had not been adopted.

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

#### **ARTICLE VII MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT**

A. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of the stockholders of the Corporation, and shall not be taken by written consent in lieu of a meeting. Notwithstanding the foregoing, any action required or permitted to be taken by the holders of any series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable Certificate of Designation relating to such series of Preferred Stock, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant series of Preferred Stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with the applicable provisions of the DGCL.

B. Subject to the special rights of the holders of one or more series of Preferred Stock, and to the requirements of applicable law, special meetings of the stockholders of the Corporation may be called for any purpose or purposes, at any time only by or at the direction of the majority of the Board of Directors, the Chairperson of the Board of Directors, the Chief Executive Officer or President, in each case, in accordance with the Bylaws, and shall not be called by any other person or persons. Any such special meeting so called may be postponed, rescheduled or cancelled by the Board of Directors or other person calling the meeting.

C. Advance notice of stockholder nominations for the election of directors and of other business proposed to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws. Any business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes identified in the notice of meeting.

#### **ARTICLE VIII LIMITATION OF DIRECTOR LIABILITY**

No director of the Corporation shall have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. Any amendment, repeal or modification of this Article VIII, or the adoption of any provision of this Third A&R Certificate of Incorporation inconsistent with this Article VIII, shall not adversely affect any right or protection of a director of the Corporation with respect to any act or omission occurring prior to such amendment, repeal, modification or adoption. If the DGCL is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

#### **ARTICLE IX INDEMNIFICATION**

The Corporation shall indemnify any person to the fullest extent authorized or permitted by applicable law, as now or hereafter in effect, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article IX shall include the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending or otherwise participating in any proceeding in advance of its final disposition upon receipt by the Corporation of an undertaking by or on behalf of the director or officer receiving advancement to repay the amount advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation under this Article IX. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article IX to directors and officers of the Corporation. The rights to indemnification and to the advancement of expenses conferred in this Article IX shall not be exclusive of any other right which any person may have or hereafter acquire under this Third A&R Certificate of Incorporation, the Bylaws, any statute, agreement, vote of stockholders or disinterested directors or otherwise. Any repeal or modification of this Article IX by the stockholders of the Corporation shall not adversely affect any rights to indemnification and to the advancement of expenses of a director, officer, employee or agent of the Corporation (collectively, the "Covered Persons") existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

The Corporation hereby acknowledges that certain Covered Persons may have rights to indemnification and advancement of expenses (directly or through insurance obtained by any such entity) provided by one or more third parties (collectively, the “Other Indemnitors”), and which may include third parties for whom such Covered Person serves as a manager, member, officer, employee or agent. The Corporation hereby agrees and acknowledges that notwithstanding any such rights that a Covered Person may have with respect to any Other Indemnitor(s), (i) the Corporation is the indemnitor of first resort with respect to all Covered Persons and all obligations to indemnify and provide advancement of expenses to Covered Persons and (ii) the Corporation shall be required to indemnify and advance the full amount of expenses incurred by the Covered Persons, to the fullest extent required by law, the terms of this Third A&R Certificate of Incorporation, the Bylaws, any agreement to which the Corporation is a party, any vote of the stockholders or the Board of Directors, or otherwise, without regard to any rights the Covered Persons may have against the Other Indemnitors. The Corporation further agrees that no advancement or payment by the Other Indemnitors with respect to any claim for which the Covered Persons have sought indemnification from the Corporation shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of any such advancement or payment to all of the rights of recovery of the Covered Persons against the Corporation. These rights shall be a contract right, and the Other Indemnitors are express third party beneficiaries of the terms of this paragraph. Notwithstanding anything to the contrary herein, the obligations of the Corporation under this paragraph shall only apply to Covered Persons in their capacity as Covered Persons.

## **ARTICLE X COMPETITION AND CORPORATE OPPORTUNITIES**

A. In recognition and anticipation that (a) certain directors, principals, officers, employees and/or other representatives of the Sponsor, (as defined in the Registration Rights Agreement) and its Affiliates (as defined below) may serve as directors, officers or agents of the Corporation, (b) the Sponsor and its Affiliates, including (i) any portfolio company in which it or any of its investment fund Affiliates have made a debt or equity investment (and vice versa) or (ii) any of its limited partners, non-managing members or other similar direct or indirect investors may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (c) members of the Board of Directors who are not employees of the Corporation (“Non-Employee Directors”) and their respective Affiliates, including (i) any portfolio company in which they or any of their respective investment fund Affiliates have made a debt or equity investment (and vice versa) or (ii) any of their respective limited partners, non-managing members or other similar direct or indirect investors may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article X are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any Sponsor, Non-Employee Director or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

B. Neither the (i) the Sponsor nor (ii) any Non-Employee Director (including any Non-Employee Director who serves as an officer of the Corporation in both his or her director and officer capacities) or his or her Affiliates (other than the Corporation, any of its subsidiaries or their respective officers or employees) (the Persons (as defined below) identified in (i) and (ii) above being referred to, collectively, as “Identified Persons” and, individually, as an “Identified Person”) shall, to the fullest extent permitted by law, have any fiduciary duty to refrain from directly or indirectly (A) engaging in and possessing interests in other business ventures of every type and description, including those engaged in the same or similar business activities or lines of business in which the Corporation or any of its subsidiaries now engages or proposes to engage or (B) competing with the Corporation or any of its subsidiaries, on its own account, or in partnership with, or as an employee, officer, director or shareholder of any other Person (other than the Corporation or any of its subsidiaries), and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted from time to time by the laws of the State of Delaware, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity that may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section C of Article X. Subject to Section C of Article X, in the event that any Identified Person acquires knowledge of a potential transaction or matter that may be a corporate or other business opportunity for itself, herself or himself, or any of its or his or her Affiliates, and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty (fiduciary, contractual or otherwise) to communicate or present such transaction or matter to the Corporation or any of its subsidiaries, as the case may be and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any subsidiary of the Corporation for breach of any duty (fiduciary, contractual or otherwise) as a stockholder or director of the Corporation by reason of the fact that such Identified Person, directly or indirectly, pursues or acquires such opportunity for itself, herself or himself, directs such opportunity to another Person or does not present such opportunity to the Corporation or any of its subsidiaries (or its Affiliates).



C. The Corporation does not renounce its interest in any corporate opportunity offered to any Non- Employee Director (including any Non-Employee Director who serves as an officer of this Corporation) if such opportunity is expressly offered to such person solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section (B) of this Article XI shall not apply to any such corporate opportunity.

D. In addition to and notwithstanding the foregoing provisions of this Article X, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (a) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (b) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (c) is one in which the Corporation has no interest or reasonable expectancy.

E. For purposes of this Article X, (i) "Affiliate" shall mean (a) in respect of the Sponsor, any Person that, directly or indirectly, is controlled by the Sponsor, controls Sponsor or is under common control with the Sponsor and shall include any principal, member, director, partner, stockholder, officer, employee or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), (b) in respect of a Non- Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (c) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; and (ii) "Person" shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article X.

#### **ARTICLE XI EXCLUSIVE FORUM**

A. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery (the "Chancery Court") of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) and any appellate court thereof shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action, suit or proceeding brought on behalf of the Corporation, (ii) any action, suit or proceeding asserting a claim of breach of a fiduciary duty owed by any director, officer or stockholder of the Corporation to the Corporation or to the Corporation's stockholders, (iii) any action, suit or proceeding arising pursuant to any provision of the DGCL or the Bylaws or this Third A&R Certificate of Incorporation (as either may be amended from time to time), (iv) any action, suit or proceeding as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (v) any action, suit or proceeding asserting a claim against the Corporation or any current or former director, officer or stockholder governed by the internal affairs doctrine. If any action the subject matter of which is within the scope of the immediately preceding sentence is filed in a court other than the courts in the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (a) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of the immediately preceding sentence and (b) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Notwithstanding the foregoing, the provisions of this Article XI(A) shall not apply to suits brought to enforce any liability or duty created by the Securities Act of 1933, as amended (the "Securities Act"), the Exchange Act or any other claim for which the federal courts of the United States have exclusive jurisdiction.

B. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

C. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article XI.

#### ARTICLE XII MISCELLANEOUS

A. Notwithstanding anything contained in this Third A&R Certificate of Incorporation to the contrary, in addition to any vote required by applicable law, the following provisions in this Third A&R Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class: Article V(B) *Preferred Stock*, Article VI *Board of Directors*, Article VII *Meetings of Stockholders; Action by Written Consent*, Article VIII *Limitation of Director Liability*, Article IX *Indemnification*, Article X *Competition and Corporate Opportunities*, Article XI *Exclusive Forum* and this Article XII *Miscellaneous*.

B. If any provision or provisions of this Third A&R Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Third A&R Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Third A&R Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not, to the fullest extent permitted by applicable law, in any way be affected or impaired thereby and (ii) to the fullest extent permitted by applicable law, the provisions of this Third A&R Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Third A&R Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Corporation has caused this Third A&R Certificate of Incorporation to be executed by its duly authorized officer as this 12th day of November, 2021.

**DFP HEALTHCARE ACQUISITIONS CORP.**

By: /s/ Christopher Wolfe

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Name: Christopher Wolfe

Title: Chief Financial Officer

**Amended & Restated  
Bylaws of  
The Oncology Institute, Inc.  
(a Delaware corporation)**

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**Amended & Restated Bylaws  
of  
The Oncology Institute, Inc.**

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**Article I — Corporate Offices**

1.1 Registered Office.

The address of the registered office of The Oncology Institute, Inc. (f/k/a DFP Healthcare Acquisitions Corp.) (the “Corporation”) in the State of Delaware, and the name of its registered agent at such address, shall be as set forth in the Corporation’s certificate of incorporation, as the same may be amended and/or restated from time to time (the “Certificate of Incorporation”).

1.2 Other Offices.

The Corporation may have additional offices at any place or places, within or outside the State of Delaware, as the Corporation’s board of directors (the “Board”) may from time to time establish or as the business of the Corporation may require.

**Article II — Meetings of Stockholders**

2.1 Place of Meetings.

Meetings of stockholders shall be held at any place within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “DGCL”). In the absence of any such designation or determination, stockholders’ meetings shall be held at the Corporation’s principal executive office.

2.2 Annual Meeting.

The Board shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and other proper business properly brought before the meeting in accordance with Section 2.4 of these bylaws may be transacted. The Board may postpone, reschedule or cancel any previously scheduled annual meeting of stockholders.

2.3 Special Meeting.

Special meetings of the stockholders may be called, postponed, rescheduled or cancelled only by such persons and only in such manner as set forth in the Certificate of Incorporation.

No business may be transacted at any special meeting of stockholders other than the business specified in the notice of such meeting.

2.4 Notice of Business to be Brought before a Meeting.

(i) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in a notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) if not specified in a notice of meeting, otherwise brought before the meeting by the Board or the Chairperson of the Board or (iii) otherwise properly brought before the meeting by a stockholder present in person who (A) (1) was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.4 and at the time of the meeting, (2) is entitled to vote at the meeting, and (3) has complied with this Section 2.4 in all applicable respects or (B) properly made such proposal in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the “Exchange Act”). The foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. For purposes of this Section 2.4, “present in person” shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or a qualified representative of such proposing stockholder, appear at such annual meeting. A “qualified representative” of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Stockholders seeking to nominate persons for election to the Board must comply with Section 2.5 and Section 2.6 and this Section shall not be applicable to nominations except as expressly provided in Section 2.5 and Section 2.6.

(ii) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.4. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the one-year anniversary of the preceding year's annual meeting (which, in the case of the first annual meeting of stockholders following the Effective Time (as defined in the Corporation's Certification of Incorporation), the date of the preceding year's annual meeting shall be deemed to be [\*]); provided, however, that if the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the 90th day prior to such annual meeting or, if later, the 10th day following the day on which public disclosure of the date of such annual meeting was first made by the Corporation (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(iii) To be in proper form for purposes of this Section 2.4, a stockholder's notice to the Secretary shall set forth:

(a) As to each Proposing Person (as defined below), (1) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (2) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (1) and (2) are referred to as "Stockholder Information");



(b) As to each Proposing Person, (1) the full notional amount of any securities that, directly or indirectly, underlie any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act) (“Synthetic Equity Position”) and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation; provided that, for the purposes of the definition of “Synthetic Equity Position,” the term “derivative security” shall also include any security or instrument that would not otherwise constitute a “derivative security” as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person’s business as a derivatives dealer, (2) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (3) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (4) any other material relationship between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation, on the other hand, (5) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (6) a representation that such Proposing Person intends or is part of a group which intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies from stockholders in support of such proposal and (7) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (1) through (7) are referred to as “Disclosable Interests”); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner; and

(c) As to each item of business that the stockholder proposes to bring before the annual meeting, (1) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (2) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment), (3) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder(s) or persons(s) who have a right to acquire beneficial ownership at any time in the future of the shares of any class or series of the Corporation or any other person or entity (including their names) in connection with the proposal of such business by such stockholder; and (4) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; provided, however, that the disclosures required by this paragraph (c) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner.

For purposes of this Section 2.4, the term “Proposing Person” shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(iv) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(v) Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.4. The Board or chairperson of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.4, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.4, if the Proposing Person (or a qualified representative of the Proposing Person) does not appear at the annual meeting to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(vi) This Section 2.4 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made in accordance with Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement. In addition to the requirements of this Section 2.4 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 2.4 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(vii) For purposes of these bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service, in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act or by such other means as is reasonably designed to inform the public or securityholders of the Corporation in general of such information including, without limitation, posting on the Corporation's investor relations website.

## 2.5 Notice of Nominations for Election to the Board of Directors.

(i) Subject in all respects to the provisions of the Certificate of Incorporation, nominations of any person for election to the Board at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (x) by or at the direction of the Board, including by any committee or persons authorized to do so by the Board or these bylaws, or (y) by a stockholder present in person (A) who was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.5 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 2.5 and Section 2.6 as to such notice and nomination. For purposes of this Section 2.5, "present in person" shall mean that the stockholder proposing that the business be brought before the meeting of the Corporation, or a qualified representative of such stockholder, appear at such meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of holders of one or more series of Preferred Stock to elect directors, the foregoing clause (y) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting or special meeting.

(ii) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting, the stockholder must (1) provide Timely Notice (as defined in Section 2.4) thereof in writing and in proper form to the Secretary of the Corporation, (2) provide the information, agreements and questionnaires with respect to such stockholder and its candidate for nomination as required to be set forth by this Section 2.5 and Section 2.6 and (3) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5 and Section 2.6.

(iii) Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting in accordance with the Certificate of Incorporation, then for a stockholder to make any nomination of a person or persons for election to the Board at a special meeting, the stockholder must (i) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, provide the information with respect to such stockholder and its candidate for nomination as required by this Section 2.5 and Section 2.6 and (iii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the 120th day prior to such special meeting and not later than the 90th day prior to such special meeting or, if later, the 10th day following the day on which public disclosure (as defined in Section 2.4) of the date of such special meeting was first made.

(iv) In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(v) In no event may a Nominating Person provide Timely Notice with respect to a greater number of director candidates than are subject to election by shareholders at the applicable meeting. If the Corporation shall, subsequent to such notice, increase the number of directors subject to election at the meeting, such notice as to any additional nominees shall be due on the later of (i) the conclusion of the time period for Timely Notice, (ii) the date set forth in Section 2.5(ii)(b), or (iii) the tenth day following the date of public disclosure (as defined in Section 2.4) of such increase.

(vi) To be in proper form for purposes of this Section 2.5, a stockholder's notice to the Secretary shall set forth:

(a) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.4(iii)(a), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(iii)(a));

(b) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.4(iii)(b), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(iii)(b) and the disclosure with respect to the business to be brought before the meeting in Section 2.4(iii)(b) shall be made with respect to the election of directors at the meeting); and

(c) As to each candidate whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such candidate for nomination that would be required to be set forth in a stockholder's notice pursuant to this Section 2.5 and Section 2.6 if such candidate for nomination were a Nominating Person, (B) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such candidate's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or his or her respective associates or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the candidate for nomination were a director or executive officer of such registrant (the disclosures to be made pursuant to the foregoing clauses (A) through (C) are referred to as "Nominee Information"), and (D) a completed and signed questionnaire, representation and agreement as provided in Section 2.6(i).

For purposes of this Section 2.5, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any other participant in such solicitation.

(vii) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any nomination or to submit any new nomination.

(viii) In addition to the requirements of this Section 2.5 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

## 2.6 Additional Requirements for Valid Nomination of Candidates to Serve as Director and, if Elected, to be Seated as Directors.

(i) To be eligible to be a candidate for election as a director of the Corporation at an annual or special meeting, a candidate must be nominated in the manner prescribed in Section 2.5 and the candidate for nomination, whether nominated by the Board or by a stockholder of record, must have previously delivered (in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board), to the Secretary at the principal executive offices of the Corporation, (i) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee, and such additional information with respect to such proposed nominee as would be required to be provided by the Corporation pursuant to Schedule 14A if such proposed nominee were a participant in the solicitation of proxies by the Corporation in connection with such annual or special meeting and (ii) a written representation and agreement (in form provided by the Corporation) that such candidate for nomination (A) is not and, if elected as a director during his or her term of office, will not become a party to (1) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") or (2) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (B) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director that has not been disclosed therein or to the Corporation, (C) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person's term in office as a director (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect), (D) if elected as director of the Corporation, intends to serve the entire term until the next meeting at which such candidate would face re-election and (E) consents to being named as a nominee in the Corporation's proxy statement pursuant to Rule 14a-4(d) under the Exchange Act and any associated proxy card of the Corporation and agrees to serve if elected as a director.

(ii) The Board may also require any proposed candidate for nomination as a Director to furnish such other information as may reasonably be requested by the Board in writing prior to the meeting of stockholders at which such candidate's nomination is to be acted upon in order for the Board to determine the eligibility of such candidate for nomination to be an independent director of the Corporation in accordance with the Corporation's Corporate Governance Guidelines.

(iii) A candidate for nomination as a director shall further update and supplement the materials delivered pursuant to this Section 2.6, if necessary, so that the information provided or required to be provided pursuant to this Section 2.6 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) not later than five business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(iv) No candidate shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Nominating Person seeking to place such candidate's name in nomination has complied with Section 2.5 and this Section 2.6, as applicable. The Board or chairperson of the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with Section 2.5 and this Section 2.6, and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect. Notwithstanding the foregoing provisions of Section 2.5, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(v) Notwithstanding anything in these bylaws to the contrary, no candidate for nomination shall be eligible to be seated as a director of the Corporation unless nominated and elected in accordance with Section 2.5 and this Section 2.6.

## 2.7 Notice of Stockholders' Meetings.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the notice of any meeting of stockholders shall be sent or otherwise given in accordance with Section 8.1 of these bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the notice of meeting (or any supplement thereto).

## 2.8 Quorum.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the holders of a majority in voting power of the stock issued and outstanding and entitled to vote, present in person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, a quorum is not present or represented at any meeting of the stockholders, then either (i) the person presiding over the meeting or (ii) a majority in voting power of the stockholders entitled to vote at the meeting, present in person, or by remote communication, if applicable, or represented by proxy, shall have power to recess the meeting or adjourn the meeting from time to time in the manner provided in Section 2.9 of these bylaws until a quorum is present or represented. At any recessed or adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

## 2.9 Adjourned Meeting; Notice.

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At any adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such meeting as of the record date so fixed for notice of such adjourned meeting.

## 2.10 Conduct of Business.

The chairperson of each annual and special meeting shall be the Chairperson of the Board or, in the absence (or inability or refusal to act) of the Chairperson of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairperson of the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairperson of the meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of the chairperson of the meeting, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The chairperson of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the chairperson of the meeting), shall, if the facts warrant, determine and declare to the meeting that a matter of business was not properly brought before the meeting and if such chairperson should so determine, such chairperson shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairperson of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

## 2.11 Voting.

Except as may be otherwise provided in the Certificate of Incorporation, these bylaws or the DGCL, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise provided by the Certificate of Incorporation and subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, at all duly called or convened meetings of stockholders at which a quorum is present, for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. Except as otherwise provided by the Certificate of Incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, each other matter presented to the stockholders at a duly called or convened meeting at which a quorum is present shall be decided by the affirmative vote of the holders of a majority in voting power of the votes cast (excluding abstentions and broker non-votes) on such matter.

## 2.12 Record Date for Stockholder Meetings and Other Purposes.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than 60 days nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is first given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting; and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

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

### 2.13 Proxies.

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of an electronic transmission that sets forth or is submitted with information from which it can be determined that the transmission was authorized by the stockholder.

### 2.14 List of Stockholders Entitled to Vote.

The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.14 or to vote in person or by proxy at any meeting of stockholders.

### 2.15 Inspectors of Election.

Before any meeting of stockholders, the Corporation shall appoint an inspector or inspectors of election to act at the meeting or its adjournment and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If any person appointed as inspector or any alternate fails to appear or fails or refuses to act, then the person presiding over the meeting shall appoint a person to fill that vacancy.

Such inspectors shall:

- (i) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting and the validity of any proxies and ballots;
- (ii) count all votes or ballots;
- (iii) count and tabulate all votes;
- (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspector(s); and



(v) certify its or their determination of the number of shares represented at the meeting and its or their count of all votes and ballots.

Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspection with strict impartiality and according to the best of such inspector's ability. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein. The inspectors of election may appoint such persons to assist them in performing their duties as they determine.

#### 2.16 Delivery to the Corporation.

Whenever this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), such document or information shall be in writing exclusively (and not in an electronic transmission) and shall be delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested, and the Corporation shall not be required to accept delivery of any document not in such written form or so delivered. For the avoidance of doubt, the Corporation expressly opts out of Section 116 of the DGCL with respect to the delivery of information and documents to the Corporation required by this Article II.

### Article III — Directors

#### 3.1 Powers.

Except as otherwise provided by the Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

#### 3.2 Number of Directors.

Subject to the Certificate of Incorporation or any certificate of designation with respect to any series of Preferred Stock, the total number of directors constituting the Board shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

#### 3.3 Election, Qualification and Term of Office of Directors.

Except as provided in Section 3.4 of these bylaws, and subject to the Certificate of Incorporation, each director, including a director elected to fill a vacancy or newly created directorship, shall hold office until the expiration of the term of the class, if any, for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation, disqualification or removal in accordance with the Certificate of Incorporation. Directors need not be stockholders. The Certificate of Incorporation or these bylaws may prescribe qualifications for directors.

#### 3.4 Resignation and Vacancies.

Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. The resignation shall take effect at the time specified therein or upon the happening of an event specified therein, and if no time or event is specified, at the time of its receipt. When one or more directors so resigns and the resignation is effective at a future date or upon the happening of an event to occur on a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in Section 3.3.

Unless otherwise provided in the Certificate of Incorporation or these bylaws, vacancies resulting from the death, resignation, disqualification or removal of any director, and newly created directorships resulting from any increase in the authorized number of directors shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

#### 3.5 Place of Meetings; Meetings by Telephone.

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this bylaw shall constitute presence in person at the meeting.

### 3.6 Regular Meetings.

Regular meetings of the Board may be held within or outside the State of Delaware and at such time and at such place as which has been designated by the Board and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other means of electronic transmission. No further notice shall be required for regular meetings of the Board.

### 3.7 Special Meetings; Notice.

Special meetings of the Board for any purpose or purposes may be held within or outside the State of Delaware and called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the Secretary or a majority of the total number of directors constituting the Board.

Notice of the time and place of special meetings shall be:

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile or electronic mail; or
- (iv) sent by other means of electronic transmission,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, or other address for electronic transmission, as the case may be, as shown on the Corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or electronic mail, or (iii) sent by other means of electronic transmission, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by U.S. mail, it shall be deposited in the U.S. mail at least four days before the time of the holding of the meeting. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting.

### 3.8 Quorum.

At all meetings of the Board, unless otherwise provided by the Certificate of Incorporation, a majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

### 3.9 Board Action without a Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board, or the committee thereof, in the same paper or electronic form as the minutes are maintained. Such action by written consent or consent by electronic transmission shall have the same force and effect as a unanimous vote of the Board.

### 3.10 Fees and Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, the Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

## Article IV — Committees

### 4.1 Committees of Directors.

The Board may designate one or more committees, each committee to consist, of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Corporation.

### 4.2 Meetings and Actions of Committees.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (i) Section 3.5 (place of meetings; meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings; notice);
- (iv) Section 3.9 (board action without a meeting); and
- (v) Section 7.14 (waiver of notice),

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. *However:*

- (i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;
- (ii) special meetings of committees may also be called by resolution of the Board or the chairperson of the applicable committee; and
- (iii) the Board may adopt rules for the governance of any committee to override the provisions that would otherwise apply to the committee pursuant to this Section 4.2, provided that such rules do not violate the provisions of the Certificate of Incorporation or applicable law.

### 4.3 Subcommittees.

Unless otherwise provided in the Certificate of Incorporation, these bylaws, the resolutions of the Board designating the committee or the charter of such committee adopted by the Board, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

## Article V — Officers

### 5.1 Officers.

The officers of the Corporation shall include a Chief Executive Officer, a President and a Secretary.

The Corporation may also have, at the discretion of the Board, a Chairperson of the Board, a Vice Chairperson of the Board, a Chief Financial Officer, a Treasurer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Treasurers, one or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person. No officer need be a stockholder or director of the Corporation.

## 5.2 Appointment of Officers.

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws.

## 5.3 Subordinate Officers.

The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

## 5.4 Removal and Resignation of Officers.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

## 5.5 Vacancies in Offices.

Any vacancy occurring in any office of the Corporation shall be filled as provided in Section 5.2 or Section 5.3, as applicable.

## 5.6 Representation of Shares of Other Corporations.

The Chairperson of the Board, the Chief Executive Officer or the President of this Corporation, or any other person authorized by the Board, the Chief Executive Officer or the President, is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares or voting securities of any other corporation or other person standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

## 5.7 Authority and Duties of Officers.

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be provided herein or designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

## 5.8 Compensation.

The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by or at the direction of the Board. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he or she is also a director of the Corporation.

## **Article VI — Records**

A stock ledger consisting of one or more records in which the names of all of the Corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the corporation are recorded in accordance with Section 224 of the DGCL shall be administered by or on behalf of the Corporation. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in Sections 219 and 220 of the DGCL, (ii) record the information specified in Sections 156, 159, 217(a) and 218 of the DGCL, and (iii) record transfers of stock as governed by Article 8 of the Uniform Commercial Code as adopted in the State of Delaware.

## Article VII — General Matters

### 7.1 Execution of Corporate Contracts and Instruments.

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances.

### 7.2 Stock Certificates.

The shares of the Corporation shall be represented by certificates, provided that the Board by resolution may provide that some or all of the shares of any class or series of stock of the Corporation shall be uncertificated. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by, any two officers authorized to sign stock certificates representing the number of shares registered in certificate form. The Chairperson or Vice Chairperson of the Board, Chief Executive Officer, the President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Corporation shall be specifically authorized to sign stock certificates. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

### 7.3 Special Designation of Certificates.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or on the back of the certificate that the Corporation shall issue to represent such class or series of stock (or, in the case of uncertificated shares, set forth in a notice provided pursuant to Section 151 of the DGCL); provided, however, that except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock (or, in the case of any uncertificated shares, included in the aforementioned notice) a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

### 7.4 Lost Certificates.

Except as provided in this Section 7.4, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may, in addition to any other requirements as may be imposed by the Corporation, require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

#### 7.5 Shares Without Certificates.

The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

#### 7.6 Construction; Definitions.

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural and the plural number includes the singular.

#### 7.7 Dividends.

The Board, subject to any restrictions contained in either (i) the DGCL or (ii) the Certificate of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

#### 7.8 Fiscal Year.

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

#### 7.9 Seal.

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

#### 7.10 Transfer of Stock.

Subject to the restrictions set forth in Section 7.12, shares of stock of the Corporation shall be transferred on the books of the Corporation only by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or by delivery of duly executed instructions with respect to uncertificated shares), with such evidence of the authenticity of such endorsement or execution, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing the names of the persons from and to whom it was transferred.

#### 7.11 Stock Transfer Agreements.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL or other applicable law.

## 7.12 Lock-Up.

(i) Subject to Section 7.12(ii), the holders (the “Lock-up Holders”) of common stock of the Corporation issued (a) as consideration pursuant to the merger of Orion Merger Sub I, Inc., a Delaware corporation (“First Merger Sub”), with and into TOI Parent Inc. (d/b/a The Oncology Institute), a Delaware corporation (“TOI Parent”), with TOI Parent surviving as a wholly owned subsidiary of the Corporation (the “First Merger”), and immediately thereafter and as part of the same overall transaction as the First Merger, the merger of TOI Parent with and into Orion Merger Sub II, LLC, a Delaware limited liability company (“Second Merger Sub”), with Second Merger Sub surviving as a wholly owned subsidiary of the Corporation (such merger, together with the First Merger, the “TOI Transaction”), (b) to directors, officers and employees of the Corporation, any subsidiary of the Corporation or any variable interest entity of the Corporation upon the settlement or exercise of restricted stock units, stock options or other equity awards outstanding as of immediately following the closing of the TOI Transaction in respect of awards of TOI Parent outstanding immediately prior to the closing of the TOI Transaction (such shares referred to in this Section 7.12(i)(b), the “TOI Parent Equity Award Shares”), or (c)(i) as Acquiror Class B Common Stock (as defined that certain Agreement and Plan of Merger, dated as of June 28, 2021, by and among the Corporation, First Merger Sub, Second Merger Sub and TOI Parent (as amended, restated, supplemented or otherwise modified from time to time, the “Merger Agreement”) prior to the TOI Transaction as well as any shares of the Corporation into which the Acquiror Class B Common Stock may be converted in connection with the TOI Transaction or (ii) in respect of any Acquiror Warrants (As defined in the Merger Agreement) originally issued to DFP Sponsor LLC and outstanding immediately prior to the closing of the TOI Transaction (such common stock of the Corporation referred to in clauses (a), (b) and (c) of this Section 7.12(i), the “Lock-up Shares”), and each Permitted Transferee may not Transfer any Lock-up Shares until the end of the Lock-up Period (the “Lock-up”).

(ii) Notwithstanding the provisions set forth in Section 7.12(i), each of the Lock-up Holders and their respective Permitted Transferees may Transfer the Lock-up Shares during the Lock-up Period (a) to (i) the Corporation’s officers or directors, (ii) any affiliates or family members of the Corporation’s officers or directors, or (iii) the other Lock-up Holders or any direct or indirect partners, members or equity holders of any Lock-up Holder, any affiliates of any Lock-up Holder, any director or employee of any Lock-up Holder or of any affiliate of any Lock-up Holder, or any related investment funds or vehicles controlled or managed by such persons or entities or their respective affiliates; (c) in the case of Lock-up Holder that is not an individual, through distributions to limited or general partners, members, managers, equity holders, stockholders or affiliates of such Lock-Up Holder or via the admission of new equity holders, partners, members or managers into any entity holding any of the Lock-Up Shares (c) in the case of an individual, by gift to a member of the individual’s immediate family or to a trust, the beneficiary of which is a member of the individual’s immediate family or an affiliate of such person or entity, or to a charitable organization; (d) in the case of an individual, by virtue of laws of descent and distribution upon death of the individual; (e) in the case of an individual, pursuant to a qualified domestic relations order; (f) in connection with any bona fide mortgage, encumbrance or pledge to a financial institution in connection with any bona fide loan or debt transaction or enforcement thereunder, including foreclosure thereof; (g) to the Corporation; (h) in connection with a liquidation, merger, stock exchange, reorganization, tender offer approved by the Board or a duly authorized committee thereof or other similar transaction which results in all of the Corporation’s stockholders having the right to exchange their shares of common stock for cash, securities or other property subsequent to the closing date of the TOI Transaction; or (i) in the case of any Pre-Closing Optionholder (as defined in the Merger Agreement), in order to satisfy any tax liability arising in connection with the vesting of the Optionholder Earnout Shares (as defined in the Merger Agreement) under Section 3.07(b) of the Merger Agreement, assuming the maximum federal, state and local income tax rates applicable to such Pre-Closing Optionholder and including all employee side employment taxes payable thereon.

(iii) Notwithstanding the other provisions set forth in this Section 7.12, the Board may, in its sole discretion, determine to waive, amend, or repeal the Lock-up obligations set forth herein.

(iv) For purposes of this Section 7.12:

(a) the term “Lock-up Period” means the period beginning on the closing date of the TOI Transaction and ending on the date that is 12 months after the closing date of the TOI Transaction; provided, that (i) 50% of the Lock-up Shares held by each Lock-up Holder will be released from lock-up six months after the closing date of the TOI Transaction and (ii) an additional 25% the Lock-up Shares held by each Lock-up Holder will be released from lock-up nine months after the closing date of the TOI Transaction;

(b) the term “Lock-up Shares” does not include (i) any shares of common stock acquired in any underwritten offering or the public market, or in any public or private capital raising transaction of the Corporation after the date of the TOI Transaction or otherwise any shares of common stock of the Corporation (or other securities of the Corporation) other than the Lock-Up Shares or (ii) shares of common stock issued in connection with the PIPE Investment (as defined in the Merger Agreement);

(c) the term “Permitted Transferees” means, prior to the expiration of the Lock-up Period, any person or entity to whom such Lock-up Holder is permitted to transfer such shares of common stock prior to the expiration of the Lock-up Period pursuant to Section 7.12(ii); and

(d) the term “Transfer” means the (a) sale or assignment of, offer to sell, contract or agreement to sell, hypothecate, pledge, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, (b) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) public announcement of any intention to effect any transaction specified in clause (a) or (b).

#### 7.13 Registered Stockholders.

The Corporation:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner; and

(ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

#### 7.14 Waiver of Notice.

Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these bylaws.

### Article VIII — Notice

#### 8.1 Delivery of Notice; Notice by Electronic Transmission.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provisions of the DGCL, the Certificate of Incorporation, or these bylaws may be given in writing directed to the stockholder’s mailing address (or by electronic transmission directed to the stockholder’s electronic mail address, as applicable) as it appears on the records of the Corporation and shall be given (1) if mailed, when the notice is deposited in the U.S. mail, postage prepaid, (2) if delivered by courier service, the earlier of when the notice is received or left at such stockholder’s address or (3) if given by electronic mail, when directed to such stockholder’s electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation.



Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the Corporation. Notwithstanding the provisions of this paragraph, the Corporation may give a notice by electronic mail in accordance with the first paragraph of this section without obtaining the consent required by this paragraph.

Any notice given pursuant to the preceding paragraph shall be deemed given:

- (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;
- (ii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and
- (iii) if by any other form of electronic transmission, when directed to the stockholder.

Notwithstanding the foregoing, a notice may not be given by an electronic transmission from and after the time that (1) the Corporation is unable to deliver by such electronic transmission two consecutive notices given by the Corporation and (2) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice, provided, however, the inadvertent failure to discover such inability shall not invalidate any meeting or other action.

An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

## **Article IX — Indemnification**

### **9.1 Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation.**

Subject to Section 9.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

### **9.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation.**

Subject to Section 9.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

### 9.3 Authorization of Indemnification.

Any indemnification under this Article IX (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 9.1 or Section 9.2, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

### 9.4 Good Faith Defined.

For purposes of any determination under Section 9.3, a person shall be deemed to have 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, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 9.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 9.1 or 9.2, as the case may be.

### 9.5 Indemnification by a Court.

Notwithstanding any contrary determination in the specific case under Section 9.3, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 9.1 or 9.2. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 9.1 or Section 9.2, as the case may be. Neither a contrary determination in the specific case under Section 9.3 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Article IX shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

#### 9.6 Expenses Payable in Advance.

Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article IX. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

#### 9.7 Nonexclusivity of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 9.1 or 9.2 shall be made to the fullest extent permitted by law. The provisions of this Article IX shall not be deemed to preclude the indemnification of any person who is not specified in Section 9.1 or Section 9.2 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

#### 9.8 Insurance.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article IX.

#### 9.9 Certain Definitions.

For purposes of this Article IX, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article IX with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article IX shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article IX, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article IX.

#### 9.10 Survival of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article IX shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### 9.11 Limitation on Indemnification.

Notwithstanding anything contained in this Article IX to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 9.5), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of the Corporation.

#### 9.12 Indemnification of Employees and Agents.

The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article IX to directors and officers of the Corporation.

#### 9.13 Primacy of Indemnification.

Notwithstanding that a director, officer, employee or agent of the Corporation (collectively, the “Covered Persons”) may have certain rights to indemnification, advancement of expenses and/or insurance provided by other persons (collectively, the “Other Indemnitors”), with respect to the rights to indemnification, advancement of expenses and/or insurance set forth herein, the Corporation: (i) shall be the indemnitor of first resort (i.e., its obligations to Covered Persons are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Covered Persons are secondary); and (ii) shall be required to advance the full amount of expenses incurred by Covered Persons and shall be liable for the full amount of all liabilities, without regard to any rights Covered Persons may have against any of the Other Indemnitors. No advancement or payment by the Other Indemnitors on behalf of Covered Persons with respect to any claim for which Covered Persons have sought indemnification from the Corporation shall affect the immediately preceding sentence, and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Covered Persons against the Corporation. Notwithstanding anything to the contrary herein, the obligations of the Corporation under this Section 9.13 shall only apply to Covered Persons in their capacity as Covered Persons.

#### 9.14 Amendments.

Any repeal or amendment of this Article IX by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these bylaws inconsistent with this Article IX, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Indemnitees on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

### **Article X — Amendments**

The Board is expressly empowered to adopt, amend or repeal the bylaws of the Corporation. The stockholders also shall have power to adopt, amend or repeal the bylaws of the Corporation; provided, however, that such action by stockholders shall require, in addition to any other vote required by the Certificate of Incorporation or applicable law, the affirmative vote of the holders of at least two-thirds of the voting power of all the then-outstanding shares of voting stock of the Corporation with the power to vote generally in an election of directors, voting together as a single class.

### **Article XI — Definitions**

As used in these bylaws, unless the context otherwise requires, the following terms shall have the following meanings:

An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

An “electronic mail” means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files and information).

An “electronic mail address” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part” of the address) and a reference to an internet domain (commonly referred to as the “domain part” of the address), whether or not displayed, to which electronic mail can be sent or delivered.

The term “person” means any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

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<b>THE ONCOLOGY INSTITUTE, INC. 2021 INCENTIVE AWARD PLAN</b>
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**ARTICLE I.  
PURPOSE**

The Plan's purpose is to enhance the Company's and its Related Entities' ability to attract, retain and motivate persons who make (or are expected to make) important contributions to the Company or its Related Entities by providing these individuals with equity ownership opportunities and/or equity-linked compensatory opportunities. Capitalized terms used in the Plan are defined in Article XI.

**ARTICLE II.  
ELIGIBILITY**

Service Providers are eligible to be granted Awards under the Plan as determined by the Administrator from time to time, subject to the limitations described herein.

**ARTICLE III.  
ADMINISTRATION AND DELEGATION**

3.1 Administration. The Plan is administered by the Administrator. The Administrator has authority to determine which Service Providers receive Awards, grant Awards and set Award terms and conditions, subject to the conditions and limitations in the Plan. The Administrator also has the authority to take all actions and make all determinations under the Plan, to interpret the Plan and Award Agreements and to adopt, amend and repeal Plan administrative rules, guidelines and practices as it deems advisable. The Administrator may correct defects and ambiguities, supply omissions and reconcile inconsistencies in the Plan or any Award Agreement as it deems necessary or appropriate to administer the Plan and any Awards. The Administrator's determinations under the Plan are in its sole discretion and will be final and binding on all persons having or claiming any interest in the Plan or any Award.

3.2 Appointment of Committees. To the extent Applicable Laws permit, the Board or the Administrator may delegate any or all of its powers under the Plan to one or more Committees or committees of officers of the Company or any of its Related Entities. The Board or the Administrator, as applicable, may rescind any such delegation, abolish any such Committee or committee and/or re-vest in itself any previously delegated authority at any time. In no event shall any officer of the Company be delegated the authority to grant Awards to, or amend Awards held by, individuals who are subject to Section 16 of the Exchange Act or officers of the Company (or non-employee Directors) to whom the authority to grant or amend Awards has been delegated hereunder. In the event that the Administrator's authority is delegated to officers or employees of the Company or any of its Related Entities in accordance with the foregoing, all provisions of the Plan relating to the Administrator shall be interpreted by treating any reference to the Administrator as a reference to such officers or employees. Any action undertaken in accordance with the Board's or the Administrator's delegation of authority hereunder shall have the same force and effect as if such action was undertaken directly by the Board or the Administrator and shall be deemed for all purposes of the Plan to have been taken by the Board or the Administrator (as applicable).

**ARTICLE IV.  
STOCK AVAILABLE FOR AWARDS**

4.1 Number of Shares. Subject to adjustment under Article VIII and the terms of this Article IV, the maximum number of Shares that may be issued pursuant to Awards under the Plan shall be equal to the Overall Share Limit. As of the Effective Date, no further awards may be granted under the Prior Plan; however, Prior Plan Awards will remain subject to the terms and conditions of the Prior Plan. Shares issued under the Plan may consist of authorized but unissued Shares, Shares purchased on the open market or treasury Shares.

4.2 Share Recycling. If all or any part of an Award or Prior Plan Award expires, lapses or is terminated, exchanged for or settled in cash, surrendered, repurchased, canceled without having been fully exercised/settled or forfeited, in any case, in a manner that results in the Company acquiring Shares covered by the Award or Prior Plan Award at a price not greater than the price (as adjusted to reflect any Equity Restructuring) paid by the Participant for such Shares or not issuing any Shares covered by the Award or Prior Plan Award, the unused Shares covered by the Award or Prior Plan Award will, as applicable, become or again be available for Award grants under the Plan. In addition, Shares delivered (either by actual delivery or attestation) to the Company by a Participant to satisfy the applicable exercise or purchase price of an Award or Prior Plan Award and/or to satisfy any applicable tax withholding obligation with respect to an Award (including Shares retained by the Company from the Award or Prior Plan Award being exercised or purchased and/or creating the tax obligation) will, as applicable, become or again be available for Award grants under the Plan. The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards or Prior Plan Awards shall not count against the Overall Share Limit. If any Optionholder Earnout Shares or Stockholder Earnout Shares are forfeited by reason of a Participant's Termination of Service (and not because of the failure to satisfy the Share price conditions thereof), then such Optionholder Earnout Shares or Stockholder Earnout Shares, as applicable, shall become available for Award grants under the Plan.

4.3 Incentive Stock Option Limitations. Subject to the Overall Share Limit, no more than a number of Shares equal to seven percent (7%) of the total number of shares of Common Stock outstanding on a fully diluted basis, as determined at the Effective Date may be issued pursuant to Incentive Stock Options granted under the Plan.

4.4 Substitute Awards. In connection with an entity's merger or consolidation with the Company or any Related Entity or the Company's or any Related Entity's acquisition of an entity's property or stock, the Administrator may grant Awards in substitution for any options or other stock or stock-based awards granted before such merger or consolidation by such entity or its affiliate. Substitute Awards may be granted on such terms as the Administrator deems appropriate, notwithstanding limitations on Awards in the Plan. Substitute Awards will not count against the Overall Share Limit (nor shall Shares subject to a Substitute Award be added to the Shares available for Awards under the Plan as provided above), except that Shares acquired by exercise of substitute Incentive Stock Options will count against the maximum number of Shares that may be issued pursuant to the exercise of Incentive Stock Options under the Plan. Additionally, in the event that a company acquired by the Company or any Related Entity or with which the Company or any Related Entity combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan (and Shares subject to such Awards shall not be added to the Shares available for Awards under the Plan as provided above); provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Service Providers prior to such acquisition or combination.

4.5 Non-Employee Director Compensation. Notwithstanding any provision to the contrary in the Plan, the Administrator may establish compensation for non-employee Directors from time to time, subject to the limitations in the Plan. The Administrator will from time to time determine the terms, conditions and amounts of all such non-employee Director compensation in its discretion and pursuant to the exercise of its business judgment, taking into account such factors, circumstances and considerations as it shall deem relevant from time to time; provided that, the sum of any cash compensation, or other compensation, and the value (determined as of the grant date in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, or any successor thereto) of Awards granted to a non-employee Director as compensation for services as a non-employee Director during any fiscal year of the Company may not exceed \$625,000. The Administrator may make exceptions to these limits for individual non-employee Directors in extraordinary circumstances, as the Administrator may determine in its discretion, provided that the non-employee Director receiving such additional compensation may not participate in the decision to award such compensation or in other contemporaneous compensation decisions involving non-employee Directors.

**ARTICLE V.**  
**STOCK OPTIONS AND STOCK APPRECIATION RIGHTS**

5.1 General. The Administrator may grant Options or Stock Appreciation Rights to Service Providers subject to the limitations in the Plan, including any limitations in the Plan that apply to Incentive Stock Options. The Administrator will determine the number of Shares covered by each Option and Stock Appreciation Right, the exercise price of each Option and Stock Appreciation Right and the conditions and limitations applicable to the exercise of each Option and Stock Appreciation Right. A Stock Appreciation Right will entitle the Participant (or other person entitled to exercise the Stock Appreciation Right) to receive from the Company upon exercise of the exercisable portion of the Stock Appreciation Right an amount determined by multiplying the excess, if any, of the Fair Market Value of one Share on the date of exercise over the exercise price per Share of the Stock Appreciation Right by the number of Shares with respect to which the Stock Appreciation Right is exercised, subject to any limitations of the Plan or that the Administrator may impose and payable in cash, Shares valued at Fair Market Value or a combination of the two as the Administrator may determine or provide in the Award Agreement.

5.2 Exercise Price. The Administrator will establish each Option's and Stock Appreciation Right's exercise price and specify the exercise price in the Award Agreement. Unless otherwise determined by the Board, the exercise price will not be less than 100% of the Fair Market Value on the grant date of the Option (subject to Section 5.6) or Stock Appreciation Right. Notwithstanding the foregoing, in the case of an Option or a Stock Appreciation Right that is a Substitute Award, the exercise price per share of the Shares subject to such Option or Stock Appreciation Right, as applicable, shall be determined in accordance with the applicable requirements of Sections 424 and 409A of the Code (and for clarity, may be less than the Fair Market Value per Share on the date of grant if (to the extent applicable) permitted under Sections 424 and/or 409A of the Code).

5.3 Duration. Each Option or Stock Appreciation Right will be exercisable at such times and as specified in the Award Agreement, provided that, subject to Section 5.6, the term of an Option or Stock Appreciation Right will not exceed ten years. Notwithstanding the foregoing and unless determined otherwise by the Company, in the event that on the last business day of the term of an Option (other than an Incentive Stock Option) or Stock Appreciation Right (i) the exercise of the Option or Stock Appreciation Right is prohibited by Applicable Law, as determined by the Company, or (ii) Shares may not be purchased or sold by the applicable Participant due to any Company insider trading policy (including blackout periods) or a "lock-up" agreement undertaken in connection with an issuance of securities by the Company, the term of the Option or Stock Appreciation Right shall be automatically extended until the date that is 30 days after the end of the legal prohibition, black-out period or lock-up agreement, as determined by the Company; provided, however, in no event shall the extension last beyond the ten year term (or any shorter maximum, if applicable) of the applicable Option or Stock Appreciation Right. Notwithstanding the foregoing, to the extent permitted under Applicable Laws, if the Participant, prior to the end of the term of an Option or Stock Appreciation Right, violates the non-competition, non-solicitation, confidentiality or other similar restrictive covenant provisions of any employment contract, confidentiality and nondisclosure agreement or other agreement between the Participant and the Company or any of its Related Entities, the right of the Participant and the Participant's transferees to exercise any Option or Stock Appreciation Right issued to the Participant shall terminate immediately upon such violation, unless the Company otherwise determines prior to such violation and/or sets forth in the Award Agreement.

5.4 Exercise. Options and Stock Appreciation Rights may be exercised by delivering to the Company (or its Agent) a written notice of exercise, in a form the Administrator approves (which may be electronic and provided through the online platform maintained by an Agent), signed by the person authorized to exercise the Option or Stock Appreciation Right, together with, as applicable, payment in full (i) as specified in Section 5.5 for the number of Shares for which the Award is exercised and (ii) as specified in Section 9.5 for any applicable taxes. Unless the Administrator otherwise determines, an Option or Stock Appreciation Right may not be exercised for a fraction of a Share.



5.5 Payment Upon Exercise. Subject to Section 10.8, any Company insider trading policy (including blackout periods) and Applicable Laws, the exercise price of an Option must be paid by online payment through the Agent's electronic platform or by wire transfer of immediately available funds to the Agent (or, in each case, if the Company has no Agent accepting payment, by wire transfer of immediately available funds to the Company) or, solely with the consent of the Administrator, by:

(a) cash, wire transfer of immediately available funds or check payable to the order of the Company, provided that the Administrator may limit the use of one of the foregoing payment forms if one or more of the payment forms below is permitted;

(b) if there is a public market for Shares at the time of exercise, unless the Administrator otherwise determines, (A) delivery (including electronically or telephonically to the extent permitted by the Administrator) of an irrevocable and unconditional undertaking by a broker acceptable to the Administrator to deliver promptly to the Company sufficient funds to pay the exercise price, or (B) the Participant's delivery to the Company of a copy of irrevocable and unconditional instructions to a broker acceptable to the Administrator to deliver promptly to the Company cash or a check sufficient to pay the exercise price; provided that such amount is paid to the Company at such time as may be required by the Administrator;

(c) delivery (either by actual delivery or attestation) of Shares owned by the Participant valued at their Fair Market Value;

(d) surrendering Shares then issuable upon the Option's exercise valued at their Fair Market Value on the exercise date;

(e) delivery of a promissory note or any other property that the Administrator determines is good and valuable consideration; or

(f) any combination of the above payment forms approved by the Administrator.

5.6 Additional Terms of Incentive Stock Options. The Administrator may grant Incentive Stock Options only to employees of the Company, any of its present or future parent or subsidiary corporations, as defined in Sections 424(e) or (f) of the Code, respectively, and any other entities the employees of which are eligible to receive Incentive Stock Options under the Code. If an Incentive Stock Option is granted to a Greater Than 10% Stockholder, the exercise price will not be less than 110% of the Fair Market Value on the Option's grant date, and the term of the Option will not exceed five years. All Incentive Stock Options will be subject to and construed consistently with Section 422 of the Code. By accepting an Incentive Stock Option, the Participant agrees to give prompt notice to the Company of dispositions or other transfers (other than in connection with a Change of Control) of Shares acquired under the Option made within (i) two years from the grant date of the Option or (ii) one year after the transfer of such Shares to the Participant, specifying the date of the disposition or other transfer and the amount the Participant realized, in cash, other property, assumption of indebtedness or other consideration, in such disposition or other transfer. Neither the Company nor the Administrator will be liable to a Participant, or any other party, if an Incentive Stock Option fails or ceases to qualify as an "incentive stock option" under Section 422 of the Code. Any Incentive Stock Option or portion thereof that fails to qualify as an "incentive stock option" under Section 422 of the Code for any reason, including becoming exercisable with respect to Shares having a fair market value exceeding the \$100,000 limitation under Treasury Regulation Section 1.422-4, will be a Non-Qualified Stock Option.

## **ARTICLE VI. RESTRICTED STOCK; RESTRICTED STOCK UNITS**

6.1 General. The Administrator may grant Restricted Stock, or the right to purchase Restricted Stock, to any Service Provider, subject to the Company's right to repurchase all or part of such Shares at their issue price or other stated or formula price from the Participant (or to require forfeiture of such Shares) if conditions the Administrator specifies in the Award Agreement are not satisfied before the end of the applicable restriction period or periods that the Administrator establishes for such Award. In addition, the Administrator may grant Restricted Stock Units to any Service Provider, which may be subject to vesting and forfeiture conditions during the applicable restriction period or periods, as set forth in an Award Agreement. The Administrator will determine and set forth in the Award Agreement the terms and conditions for each Restricted Stock and Restricted Stock Unit Award, subject to the conditions and limitations contained in the Plan.

## 6.2 Restricted Stock.

(a) Dividends. Participants holding Shares of Restricted Stock will be entitled to all ordinary cash dividends paid with respect to such Shares, unless the Administrator provides otherwise in the Award Agreement. In addition, unless the Administrator provides otherwise, if any dividends or distributions are paid in Shares, or consist of a dividend or distribution to holders of Common Stock of property other than an ordinary cash dividend, the Shares or other property will be subject to the same restrictions on transferability and forfeitability as the Shares of Restricted Stock with respect to which they were paid. Notwithstanding anything to the contrary herein, with respect to any award of Restricted Stock, dividends which would be paid prior to vesting shall only be paid out to the Participant holding such Restricted Stock to the extent that the Restricted Stock vesting conditions are subsequently satisfied. All such dividend payments will be made no later than March 15 of the calendar year following the calendar year in which the right to the dividend payment becomes nonforfeitable.

(b) Stock Certificates. The Company may require that the Participant deposit in escrow with the Company (or its designee) any stock certificates issued in respect of Shares of Restricted Stock, together with a stock power endorsed in blank.

## 6.3 Restricted Stock Units.

(a) Settlement. The Administrator shall provide in the Award Agreement that settlement of Restricted Stock Units will occur upon or as soon as reasonably practicable after the Restricted Stock Units vest or will instead be deferred, on a mandatory basis or at the Participant's election, in a manner intended to comply with Section 409A (to the extent applicable).

(b) Stockholder Rights. A Participant will have no rights of a stockholder with respect to Shares subject to any Restricted Stock Unit unless and until the Shares are delivered in settlement of the Restricted Stock Unit.

## **ARTICLE VII. OTHER STOCK OR CASH BASED AWARDS; DIVIDEND EQUIVALENTS**

7.1 Other Stock or Cash Based Awards. Other Stock or Cash Based Awards may be granted to Participants, including Awards entitling Participants to receive Shares to be delivered in the future and including annual or other periodic or long-term cash bonus awards (whether based on specified Performance Criteria or otherwise), in each case subject to any conditions and limitations in the Plan. Such Other Stock or Cash Based Awards will also be available as a payment form in the settlement of other Awards, as standalone payments and as payment in lieu of compensation to which a Participant is otherwise entitled. Other Stock or Cash Based Awards may be paid in Shares, cash or other property, or any combination of the foregoing, as the Administrator determines. Subject to the provisions of the Plan, the Administrator will determine the terms and conditions of each Other Stock or Cash Based Award, including any purchase price, performance goal(s) (which may be based on the Performance Criteria), transfer restrictions, and vesting conditions, which will be set forth in the applicable Award Agreement. In addition, the Company may adopt subplans or programs under the Plan pursuant to which it makes Awards available in a manner consistent with the terms and conditions of the Plan.

7.2 Dividend Equivalents. An Award may provide a Participant with the right to receive Dividend Equivalents. Dividend Equivalents may be settled in cash or Shares and subject to the same restrictions on transferability and forfeitability as the underlying Award with respect to which the Dividend Equivalents are paid and subject to other terms and conditions as set forth in the Award Agreement.

## **ARTICLE VIII. ADJUSTMENTS FOR CHANGES IN COMMON STOCK AND CERTAIN OTHER EVENTS**

8.1 Equity Restructuring(a). In connection with any Equity Restructuring, notwithstanding anything to the contrary in this Article VIII, the Administrator will equitably adjust each outstanding Award as it deems appropriate to reflect the Equity Restructuring, which may include adjusting the number and type of securities subject to each outstanding Award and/or the Award's exercise price or grant price (if applicable), granting new Awards to Participants, and/or making a cash payment to Participants. The adjustments provided under this Section 8.1 will be nondiscretionary and final and binding on the affected Participant and the Company; provided that the Administrator will determine whether an adjustment is equitable.

8.2 Corporate Transactions. In the event of any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), reorganization, merger, consolidation, combination, amalgamation, repurchase, recapitalization, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, or sale or exchange of Common Stock or other securities of the Company, Change of Control, issuance of warrants or other rights to purchase Common Stock or other securities of the Company outside of the Plan, other similar corporate transaction or event, other unusual or nonrecurring transaction or event affecting the Company or its financial statements or any change in any Applicable Laws or accounting principles, the Administrator, on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event (except that action to give effect to a change in Applicable Law or accounting principles may be made within a reasonable period of time after such change) and either automatically or upon the Participant's request, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to (x) prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any Award granted or issued under the Plan, (y) to facilitate such transaction or event or (z) give effect to such changes in Applicable Laws or accounting principles:

(a) To provide for the cancellation of any such Award in exchange for either an amount of cash or other property with a value equal to the amount that could have been obtained upon the exercise or settlement of the vested portion of such Award or realization of the Participant's rights under the vested portion of such Award, as applicable; provided that, if the amount that could have been obtained upon the exercise or settlement of the vested portion of such Award or realization of the Participant's rights, in any case, is equal to or less than zero, then the Award may be terminated without payment;

(b) To provide that such Award shall vest and, to the extent applicable, be exercisable as to all Shares covered thereby, notwithstanding anything to the contrary in the Plan or the provisions of such Award;

(c) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and/or applicable exercise or purchase price, in all cases, as determined by the Administrator;

(d) To make adjustments in the number and type of Shares (or other securities or property) subject to outstanding Awards and/or with respect to which Awards may be granted under the Plan (including, but not limited to, adjustments of the limitations in Article IV on the maximum number and kind of shares which may be issued) and/or in the terms and conditions of (including the grant or exercise price or applicable performance goals), and the criteria included in, outstanding Awards;

(e) To replace such Award with other rights or property selected by the Administrator; and/or

(f) To provide that the Award will terminate and cannot vest, be exercised or become payable after the applicable event.

8.3 Effect of Non-Assumption in a Change of Control. Notwithstanding the provisions of Section 8.2, if a Change of Control occurs and a Participant's Award is not continued, converted, assumed, or replaced with an award (which may include, without limitation, a cash-based award) with substantially the same value and a substantially similar vesting schedule as of such conversion by (a) the Company, or (b) a successor entity or its parent or subsidiary (an "**Assumption**"), and provided that the Participant has not had a Termination of Service, then, immediately prior to the Change of Control, such Award shall become fully vested and exercisable, as applicable, and all forfeiture, repurchase and other restrictions on such Award shall lapse, in which case, such Award shall be canceled upon the consummation of the Change of Control in exchange for the right to receive the Change of Control consideration payable to other holders of Common Stock (i) which may be on such terms and conditions as apply generally to holders of Common Stock under the Change of Control documents (including, without limitation, any escrow, earnout or other deferred consideration provisions) or such other terms and conditions as the Administrator may provide, and (ii) determined by reference to the number of Shares subject to such Award and net of any applicable exercise price; provided that to the extent that any Award constitutes "nonqualified deferred compensation" that may not be paid upon the Change of Control under Section 409A (to the extent applicable to such Award) without the imposition of taxes thereon under Section 409A, the timing of such payments shall be governed by the applicable Award Agreement (subject to any deferred consideration provisions applicable under the Change of Control documents); and provided, further, that if the amount to which the Participant would be entitled upon the settlement or exercise of such Award at the time of the Change of Control is equal to or less than zero, then such Award may be terminated without payment. The Administrator shall have full and final authority to determine whether an Assumption of an Award has occurred in connection with a Change of Control.

8.4 Administrative Stand Still. In the event of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other extraordinary transaction or change affecting the Shares or the share price of Common Stock, including any Equity Restructuring or any securities offering or other similar transaction, for administrative convenience, the Administrator may refuse to permit the exercise of any Award for up to 60 days before or after such transaction.

8.5 General. Except as expressly provided in the Plan or the Administrator's action under the Plan, no Participant will have any rights due to any subdivision or consolidation of Shares of any class, dividend payment, increase or decrease in the number of Shares of any class or dissolution, liquidation, merger, or consolidation of the Company or other corporation. Except as expressly provided with respect to an Equity Restructuring under Section 8.1 or the Administrator's action under the Plan, no issuance by the Company of Shares of any class, or securities convertible into Shares of any class, will affect, and no adjustment will be made regarding, the number of Shares subject to an Award or the Award's grant or exercise price. The existence of the Plan, any Award Agreements and the Awards granted hereunder will not affect or restrict in any way the Company's right or power to make or authorize (i) any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, (ii) any merger, consolidation dissolution or liquidation of the Company or sale of Company assets or (iii) any sale or issuance of securities, including securities with rights superior to those of the Shares or securities convertible into or exchangeable for Shares. The Administrator may treat Participants and Awards (or portions thereof) differently under this Article VIII.

#### **ARTICLE IX. GENERAL PROVISIONS APPLICABLE TO AWARDS**

9.1 Transferability. Except as the Administrator may determine or provide in an Award Agreement or otherwise for Awards other than Incentive Stock Options, Awards may not be sold, assigned, transferred, pledged or otherwise encumbered, either voluntarily or by operation of law, except for certain beneficiary designations, by will or the laws of descent and distribution, or, subject to the Administrator's consent, pursuant to a domestic relations order, and, during the life of the Participant, will be exercisable only by the Participant. Any permitted transfer of an Award hereunder shall be without consideration, except as required by Applicable Law. References to a Participant, to the extent relevant in the context, will include references to a Participant's authorized transferee that the Administrator specifically approves.

9.2 Documentation. Each Award will be evidenced in an Award Agreement, which may be written or electronic, as the Administrator determines. The Award Agreement will contain the terms and conditions applicable to an Award. Each Award may contain terms and conditions in addition to those set forth in the Plan.

9.3 Discretion. Except as the Plan otherwise provides, each Award may be made alone or in addition or in relation to any other Award. The terms of each Award to a Participant need not be identical, and the Administrator need not treat Participants or Awards (or portions thereof) uniformly.

9.4 Termination of Status. The Administrator will determine how a Participant's Disability, death, retirement or authorized leave of absence or any other change or purported change in a Participant's Service Provider status affects an Award (including whether and when a Termination of Service has occurred) and the extent to which, and the period during which the Participant, the Participant's legal representative, conservator, guardian or Designated Beneficiary may exercise rights under the Award, if applicable.

9.5 Withholding. Each Participant must pay the Company, or make provision satisfactory to the Administrator for payment of, any taxes required by Applicable Law to be withheld in connection with such Participant's Awards by the date of the event creating the tax liability. The Company or one of its Related Entities may deduct an amount sufficient to satisfy such tax obligations based on the applicable statutory withholding rates (or such other rate as may be determined by the Administrator after considering any accounting consequences or costs) from any payment of any kind otherwise due to a Participant. Subject to Section 10.8 and any Company insider trading policy (including blackout periods), Participants may satisfy such tax obligations through the Agent's electronic platform or by wire transfer of immediately available funds to the Agent (or, in each case, if the Company has no Agent accepting payment, by wire transfer of immediately available funds to the Company) or, solely with the consent of the Administrator, by (i) cash, wire transfer of immediately available funds or check made payable to the order of the Company, provided that the Administrator may limit the use of the foregoing payment forms in its discretion, (ii) to the extent permitted by the Administrator, delivery of Shares (in whole or in part), including Shares delivered by attestation and Shares retained from the Award creating the tax obligation, valued at their Fair Market Value on the date of delivery, (iii) if there is a public market for Shares at the time the tax obligations are satisfied, unless the Administrator otherwise determines, (A) delivery (including electronically or telephonically to the extent permitted by the Administrator) of an irrevocable and unconditional undertaking by a broker acceptable to the Administrator to deliver promptly to the Company sufficient funds to satisfy the tax obligations, or (B) delivery by the Participant to the Company of a copy of irrevocable and unconditional instructions to a broker acceptable to the Administrator to deliver promptly to the Company cash or a check sufficient to satisfy the tax withholding; provided that such amount is paid to the Company at such time as may be required by the Administrator, or (iv) to the extent permitted by the Administrator, any combination of the foregoing payment forms approved by the Administrator. Notwithstanding any other provision of the Plan, the number of Shares which may be so delivered or retained pursuant to clause (ii) of the immediately preceding sentence shall be limited to the number of Shares which have a Fair Market Value on the date of delivery or retention no greater than the aggregate amount of such liabilities based on the maximum individual statutory tax rate in the applicable jurisdiction at the time of such withholding (or such other rate as may be required to avoid the liability classification of the applicable award under generally accepted accounting principles in the United States of America), and for clarity, may be less than such maximum individual statutory tax rate if so determined by the Administrator. If any tax withholding obligation will be satisfied under clause (ii) of the immediately preceding sentence by the Company's retention of Shares from the Award creating the tax obligation and there is a public market for Shares at the time the tax obligation is satisfied, the Company may elect to instruct any brokerage firm determined acceptable to the Company for such purpose to sell on the applicable Participant's behalf some or all of the Shares retained and to remit the proceeds of the sale to the Company or its designee, and each Participant's acceptance of an Award under the Plan will constitute the Participant's authorization to the Company and instruction and authorization to such brokerage firm to complete the transactions described in this sentence.

9.6 Amendment of Award; Repricing. The Administrator may amend, modify or terminate any outstanding Award, including by substituting another Award of the same or a different type, changing the exercise or settlement date, and converting an Incentive Stock Option to a Non-Qualified Stock Option. The Participant's consent to such action will be required unless (i) the action does not materially and adversely affect the Participant's rights under the Award, or (ii) the change is permitted under Article VIII or pursuant to Sections 10.6 or 10.15. Notwithstanding the foregoing or anything in the Plan to the contrary, the Administrator may, without the approval of the stockholders of the Company, reduce the exercise price or base price per share of outstanding Options or Stock Appreciation Rights or cancel outstanding Options or Stock Appreciation Rights that have an exercise price or base price in excess of Fair Market Value in exchange for cash, other Awards or Options or Stock Appreciation Rights with an exercise price or base price per share that is less than the exercise price or base price per share of the original Options or Stock Appreciation Rights.

9.7 Conditions on Delivery of Stock. The Company will not be obligated to deliver any Shares under the Plan or remove restrictions from Shares previously delivered under the Plan until (i) all Award conditions have been met or removed to the Company's satisfaction, (ii) as determined by the Company, all other legal matters regarding the issuance and delivery of such Shares have been satisfied, including any applicable securities laws and stock exchange or stock market rules and regulations, and (iii) the Participant has executed and delivered to the Company such representations or agreements as the Administrator deems necessary or appropriate to satisfy any Applicable Laws. The Company's inability to obtain authority from any regulatory body having jurisdiction, which the Administrator determines is necessary to the lawful issuance and sale of any securities, will relieve the Company of any liability for failing to issue or sell such Shares as to which such requisite authority has not been obtained.

9.8 Acceleration. The Administrator may at any time provide that any Award will become immediately vested and fully or partially exercisable, free of some or all restrictions or conditions, or otherwise fully or partially realizable.

9.9 Cash Settlement. Without limiting the generality of any other provision of the Plan, the Administrator may provide, in an Award Agreement or subsequent to the grant of an Award, in its discretion, that any Award may be settled in cash, Shares or a combination thereof.

9.10 Broker-Assisted Sales 9.11. In the event of a broker-assisted sale of Shares in connection with the payment of amounts owed by a Participant under or with respect to the Plan or Awards, including amounts to be paid under the final sentence of Section 9.5: (i) any Shares to be sold through the broker-assisted sale will be sold on the day the payment first becomes due, or as soon thereafter as practicable; (ii) such Shares may be sold as part of a block trade with other Participants in the Plan in which all participants receive an average price; (iii) the applicable Participant will be responsible for all broker's fees and other costs of sale, and by accepting an Award, each Participant agrees to indemnify and hold the Company and its Related Entities harmless from any losses, costs, damages, or expenses relating to any such sale; (iv) to the extent the Company, its Related Entities or their designee receives proceeds of such sale that exceed the amount owed, the Company or its Related Entity will pay such excess in cash to the applicable Participant as soon as reasonably practicable; (v) the Company, its Related Entities and their designees are under no obligation to arrange for such sale at any particular price; and (vi) in the event the proceeds of such sale are insufficient to satisfy the Participant's applicable obligation, the Participant may be required to pay immediately upon demand to the Company, its Related Entities or their designee an amount in cash sufficient to satisfy any remaining portion of the Participant's obligation.

## ARTICLE X. MISCELLANEOUS

10.1 No Right to Employment or Other Status. No person will have any claim or right to be granted an Award, and the grant of an Award will not be construed as giving a Participant the right to continued employment or any other relationship with the Company or any of its Related Entities. The Company and its Related Entities expressly reserve the right at any time to dismiss or otherwise terminate their respective relationships with a Participant free from any liability or claim under the Plan or any Award, except as expressly provided in an Award Agreement or in the Plan.

10.2 No Rights as Stockholder; Certificates. Subject to the Award Agreement, no Participant or Designated Beneficiary will have any rights as a stockholder with respect to any Shares to be distributed under an Award until becoming the record holder of such Shares. Notwithstanding any other provision of the Plan, unless the Administrator otherwise determines or Applicable Laws require, the Company will not be required to deliver to any Participant certificates evidencing Shares issued in connection with any Award and instead such Shares may be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator). The Company may place legends on stock certificates issued under the Plan that the Administrator deems necessary or appropriate to comply with Applicable Laws.

10.3 Effective Date and Term of Plan. The Plan will become effective on the closing of the transactions contemplated by the Merger Agreement (the "**Effective Date**"). Notwithstanding anything to the contrary in the Plan, an Incentive Stock Option may not be granted under the Plan after 10 years from the earlier of (i) the date the Board adopted the Plan or (ii) the date on which the Company's stockholders approve the Plan, but Incentive Stock Options previously granted may remain outstanding after that date in accordance with the Plan. If the Plan is not approved by the Company's stockholders, the Plan will not become effective and no Awards will be granted under the Plan.

10.4 Amendment of Plan. The Board may amend, suspend or terminate the Plan at any time; provided that no amendment, other than (a) as permitted by the applicable Award Agreement, (b) as provided under Article VIII or Sections 10.6 or 10.15, or (c) an amendment to increase the Overall Share Limit, may materially and adversely affect any Award outstanding at the time of such amendment without the affected Participant's consent. No Awards may be granted under the Plan during any suspension period or after the Plan's termination. Awards outstanding at the time of any Plan suspension or termination will continue to be governed by the Plan and the Award Agreement, as in effect before such suspension or termination. The Board will obtain stockholder approval of any Plan amendment to the extent necessary to comply with Applicable Laws.

10.5 Provisions for Foreign Participants. The Administrator may modify Awards granted to Participants who are foreign nationals or employed outside the United States or establish subplans or procedures under the Plan to address differences in laws, rules, regulations or customs of such foreign jurisdictions with respect to tax, securities, currency, employee benefit or other matters.

10.6 Section 409A.

(a) General. To the extent that the Administrator determines that any Award granted under the Plan is subject to Section 409A, the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A. To the extent applicable, the Plan and the Award Agreements shall be interpreted as compliant with Section 409A or as exempt from Section 409A, such that no adverse tax consequences, interest, or penalties under Section 409A apply. Notwithstanding anything in the Plan or any Award Agreement to the contrary, the Administrator may, without a Participant's consent, amend this Plan or Awards, adopt policies and procedures, or take any other actions (including amendments, policies, procedures and retroactive actions) as are necessary or appropriate to preserve the intended tax treatment of Awards, including any such actions intended to (A) exempt this Plan or any Award from Section 409A, or (B) comply with Section 409A, including regulations, guidance, compliance programs and other interpretative authority that may be issued after an Award's grant date. The Company makes no representations or warranties as to an Award's tax treatment under Section 409A or otherwise. The Company will have no obligation under this Section 10.6 or otherwise to avoid the taxes, penalties or interest under Section 409A with respect to any Award and will have no liability to any Participant or any other person if any Award, compensation or other benefits under the Plan are subject to taxes, penalties or interest under Section 409A. Notwithstanding any contrary provision of the Plan or any Award Agreement, any payment of "nonqualified deferred compensation" under the Plan that may be made in installments shall be treated as a right to receive a series of separate and distinct payments.

(b) Separation from Service. If an Award is subject to and constitutes "nonqualified deferred compensation" under Section 409A, any payment or settlement of such Award upon a termination of a Participant's Service Provider relationship will, to the extent necessary to avoid taxes under Section 409A, be made only upon the Participant's "separation from service" (within the meaning of Section 409A), whether such "separation from service" occurs upon or after the termination of the Participant's Service Provider relationship. For purposes of this Plan or any Award Agreement relating to any such payments or benefits, references to a "termination," "termination of employment" or like terms means a "separation from service."

(c) Payments to Specified Employees. Notwithstanding any contrary provision in the Plan or any Award Agreement, any payment(s) of "nonqualified deferred compensation" required to be made under an Award subject to Section 409A to a "specified employee" (as defined under Section 409A and as the Administrator determines) due to his or her "separation from service" will, to the extent necessary to avoid taxes under Section 409A(a)(2)(B)(i) of the Code, be delayed for the six-month period immediately following such "separation from service" (or, if earlier, until the specified employee's death) and will instead be paid (as set forth in the Award Agreement) on the day immediately following such six-month period or as soon as administratively practicable thereafter (without interest). Any payments of "nonqualified deferred compensation" under such Award payable more than six months following the Participant's "separation from service" (or following death) will be paid at the time or times the payments are otherwise scheduled to be made.

10.7 Limitations on Liability. Notwithstanding any other provisions of the Plan, no individual acting as a director, officer, other employee or agent of the Company or any Related Entity will be liable to any Participant, former Participant, spouse, beneficiary, or any other person for any claim, loss, liability, or expense incurred in connection with the Plan or any Award, and such individual will not be personally liable with respect to the Plan because of any contract or other instrument executed in his or her capacity as an Administrator, director, officer, other employee or agent of the Company or any Related Entity. The Company will indemnify and hold harmless each director, officer, other employee and agent of the Company or any Related Entity that has been or will be granted or delegated any duty or power relating to the Plan's administration or interpretation, against any cost or expense (including attorneys' fees) or liability (including any sum paid in settlement of a claim with the Administrator's approval) arising from any act or omission concerning this Plan unless arising from such person's own fraud or bad faith.

10.8 Lock-Up Period. The Company may, at the request of any underwriter representative or otherwise, in connection with registering the offering of any Company securities under the Securities Act, prohibit Participants from, directly or indirectly, selling or otherwise transferring any Shares or other Company securities during a period of up to 180 days following the effective date of a Company registration statement filed under the Securities Act, or such longer period as determined by the underwriter.

10.9 Data Privacy. As a condition for receiving any Award, each Participant explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of personal data as described in this section by and among the Company and its Related Entities and affiliates exclusively for implementing, administering and managing the Participant's participation in the Plan. The Company and its Related Entities and affiliates may hold certain personal information about a Participant, including the Participant's name, address and telephone number; birthdate; social security number, insurance number or other identification number; salary; nationality; job title(s); any Shares held in the Company or its Related Entities and affiliates; and Award details, to implement, manage and administer the Plan and Awards (the "**Data**"). The Company and its Related Entities and affiliates may transfer the Data amongst themselves as necessary to implement, administer and manage a Participant's participation in the Plan, and the Company and its Related Entities and affiliates may transfer the Data to third parties assisting the Company with Plan implementation, administration and management. These recipients may be located in the Participant's country, or elsewhere, and the Participant's country may have different data privacy laws and protections than the recipients' country. By accepting an Award, each Participant authorizes such recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, to implement, administer and manage the Participant's participation in the Plan, including any required Data transfer to a broker or other third party with whom the Company or the Participant may elect to deposit any Shares. The Data related to a Participant will be held only as long as necessary to implement, administer, and manage the Participant's participation in the Plan. A Participant may, at any time, view the Data that the Company and its Related Entities hold regarding such Participant, request additional information about the storage and processing of the Data regarding such Participant, recommend any necessary corrections to the Data regarding the Participant or refuse or withdraw the consents in this Section 10.9 in writing, without cost, by contacting the local human resources representative. If the Participant refuses or withdraws the consents in this Section 10.9, the Company may cancel Participant's ability to participate in the Plan and, in the Administrator's discretion, the Participant may forfeit any outstanding Awards. For more information on the consequences of refusing or withdrawing consent, Participants may contact their local human resources representative.

10.10 Severability. If any portion of the Plan or any action taken under it is held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining parts of the Plan, and the Plan will be construed and enforced as if the illegal or invalid provisions had been excluded, and the illegal or invalid action will be null and void.

10.11 Governing Documents. If any contradiction occurs between the Plan and any Award Agreement or other written agreement between a Participant and the Company (or any Related Entity) that the Administrator has approved, the Plan will govern, unless it is expressly specified in such Award Agreement or other written document that a specific provision of the Plan will not apply. For clarity, the foregoing sentence shall not limit the applicability of any additive language contained in an Award Agreement or other written agreement which provides supplemental or additional terms not inconsistent with the Plan.



10.12 Governing Law. The Plan and all Awards will be governed by and interpreted in accordance with the laws of the State of Delaware, disregarding any state's choice-of-law principles requiring the application of a jurisdiction's laws other than the State of Delaware.

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

10.14 Titles and Headings. The titles and headings in the Plan are for convenience of reference only and, if any conflict, the Plan's text, rather than such titles or headings, will control.

10.15 Conformity to Securities Laws. Participant acknowledges that the Plan is intended to conform to the extent necessary with Applicable Laws. Notwithstanding anything herein to the contrary, the Plan and all Awards will be administered only in conformance with Applicable Laws. To the extent Applicable Laws permit, the Plan and all Award Agreements will be deemed amended as necessary to conform to Applicable Laws.

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

10.17 Relationship to Other Benefits. No payment under the Plan will be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Related Entity except as expressly provided in writing in such other plan or an agreement thereunder.

## **ARTICLE XI. DEFINITIONS**

As used in the Plan, the following words and phrases will have the following meanings:

11.1 "**Administrator**" means the Board or a Committee to the extent that the Board's powers or authority under the Plan have been delegated to such Committee. Notwithstanding anything herein to the contrary, the Board shall conduct the general administration of the Plan with respect to Awards granted to non-employee Directors and, with respect to such Awards, the term "Administrator" as used in the Plan shall mean and refer to the Board.

11.2 "**Agent**" means the brokerage firm, bank or other financial institution, entity or person(s), if any, engaged, retained, appointed or authorized to act as the agent of the Company or a Participant with regard to the Plan.

11.3 "**Applicable Laws**" means the requirements relating to the administration of equity incentive plans under U.S. federal and state securities, tax and other applicable laws, rules and regulations, the applicable rules of any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws and rules of any foreign country or other jurisdiction where Awards are granted.

11.4 "**Award**" means, individually or collectively, a grant under the Plan of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Dividend Equivalents, or Other Stock or Cash Based Awards.

11.5 “**Award Agreement**” means a written agreement evidencing an Award, which may be electronic, that contains such terms and conditions as the Administrator determines, consistent with and subject to the terms and conditions of the Plan.

11.6 “**Board**” means the Board of Directors of the Company.

11.7 “**Change of Control**” means and includes each of the following:

(a) A merger or consolidation of the Company with or into any other corporation or other entity or person;

(b) A sale, lease, exchange or other transfer in one transaction or a series of related transactions of all or substantially all of the Company’s assets; or

(c) Any other transaction, including the sale by the Company of new shares of its capital stock or a transfer of existing shares of capital stock of the Company, the result of which is that a third party that is not an affiliate of the Company or its stockholders (or a group of third parties not affiliated with the Company or its stockholders) immediately prior to such transaction acquires or holds capital stock of the Company representing a majority of the Company’s outstanding voting power immediately following such transaction; provided that the following events shall not constitute a “Change of Control”:

(i) a transaction (other than a sale of all or substantially all of the Company’s assets) in which the holders of the voting securities of the Company immediately prior to the merger or consolidation hold, directly or indirectly, at least a majority of the voting securities in the successor corporation or its parent immediately after the merger or consolidation;

(ii) a sale, lease, exchange or other transaction in one transaction or a series of related transactions of all or substantially all of the Company’s assets to an affiliate of the Company;

(iii) an initial public offering of any of the Company’s securities;

(iv) a reincorporation of the Company solely to change its jurisdiction; or

(v) a transaction undertaken for the primary purpose of creating a holding company that will be owned in substantially the same proportion by the persons who held the Company’s securities immediately before such transaction.

Notwithstanding the foregoing, if a Change of Control would give rise to a payment or settlement event with respect to any Award that constitutes “nonqualified deferred compensation,” the transaction or event constituting the Change of Control must also constitute a “change in control event” (as defined in Treasury Regulation Section 1.409A-3(i)(5)) in order to give rise to the payment or settlement event for such Award, to the extent required by Section 409A of the Code.

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

11.8 “**Code**” means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

11.9 “**Committee**” means one or more committees or subcommittees of the Board, which may include one or more Company directors or executive officers, to the extent Applicable Laws permit. To the extent required to comply with the provisions of Rule 16b-3, it is intended that each member of the Committee will be, at the time the Committee takes any action with respect to an Award that is subject to Rule 16b-3, a “non-employee director” within the meaning of Rule 16b-3; however, a Committee member’s failure to qualify as a “non-employee director” within the meaning of Rule 16b-3 will not invalidate any Award granted by the Committee that is otherwise validly granted under the Plan.

11.10 “**Common Stock**” means the Class A common stock, par value \$0.0001 per share, of the Company and Class B common stock, par value \$0.0001 per share and such other securities of the Company that may be substituted therefore.

11.11 “**Company**” means The Oncology Institute, Inc., a Delaware corporation, or any successor.

11.12 “**Consultant**” means any consultant or advisor engaged by the Company or any of its Related Entities to render services to such entity that qualifies as a consultant or advisor under the applicable rules of Form S-8 Registration Statements.

11.13 “**Designated Beneficiary**” means the beneficiary or beneficiaries the Participant designates, in a manner the Administrator determines, to receive amounts due or exercise the Participant’s rights if the Participant dies or becomes incapacitated. Without a Participant’s effective designation, “Designated Beneficiary” will mean the Participant’s estate.

11.14 “**Director**” means a member of the Board or the Board of Directors of any Related Entity.

11.15 “**Disability**” means that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

11.16 “**Dividend Equivalents**” means a right granted to a Participant under the Plan to receive the equivalent value (in cash or Shares) of dividends paid on Shares.

11.17 “**Employee**” means any employee of the Company or its Related Entities.

11.18 “**Equity Restructuring**” means, as determined by the Administrator, a non-reciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off or recapitalization through a large, nonrecurring cash dividend, or other large, nonrecurring cash dividend, that affects the Shares (or other securities of the Company) or the share price of Shares (or other securities of the Company) and causes a change in the per share value of the Shares underlying outstanding Awards.

11.19 “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

11.20 “**Fair Market Value**” means, as of any date, the value of a Share determined as follows: (a) if the Common Stock is listed on any established stock exchange, its Fair Market Value will be the closing sales price for such Common Stock as quoted on such exchange for such date, or if no sale occurred on such date, the last day preceding such date during which a sale occurred, as reported in *The Wall Street Journal* or another source the Administrator deems reliable; (b) if the Common Stock is not traded on a stock exchange but is quoted on a national market or other quotation system, the closing sales price on such date, or if no sales occurred on such date, then on the last date preceding such date during which a sale occurred, as reported in *The Wall Street Journal* or another source the Administrator deems reliable; or (c) without an established market for the Common Stock, the Administrator will determine the Fair Market Value in its discretion.

11.21 “**Greater Than 10% Stockholder**” means an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or its parent or subsidiary corporation, as defined in Section 424(e) and (f) of the Code, respectively.

11.22 “**Incentive Stock Option**” means an Option intended to qualify as an “incentive stock option” as defined in Section 422 of the Code.

11.23 “**Merger Agreement**” means that Agreement and Plan of Merger, dated as of June 28, 2021, by and among DFP Healthcare Acquisitions Corp., Orion Merger Sub I, Inc., Orion Merger Sub II, LLC and TOI Parent, Inc.

11.24 “**Non-Qualified Stock Option**” means an Option, or portion thereof, not intended or not qualifying as an Incentive Stock Option.

- 11.25 “**Option**” means an option to purchase Shares, which will either be an Incentive Stock Option or a Non-Qualified Stock Option.
- 11.26 “**Optionholder Earnout Shares**” has the meaning set forth in the Merger Agreement.
- 11.27 “**Other Stock or Cash Based Awards**” means cash awards, awards of Shares, and other awards valued wholly or partially by referring to, or are otherwise based on, Shares or other property awarded to a Participant under Article VII.
- 11.28 “**Overall Share Limit**” means the sum of (a) a number of Shares equal to seven percent (7%) of the aggregate number of shares of Common Stock outstanding on a fully diluted basis, as determined at the Effective Date ; (b) any Shares which are subject to Prior Plan Awards as of the Effective Date which, following the Effective Date, become available for issuance under the Plan pursuant to Article IV; (c) any Optionholder Earnout Shares or Stockholder Earnout Shares, as applicable, which are forfeited by reason of a Termination of Service, which following the Effective Date, become available for issuance under the Plan pursuant to Article IV; and (d) an annual increase on the first day of each calendar year beginning January 1, 2022 and ending on and including January 1, 2031, equal to the lesser of (i) a number of Shares equal to four percent (4%) of the aggregate number of shares of Common Stock outstanding on a fully diluted basis, determined on the final day of the immediately preceding calendar year and (ii) such smaller number of Shares as is determined by the Board. For this purpose, the number of shares of Common Stock outstanding will be calculated as if all Options and Stock Appreciation Rights issued and outstanding were exercised in full, and all outstanding Restricted Stock Units were issued and outstanding shares of Common Stock.
- 11.29 “**Participant**” means a Service Provider who has been granted an Award.
- 11.30 “**Performance Criteria**” means the criteria (and adjustments) that the Administrator may select for an Award to establish performance goals for a performance period, which may include (but is not limited to) the following: net earnings or losses (either before or after one or more of interest, taxes, depreciation, amortization, and non-cash equity-based compensation expense); gross or net sales or revenue or sales or revenue growth; net income (either before or after taxes) or adjusted net income; profits (including but not limited to gross profits, net profits, profit growth, net operation profit or economic profit), profit return ratios or operating margin; operating efficiency; budget or operating earnings (either before or after taxes or before or after allocation of corporate overhead and bonus); cash flow (including operating cash flow and free cash flow or cash flow return on capital); return on assets; return on capital or invested capital; cost of capital; return on stockholders’ equity; total stockholder return; return on sales; costs, reductions in costs and cost control measures; expenses; working capital; earnings or loss per share; adjusted earnings or loss per share; price per share or dividends per share (or appreciation in or maintenance of such price or dividends); regulatory achievements or compliance; implementation, completion or attainment of objectives relating to research, development, regulatory, commercial, or strategic milestones or developments; market share; economic value or economic value added models; division, group or corporate financial goals; customer satisfaction/growth; customer service; employee satisfaction; recruitment and maintenance of personnel; human resources management; supervision of litigation and other legal matters; strategic partnerships, collaborations and transactions; financial ratios (including those measuring liquidity, activity, profitability or leverage); debt levels or reductions; sales-related goals; financing and other capital raising transactions; cash on hand; acquisition, licensing or divestiture activity; investment sourcing activity; and marketing initiatives, any of which may be measured in absolute terms or as compared to any incremental increase or decrease. Such performance goals also may be based solely by reference to the Company’s performance or the performance of a Related Entity, division, business segment or business unit of the Company or a Related Entity, or based upon performance relative to performance of other companies or upon comparisons of any of the indicators of performance relative to performance of other companies.
- 11.31 “**Plan**” means this The Oncology Institute, Inc. 2021 Incentive Award Plan.
- 11.32 “**Prior Plan**” means the TOI Parent, Inc. 2019 Non-Qualified Stock Option Plan.
- 11.33 “**Prior Plan Award**” means an award outstanding under the Prior Plan as of the Effective Date.
- 11.34 “**Related Entity**” means any Subsidiary, and any business, corporation, partnership, limited liability company or other entity designated by the Board, which the Company or a Subsidiary controls, directly or indirectly, through one or more intermediaries. .

- 11.35 “**Restricted Stock**” means Shares awarded to a Participant under Article VI subject to certain vesting conditions and other restrictions.
- 11.36 “**Restricted Stock Unit**” means an unfunded, unsecured right to receive, on the applicable settlement date, one Share or an amount in cash or other consideration determined by the Administrator to be of equal value as of such settlement date awarded to a Participant under Article VI subject to certain vesting conditions and other restrictions.
- 11.37 “**Rule 16b-3**” means Rule 16b-3 promulgated under the Exchange Act.
- 11.38 “**Section 409A**” means Section 409A of the Code and all regulations, guidance, compliance programs and other interpretative authority thereunder.
- 11.39 “**Securities Act**” means the Securities Act of 1933, as amended.
- 11.40 “**Service Provider**” means an Employee, Consultant or Director.
- 11.41 “**Shares**” means shares of Class A common stock, par value \$0.0001 per share, of the Company.
- 11.42 “**Stock Appreciation Right**” means a stock appreciation right granted under Article V.
- 11.43 “**Stockholder Earnout Shares**” has the meaning set forth in the Merger Agreement.
- 11.44 “**Subsidiary**” means any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities beginning with the Company if each of the entities other than the last entity in the unbroken chain beneficially owns, at the time of the determination, securities or interests representing at least 50% of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.
- 11.45 “**Substitute Awards**” means Awards granted or Shares issued by the Company in assumption of, or in substitution or exchange for, awards previously granted, or the right or obligation to make future awards, in each case by a company (i) acquired by the Company or any Related Entity, (ii) which becomes a Related Entity after the date hereof, or (iii) with which the Company or any Related Entity combines.
- 11.46 “**Termination of Service**” means the date the Participant ceases to be a Service Provider.

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<b>THE ONCOLOGY INSTITUTE, INC.</b> <b>2021 EMPLOYEE STOCK PURCHASE PLAN</b>
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**ARTICLE I. PURPOSE**

The purpose of this Plan is to assist Eligible Employees of the Company and its Designated Subsidiaries in acquiring a stock ownership interest in the Company.

The Plan consists of two components: (i) the Section 423 Component and (ii) the Non-Section 423 Component. The Section 423 Component is intended to qualify as an “employee stock purchase plan” under Section 423 of the Code and shall be administered, interpreted and construed in a manner consistent with the requirements of Section 423 of the Code. The Non-Section 423 Component authorizes the grant of rights which need not qualify as rights granted pursuant to an “employee stock purchase plan” under Section 423 of the Code. Rights granted under the Non-Section 423 Component shall be granted pursuant to separate Offerings containing such sub-plans, appendices, rules or procedures as may be adopted by the Administrator and designed to achieve tax, securities laws or other objectives for Eligible Employees and Designated Subsidiaries but shall not be intended to qualify as an “employee stock purchase plan” under Section 423 of the Code. Except as otherwise determined by the Administrator or provided herein, the Non-Section 423 Component will operate and be administered in the same manner as the Section 423 Component. Offerings intended to be made under the Non-Section 423 Component will be designated as such by the Administrator at or prior to the time of such Offering.

For purposes of this Plan, the Administrator may designate separate Offerings under the Plan in which Eligible Employees will participate. The terms of these Offerings need not be identical, even if the dates of the applicable Offering Period(s) in each such Offering are identical, provided that the terms of participation are the same within each separate Offering under the Section 423 Component (as determined under Section 423 of the Code). Solely by way of example and without limiting the foregoing, the Company could, but shall not be required to, provide for simultaneous Offerings under the Section 423 Component and the Non-Section 423 Component of the Plan.

**ARTICLE II.**  
**DEFINITIONS AND CONSTRUCTION**

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise.

2.1 “**Administrator**” means the entity that conducts the general administration of the Plan as provided in Article XI.

2.2 “**Agent**” means the brokerage firm, bank or other financial institution, entity or person(s), if any, engaged, retained, appointed or authorized to act as the agent of the Company or an Employee with regard to the Plan.

2.3 “**Applicable Law**” means the requirements relating to the administration of equity incentive plans under U.S. federal and state securities, tax and other applicable laws, rules and regulations, the applicable rules of any stock exchange or quotation system on which Shares are listed or quoted and the applicable laws and rules of any foreign country or other jurisdiction where rights under this Plan are granted.

2.4 “**Board**” means the Board of Directors of the Company.

2.5 “**Change of Control**” means and includes each of the following:

- (a) A merger or consolidation of the Company with or into any other corporation or other entity or person;

(b) A sale, lease, exchange or other transfer in one transaction or a series of related transactions of all or substantially all of the Company's assets; or

(c) Any other transaction, including the sale by the Company of new shares of its capital stock or a transfer of existing shares of capital stock of the Company, the result of which is that a third party that is not an affiliate of the Company or its stockholders (or a group of third parties not affiliated with the Company or its stockholders) immediately prior to such transaction acquires or holds capital stock of the Company representing a majority of the Company's outstanding voting power immediately following such transaction; provided that the following events shall not constitute a "Change of Control":

(i) a transaction (other than a sale of all or substantially all of the Company's assets) in which the holders of the voting securities of the Company immediately prior to the merger or consolidation hold, directly or indirectly, at least a majority of the voting securities in the successor corporation or its parent immediately after the merger or consolidation;

(ii) a sale, lease, exchange or other transaction in one transaction or a series of related transactions of all or substantially all of the Company's assets to an affiliate of the Company;

(iii) an initial public offering of any of the Company's securities;

(iv) a reincorporation of the Company solely to change its jurisdiction; or

(v) a transaction undertaken for the primary purpose of creating a holding company that will be owned in substantially the same proportion by the persons who held the Company's securities immediately before such transaction.

Notwithstanding the foregoing, if a Change of Control would give rise to a payment or settlement event with respect to any Award that constitutes "nonqualified deferred compensation," the transaction or event constituting the Change of Control must also constitute a "change in control event" (as defined in Treasury Regulation Section 1.409A-3(i)(5)) in order to give rise to the payment or settlement event for such Award, to the extent required by Section 409A of the Code.

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

2.6 "**Code**" means the U.S. Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

2.7 "**Common Stock**" means the Class A common stock, par value \$0.0001 per share, of the Company and Class B common stock, par value \$0.0001 per share and such other securities of the Company that may be substituted therefore.

2.8 "**Company**" means The Oncology Institute, Inc., a Delaware corporation, or any successor.

2.9 "**Compensation**" of an Eligible Employee means, unless otherwise determined by the Administrator, the base salary, wages (including overtime), cash incentive compensation, bonuses, commissions and compensation in respect of periods of absence from work, in each case, paid by the Company or any Designated Subsidiary to such Eligible Employee; and excluding any education or tuition reimbursements, travel expenses, business and moving reimbursements, income received in connection with any stock options, stock appreciation rights, restricted stock, restricted stock units or other compensatory equity awards, fringe benefits, other special payments and all contributions made by the Company or any Designated Subsidiary for the Employee's benefit under any employee benefit plan now or hereafter established.

2.10 “**Designated Beneficiary**” means the beneficiary or beneficiaries the Participant designates, in a manner the Administrator determines, to receive amounts due or exercise the Participant’s rights if the

Participant dies or becomes incapacitated. Without a Participant’s effective designation, “Designated Beneficiary” will mean the Participant’s estate.

2.11 “**Designated Subsidiary**” means any Subsidiary designated by the Administrator in accordance with Section 11.2(b), such designation to specify whether such participation is in the Section 423 Component or Non-Section 423 Component. A Designated Subsidiary may participate in either the Section 423 Component or Non-Section 423 Component, but not both.

2.12 “**Effective Date**” means on the closing of the transactions contemplated by the Agreement and Plan of Merger, dated as of June 28, 2021, by and among DFP Healthcare Acquisitions Corp., Orion Merger Sub I, Inc., Orion Merger Sub II, LLC and TOI Parent, Inc., subject to prior approval by the Company’s stockholders of the Plan. If the Plan is not approved by the Company’s stockholders, the Plan will not become effective and no Awards will be granted under the Plan.

2.13 “**Eligible Employee**” means an Employee who does not, immediately after any rights under this Plan are granted, own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of Shares and other securities of the Company, a Parent or a Subsidiary (as determined under Section 423(b)(3) of the Code). For purposes of the foregoing, the rules of Section 424(d) of the Code with regard to the attribution of stock ownership shall apply in determining the stock ownership of an individual, and stock that an Employee may purchase under outstanding options shall be treated as stock owned by the Employee. Notwithstanding the foregoing, the Administrator may provide in an Offering Document that an Employee shall not be eligible to participate in an Offering Period under the Section 423 Component if: (a) such Employee is a highly compensated employee within the meaning of Section 423(b)(4)(D) of the Code; (b) such Employee has not met a service requirement designated by the Administrator pursuant to Section 423(b)(4)(A) of the Code (which service requirement may not exceed two years); (c) such Employee’s customary employment is for 20 hours per week or less; (d) such Employee’s customary employment is for less than five months in any calendar year; and/or (e) such Employee is a citizen or resident of a foreign jurisdiction and the grant of a right to purchase Shares under the Plan to such Employee would be prohibited under the laws of such foreign jurisdiction or the grant of a right to purchase Shares under the Plan to such Employee in compliance with the laws of such foreign jurisdiction would cause the Plan to violate the requirements of Section 423 of the Code, as determined by the Administrator in its sole discretion; *provided*, that any exclusion in clauses (a), (b), (c), (d) or (e) shall be applied in an identical manner under each Offering Period to all Employees, in accordance with Treasury Regulation Section 1.423-2(e).

Further notwithstanding the foregoing, with respect to the Non-Section 423 Component, the first sentence in this definition shall apply in determining who is an “Eligible Employee,” except (i) the Administrator may further limit eligibility within the Company or within a Designated Subsidiary so as to only designate certain Employees of the Company or of a Designated Subsidiary as “Eligible Employees”, and (ii) to the extent the restrictions in the first sentence in this definition are not consistent with any applicable local law, such applicable local law shall control.

2.14 “**Employee**” means any individual who renders services to the Company or any Designated Subsidiary in the status of an employee, and, with respect to the Section 423 Component, a person who is an employee of the Company or any Designated Subsidiary within the meaning of Section 3401(c) of the Code. For purposes of an individual’s participation in, or other rights under the Plan, all determinations by the Company shall be final, binding and conclusive, notwithstanding that any court of law or governmental agency subsequently makes a contrary determination. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company or Designated Subsidiary and meeting the requirements of Treasury Regulation Section 1.421-1(h)(2). Where the period of leave exceeds three months and the individual’s right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the first day immediately following such three-month period.

2.15 “**Enrollment Date**” means the first Trading Day of each Offering Period.



2.16 “**Fair Market Value**” means, as of any date, the value of Shares determined as follows: (a) if the Shares are listed on any established stock exchange, its Fair Market Value will be the closing sales price for such Shares as quoted on such exchange for such date, or if no sale occurred on such date, the last day preceding such date during which a sale occurred, as reported in *The Wall Street Journal* or another source the Administrator deems reliable; (b) if the Shares are not traded on a stock exchange but are quoted on a national market or other quotation system, the closing sales price on such date, or if no sales occurred on such date, then on the last date preceding such date during which a sale occurred, as reported in *The Wall Street Journal* or another source the Administrator deems reliable; or (c) without an established market for the Shares, the Administrator will determine the Fair Market Value in its discretion.

2.17 “**Non-Section 423 Component**” means those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of this Plan, in each case, pursuant to which rights to purchase Shares during an Offering Period may be granted to Eligible Employees that need not satisfy the requirements for rights to purchase Shares granted pursuant to an “employee stock purchase plan” that are set forth under Section 423 of the Code.

2.18 “**Offering**” means an offer by the Company under the Plan to Eligible Employees of a right to purchase Shares that may be exercised during an Offering Period, as further described in Article IV hereof. Unless otherwise specified by the Administrator, each Offering to the Eligible Employees of the Company or a Designated Subsidiary shall be deemed a separate Offering, even if the dates and other terms of the applicable Offering Periods of each such Offering are identical, and the provisions of the Plan will separately apply to each Offering. To the extent permitted by Treasury Regulation Section 1.423-2(a)(1), the terms of each separate Offering under the Section 423 Component need not be identical, provided that the terms of the Section 423 Component and an Offering thereunder together satisfy Treasury Regulation Section 1.423-2(a)(2) and (a)(3).

2.19 “**Offering Document**” has the meaning given to such term in Section 4.1.

2.20 “**Offering Period**” has the meaning given to such term in Section 4.1.

2.21 “**Parent**” means any corporation, other than the Company, in an unbroken chain of corporations ending with the Company if, at the time of the determination, each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

2.22 “**Participant**” means any Eligible Employee who has executed a subscription agreement and been granted rights to purchase Shares pursuant to the Plan.

2.23 “**Plan**” means this The Oncology Institute, Inc. 2021 Employee Stock Purchase Plan, including both the Section 423 Component and Non-Section 423 Component and any other sub-plans or appendices hereto, as amended from time to time.

2.24 “**Purchase Date**” means the last Trading Day of each Purchase Period or such other date as determined by the Administrator and set forth in the Offering Document.

2.25 “**Purchase Period**” shall refer to one or more specified periods within an Offering Period, as designated in the applicable Offering Document; *provided, however*, that, if no Purchase Period is designated by the Administrator in the applicable Offering Document, the Purchase Period for each Offering Period covered by such Offering Document shall be the same as the applicable Offering Period.

2.26 “**Purchase Price**” means the purchase price designated by the Administrator in the applicable Offering Document (which purchase price, for purposes of the Plan, shall not be less than 85% of the Fair Market Value of a Share on the Enrollment Date or on the Purchase Date, whichever is lower); *provided, however*, that, if no purchase price is designated by the Administrator in the applicable Offering Document, the purchase price for the Offering Periods covered by such Offering Document shall be 85% of the Fair Market Value of a Share on the Enrollment Date or on the Purchase Date, whichever is lower; *provided, further*, that the Purchase Price may be adjusted by the Administrator pursuant to Article VIII and shall not be less than the par value of a Share.

2.27 “**Section 423 Component**” means those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of this Plan or any Offering(s), in each case, pursuant to which rights to purchase Shares during an Offering Period may be granted to Eligible Employees that are intended to satisfy the requirements for rights to purchase Shares granted pursuant to an “employee stock purchase plan” that are set forth under Section 423 of the Code.

2.28 “**Securities Act**” means the U.S. Securities Act of 1933, as amended.

2.29 “**Share**” means a share of shares of Class A common stock, par value \$0.0001 per share, of the Company..

2.30 “**Subsidiary**” means any corporation, other than the Company, in an unbroken chain of corporations beginning with the Company if, at the time of the determination, each of the corporations other than the last corporation in an unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain; *provided*, however, that a limited liability company or partnership may be treated as a Subsidiary to the extent either (a) such entity is treated as a disregarded entity under Treasury Regulation Section 301.7701-3(a) by reason of the Company or any other Subsidiary that is a corporation being the sole owner of such entity, or (b) such entity elects to be classified as a corporation under Treasury Regulation Section 301.7701-3(a) and such entity would otherwise qualify as a Subsidiary. In addition, with respect to the Non-Section 423 Component, Subsidiary shall include any and any business, corporation, partnership, limited liability company or other entity designated by the Board, which the Company or a Subsidiary controls, directly or indirectly, through one or more intermediaries.

2.31 “**Trading Day**” means a day on which national stock exchanges in the United States are open for trading.

### **ARTICLE III. SHARES SUBJECT TO THE PLAN**

3.1 Number of Shares. Subject to Article VIII, the aggregate number of Shares that may be issued pursuant to rights granted under the Plan shall be a number of Shares equal to one percent (1%) of the aggregate number of shares of Common Stock outstanding on a fully diluted basis, as determined at the Effective Date, plus, on the first day of each calendar year beginning on January 1, 2022 and ending on and including January 1, 2031, the number of Shares available for issuance under the Plan shall be increased by that number of Shares equal to the lesser of (a) 1% of the aggregate number of shares of Common Stock outstanding calculated on a fully diluted basis, on the final day of the immediately preceding calendar year and (b) such smaller number of Shares as determined by the Board (the “Overall Share Limit”). For this purpose, the number of shares of Common Stock outstanding will be calculated as if all options and stock appreciation rights issued and outstanding were exercised in full, and all restricted stock units were issued and outstanding shares of Common Stock. If any right granted under the Plan shall for any reason terminate without having been exercised, the Shares not purchased under such right shall again become available for issuance under the Plan. Subject to the Overall Share Limit and Article VIII, the number of Shares that may be issued or transferred pursuant to the rights granted under the Section 423 Component of the Plan shall not exceed an aggregate of one percent (1%) of the aggregate number of shares of Common Stock outstanding on a fully diluted basis, as determined at the Effective Date.

3.2 Shares Distributed. Any Shares distributed pursuant to the Plan may consist, in whole or in part, of authorized and unissued Shares, treasury shares or Shares purchased on the open market.

### **ARTICLE IV. OFFERING PERIODS; OFFERING DOCUMENTS; PURCHASE DATES**

4.1 Offering Periods. The Administrator may from time to time grant or provide for the grant of rights to purchase Shares under the Plan to Eligible Employees during one or more periods (each, an “**Offering Period**”) selected by the Administrator. The terms and conditions applicable to each Offering Period shall be set forth in an “**Offering Document**” adopted by the Administrator from time to time, which Offering Document shall be in such form and shall contain such terms and conditions as the Administrator shall deem appropriate and shall be incorporated by reference into and made part of the Plan. The Administrator shall establish in each Offering Document one or more Purchase Periods within such Offering Period during which rights granted under the Plan shall be exercised and purchases of Shares carried out in accordance with such Offering Document and the Plan. The provisions of separate Offerings or Offering Periods under the Plan may be partially or wholly concurrent and need not be identical.

4.2 Offering Documents. Each Offering Document with respect to an Offering Period shall specify (through incorporation of the provisions of this Plan by reference or otherwise):

- (a) the length of the Offering Period, which period shall not exceed 27 months;
- (b) the length of the Purchase Period(s) within the Offering Period, which period(s), in the absence of a contrary designation by the Administrator, shall not exceed 27 months;
- (c) in connection with each Offering Period that contains more than one Purchase Period, the maximum aggregate number of Shares which may be purchased by any Eligible Employee during each Purchase Period (if applicable), which, in the absence of a contrary designation by the Administrator, shall be 100,000 Shares (and which, for the Section 423 Component Offering Periods, shall be subject to the limitations described in Section 5.5 below);
- (d) the maximum number of Shares that may be purchased by any Eligible Employee during such Offering Period (if applicable), which, in the absence of a contrary designation by the Administrator, shall be 20,000 Shares (and which, for the Section 423 Component Offering Periods, shall be subject to the limitations described in Section 5.5 below); and
- (e) such other provisions as the Administrator determines are appropriate, subject to the Plan.

#### **ARTICLE V. ELIGIBILITY AND PARTICIPATION**

5.1 Eligibility. Any Eligible Employee who shall be employed by the Company or a Designated Subsidiary on a given Enrollment Date for an Offering Period shall be eligible to participate in the Plan during such Offering Period, subject to the applicable requirements of this Article V and, for the Section 423 Component, the limitations imposed by Section 423(b) of the Code.

5.2 Enrollment in Plan.

(a) Except as otherwise set forth herein or in an Offering Document or determined by the Administrator, an Eligible Employee may become a Participant in the Plan for an Offering Period by delivering a subscription agreement to the Company by such time prior to the Enrollment Date for such Offering Period (or such other date specified in the Offering Document) designated by the Administrator and in such form as the Company provides.

(b) Subject to such minimum and maximum limitations as the Administrator may set for each Offering Period, each subscription agreement shall designate either (i) a whole percentage of such Eligible Employee's Compensation or (ii) a fixed dollar amount, in either case, to be withheld by the Company or the Designated Subsidiary employing such Eligible Employee on each payday during the Offering Period as payroll deductions under the Plan; *provided* that, in no event shall the actual amount withheld on any payday hereunder exceed the net amount payable to the Eligible Employee on such payday after taxes and any other applicable deductions therefrom (and if amounts to be withheld hereunder would otherwise result in a negative payment to the Eligible Employee on such payday, the amount to be withheld hereunder shall instead be reduced by the least amount necessary to avoid a negative payment amount for the Eligible Employee on such payday, as determined by the Administrator). In absence of any designation by the Administrator in the Offering Documents, the designated percentage or fixed dollar amount may not be less than 1% and may not be more than 15% of the Participant's Compensation for any payroll period. The payroll deductions made for each Participant shall be credited to an account for such Participant under the Plan and shall be deposited with the general funds of the Company.

(c) Unless otherwise provided in the terms of an Offering Document, a Participant may increase or decrease the percentage of Compensation or the fixed dollar amount designated in his or her subscription agreement, subject to the limits set by the Administrator in the Offering Document, or may suspend his or her payroll deductions, in any case, at any time during an Offering Period; *provided, however*, that the Administrator may limit or eliminate the type or number of changes a Participant may make to his or her payroll deduction elections during each Offering Period in the applicable Offering Document (and in the absence of any specific designation by the Administrator, a Participant shall be allowed to decrease, increase or suspend his or her payroll deduction elections, in each case, once during each Purchase Period). Any such change or suspension of payroll deductions shall be effective with the first full payroll period starting at least two calendar weeks after the Company's receipt of the new subscription agreement (or such shorter or longer period as may be specified by the Administrator in the applicable Offering Document). If a Participant suspends his or her payroll deductions during an Offering Period: (i) such Participant's cumulative unapplied payroll deductions prior to the suspension (if any) shall be refunded to such Participant as soon as practicable after such suspension (but no later than 30 days thereafter), and (ii) such Participant shall be deemed to have withdrawn from the Offering Period for all purposes upon such Purchase Date (and shall be eligible to enroll in any Offering Period commencing on or after such Purchase Date if he or she remains an Eligible Employee as of the start of any such subsequent Offering Period and timely submits a valid election to participate). For clarity, if a Participant who suspends participation in an Offering Period ceases to be an Eligible Employee or he or she withdraws from participation in such Offering Period, in either case, prior to the Purchase Date next-following his or her suspension of participation in the Offering Period, in any case, such Participant's cumulative unapplied payroll deductions shall be returned to him or her in accordance with Article VII.

(d) Except as otherwise set forth in herein or in an Offering Document or as otherwise determined by the Administrator, a Participant may participate in the Plan only by means of payroll deduction and may not make contributions by lump sum payment for any Offering Period.

5.3 Payroll Deductions. Except as otherwise provided herein or in the applicable Offering Document, payroll deductions for a Participant shall commence on the first payday following the Enrollment Date and shall end on the last payday in the Offering Period to which the Participant's authorization is applicable, unless sooner terminated by the Participant as provided in Article VII or suspended by the Participant or the Administrator as provided in Section 5.2 and Section 5.6, respectively. Notwithstanding any other provisions of the Plan to the contrary, in any non-U.S. jurisdiction where participation in the Plan through payroll deductions is prohibited, the Administrator may provide that an Eligible Employee may elect to participate through contributions to the Participant's account under the Plan in a form acceptable to the Administrator in lieu of or in addition to payroll deductions; *provided, however*, that, for any Offering under the Section 423 Component, the Administrator shall take into consideration any limitations under Section 423 of the Code when applying an alternative method of contribution.

5.4 Effect of Enrollment. A Participant's completion of a subscription agreement will enroll such Participant in the Plan for each subsequent Offering Period on the terms contained therein until the Participant either submits a new subscription agreement, withdraws from participation under the Plan as provided in Article VII or otherwise becomes ineligible to participate in the Plan.

5.5 Limitation on Purchase of Shares. An Eligible Employee may be granted rights under the Section 423 Component only if such rights, together with any other rights granted to such Eligible Employee under "employee stock purchase plans" of the Company, any Parent or any Subsidiary, as specified by Section 423(b)(8) of the Code, do not permit such employee's rights to purchase stock of the Company or any Parent or Subsidiary to accrue at a rate that exceeds \$25,000 of the fair market value of such stock (determined as of the first day of the Offering Period during which such rights are granted) for each calendar year in which such rights are outstanding at any time. This limitation shall be applied in accordance with Section 423(b)(8) of the Code.

5.6 Suspension of Payroll Deductions. Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 5.5 (with respect to the Section 423 Component) or the other limitations set forth in this Plan, a Participant's payroll deductions may be suspended by the Administrator at any time during an Offering Period. The balance of the amount credited to the account of each Participant that has not been applied to the purchase of Shares by reason of Section 423(b)(8) of the Code, Section 5.5 (with respect to the Section 423 Component) or the other limitations set forth in this Plan shall be paid to such Participant in one lump sum in cash within 30 days after the Purchase Date.

5.7 Foreign Employees. In order to facilitate participation in the Plan, the Administrator may provide for such special terms, rules and procedures applicable to Participants who are citizens or residents of a foreign jurisdiction, or who are employed by a Designated Subsidiary outside of the United States, as the Administrator may consider necessary or appropriate to accommodate differences in local law, tax policy or custom. Except as permitted by Section 423 of the Code, with respect to the Section 423 Component, such special terms may not be more favorable than the terms of rights granted under the Section 423 Component to Eligible Employees who are residents of the United States. Such special terms may be set forth in an addendum to the Plan in the form of an appendix or sub-plan (which appendix or sub-plan may be designed to govern Offerings under the Section 423 Component or the Non-Section 423 Component, as determined by the Administrator). To the extent that the terms and conditions set forth in an appendix or sub-plan conflict with any provisions of the Plan, the provisions of the appendix or sub-plan shall govern except as otherwise set forth therein. The adoption of any such appendix or sub-plan shall be pursuant to Section 11.2(f) and any other applicable provision herein. Without limiting the foregoing, the Administrator is specifically authorized to adopt rules and procedures, with respect to Participants who are foreign nationals or employed in non-U.S. jurisdictions, regarding the exclusion of particular Subsidiaries from participation in the Plan, eligibility to participate, the definition of Compensation, handling of payroll deductions or other contributions by Participants, payment of interest, conversion of local currency, data privacy security, payroll tax, withholding procedures, establishment of bank or trust accounts to hold payroll deductions or contributions.

5.8 Leave of Absence. During leaves of absence approved by the Company meeting the requirements of Treasury Regulation Section 1.421-1(h) (2) under the Code, unless otherwise set forth in the terms of an Offering Document, a Participant may continue participation in the Plan by making cash payments to the Company on his or her normal payday equal to the Participant's authorized payroll deduction.

## ARTICLE VI. GRANT AND EXERCISE OF RIGHTS

6.1 Grant of Rights. On the Enrollment Date of each Offering Period, each Eligible Employee participating in such Offering Period shall be granted a right to purchase the maximum number of Shares specified under Section 4.2, subject to the limits in Section 5.5, and shall have the right to buy, on each Purchase Date during such Offering Period (at the applicable Purchase Price), such number of whole Shares as is determined by dividing (a) such Participant's payroll deductions accumulated prior to such Purchase Date and retained in the Participant's account as of the Purchase Date, by (b) the applicable Purchase Price (rounded down to the nearest Share). The right shall expire on the last day of the applicable Offering Period, or if earlier, the date on which the Participant withdraws in accordance with Section 7.1 or Section 7.3.

6.2 Exercise of Rights. On each Purchase Date, each Participant's accumulated payroll deductions and any other additional payments specifically provided for herein or in the applicable Offering Document will be applied to the purchase of whole Shares, up to the maximum number of Shares permitted pursuant to the terms of the Plan and the applicable Offering Document, at the Purchase Price. No fractional Shares shall be issued upon the exercise of rights granted under the Plan, unless the Offering Document specifically provides otherwise. Any cash in lieu of fractional Shares remaining after the purchase of whole Shares upon exercise of a purchase right will be credited to a Participant's account and carried forward and applied toward the purchase of whole Shares for the next following Offering Period. Shares issued pursuant to the

Plan may be evidenced in such manner as the Administrator may determine and may be issued in certificated form or issued pursuant to book-entry procedures.

6.3 Pro Rata Allocation of Shares. If the Administrator determines that, on a given Purchase Date, the number of Shares with respect to which rights are to be exercised may exceed (a) the number of Shares that were available for issuance under the Plan on the Enrollment Date of the applicable Offering Period, or (b) the number of Shares available for issuance under the Plan on such Purchase Date, the Administrator may in its sole discretion provide that the Company shall make a pro rata allocation of the Shares available for purchase on such Enrollment Date or Purchase Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all Participants for whom rights to purchase Shares are to be exercised pursuant to this Article VI on such Purchase Date, and shall either (i) continue all Offering Periods then in effect, or (ii) terminate any or all Offering Periods then in effect pursuant to Article IX. The Company may make pro rata allocation of the Shares available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional Shares for issuance under the Plan by the Company's stockholders subsequent to such Enrollment Date. The balance of the amount credited to the account of each Participant that has not been applied to the purchase of Shares shall be paid to such Participant without interest in one lump sum in cash as soon as reasonably practicable after the Purchase Date, or such earlier date as determined by the Administrator.

6.4 Withholding. At the time a Participant's rights under the Plan are exercised, in whole or in part, or at the time some or all of the Shares issued under the Plan is disposed of, the Participant must make adequate provision for the Company's federal, state, or other tax withholding obligations, if any, that arise upon the exercise of the right or the disposition of the Shares. At any time, the Company may, but shall not be obligated to, withhold from the Participant's compensation or Shares received pursuant to the Plan the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefits attributable to sale or early disposition of Shares by the Participant.

6.5 Conditions to Issuance of Shares. The Company shall not be required to issue or deliver any certificate or certificates for, or make any book entries evidencing, Shares purchased upon the exercise of rights under the Plan prior to fulfillment of all of the following conditions: (a) the admission of such Shares to listing on all stock exchanges, if any, on which the Shares are then listed; (b) the completion of any registration or other qualification of such Shares under any state or federal law or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body, that the Administrator shall, in its absolute discretion, deem necessary or advisable; (c) the obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable; (d) the payment to the Company of all amounts that it is required to withhold under federal, state or local law upon exercise of the rights, if any; and (e) the lapse of such reasonable period of time following the exercise of the rights as the Administrator may from time to time establish for reasons of administrative convenience.

## **ARTICLE VII. WITHDRAWAL; CESSATION OF ELIGIBILITY**

7.1 Withdrawal. A Participant may withdraw all but not less than all of the payroll deductions credited to his or her account and not yet used to exercise his or her rights under the Plan at any time by giving written notice to the Company in a form acceptable to the Company no later than two calendar weeks prior to the end of the then-applicable Purchase Period (or such shorter or longer period as may be specified by the Administrator in the applicable Offering Document). All of the Participant's payroll deductions credited to his or her account during such Purchase Period and not yet used to exercise rights under the Plan shall be paid to such Participant as soon as reasonably practicable after receipt of notice of withdrawal, such Participant's rights for the Offering Period shall be automatically terminated, and no further payroll deductions for the purchase of Shares shall be made for such Offering Period. If a Participant withdraws from an Offering Period (including by virtue of a suspension as described in Section 5.2(c) above), payroll deductions shall not resume at the beginning of any subsequent Offering Period unless the Participant is an Eligible Employee and timely delivers to the Company a new subscription agreement by the applicable enrollment deadline for any such subsequent Offering Period, as determined by the Administrator.

7.2 Future Participation. A Participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan that may hereafter be adopted by the Company or a Designated Subsidiary or in any subsequent Offering Period that commences on or after the Participant's withdrawal from any Offering Period.

7.3 Cessation of Eligibility. Upon a Participant's ceasing to be an Eligible Employee for any reason, he or she shall be deemed to have elected to withdraw from the Plan pursuant to this Article VII and the payroll deductions credited to such Participant's account during the then-current Purchase Period shall be paid to such Participant or, in the case of his or her death, to the Participant's Designated Beneficiary, within 30 days following such Participant's ceasing to be an Eligible Employee, and such Participant's rights for the Offering Period shall be automatically terminated. For clarity, if a Participant transfers employment from the Company or any Designated Subsidiary participating in either the Section 423 Component or Non- Section 423 Component to any Designated Subsidiary that is neither participating in the Section 423 Component nor the Non-Section 423 Component, then, in any case, such transfer shall be treated as a termination of employment under the Plan and the Participant shall be deemed to have withdrawn from the Plan pursuant to this Article VII and the payroll deductions credited to such Participant's account during the then-current Purchase Period shall be paid to such Participant within 30 days following such Participant's transfer of employment, and such Participant's participation in the Offering Period shall be automatically terminated. If a Participant transfers employment from the Company or any Designated Subsidiary participating in the Section 423 Component to any Designated Subsidiary participating in the Non- Section 423 Component, such transfer shall not be treated as a termination of employment under the Plan, but the Participant shall immediately cease to participate in the Section 423 Component; however, any contributions made for the then-current Purchase Period in which such transfer occurs shall be transferred to the Non-Section 423 Component, and such Participant shall immediately join the then-current Offering under the Non-Section 423 Component upon the same terms and conditions in effect for the Participant's participation in the Section 423 Component, except for such modifications otherwise applicable for Participants in such Offering. A Participant who transfers employment from any Designated Subsidiary participating in the Non-Section 423 Component to the Company or any Designated Subsidiary participating in the Section 423 Component shall not be treated as terminating the Participant's employment under the Plan and shall remain a Participant in the Non-Section 423 Component until the earlier of (i) the end of the current Offering Period under the Non-Section 423 Component or (ii) the Enrollment Date of the first Offering Period in which the Participant is eligible to participate following such transfer. Notwithstanding the foregoing, the Administrator may establish different rules to govern transfers of employment between entities participating in the Section 423 Component and the Non-Section 423 Component, consistent with the applicable requirements of Section 423 of the Code (to the extent applicable) and other Applicable Law.

## **ARTICLE VIII. ADJUSTMENTS UPON CHANGES IN SHARES**

8.1 Changes in Capitalization. Subject to Section 8.3, in the event that the Administrator determines that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), Change of Control, reorganization, merger, amalgamation, consolidation, combination, repurchase, redemption, recapitalization, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, or sale or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event, as determined by the Administrator, affects the Shares such that an adjustment is determined by the Administrator to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any outstanding purchase rights under the Plan, the Administrator shall make equitable adjustments, if any, and, solely with respect to the Section 423 Component of the Plan, subject to stockholder approval if required to comply with Section 423 of the Code, to reflect such change with respect to (a) the aggregate number and type of Shares (or other securities or property) that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 and the limitations established in each Offering Document pursuant to Section 4.2 on the maximum number of Shares that may be purchased); (b) the class(es) and number of Shares and price per Share subject to outstanding rights; and (c) the Purchase Price with respect to any outstanding rights.

8.2 Other Adjustments. Subject to Section 8.3, in the event of any transaction or event described in Section 8.1 or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate, or of changes in Applicable Law or accounting principles, the Administrator, in its discretion, and on such terms and conditions as it deems appropriate, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any right under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

- (a) To provide for either (i) termination of any outstanding right in exchange for an amount of cash, if any, equal to the amount that would have been obtained upon the exercise of such right had such right been currently exercisable or (ii) the replacement of such outstanding right with other rights or property selected by the Administrator in its sole discretion;

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

(c) To make adjustments in the number and type of Shares (or other securities or property) subject to outstanding rights under the Plan and/or in the terms and conditions of outstanding rights and rights that may be granted in the future;

(d) To provide that Participants' accumulated payroll deductions may be used to purchase Shares prior to the next occurring Purchase Date on such date as the Administrator determines in its sole discretion and the Participants' rights under the ongoing Offering Period(s) shall be terminated; and

(e) To provide that all outstanding rights shall terminate without being exercised.

8.3 No Adjustment Under Certain Circumstances. Unless determined otherwise by the Administrator, no adjustment or action described in this Article VIII or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Section 423 Component of the Plan to fail to satisfy the requirements of Section 423 of the Code.

8.4 No Other Rights. Except as expressly provided in the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to action of the Administrator under the Plan, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Shares subject to outstanding rights under the Plan or the Purchase Price with respect to any outstanding rights.

#### **ARTICLE IX. AMENDMENT, MODIFICATION AND TERMINATION**

9.1 Amendment, Modification and Termination. The Administrator may amend, suspend or terminate the Plan at any time and from time to time; *provided, however*, that approval of the Company's stockholders shall be required to amend the Plan to increase the aggregate number, or change the type, of shares that may be sold pursuant to rights under the Plan under Section 3.1 (other than an adjustment as provided by Article VIII) or as may otherwise be required under Section 423 of the Code.

9.2 Certain Changes to Plan. Without stockholder consent and without regard to whether any Participant rights may be considered to have been adversely affected (and, with respect to the Section 423 Component of the Plan, to the extent permitted by Section 423 of the Code), the Administrator shall be entitled to change or terminate the Offering Periods, limit the frequency and/or number of changes a Participant may make in the amount withheld from Compensation during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of payroll withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Shares for each Participant properly correspond with amounts withheld from the Participant's Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion to be advisable that are consistent with the Plan.



9.3 Actions In the Event of Unfavorable Financial Accounting Consequences. In the event the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Administrator may, in its discretion and, to the extent necessary or desirable, modify or amend the Plan to reduce or eliminate such accounting consequence including, but not limited to:

- (a) altering the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price;
- (b) shortening any Offering Period so that the Offering Period ends on a new or earlier Purchase Date, including an Offering Period underway at the time of the Administrator action;
- (c) allocating Shares; and
- (d) such other changes and modifications as the Administrator determines are necessary or appropriate.

Such modifications or amendments shall not require stockholder approval or the consent of any Participant.

9.4 Payments Upon Termination of Plan. Upon termination of the Plan, the balance in each Participant's Plan account shall be refunded as soon as practicable after such termination, without any interest thereon, or if the Administrator so determines, the then-current Offering Period may be shortened so that the purchase of Shares occurs prior to the termination of the Plan.

#### **ARTICLE X. TERM OF PLAN**

The Plan shall become effective on the Effective Date and shall continue until terminated by the Board in accordance with Section 9.1. No right may be granted under the Plan prior to the Effective Date. No rights may be granted under the Plan during any period of suspension of the Plan or after termination of the Plan.

#### **ARTICLE XI. ADMINISTRATION**

11.1 Administrator. Unless otherwise determined by the Board, the Administrator of the Plan shall be the Compensation Committee of the Board (or another committee or a subcommittee of the Board to which the Board delegates administration of the Plan). The Board may at any time vest in the Board any authority or duties for administration of the Plan. The Administrator may delegate administrative tasks under the Plan to the services of an Agent or Employees to assist in the administration of the Plan, including establishing and maintaining an individual securities account under the Plan for each Participant.

11.2 Authority of Administrator. The Administrator shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

- (a) To determine when and how rights to purchase Shares shall be granted and the provisions of each offering of such rights (which need not be identical).
- (b) To designate from time to time which Subsidiaries of the Company shall be Designated Subsidiaries, which designation may be made without the approval of the stockholders of the Company.
- (c) To impose a mandatory holding period pursuant to which Participants may not dispose of or transfer Shares purchased under the Plan for a period of time determined by the Administrator in its discretion.
- (d) To construe and interpret the Plan and rights granted under it, and to establish, amend and revoke rules and regulations for its administration. The Administrator, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.
- (e) To amend, suspend or terminate the Plan as provided in Article IX.
- (f) Generally, to exercise such powers and to perform such acts as the Administrator deems necessary or expedient to promote the best interests of the Company and its Subsidiaries and to carry out the intent that the Plan be treated as an "employee stock purchase plan" within the meaning of Section 423 of the Code for the Section 423 Component.

(g) To adopt annexes or sub-plans applicable to particular Designated Subsidiaries or locations, which annexes or sub-plans may be designed to be outside the scope of Section 423 of the Code. The rules of such annexes or sub-plans may take precedence over other provisions of this Plan, with the exception of Section 3.1, but unless otherwise superseded by the terms of such annex or sub-plan, the provisions of this Plan shall govern the operation of such annex or sub-plan.

11.3 Decisions Binding. The Administrator's interpretation of the Plan, any rights granted pursuant to the Plan, any subscription agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding, and conclusive on all parties.

## **ARTICLE XII. MISCELLANEOUS**

12.1 Restriction upon Assignment. A right granted under the Plan shall not be transferable other than by will or the Applicable Laws of descent and distribution, and shall be exercisable during the Participant's lifetime only by the Participant. Except in the case of a Participant's death, a right under the Plan may not be exercised to any extent except by the Participant. The Company shall not recognize and shall be under no duty to recognize any assignment or alienation of the Participant's interest in the Plan, the Participant's rights under the Plan or any rights thereunder.

12.2 Rights as a Stockholder. With respect to Shares subject to a right granted under the Plan, no Participant or Designated Beneficiary shall be deemed to be a stockholder of the Company, and no Participant or Designated Beneficiary shall have any of the rights or privileges of a stockholder, until such Shares have been issued to the Participant or the Designated Beneficiary following exercise of the Participant's rights under the Plan. No adjustments shall be made for dividends (ordinary or extraordinary, whether in cash securities, or other property) or distribution or other rights for which the record date occurs prior to the date of such issuance, except as otherwise expressly provided herein or as determined by the Administrator.

12.3 Interest. No interest shall accrue on the payroll deductions or contributions of a Participant under the Plan.

12.4 Notices. All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

12.5 Equal Rights and Privileges. Subject to Section 5.7, all Eligible Employees will have equal rights and privileges under the Section 423 Component so that the Section 423 Component of this Plan qualifies as an "employee stock purchase plan" within the meaning of Section 423 of the Code. Subject to Section 5.7, any provision of the Section 423 Component that is inconsistent with Section 423 of the Code will, without further act or amendment by the Company, the Board or the Administrator, be reformed to comply with the equal rights and privileges requirement of Section 423 of the Code. Eligible Employees participating in the Non-Section 423 Component need not have the same rights and privileges as other Eligible Employees participating in the Non-Section 423 Component or as Eligible Employees participating in the Section 423 Component.

12.6 Use of Funds. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions.

12.7 Reports. Statements of account shall be given to Participants at least annually, which statements shall set forth the amounts of payroll deductions, the Purchase Price, the number of Shares purchased and the remaining cash balance, if any.

12.8 No Employment Rights. Nothing in the Plan shall be construed to give any person (including any Eligible Employee or Participant) the right to employment or service (or to remain in the employ or service) with the Company or any Parent or Subsidiary or affect the right of the Company or any Parent or Subsidiary to terminate the employment or service of any person (including any Eligible Employee or Participant) at any time, with or without cause.

12.9 Notice of Disposition of Shares. Each Participant shall give prompt notice to the Company of any disposition or other transfer of any Shares purchased upon exercise of a right under the Section 423 Component of the Plan if such disposition or transfer is made: (a) within two years from the Enrollment Date of the Offering Period in which the Shares were purchased or (b) within one year after the Purchase Date on which such Shares were purchased. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Participant in such disposition or other transfer.

12.10 Limitations on Liability. Notwithstanding any other provisions of the Plan, no individual acting as a director, officer, other employee or agent of the Company or any Subsidiary will be liable to any Participant, former Participant, Designated Beneficiary or any other person for any claim, loss, liability, or expense incurred in connection with the Plan or any Offering Period, and such individual will not be personally liable with respect to the Plan because of any contract or other instrument executed in his or her capacity as an Administrator, director, officer, other employee or agent of the Company or any Subsidiary. The Company will indemnify and hold harmless each director, officer, other employee and agent of the Company or any Subsidiary that has been or will be granted or delegated any duty or power relating to the Plan's administration or interpretation, against any cost or expense (including attorneys' fees) or liability (including any sum paid in settlement of a claim with the Administrator's approval) arising from any act or omission concerning this Plan unless arising from such person's own fraud or bad faith.

12.11 Data Privacy. As a condition for participation in the Plan, each Participant explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of personal data as described in this section by and among the Company and its Subsidiaries and affiliates exclusively for implementing, administering and managing the Participant's participation in the Plan. The Company and its Subsidiaries and affiliates may hold certain personal information about a Participant, including the Participant's name, address and telephone number; birthdate; social security, insurance number or other identification number; salary; nationality; job title(s); any Shares held in the Company or its Subsidiaries and affiliates; and participation details, to implement, manage and administer the Plan and any Offering Period(s) (the "**Data**"). The Company and its Subsidiaries and affiliates may transfer the Data amongst themselves as necessary to implement, administer and manage a Participant's participation in the Plan and any Offering Period(s), and the Company and its Subsidiaries and affiliates may transfer the Data to third parties assisting the Company with Plan implementation, administration and management. These recipients may be located in the Participant's country, or elsewhere, and the Participant's country may have different data privacy laws and protections than the recipients' country. By participating in any Offering Period under the Plan, each Participant authorizes such recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, to implement, administer and manage the Participant's participation in the Plan, including any required Data transfer to a broker or other third party with whom the Company or the Participant may elect to deposit any Shares. The Data related to a Participant will be held only as long as necessary to implement, administer, and manage the Participant's participation in the Plan. A Participant may, at any time, view the Data that the Company holds regarding such Participant, request additional information about the storage and processing of the Data regarding such Participant, recommend any necessary corrections to the Data regarding the Participant or refuse or withdraw the consents in this Section 12.11 in writing, without cost, by contacting the local human resources representative. If the Participant refuses or withdraws the consents in this Section 12.11, and the Company may cancel Participant's ability to participate in the Plan or any Offering Period(s). For more information on the consequences of refusing or withdrawing consent, Participants may contact their local human resources representative.

12.12 Severability. If any portion of the Plan or any action taken under it is held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining parts of the Plan, and the Plan will be construed and enforced as if the illegal or invalid provisions had been excluded, and the illegal or invalid action will be null and void.

12.13 Titles and Headings. The titles and headings in the Plan are for convenience of reference only and, if any conflict, the Plan's text, rather than such titles or headings, will control.

12.14 Conformity to Securities Laws. Participant acknowledges that the Plan is intended to conform to the extent necessary with Applicable Laws. Notwithstanding anything herein to the contrary, the Plan and all Offering Periods will be administered only in conformance with Applicable Laws. To the extent Applicable Laws permit, the Plan and all Offering Periods will be deemed amended as necessary to conform to Applicable Laws.

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

12.16 Governing Law. The Plan and any agreements hereunder shall be administered, interpreted and enforced in accordance with the laws of the State of Delaware, disregarding any state's choice of law principles requiring the application of a jurisdiction's laws other than the State of Delaware.

12.17 Electronic Forms. To the extent permitted by Applicable Law and in the discretion of the Administrator, an Eligible Employee may submit any form or notice as set forth herein by means of an electronic form approved by the Administrator. Before the commencement of an Offering Period, the Administrator shall prescribe the time limits within which any such electronic form shall be submitted to the Administrator with respect to such Offering Period in order to be a valid election.

12.18 Section 409A. The Section 423 Component of the Plan and the rights to purchase Shares granted pursuant to Offerings thereunder are intended to be exempt from the application of Section 409A of the Code and the U.S. Department of Treasury Regulations and other interpretive guidance issued thereunder (collectively, "**Section 409A**"). Neither the Non-Section 423 Component nor any right to purchase Shares granted pursuant to an Offering thereunder is intended to constitute or provide for "nonqualified deferred compensation" within the meaning of Section 409A. Notwithstanding any provision of the Plan to the contrary, if the Administrator determines that any right to purchase Shares granted under the Plan may be or become subject to Section 409A or that any provision of the Plan may cause a right to purchase Shares granted under the Plan to be or become subject to Section 409A, the Administrator may adopt such amendments to the Plan and/or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions as the Administrator determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, either through compliance with the requirements of Section 409A or with an available exemption therefrom.

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November 18, 2021

Office of the Chief Accountant  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
United States of America

Commissioners:

We have read the statements of TOI Parent, Inc. (formerly known as DFP Healthcare Acquisitions Corp.) included under Item 4.01 of its Form 8-K dated November 18, 2021. We agree with the statements concerning our Firm under Item 4.01, specifically in which we were informed of our dismissal on November 12, 2021. We are not in a position to agree or disagree with other statements contained therein.

Very truly yours,

/s/ WithumSmith+Brown, PC

New York, New York

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**TOI Parent, Inc.**

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# **TOI Parent, Inc.**

## **Condensed Consolidated Financial Statements**

**As of September 30, 2021 and December 31, 2020 and For the Nine Months Ended September 30, 2021 and 2020  
(Unaudited)**

**TOI Parent, Inc.**  
**Condensed Consolidated Balance Sheets**  
(In US Dollars, except share data)  
(Unaudited)

	September 30, 2021	December 31, 2020
<b>Assets</b>		
Current assets:		
Cash	\$ 11,531,997	\$ 5,997,530
Accounts receivable	22,256,605	17,145,910
Other receivables	581,451	112,663
Inventories, net	5,756,578	4,354,232
Prepaid expenses	2,077,045	2,109,256
Deferred transaction costs	9,094,029	—
<b>Total current assets</b>	<u>51,297,705</u>	<u>29,719,591</u>
Property and equipment, net	3,517,179	2,104,225
Intangible assets, net	18,156,667	19,515,569
Goodwill	15,680,160	14,226,674
Other assets	250,420	122,509
Deferred income taxes asset	1,925,196	—
<b>Total assets</b>	<u>\$ 90,827,327</u>	<u>\$ 65,688,568</u>
<b>Liabilities and stockholders' deficit</b>		
Current liabilities:		
Current portion of long-term debt	\$ 4,895,275	\$ 5,367,758
Accounts payable	19,013,532	12,643,024
Income taxes payable	6,159,079	1,143,956
Accrued expenses and other current liabilities	11,758,211	9,452,120
<b>Total current liabilities</b>	<u>41,826,097</u>	<u>28,606,858</u>
Long-term debt, net of unamortized debt issuance costs and current portion	—	6,561,238
Other non-current liabilities	1,517,844	806,186
Deferred income taxes liability	—	1,612,769
<b>Total liabilities</b>	<u>43,343,941</u>	<u>37,587,051</u>
6% cumulative preferred shares, \$0.001 par value. Authorized 20,000 shares; 11,451 shares issued and outstanding at September 30, 2021 and 10,000 issued and outstanding at December 31, 2020	100,113,700	80,113,700
<b>Stockholders' deficit:</b>		
Common shares, \$0.0001 par value. Authorized 400,000 shares; 100 shares issued and outstanding at September 30, 2021 and December 31, 2020	—	—
Additional paid-in capital	447,030	294,413
Accumulated deficit	(53,077,344)	(52,306,596)
<b>Total stockholders' deficit</b>	<u>(52,630,314)</u>	<u>(52,012,183)</u>
<b>Total liabilities, cumulative preferred shares and stockholders' deficit</b>	<u>\$ 90,827,327</u>	<u>\$ 65,688,568</u>

Note: The Company's unaudited condensed consolidated balance sheets include the assets and liabilities of its consolidated variable interest entities ("VIEs"). The unaudited condensed consolidated balance sheets include total assets that can be used only to settle obligations of the Company's consolidated VIEs totaling \$31,261,239 and \$22,638,470 as of September 30, 2021 and December 31, 2020, respectively, and total liabilities of the Company's consolidated VIEs for which creditors do not have recourse to the general credit of the primary beneficiary of \$57,055,742 and \$40,426,148 as of September 30, 2021 and December 31, 2020, respectively. See Note 17 - Variable Interest Entities for further details.

See accompanying notes to the unaudited condensed consolidated financial statements.



**TOI Parent, Inc.**  
**Condensed Consolidated Statement of Operations**  
(In US Dollars, except share data)  
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Revenue</b>				
Patient services	\$ 32,967,401	\$ 29,663,884	\$ 92,375,768	\$ 86,985,513
Dispensary	17,918,035	16,162,528	53,317,877	46,347,096
Clinical trials & other	1,389,522	1,423,032	5,004,889	5,216,372
<b>Total operating revenue</b>	<u>52,274,958</u>	<u>47,249,444</u>	<u>150,698,534</u>	<u>138,548,981</u>
<b>Operating expenses</b>				
Direct costs - patient services	25,390,950	24,078,152	72,050,631	72,830,254
Direct costs - dispensary	15,279,173	13,431,738	45,639,083	38,896,324
Direct costs - clinical trials & other	182,230	166,238	493,988	786,992
Selling, general and administrative expense	12,729,425	9,492,069	35,119,854	26,861,651
Depreciation and amortization	850,199	792,475	2,421,577	2,388,219
<b>Total operating expenses</b>	<u>54,431,977</u>	<u>47,960,672</u>	<u>155,725,133</u>	<u>141,763,440</u>
<b>Loss from operations</b>	<u>(2,157,019)</u>	<u>(711,228)</u>	<u>(5,026,599)</u>	<u>(3,214,459)</u>
<b>Other non-operating (income) expense</b>				
Interest expense	77,983	107,143	259,894	259,013
Gain on debt extinguishment	—	—	(5,186,341)	—
Other, net	(53,383)	(119,233)	(1,125,527)	6,328,119
<b>Total other non-operating (income) expense</b>	<u>24,600</u>	<u>(12,090)</u>	<u>(6,051,974)</u>	<u>6,587,132</u>
<b>(Loss) income before provision for income taxes</b>	<u>(2,181,619)</u>	<u>(699,138)</u>	<u>1,025,375</u>	<u>(9,801,591)</u>
Income tax (expense) benefit	(798,504)	23,190	(1,796,123)	298,102
<b>Net loss</b>	<u>\$ (2,980,123)</u>	<u>\$ (675,948)</u>	<u>\$ (770,748)</u>	<u>\$ (9,503,489)</u>
<b>Loss per share attributable to TOI Parent, Inc. common stockholders:</b>				
Basic and diluted	\$ (26.03)	\$ (67.59)	\$ (6.73)	\$ (950.35)
<b>Weighted average number of shares outstanding:</b>				
Basic and diluted	114,510	10,000	114,510	10,000

See accompanying notes to the unaudited condensed consolidated financial statements.

**TOI Parent, Inc.**  
**Condensed Consolidated Statements of Convertible Preferred Shares and Changes in Stockholders' Deficit**  
(In US Dollars, except share data)  
(Unaudited)

	Cumulative Preferred Shares		Common Shares		Additional Paid in		Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Accumulated Deficit	Deficit
<b>Balance at December 31, 2019</b>	10,000	\$ 48,143,362	—	—	\$ 94,007	\$ (6,015,023)	\$ (5,921,016)
Net loss	—	—	—	—	—	(9,845,729)	(9,845,729)
Share-based compensation expense	—	—	—	—	34,106	—	34,106
<b>Balance at March 31, 2020</b>	10,000	48,143,362	—	—	128,113	(15,860,752)	(15,732,639)
Net income	—	—	—	—	—	1,018,188	1,018,188
Share-based compensation expense	—	—	—	—	42,220	—	42,220
<b>Balance at June 30, 2020</b>	10,000	48,143,362	—	—	170,333	(14,842,564)	(14,672,231)
Net loss	—	—	—	—	—	(675,948)	(675,948)
Share-based compensation expense	—	—	—	—	36,343	—	36,343
<b>Balance at September 30, 2020</b>	10,000	\$ 48,143,362	—	—	\$ 206,676	\$ (15,518,512)	\$ (15,311,836)

	Cumulative Preferred Shares		Common Shares		Additional Paid in		Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Accumulated Deficit	Deficit
<b>Balance at December 31, 2020</b>	10,000	\$ 80,113,700	100	—	\$ 294,413	\$ (52,306,596)	\$ (52,012,183)
Net loss	—	—	—	—	—	(994,650)	(994,650)
Series A Preferred Shares issued	1,451	20,000,000	—	—	—	—	—
Share-based compensation expense	—	—	—	—	41,667	—	41,667
<b>Balance at March 31, 2021</b>	11,451	100,113,700	100	—	336,080	(53,301,246)	(52,965,166)
Net income	—	—	—	—	—	3,204,025	3,204,025
Share-based compensation expense	—	—	—	—	51,272	—	51,272
<b>Balance at June 30, 2021</b>	11,451	100,113,700	100	—	387,352	(50,097,221)	(49,709,869)
Net loss	—	—	—	—	—	(2,980,123)	(2,980,123)
Share-based compensation expense	—	—	—	—	59,678	—	59,678
<b>Balance at September 30, 2021</b>	11,451	\$ 100,113,700	100	—	\$ 447,030	\$ (53,077,344)	\$ (52,630,314)

See accompanying notes to the unaudited condensed consolidated financial statements.

**TOI Parent, Inc.**  
**Condensed Consolidated Statement of Cash Flows**  
(In US Dollars)  
(Unaudited)

	<b>Nine Months Ended September 30</b>	
	<b>2021</b>	<b>2020</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (770,748)	\$ (9,503,489)
Adjustments to reconcile net income (loss) to cash provided by (used in) operating activities:		
Depreciation and amortization	2,421,577	2,388,219
Amortization of debt issuance costs	52,787	41,950
Impairment loss	—	7,500,000
Share-based compensation	152,617	112,669
Deferred taxes	(3,537,965)	(888,897)
Gain on debt extinguishment	(5,186,341)	—
Bad debt recovery, net	(667,099)	—
Changes in operating assets and liabilities:		
Accounts receivable	(4,194,781)	(4,142,477)
Inventories	(1,339,690)	(782,278)
Other receivables	(319,390)	55,906
Prepaid expenses	32,211	(982,021)
Other current assets	(9,094,029)	—
Other assets	(127,911)	(16,075)
Accrued expenses and other current liabilities	1,431,749	5,067,777
Income taxes payable	5,015,123	532,044
Accounts payable	6,250,508	2,084,374
Other non-current liabilities	536,674	(83,991)
<b>Net cash (used in) provided by operating activities</b>	<b>(9,344,708)</b>	<b>1,383,711</b>
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(1,975,629)	(835,539)
Purchases of intangible asset in acquisition	(200,000)	—
Cash paid for acquisition, net	(827,457)	(150,000)
Issuance of notes receivable	—	(7,500,000)
<b>Net cash used in investing activities</b>	<b>(3,003,086)</b>	<b>(8,485,539)</b>
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of long-term debt, net	—	12,399,008
Principal payments on long-term debt	(2,093,750)	(93,750)
Principal payments on capital leases	(23,989)	(26,251)
Deferred offering costs	—	(342,500)
Issuance of preferred stock	20,000,000	—
<b>Net cash provided by financing activities</b>	<b>17,882,261</b>	<b>11,936,507</b>
Net increase in cash	5,534,467	4,834,679
Cash at beginning of period	5,997,530	2,446,201
<b>Cash at end of period</b>	<b>\$ 11,531,997</b>	<b>\$ 7,280,880</b>
<b>Supplemental disclosure of non-cash investing and financing activities:</b>		
Interest and principal forgiven from Paycheck Protection Program loans	\$ 5,186,341	\$ —
Cash paid for:		
Income taxes	\$ 428,537	\$ 58,500
Interest	193,096	168,530

See accompanying notes to the unaudited condensed consolidated financial statements.

**TOI Parent Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**As of September 30, 2021 and December 31, 2020 and For the Nine Months Ended September 30, 2021 and 2020**  
**(In US Dollars)**  
**(Unaudited)**

**Note 1. Description of the Business**

Founded in 2018, TOI Parent, Inc. ("TOI Parent") is the successor entity to The Oncology Institute CA, a Professional Corporation ("TOI CA"), which was founded in 2007. TOI Parent is a community oncology practice that operates value-based oncology services platforms. TOI Parent has three wholly-owned subsidiaries, TOI Acquisition, LLC ("TOI Acquisition"), TOI Management, LLC ("TOI Management"), and Hope, Health, and Healing Center, LLC ("HHHC"). Additionally, TOI Management holds master services agreements that confer controlling financial interests to TOI CA and its wholly-owned subsidiary Innovative Clinical Research Institute, LLC ("ICRI") as well as The Oncology Institute FL, LLC ("TOI FL," together with TOI Parent, TOI CA, and ICRI, the "Company").

Concurrent with its founding in 2018, TOI Parent entered into a purchase agreement among TOI Acquisition, TOI Management, HHHC, Richy Agajanian Holdings, TOI CA, ICRI, and Richy Agajanian, M.D., not individually but in his capacity as the representative of the shareholders of TOI CA. As a result of the purchase, a portion of TOI Parent was sold to TOI HC I, LLC; M33 Growth I L.P.; TOI M, LLC; and OncologyCare Partners, LLC.

Operationally, the Company's medical centers provide a complete suite of medical oncology services including: physician services, in-house infusion and pharmacy, clinical trials, educational seminars, support groups, counseling, and 24/7 patient assistance. TOI's mission is to heal and empower cancer patients through compassion, innovation, and state-of-the-art medical care. The Company brings comprehensive, integrated cancer care into the community setting, including clinical trials, palliative care programs, stem cell transplants, transfusions, and other care delivery models traditionally associated with non-community-based academic and tertiary care settings. In addition, the Company, through ICRI, performs cancer clinical trials through a network of experienced cancer care specialists. ICRI conducts clinical trials for a broad range of pharmaceutical and medical device companies from around the world.

The Company has 90 oncologists and mid-level professionals across 62 clinic locations located within four states: California, Nevada, Arizona, and Florida. TOI CA is comprised of the clinic locations in California, Nevada, and Arizona and TOI FL is comprised of the clinic locations in Florida. The Company has contractual relationships with multiple payors, serving Medicare, including Medicare Advantage, MediCal, and commercial patients.

**Note 2. Summary of Significant Accounting Policies****Unaudited Interim Financial Information**

The accompanying interim condensed consolidated financial statements are unaudited and have been prepared in accordance with Article 10 of Regulation S-X issued by the Securities and Exchange Commission ("SEC"). Accordingly, they do not include all of the information and note disclosures required by U.S. generally accepted accounting principles ("GAAP") for complete financial statements. However, the Company believes that the disclosures are adequate to make that information not misleading. In the opinion of management, all adjustments (of normal and recurring nature) considered necessary for fair presentation have been reflected in these interim statements. As such, the information included in the accompanying unaudited interim condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes as of, and for the year ended December 31, 2020, issued on June 27, 2021.

## **Principles of Consolidation**

The accompanying unaudited condensed consolidated financial statements include the accounts of TOI Parent, its subsidiaries, all of which are controlled by the Parent through majority voting control or are variable interest entities ("VIEs") for which TOI Parent (through TOI Management) is the primary beneficiary. The Company consolidates entities in which it has a controlling financial interest based on either the variable interest entity or voting interest model. All significant intercompany balances and transactions have been eliminated in consolidation.

## **Variable Interest Entities**

The Company consolidates entities for which it has a variable interest and is determined to be the primary beneficiary. Noncontrolling interests in less-than-wholly-owned consolidated subsidiaries of the Company are presented as a component of total equity, to the extent they are material, to distinguish between the interests of the Company and the interests of the noncontrolling owners. Revenues, expenses, and income from these subsidiaries are included in the consolidated amounts as presented on the consolidated statements of operations.

The Company holds variable interests in clinical practices, for which it cannot legally own, as a result of entering into master services agreements ("MSAs") with such practices. TOI Parent holds a variable interest in TOI CA, which is a VIE. The Company is the primary beneficiary of TOI CA and thus, consolidates TOI CA in its financial statements. Further, as a result of the February 2021 acquisition, discussed in Note 16, the Company holds an additional variable interest in TOI FL, which was determined to be a VIE. The Company determined that it is a primary beneficiary of TOI FL and thus, consolidates the entity in its financial statements. As discussed in Note 17, the shareholders of the Company's consolidating VIEs own a minority of the issued and outstanding common shares of the Company.

## **Business Combinations**

The Company accounts for all transactions that represent business combinations using the acquisition method of accounting under Accounting Standards Codification Topic No. 805, *Business Combinations* ("ASC 805"). Per ASC 805, the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquired entity are recognized and measured at their fair values on the date an entity obtains control of the acquiree. Such fair values that are not finalized for reporting periods following the acquisition date are estimated and recorded as provisional amounts. Adjustments to these provisional amounts during the measurement period (defined as the date through which all information required to identify and measure the consideration transferred, the assets acquired, the liabilities assumed, and the noncontrolling interests obtained, limited to one year from the acquisition date) are recorded when identified. Goodwill is determined as the excess of the fair value of the consideration exchanged in the acquisition over the fair value of the net assets acquired.

## **Segment Reporting**

The Company presents the financial statements by segment in accordance with Accounting Standard Codification Topic No. 280, *Segment Reporting* ("ASC 280") to provide investors with transparency into how the chief operating decision maker ("CODM") manages the business. The Company determined the CODM is its Chief Executive Officer. The CODM reviews financial information and allocates resources across three operating segments: patient services, dispensary, and clinical trials & other. Each of the operating segments is also a reporting segment as described further in Note 20.

## **Use of Estimates**

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates under different assumptions or conditions. Significant items subject to such estimates and assumptions include estimated accounts receivable, useful lives and recoverability of long-lived and intangible assets, recoverability of goodwill, fair values of acquired assets and assumed liabilities in business combinations, fair value of goodwill, judgements related to revenue recognition, and deferred income taxes.

## **Net Income (Loss) Per Share**

The Company has not issued substantive common shares since inception. The Company's Series A Preferred Shares are considered in-substance common stock since the net income (loss) of the Company is attributable to the Series A Preferred shareholders, and therefore, they are included in the denominator to calculate net income (loss) per share.

Basic net income (loss) per share is calculated by dividing net income (loss) attributable to TOI Parent, Inc. by the weighted average Series A Preferred Shares, on an as-converted basis (see Note 19), and common shares issued and outstanding during the period. Diluted net income (loss) per share is calculated by dividing net income (loss) by the weighted average number of Series A Preferred Shares and common shares used in the basic income (loss) per share calculation plus the number of potential common shares that would be issued assuming exercise of all potentially dilutive instruments. Potentially dilutive instruments are excluded from the calculation of diluted income (loss) per share if the effect of including such instruments is anti-dilutive.

Given the Company incurred a net loss in each period presented, the stock options outstanding during each period are anti-dilutive. As such, diluted net loss per share is the same as basic net loss per share for each period presented.

## **Emerging Growth Company**

Pursuant to the special purpose acquisition company ("SPAC") transaction described in Note 22, the Company anticipates qualifying as an "emerging growth company," as defined in Section 2(a) of the Securities Act of 1933, as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies, but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company's financial statements with another public company which is neither an emerging growth company, nor an emerging growth company which has opted out of using the extended transition period, difficult or impossible because of the potential differences in accounting standards used.

## Recently Issued Accounting Standards

In June 2020, the FASB issued Accounting Standards Update 2020-05, *Leases (Topic 842), Effective Dates for Certain Entities* ("ASU 2020-05"), which deferred the effective dates of Accounting Standards Update 2016-02, *Leases (Topic 842)* ("ASU 2016-02") in order to respond to the significant business and capital market disruptions caused by the COVID-19 pandemic. In February 2016, the Board issued ASU 2016-02, with an effective date for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years, for public business entities. For all other entities, ASU 2016-02 was effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. In November 2019, the Board issued Accounting Standards Update 2019-10, *Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates* ("ASU 2019-10"). The amendments in ASU 2019-10 deferred the effective dates for ASU 2016-02 for entities in the "all other" category by an additional year. Therefore, ASU 2016-02 was effective for all other entities for fiscal years beginning after December 15, 2020, and interim periods within fiscal years beginning after December 15, 2021. The amendments in ASU 2020-05 defer the effective date for one year for entities in the "all other" category that have not yet issued their financial statements (or made financial statements available for issuance) reflecting the adoption of ASU 2016-02. Therefore, under the amendments, ASU 2016-02 is effective for entities within the "all other" category for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022. Given the Company's assessment that it will likely qualify as an EGC pending a SPAC transaction, it would be considered to belong in the "all other" category.

In February 2016, the FASB issued ASU 2016-02, which amends the existing accounting standards for leases. The new standard requires lessees to record a right-of-use ("ROU") asset and a corresponding lease liability on the balance sheet (with the exception of short-term leases), whereas under current accounting standards the Company's lease portfolio consists primarily of operating leases and is not recognized on its consolidated balance sheets. The Company will adopt ASC 842 effective January 1, 2022, using the alternative modified transition method and will record a cumulative-effect adjustment to the opening balance of retained earnings as of that date. Prior periods will not be restated. The Company believes the largest impact will be on the consolidated balance sheets for the accounting of facilities-related leases, which represents a majority of its operating leases it has entered into as a lessee. These leases will be recognized under the new standard as ROU assets and operating lease liabilities. The Company will also provide expanded disclosures for its leasing arrangements. The results of operations are not expected to significantly change after adoption of the new standard.



In June 2016, the FASB issued Accounting Standards Update 2016-13, *Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"), which changes the way entities recognize impairment of many financial assets by requiring immediate recognition of estimated credit losses expected to occur over their remaining life, instead of when incurred. In November 2018, the FASB issued Accounting Standard Update 2018-19, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses* ("ASU 2018-19"), which amends Subtopic 326-20 (created by ASU 2016-13) to explicitly state that operating lease receivables are not in the scope of Subtopic 326-20. Additionally, in April 2019, the FASB issued Accounting Standard Update 2019-04, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments* ("ASU 2019-04"), in May 2019, the FASB issued Accounting Standards Update 2019-05, *Financial Instruments—Credit Losses (Topic 326): Targeted Transition Relief* ("ASU 2019-05"), and in November 2019, the FASB issued Accounting Standards Update 2019-10, *Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates, and ASU 2019-11, Codification Improvements to Topic 326, Financial Instruments—Credit Losses* ("ASU 2019-10"), to provide further clarifications on certain aspects of ASU 2016-13 and to extend the nonpublic entity effective date of ASU 2016-13. The changes (as amended) are effective for the Company for annual and interim periods in fiscal years beginning after December 15, 2022. The entity may early adopt ASU 2016-13, as amended, for annual and interim periods in fiscal years beginning after December 15, 2018. While the Company expects its allowance for credit losses to increase upon adoption of ASU 2016-13, the Company does not expect the adoption of ASU 2016-13 to have a material effect on its consolidated financial statements.

In January 2017, the FASB issued Accounting Standards Update 2017-04, *Intangibles - Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment* ("ASU 2017-04"). This new standard allows entities to eliminate Step 2 from the goodwill impairment test. Entities should perform their goodwill impairment tests by comparing the fair value of a reporting unit with its carrying amount and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. Entities should apply the amendments in ASU 2017-04 on a prospective basis and is effective for entities in the "all other" category for fiscal years beginning after December 15, 2021. Given the Company's assessment that it will likely qualify as an EGC pending a SPAC transaction, it would be considered to belong in the "all other" category. The Company is currently evaluating the effect of this ASU on the Company's condensed consolidated financial statements and related disclosures.

In December 2019, the FASB issued Accounting Standards Update 2019-12, *Simplifying the Accounting for Income Taxes which amends ASC 740, Income Taxes ("ASC 740")* ("ASU 2019-12"). This new standard is intended to simplify accounting for income taxes by removing certain exceptions to the general principles in ASC 740 and amending existing guidance to improve consistent application of ASC 740. The new standard is effective for the Company beginning January 1, 2022. The guidance in the new standard has various elements, some of which are applied on a prospective basis and others on a retrospective basis with earlier application permitted. The Company is currently evaluating the effect of this ASU on the Company's condensed consolidated financial statements and related disclosures.

In August 2020, the FASB issued Accounting Standards Update 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40)* ("ASU 2020-06"). This new standard simplifies the accounting for certain convertible instruments by removing the separation models for convertible debt with a cash conversion feature and for convertible instruments with a beneficial conversion feature. As a result, more convertible instruments will be reported as a single liability instrument with no separate accounting for embedded conversion features. Additionally, this new standard amends the diluted earnings per share calculation for convertible instruments by requiring the use of the if-converted method. The treasury stock method is no longer available. Entities may adopt ASU 2020-06 either through a modified or fully retrospective method of transition and is effective for entities in the "all other" category for fiscal years beginning after December 15, 2023. Given the Company's assessment that it will likely qualify as an EGC pending a SPAC transaction, it would be considered to belong in the "all other" category. The Company is currently evaluating the effect of this ASU on the Company's condensed consolidated financial statements and related disclosures.

### Note 3. Significant Risks and Uncertainties Including Business and Credit Concentrations

#### Interest Rate Risk

The London Interbank Offered Rate ("LIBOR") may be eliminated in the near future. It is expected that a number of banks currently reporting information used to set LIBOR will stop doing so at the end of 2021 when their reporting commitments end. This will either end the publication of LIBOR immediately or degrade its quality such that it would no longer be a relevant metric to the Company. Change in LIBOR could affect the interest rates of the revolving credit facility and unsecured note payable. If LIBOR is no longer available, the Company will pursue alternative interest rate calculations in its revolving credit facility and unsecured note payable. However, if no alternative can be determined, the LIBOR rate component will no longer be used in determining the rates. As of September 30, 2021 and December 31, 2020, the potential effect of no longer using the LIBOR rate component to the Company's interest rates would not have had a material effect on the interest rate in the credit facility or the note, thus the discontinuation of LIBOR is not expected to have a material effect on the Company's financial statements.

#### Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and accounts receivable.

Cash accounts in a financial institution may, at times, exceed the Federal Deposit Insurance Corporation ("FDIC") coverage of \$250,000 per account. The Company has not experienced losses on these accounts, and management believes the Company is not exposed to significant risks on such accounts.

The Company's accounts receivable has implicit collection risk. The Company grants credit without collateral to their patients, most of whom are local residents and are insured under third-party payor agreements. The Company believes this risk is partially mitigated by the Company's establishment of long-term agreements and relationships with third-party payors that provide the Company with insight into historic collectability and improve the collections process.

#### Revenue Concentration Risk

The concentration of net revenue on a percentage basis for major payors at September 30, 2021 and 2020 are as follows:

	Nine Months Ended September 30,	
	2021	2020
Percentage of net revenue:		
Payor A	17%	15%
Payor B	14%	15%

The concentration of gross receivables on a percentage basis for major payors at September 30, 2021 and December 31, 2020 are as follows:

	<b>September 30, 2021</b>	<b>December 31, 2020</b>
Percentage of gross receivables:		
Payor B	21%	11%
Payor D	22%	21%

All of the Company's revenue is generated from customers located in the United States.

#### **Vendor Concentration Risk**

The concentration of cost of sales on a percentage basis for major vendors at September 30, 2021 and 2020 are as follows:

	<b>Nine Months Ended September 30,</b>	
	<b>2021</b>	<b>2020</b>
Percentage of cost of sales:		
Vendor A	51%	54%
Vendor B	48%	44%

The concentration of gross payables on a percentage basis for major vendors at September 30, 2021 and December 31, 2020 are as follows:

	<b>September 30, 2021</b>	<b>December 31, 2020</b>
Percentage of gross payables:		
Vendor A	30%	42%
Vendor B	59%	48%

#### **COVID-19 Pandemic**

In January 2020, the Secretary of the U.S. Department of Health and Human Services ("HHS") declared a national public health emergency due to a novel strain of coronavirus ("COVID-19"). In March 2020, the World Health Organization declared the outbreak of COVID-19, a disease caused by this coronavirus, a pandemic. The resulting measures to contain the spread and impact of COVID-19 and other developments related to COVID-19 affected the Company's results of operations during 2020. Where applicable, the impact resulting from the COVID-19 pandemic during the nine months ended September 30, 2021, has been considered, including updated assessments of the recoverability of assets and evaluation of potential credit losses. As a result of the COVID-19 pandemic, federal and state governments have passed legislation, promulgated regulations, and taken other administrative actions intended to assist healthcare providers in providing care to COVID-19 and other patients during the public health emergency. Sources of relief include the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), which was enacted on March 27, 2020, the Paycheck Protection Program and Health Care Enhancement Act (the "PPHCE Act"), which was enacted on April 24, 2020, and the Consolidated Appropriations Act, 2021 (the "CAA"), which was enacted on December 27, 2020. In total, the CARES Act, PPHCE Act, and the CAA authorize \$178 billion in funding to be distributed to hospitals and other healthcare providers through the Public Health and Social Services Emergency Fund (the "PHSSEF"). In addition, the CARES Act provides for an expansion of the Medicare Accelerated and Advance Payment Program whereby inpatient acute care hospitals and other eligible providers were able to request accelerated payment of up to 100% of their Medicare payment amount for a six-month period to be repaid through withholding of future Medicare fee-for-service payments. Various other state and local programs also exist to provide relief, either independently or through distribution of monies received via the CARES Act. During the nine months ended September 30, 2021 and the year ended December 31, 2020, the Company was a beneficiary of these stimulus measures.

The Company received \$4,992,758 in Paycheck Protection Program (“PPP”) loans under the CARES Act. PPP loans may be eligible for forgiveness if the funds were used for eligible payroll costs, payments on business mortgage interest payments, rent, or utilities during either the 8- or 24-week period after disbursement (see Note 11). The Company has elected to account for the loans as current debt until such loans are forgiven. Forgiveness was received during the nine months ended September 30, 2021, and as such, the Company recognized the loan principal balance and accrued interest as a gain on debt extinguishment in the condensed consolidated income statements.

The Company received \$2,726,856 from CMS under the Accelerated and Advance Payment Program which is an advance on future Medicare payments and will be recouped from future payments due to the Company by Medicare after 120 days. Effective October 1, 2020, the program was amended such that providers are required to repay accelerated payments beginning one year after the payment was issued. After such one-year period, Medicare payments owed to providers will be recouped against Medicare payments according to the repayment terms. As of September 30, 2021 and December 31, 2020, the Medicare accelerated payments are reflected within accrued expenses and other current liabilities in the consolidated balance sheets. The \$2,726,856 is expected to be fully recouped by the first quarter of 2022.

The Company received funding from United States Department of HHS as part of the Provider Relief Funding under the CARES Act. Provider Relief Funding is paid in the form of a grant and does not require repayment if used to cover lost revenue, as defined, attributable to COVID-19 and healthcare-related expenses, as defined, including qualifying direct labor, paid or purchased to prevent, prepare for, and respond to COVID-19. Under International Accounting Standard 20, *Accounting for Government Grants* (“IAS 20”), grants are recognized when an entity has reasonable assurance that 1) it will comply with the relevant conditions and 2) the grant will be received. The Company recognized the \$1,022,520 in other income related to the HHS funding during the nine months ended September 30, 2021 by applying IAS 20 by analogy.

#### **Note 4. Accounts Receivable**

The Company's accounts receivable consists primarily of amounts due from third-party payors and patients.

Accounts receivable as of September 30, 2021 and December 31, 2020 consist of the following:

	<b>September 30, 2021</b>	<b>December 31, 2020</b>
Oral drug accounts receivable	\$ 2,668,582	\$ 2,307,872
Capitated accounts receivable	663,562	353,250
FFS accounts receivable	14,355,205	10,962,394
Clinical trials accounts receivable	1,947,626	1,718,846
Other trade receivables	2,621,630	1,803,548
<b>Total</b>	<b>\$ 22,256,605</b>	<b>\$ 17,145,910</b>

There were no material direct write-offs related to bad debts for the nine months ended September 30, 2021 and 2020. In the nine months ended September 30, 2021 and 2020, the Company had net bad debt expense (recovery) of \$667,099 and \$0, respectively.

#### Note 5. Revenue

Management recognizes revenue in accordance with ASC 606 on the basis of its satisfaction of outstanding performance obligations. Management typically fulfills its performance obligations over time, either over the course of a single treatment ("FFS"), a month (capitation), or a number of months (clinical research). Management also has revenue that is satisfied at a point in time (dispensary).

#### Disaggregation of Revenue

The Company categorizes revenue based on various factors such as the nature of contracts, payors, order to billing arrangements, and cash flows received by the Company, as follows:

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30, 2021</b>	<b>September 30, 2020</b>	<b>September 30, 2021</b>	<b>September 30, 2020</b>
Patient services				
Capitated revenue	\$ 14,124,468	\$ 9,720,441	\$ 39,351,829	\$ 26,177,975
FFS revenue	18,842,933	19,943,443	53,023,939	60,807,538
Subtotal	32,967,401	29,663,884	92,375,768	86,985,513
Dispensary revenue	17,918,035	16,162,528	53,317,877	46,347,096
Clinical research trials & other revenue	1,389,522	1,423,032	5,004,889	5,216,372
<b>Total</b>	<b>\$ 52,274,958</b>	<b>\$ 47,249,444</b>	<b>\$ 150,698,534</b>	<b>\$ 138,548,981</b>

Refer to Note 20 for segment reporting for disaggregation of revenue by reporting segment.

#### Contract Asset and Liabilities

Under ASC 606, contract assets represent rights to payment for performance contingent on something other than the passage of time and accounts receivable represent rights to payment for performance that are only contingent upon the passage of time. The Company does not have any contract assets as of September 30, 2021 and December 31, 2020. Refer to Note 4 for accounts receivable as of September 30, 2021 and December 31, 2020.

Contract liabilities represent cash that has been received for contracts, but for which performance is still unsatisfied. As of September 30, 2021 and December 31, 2020, contract liabilities amounted to \$370,000 and \$370,000, respectively. Contract liabilities are presented as "deferred revenue and refund liabilities" under accrued expenses and other current liabilities, refer to Note 9.

### Remaining Unsatisfied Performance Obligations

The accounting term for the Company's contracts do not extend past a year in duration. Additionally, the Company applies the 'as invoiced' practical expedient to its clinical research contracts.

### Note 6. Inventories

The Company purchases intravenous chemotherapy drugs and oral prescription drugs from various suppliers.

The Company's inventories as of September 30, 2021 and December 31, 2020 were as follows:

	September 30, 2021	December 31, 2020
Oral drug inventory	\$ 1,712,606	\$ 1,414,250
IV drug inventory	4,043,972	2,939,982
<b>Total</b>	<b>\$ 5,756,578</b>	<b>\$ 4,354,232</b>

### Note 7. Fair Value Measurements and Hierarchy

The following table presents the carrying amounts of the Company's financial instruments at September 30, 2021 and December 31, 2020:

	September 30, 2021	December 31, 2020
<b>Financial assets:</b>		
Cash	\$ 11,531,997	\$ 5,997,530
Accounts receivable	22,256,605	17,145,910
Other receivables	581,451	112,663
<b>Financial liabilities:</b>		
Accounts payable	\$ 19,013,532	\$ 12,643,024

The carrying value of cash, accounts receivable, other receivables, and accounts payable approximates fair value because of the short maturity and high liquidity of these instruments.

Therefore, the carrying amounts of the financial instruments shown in the above table as of September 30, 2021 and December 31, 2020 represent the amounts that would be received to sell those assets or that would be paid to transfer those liabilities in an orderly transaction between market participants at that date. Those measurements maximize the use of observable inputs.

There were no transfers between fair value measurement levels during the nine months ended September 30, 2021 and the year ended December 31, 2020.

**Note 8. Property and Equipment, Net**

The Company accounts for property and equipment at historical cost less accumulated depreciation.

Property and equipment, net, consist of the following:

	Useful lives	September 30, 2021	December 31, 2020
Computers and software	60 months	\$ 739,853	\$ 424,099
Office furniture	80 months	305,506	270,761
Leasehold improvements	Shorter of lease term or estimated useful life	3,181,788	1,684,889
Medical equipment	60 months	719,035	515,386
Construction in progress		129,306	204,724
Equipment capital lease assets	Shorter of lease term or estimated useful life	162,769	162,769
Less: accumulated depreciation		(1,721,078)	(1,158,403)
<b>Total property and equipment, net</b>		<u>\$ 3,517,179</u>	<u>\$ 2,104,225</u>

Depreciation expense for the nine months ended September 30, 2021 and September 30, 2020 was \$562,676 and \$513,830, respectively.

**Note 9. Accrued Expenses and Other Current Liabilities**

Accrued expenses and other current liabilities as of September 30, 2021 and December 31, 2020 consist of the following:

	September 30, 2021	December 31, 2020
Compensation, including bonuses, fringe benefits, and payroll taxes	\$ 3,871,605	\$ 3,809,631
Deferred revenue and refund liabilities	1,657,120	3,378,905
Other liabilities	6,229,486	2,263,584
<b>Total accrued expenses and other current liabilities</b>	<u>\$ 11,758,211</u>	<u>\$ 9,452,120</u>

Refund liabilities as of September 30, 2021 and December 31, 2020 primarily consist of cumulative adjustments made to capitated and FFS revenue recognized in prior years.

## Note 10. Leases

The Company leases clinics, office buildings, and certain equipment under noncancellable capital and operating lease agreements that expire at various dates through July 2028. See Note 15 for the lease commitment disclosure.

Monthly payments for these leases range from \$1,000 to \$36,130. All lease agreements generally require the Company to pay maintenance, repairs, property taxes, and insurance costs, which are variable amounts based on actual costs incurred during each applicable period. The following summarizes the Company's capital leases:

	September 30, 2021	December 31, 2020
Capital leases:		
Machinery and equipment	\$ 162,769	\$ 162,769
Accumulated amortization	(62,395)	(37,980)
<b>Property, plant, and equipment, net</b>	<u>100,374</u>	<u>124,789</u>
Current installments of obligations under capital leases	32,344	31,191
Long-term portion of obligations under capital leases	72,028	97,044
<b>Total capital lease obligations</b>	<u>\$ 104,372</u>	<u>\$ 128,235</u>

## Note 11. Debt

Short-term debt and current portion of long-term debt at September 30, 2021 and December 31, 2020 consists of the following:

	September 30, 2021	December 31, 2020
1% Paycheck Protection Program Loan, due May 13, 2022	\$ —	\$ 2,000,000
1% Small Business Administration Loan, due May 2, 2022	—	2,992,758
Current portion of term loan payable	5,125,000	375,000
Less:		
Unamortized debt issuance costs	229,725	—
<b>Short-term debt and current portion of long-term debt</b>	<u>\$ 4,895,275</u>	<u>\$ 5,367,758</u>

The Company accounts for long-term debt net of debt issuance costs. Long-term debt, net of unamortized debt issuance costs and current portion at September 30, 2021 and December 31, 2020 consists of the following:

	September 30, 2021	December 31, 2020
Variable Rate Revolving Credit Facility Term Loan, interest at LIBOR plus applicable margin, due February 26, 2025	\$ 5,125,000	\$ 7,218,750
Less:		
Unamortized debt issuance costs	229,725	282,512
Current portion of term loan payable, net of debt issuance costs	4,895,275	375,000
<b>Long-term debt, net of unamortized debt issuance costs and current portion</b>	<u>\$ —</u>	<u>\$ 6,561,238</u>

On May 2, 2020, the Company entered into a Small Business Administration ("SBA") loan with MUFG Union Bank, N.A. in the amount of \$2,992,758, with interest bearing at 1%. The maturity date of the loan is May 2, 2022.



On May 13, 2020, the Company entered into a Paycheck Protection Program (“PPP”) loan with Celtic Bank Corporation in the amount of \$2,000,000, with interest bearing at 1%. The maturity date of the loan is May 13, 2022.

The Company recorded a PPP loan as a result of the acquisition of TOI FL on February 12, 2021 with Valley National Bank in the amount of \$149,398, with interest bearing at 1%. The maturity date of the loan is May 4, 2022.

The application for the PPP and SBA funds required the Company to, in good faith, certify that the current economic uncertainty made the loan request necessary to support the ongoing operations of the Company. This certification further required the Company to take into account its current business activity and its ability to access other sources of liquidity sufficient to support ongoing operations in a manner that is not significantly detrimental to the business. The receipt of these funds, and the forgiveness of the loan attendant to these funds, is dependent on the Company having initially qualified for the loan and qualifying for the forgiveness of such loan based on its future adherence to the forgiveness criteria. Management has performed an assessment and concluded they met the eligibility requirements to participate in the PPP and SBA programs and it is probable they will qualify for forgiveness, as determined by the program administrators within the parameters of the program. The loan proceeds were used to pay for qualifying salaries and were recognized to other revenues in 2020 as qualified expenses were paid. The Company applied for loan forgiveness in December 2020 for the PPP loan and in March 2021 for the SBA loan. Through the TOI FL acquisition, the Company recorded a PPP loan (and corresponding escrow receivable) for which the application for forgiveness was being processed. During the nine months ended September 30, 2021, the Company received notice of forgiveness for each of the PPP and SBA loans. Upon receiving forgiveness, the Company recognized the loan principal balance and accrued interest as a gain on debt extinguishment, with a corresponding write off of the escrow receivable, in the condensed consolidated statements of operation during the nine months ended September 30, 2021.

On February 26, 2020 the Company entered into a credit agreement with MUFG Union Bank (“Credit Agreement”), which allows the Company to borrow up to an aggregate principal amount of \$10,000,000 in the form of term loans, revolving credit commitments (“Revolver”), and a letter of credit (“LOC”) facility. The term loans and the Revolver shall bear interest at base rate plus the applicable margin or LIBOR rate plus the applicable margin. The Company can prepay the obligations at their option or upon the occurrence of certain events. The outstanding principal on the term loans will be repaid in quarterly installments equal to (i) \$93,750 on the last business day of each quarter ending December 31, 2023, commencing on June 30, 2020 and (ii) \$187,500 on the last business day of each quarter thereafter. The maturity date of the Credit Agreement is February 26, 2025.

As of September 30, 2021, the Company has borrowed \$5,125,000 in the form of a term loan. The Company paid down \$2,500,000 drawn upon the Revolver in the second quarter, and no additional amounts were drawn during the current quarter. As of March 31, 2021 and December 31, 2020, the Company violated certain covenants in the Credit Agreement. On June 18, 2021, the Company entered into an amendment to the Credit Agreement, which reduced the aggregate principal amount from which the Company can borrow to \$9,000,000 and concurrently provided a waiver for the covenant violations. As part of the amendment, the Company paid \$2,000,000 of the outstanding principal balance on the term loan and no additional principal payments are required until the quarter ending March 31, 2022. The Company determined that the amendment to the Credit Agreement meet the definition of a debt modification under ASC 470-50, *Modifications and Extinguishments*. Based on the results of the current quarter, the Company will be in violation of the senior leverage ratio covenant within the Credit Agreement. The Company will not seek a waiver of the violation but will pay the remaining principal and interest associated with the Credit Agreement in the upcoming quarter. Therefore, the Credit Agreement term loan, in its entirety, has been reclassified as current debt.

Net debt issuance costs are presented as a direct reduction in the condensed consolidated balance sheets and amount to \$229,725 from current debt and \$282,512 from long-term debt as of September 30, 2021 and December 31, 2020, respectively. The amortization of the debt issuance costs was charged to interest expense for all periods presented. The amount of debt issuance costs included in interest expense for the nine months ended September 30, 2021 and September 30, 2020 was approximately \$52,787 and \$41,950, respectively.

The Company paid interest of \$193,096 and \$168,530 on the Credit Agreement term loan for the nine months ended September 30, 2021 and 2020, respectively.

#### **Note 12. Income Taxes**

The Company recorded income tax expense of \$798,504 for the three months ended September 30, 2021, as compared to income tax benefit of \$23,190 for the three months ended September 30, 2020. The increase of \$821,694 in income tax expense is primarily related to the corresponding increase in our profitable entity's, TOI Parent's, pre-tax book income combined with an increase in our annual effective tax rate. Our effective tax rate decreased to (36.6)% for the three months ended September 30, 2021, from 3.3% for the three months ended September 30, 2020, primarily due to increase in the valuation allowance, partially offset by the tax effect of gain on PPP loan forgiveness, which is not taxable for federal income tax purposes.

The Company recorded income tax expense of \$1,796,123 for the nine months ended September 30, 2021, as compared to income tax benefit of \$298,102 for the nine months ended September 30, 2020. The increase of \$2,094,225 in income tax expense is primarily related to the corresponding increase in our profitable entity's, TOI Parent's, pre-tax book income combined with an increase in our effective tax rate. Our effective tax rate increased to 175.2% for the nine months ended September 30, 2021, from 3.3% for the nine months ended September 30, 2020, primarily due to increase in the valuation allowance, partially offset by the tax effect of gain on PPP loan forgiveness, which is not taxable for federal income tax purposes.

Our effective tax rate for the three and nine months ended September 30, 2021, was different than the U.S. federal statutory tax rate of 21.0% primarily due to increase in the valuation allowance, partially offset by the tax effect of gain on PPP loan forgiveness, which is not taxable for federal income tax purposes.

#### **Note 13. Common and Preferred Shares**

The Company issued Series A Preferred Shares under the Company's original Certificate of Incorporation dated September 10, 2018 and the Company's Shareholders' Agreement dated September 19, 2018. The Certificate of Incorporation was amended and restated on September 14, 2018 ("Amendment I") and again on November 6, 2020 ("Amendment II").

Per the original Certificate of Incorporation, the Company had authority to issue 30,000 shares, consisting of 20,000 common shares and 10,000 Series A Preferred Shares. The Company issued 10,000 shares of Series A Preferred Shares on September 10, 2018 at \$0.001 par value per share.

As a result of Amendment I to the Certificate of Incorporation, Series A Preferred shareholders were entitled to a return of capital on their shares prior to any declaration or payment of dividends to common shareholders. The original preferred return was equal to the number of shares held by the preferred shareholder multiplied by the price paid for such shares. In the event of liquidation, dissolution, or winding up of the operations of the Company, Series A Preferred shareholders had preferential liquidation rights compared to the common shareholders. As such, the preferred shareholders were entitled to full payment of the original preferred return before the remaining assets of the Company were to be distributed to common and preferred shareholders based on their pro-rata share of total outstanding securities. Holders of Series A Preferred Shares were granted one vote, per share, for all matters voted on by the common shareholders of the Company.

Given the short duration and immaterial operations of the Company between the execution of Amendment I as compared to the Original Certificate of Incorporation, there was no material accounting impact to the Company's financial statements resulting from the execution of Amendment I.

As a result of Amendment II, the Company now has the authority to issue 420,000 shares consisting of 400,000 common shares and 20,000 Series A Preferred Shares. Additionally, each outstanding common share was split into 10 common shares. Amendment II resulted in an extinguishment of old Series A Preferred Shares under the original Certificate of Incorporation and a deemed authorization and issuance of new Series A Preferred Shares. As such, the Company recognized Series A Preferred Shares at fair value at the amendment date, with the difference between the fair value and carrying value being recognized in retained earnings. The fair value of the Series A Preferred Shares was derived using a combination of an option pricing model ("OPM") and common stock equivalent method ("CSE") which are considered Level 2 and Level 3 inputs, respectively, in the fair value hierarchy.

The assumptions used in the OPM and CSE models are provided in the following tables:

**Option-pricing method**

Valuation date	11/6/2020
Liquidity event date	12/31/2024
Time to liquidity	4.15 years
Total equity value	\$ 82,000,000
Annual dividend rate for common stock	0.0%
Annualized volatility	40.0%
Risk-free rate (continuously compounding)	0.3%

**Common-stock equivalent method**

Valuation date	11/6/2020
Liquidity event date	12/31/2024
Time to liquidity	4.15 years
Total equity value	\$ 82,000,000
Value per common stock equivalent	\$ 562.06

Further, under Amendment II, cumulative dividends on Series A Preferred Shares will accrue, whether or not declared by the Board at a rate of 6% per year. The preferred shareholders are entitled to payment of all accrued but unpaid dividends prior to declaration or payment of dividends to common shareholders. As of September 30, 2021 and December 31, 2020, dividends in arrears were \$9,547,569 and \$6,883,835, respectively. In the event of liquidation, Series A Preferred shareholders are entitled to receive payment of assets before distribution to common shareholders. If the full preferential amount is unavailable, the Series A Preferred shareholders will share ratably in the distribution.

Additionally, holders of Series A Preferred Shares now have 10 votes, per share, as of November 6, 2020, for all matters voted upon by the common shareholders of the Company and have the option to convert outstanding Series A Preferred Shares into common shares, at any point in time, by a factor of 1-to-10.

The Series A Preferred shareholders control the vote of the Board through direct representation and can initiate a sale of the Company that may result in the Series A Preferred Shares being redeemed for cash. This potential event is deemed to be outside the control of the Company and therefore, the Series A Preferred Shares are accounted for as temporary equity.

In the first quarter of 2021, TOI Parent executed an equity capital raise in separate transactions with 3 accredited investors. A total of 1,451 of the Company's Series A Preferred Shares were purchased in exchange for \$20,000,000 and are subject to the terms of Amendment II of the Certificate of Incorporation. There were 11,451 Series A Preferred Shares issued and outstanding at September 30, 2021 and 10,000 Series A Preferred Shares issued and outstanding at December 31, 2020.

#### **Note 14. Share-Based Compensation**

##### **Non-Qualified Stock Option Plan**

On January 2, 2019, the Company issued and adopted the 2019 Non-Qualified Stock Option Plan ("the Plan") to incentivize directors, consultants, advisors, and other key employees of the Company and its subsidiaries to continue their association by providing opportunities to participate in the ownership and further growth of the Company. The Plan provides for the grant of options ("the Stock Options") to acquire common shares of the Company. The Company issued immaterial amounts of stock options to non-employees for the nine months ended September 30, 2021 and the year ended December 31, 2020.

Stock Options are exercised from the pool of shares designated by the appropriate Committee of the Board of Directors. The grant-date fair value of each option award is estimated on the date of grant using the Black-Scholes-Merton option-pricing model. The grant date fair value of the service vesting and the performance vesting options is recognized as an expense over the requisite service period and upon the achievement of the performance condition deemed probable of being achieved, respectively. The exercise price of each Stock Option shall be determined by the Committee and may not be less than the fair market value of the common shares on the date of grant. Stock Options have 10-year terms, after which they expire and are no longer exercisable.

The total number of common shares for which Stock Options may be granted under the Plan shall not exceed 13,640. The Plan was amended on November 6, 2020, pursuant to which the total number of common shares for which Stock Options may be granted under the Plan shall not exceed 15,640. At September 30, 2021, there were 399,900 common shares of the Company authorized and unissued.

The weighted average assumptions used in the Black-Scholes-Merton option-pricing model for the 2021 Stock Options are provided in the following table:

	<b>9 Months Ended 09/30/2021</b>
Valuation assumptions	
Expected dividend yield	—%
Expected volatility	38.6% and 40.2%
Risk-free interest rate	0.76% to 1.12%
Expected term (years)	7

Stock option activity during the periods indicated is as follows:

<b>Stock options</b>	<b>Number of shares</b>	<b>Weighted average exercise price</b>	<b>Weighted average remaining contractual term</b>	<b>Aggregate intrinsic value</b>
Balance at January 1, 2021	14,860	\$ 497.95		
Granted	2,023	630.00		
Exercised	—			
Forfeited	(1,215)	504.38		
Expired	—			
<b>Balance at September 30, 2021</b>	<b>15,668</b>	<b>514.50</b>	<b>8.31</b>	<b>—</b>
Vested options exercisable at September 30, 2021	2,578	\$ 497.03	6.86	—

In June, 2021 the Company and certain participants in the Plan entered into agreements to amend the terms of the Stock Options previously issued to the participant during Q1 and Q2 2021. The amendment primarily related to updating the exercise price, vesting conditions, and the number of Stock Options. The modification to the Stock Options resulted in immaterial incremental share-based compensation expense recorded in the Company's statement of operations. Total share-based compensation expense for the nine months ended September 30, 2021 and September 30, 2020 was \$152,617 and \$112,669, respectively, and for the three months ended September 30, 2021 and September 30, 2020, share-based compensation expense was \$59,678 and \$36,343, respectively.

At September 30, 2021 and September 30, 2020, there was \$604,655 and \$384,434, respectively, of total unrecognized compensation cost related to unvested service Stock Options granted under the Plan that are expected to vest. That cost is expected to be recognized over a weighted average period of 2.68 and 3.07 years for the 2021 and 2020 unrecognized compensation costs, respectively. At September 30, 2021 and September 30, 2020, there was \$1,294,168 and \$807,777, respectively, of unrecognized stock compensation related to the unvested performance Stock Options granted under the Plan that are expected to vest. The total fair value of common shares vested for the nine months ended September 30, 2021 and September 30, 2020 was \$321,591 and \$220,518, respectively, and for the three months ended September 30, 2021 and September 30, 2020, the fair value of common shares vested was \$84,813 and \$38,759, respectively.

#### **Restricted Stock Awards ("RSAs")**

Additionally, Agajanian Holdings ("Holdings"), a holder of Series A Preferred Shares of the Company, enters into arrangements with physicians employed by TOI CA to issue RSAs which represent Series A Preferred Shares of the Company. The RSAs only have performance vesting requirements linked to the sale of the Company so long as the optionee remains continuously and actively employed by the Company's subsidiaries through the vesting date.

For the nine months ended September 30, 2021 and the year ended December 31, 2020, Holdings issued 0 and 188 RSAs, respectively. The optionee is not entitled to dividends or distributions from the Company, nor are they entitled to vote. Additionally, the RSA may not be sold, transferred, pledged, or assigned at any time.

No RSAs were issued for the nine months ended September 30, 2021 and the year ended December 31, 2020.

A summary of the activity for the RSAs for the nine months ended September 30, 2021 is shown in the following table:

	<b>Number of shares</b>
Balance at January 1, 2021	238
Granted	—
Forfeited	(4)
Balance at September 30, 2021	<u>234</u>

For the nine months ended September 30, 2021 and September 30, 2020, no compensation costs were recognized related to the RSAs. At September 30, 2021 and September 30, 2020, there was no unrecognized compensation expense related to the RSAs that are expected to vest.

#### **Note 15. Commitments and Contingencies**

The Company evaluates contingencies based upon available evidence. In addition, allowances for losses are provided each year for disputed items which have continuing significance. The Company believes that allowances for losses have been provided to the extent necessary, and that its assessment of contingencies is reasonable. Due to the inherent uncertainties and subjectivity involved in accounting for contingencies, there is at least a reasonable possibility that recorded estimates will change by a material amount in the near term. To the extent that the resolution of contingencies results in amounts which vary from management's estimates, future operating results will be charged or credited. The principal commitments and contingencies are described below.

#### **Leases**

The Company leases its offices, clinics and certain equipment under non-cancellable operating leases, and certain equipment under capital lease agreements, that expire at various dates through 2028. The Company has 49 rental agreements for property. Additionally, the Company has 4 rental agreements for medical equipment classified as capital leases.

Future minimum lease payments under noncancellable operating leases (with initial or remaining lease terms in excess of one year) and future minimum capital lease payments as of September 30, 2021 were:

	<b>Capital leases</b>	<b>Operating leases</b>
Year ending December 31:		
2021	\$ 8,572	\$ 874,490
2022	36,736	3,430,762
2023	36,736	3,151,293
2024	30,614	2,673,093
2025	—	2,141,122
Thereafter	—	1,674,718
Total minimum lease payments	<u>\$ 112,658</u>	<u>\$ 13,945,478</u>
Less: amount representing interest (6% interest rate)	(8,286)	
Present value of net minimum capital lease payments	104,372	
Less current installments of obligations under capital leases	(32,344)	
Obligations under capital leases, excluding current installments	<u>\$ 72,028</u>	

### Legal Matters

The Company is subject to certain outside claims and litigation arising in the ordinary course of business. In the opinion of management, the outcome of such matters will not have a material effect on the Company's condensed consolidated financial statements. Loss contingencies entail uncertainty and a possibility of loss to an entity. If the loss is probable and the amount of loss can be reasonably estimated, the loss should be accrued according to Accounting Standards Codification No. 450-20, *Disclosure of Certain Loss Contingencies*. During the nine months ended September 30, 2021, the Company accrued a loss contingency for a legal matter related to an employee lawsuit, which was settled for approximately \$350,000.

### Indemnities

The Company's Articles of Incorporation and bylaws require it, among other things, to indemnify the director or officer against specified expenses and liabilities, such as attorneys' fees, judgments, fines, and settlements, paid by the individual in connection with any action, suit, or proceeding arising out of the individual's status or service as its director or officer, other than liabilities arising from willful misconduct or conduct that is knowingly fraudulent or deliberately dishonest, and to advance expenses incurred by the individual in connection with any proceeding against the individual with respect to which the individual may be entitled to indemnification by the Company. The Company also indemnifies its lessor in connection with its facility lease for certain claims arising from the use of the facilities. These indemnities do not provide for any limitation of the maximum potential future payments it could be obligated to make. Historically, the Company has not incurred any payments for these obligations and, therefore, no liabilities have been recorded for these indemnities in the accompanying condensed consolidated balance sheet.

### The Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act ("HIPAA") assures health insurance portability, reduces healthcare fraud and abuse, guarantees security and privacy of health information, and enforces standards for health information. Organizations are required to be in compliance with HIPAA provisions. The Health Information Technology for Economic and Clinical Health Act ("HITECH") imposes notification requirements in the event of certain security breaches relating to protected health information. Organizations are subject to significant fines and penalties if found not to be compliant with the provisions outlined in the regulations. The Company believes it is in compliance with these laws.

## **Regulatory Matters**

Laws and regulations governing the Medicare program and healthcare generally, are complex and subject to interpretation. The Company believes that it is in compliance with all applicable laws and regulations and is not aware of any pending or threatened investigations involving allegations of potential wrongdoing. While no regulatory inquiries have been made, compliance with such laws and regulations can be subject to future government review and interpretation as well as significant regulatory action including fines, penalties, and exclusion from the Medicare and Medi-Cal programs.

Many of the Company's payor and provider contracts are complex in nature and may be subject to differing interpretations regarding amounts due for the provision of medical services. Such differing interpretations may not come to light until a substantial period of time has passed following contract implementation. Liabilities for claims disputes are recorded when the loss is probable and can be estimated. Any adjustments to reserves are reflected in current operations. The Company does not have any reserves for regulatory matters as of September 30, 2021 and December 31, 2020.

## **Liability Insurance**

The Company believes that its insurance coverage is appropriate based upon the Company's claims experience and the nature and risks of the Company's business. In addition to the known incidents that have resulted in the assertion of claims, the Company cannot be certain that its insurance coverage will be adequate to cover liabilities, arising out of claims asserted against the Company or the Company's affiliated professional organizations, in the future where the outcomes of such claims are unfavorable.

The Company believes that the ultimate resolution of all pending claims, including liabilities in excess of the Company's insurance coverage, will not have a material adverse effect on the Company's financial position, results of operations or cash flows; however, there can be no assurance that future claims will not have such a material adverse effect on the Company's business. Contracted physicians are required to obtain their own insurance coverage.

## **Note 16. Business Combination**

On February 12, 2021 (the "Acquisition Date"), the Company entered into an asset purchase agreement and master services agreement (PCC MSA) with Anil N Raiker, M.D., P.L.C., d/b/a Pinellas Cancer Center ("PCC") and Anil Raiker, M.D., an individual. Pursuant to the asset purchase agreement, the Company purchased from PCC certain non-clinical assets, properties, and rights. Pursuant to the PCC MSA, TOI Management established an ongoing management services agreement which grants TOI Management the right to control the non-clinical and management operations of PCC. Anil Raiker, M.D. continued to own all of the issued and outstanding equity interests of PCC.

Pursuant to the PCC MSA, and as further described in Note 17, TOI Management became PCC's primary beneficiary and thus consolidated PCC and its subsidiaries. The consolidation of PCC (the "Acquisition") at the Acquisition Date constituted a business combination in accordance with ASC 805. See Note 2 for a summary of the Company's policies related to business combinations.



The estimated fair value of the net assets acquired at the Acquisition Date amounted to \$256,514. The total consideration for the Acquisition was \$1,710,000, comprised of a cash payment of \$892,500 and deferred consideration of \$817,500. The deferred cash consideration is to be paid in two equal installments on the first and second anniversary of the transaction closing date (February 12, 2022 and 2023, respectively). Considering the Company's incremental borrowing rate, the present value of the deferred cash consideration is not materially different than its stated value.

The purchase consideration for the Acquisition has been allocated under the acquisition method of accounting to the estimated fair market value of the net assets acquired including a residual amount of tax deductible goodwill of approximately \$1,453,486.

The Acquisition was made primarily to expand the Company's market share to the Florida market. The goodwill of \$1,453,486 arising from the purchase is derived largely from the expected growth of the Company, as well as synergies and economies of scale expected from combining operations with the Company. The establishment of the allocation to goodwill requires the extensive use of accounting estimates and management judgement. The fair values assigned to the assets acquired are based on estimates and assumptions from data that is readily available.

<b>Consideration:</b>	
Cash	\$ 892,500
Deferred consideration arrangement	817,500
<b>Fair value of total consideration transferred</b>	<u>1,710,000</u>
<b>Estimated fair value of assets acquired and liabilities assumed:</b>	
Cash	65,042
Accounts receivable	248,816
Inventory	62,656
Other receivables	149,398
Goodwill	1,453,486
<b>Total assets acquired</b>	<u>1,979,398</u>
Accounts payable	120,000
Debt, inclusive of PPP	149,398
<b>Total liabilities assumed</b>	<u>269,398</u>
<b>Net assets acquired</b>	<u><u>\$ 1,710,000</u></u>

Subsequent to the Acquisition, the Company filed an amendment to the articles of incorporation of PCC to legally change the name to The Oncology Institute FL, LLC (TOI FL). The change was solely nominal, and the legal form, tax attributes, and books and records of PCC all remained.

The revenues, earnings, and pro forma effects of the Acquisition are not, and would not have been, material to the results of operations, individually and in aggregate.

**Note 17. Variable Interest Entities**

The Company prepares its condensed consolidated financial statements in accordance with Accounting Standards Codification Topic No. 810, *Consolidations* ("ASC 810"), which provides for the consolidation of VIEs of which TOI Parent is the primary beneficiary.

Pursuant to the MSAs established with TOI CA and TOI FL, TOI Management is entitled to receive a management fee, which represents a variable interest in and the right to receive the benefits of TOI CA and TOI FL. Through the terms of the MSAs, TOI Management receives the right to direct the most significant activities of TOI CA and TOI FL. Therefore, TOI CA and TOI FL are variable interest entities and TOI Management is the primary beneficiary that consolidates TOI CA, TOI FL, and its subsidiaries.

Accordingly, the condensed consolidated financial statements include the accounts of TOI Parent and its subsidiaries and VIEs. All inter-company profits, transactions, and balances have been eliminated upon consolidation. The following table presents the total assets and liabilities of the consolidated VIEs:

	September 30, 2021	December 31, 2020
<b>Assets</b>		
Current assets:		
Cash	\$ 1,537,568	\$ 19,502
Accounts receivable	22,256,608	17,145,910
Other receivables	99,445	49,163
Inventories, net	5,756,578	4,354,232
Prepaid expenses and other current assets	675,233	719,063
Total current assets	30,325,432	22,287,870
Intangible assets, net	479,167	—
Other assets	306,640	200,600
Goodwill	150,000	150,000
<b>Total assets</b>	<b>\$ 31,261,239</b>	<b>\$ 22,638,470</b>
<b>Liabilities</b>		
Current liabilities:		
Accounts payable	\$ 17,694,967	\$ 11,953,239
Accrued expenses and other current liabilities	4,231,336	5,818,538
Income taxes payable	220,046	220,046
Current portion of long-term debt	—	2,000,000
Amounts due to affiliates	34,013,311	19,883,097
Total current liabilities	56,159,660	39,874,920
Other non-current liabilities	896,082	551,228
<b>Total liabilities</b>	<b>\$ 57,055,742</b>	<b>\$ 40,426,148</b>

Single physician holders retain equity ownership in TOI CA and TOI FL, which represents nominal noncontrolling interests. The noncontrolling interests do not participate in the profit or loss of TOI CA or TOI FL, however. As such, for the nine months ended September 30, 2021, net loss of \$770,748 and \$0 was attributable to TOI Parent and to the noncontrolling interest, respectively. For the nine months ended September 30, 2020, net loss of \$9,503,489 and \$0 was attributable to TOI Parent and to the noncontrolling interest, respectively.

#### **Note 18. Goodwill and Intangible Assets**

The Company accounts for goodwill at acquisition-date fair value and other intangible assets at acquisition-date fair value less accumulated depreciation.

## Intangible Assets

As of September 30, 2021, the Company's intangible assets, net consist of the following:

	Weighted average amortization period	Gross carrying amount	Accumulated amortization	Net carrying amount
Intangible assets				
Amortizing intangible assets:				
Payor contracts	10 years	\$ 19,400,000	\$ (5,680,572)	\$ 13,719,428
Trade names	10 years	4,170,000	(1,248,736)	2,921,264
Clinical contracts	10 years	2,164,000	(648,025)	1,515,975
<b>Total intangible assets</b>		<u>\$ 25,734,000</u>	<u>\$ (7,577,333)</u>	<u>\$ 18,156,667</u>

As of December 31, 2020, the Company's intangible assets, net consist of the following:

	Weighted average amortization period	Gross carrying amount	Accumulated amortization	Net carrying amount
Intangible assets				
Amortizing intangible assets:				
Payor contracts	10 years	\$ 18,900,000	\$ (4,283,045)	\$ 14,616,955
Trade names	10 years	4,170,000	(944,989)	3,225,011
Clinical contracts	10 years	2,164,000	(490,397)	1,673,603
<b>Total intangible assets</b>		<u>\$ 25,234,000</u>	<u>\$ (5,718,431)</u>	<u>\$ 19,515,569</u>

On May 1, 2021, TOI Management, through PCC, entered into a purchase agreement to acquire certain clinical assets from Oncology Association, P.A. ("OA") from Pedro Mendez, M.D. Management determined the acquisition of OA is an asset acquisition. The Company paid \$500,000, consisting of cash and deferred cash consideration, in exchange for intangible assets in the form of payor contracts. The entire \$500,000 was assigned to the payor contract intangible asset class with a weighted average amortization period of 10 years.

The estimated aggregate amortization expense for each of the five succeeding fiscal years as of September 30, 2021 is as follows:

	Amount
Year ending December 31:	
Remainder of 2021	\$ 625,189
2022	2,500,757
2023	2,500,757
2024	2,500,757
2025	2,500,757
Thereafter	7,528,450
<b>Total</b>	<u>\$ 18,156,667</u>

The aggregate amortization expense during the nine months ended September 30, 2021 and September 30, 2020 was \$1,858,902 and \$1,874,390, respectively and during the three months ended September 30, 2021 and September 30, 2020 was \$625,189 and \$612,689, respectively.

## Goodwill

The Company evaluates goodwill at the reporting unit level, which, for the Company, is at the level of the reportable segments, patient services, dispensary, and clinical trials & other. The goodwill allocated to each of the reporting units as of September 30, 2021 and December 31, 2020 is as follows:

	<b>September 30, 2021</b>	<b>December 31, 2020</b>
Patient services	\$ 10,497,489	\$ 9,044,003
Dispensary	4,551,002	4,551,002
Clinical trials & other	631,669	631,669
<b>Total goodwill</b>	<b>\$ 15,680,160</b>	<b>\$ 14,226,674</b>

The changes in the carrying amount of goodwill for the nine months ended September 30, 2021 and the year ended December 31, 2020 are as follows:

	<b>September 30, 2021</b>	<b>December 31, 2020</b>
Balance as of January 1 :		
Gross goodwill	\$ 14,226,674	\$ 14,076,674
Goodwill acquired during the period	1,453,486	150,000
Goodwill, net as of September 30 and December 31	<b>\$ 15,680,160</b>	<b>\$ 14,226,674</b>

## Note 19. Net Loss Per Share

The following is a reconciliation of the numerator (net loss) and the denominator (weighted average number of shares) used in the basic and diluted net loss per share calculations:

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2021</b>	<b>2020</b>	<b>2021</b>	<b>2020</b>
Net loss attributable to TOI Parent, Inc.	\$ (2,980,123)	\$ (675,948)	\$ (770,748)	\$ (9,503,489)
Basic and diluted weighted average shares outstanding	114,510	10,000	114,510	10,000
Basic and diluted net loss per share attributable to TOI Parent, Inc.	\$ (26.03)	\$ (67.59)	\$ (6.73)	\$ (950.35)

(1) The computation of weighted average shares outstanding applies the Series A Preferred Shares on an as-converted basis following the execution of Amendment II in November 2020, which added a one-to-ten conversion feature. As such, the Series A Preferred Shares are applied to the computation of weighted average shares outstanding on an as-converted basis for the nine months ended September 30, 2021.

All stock options were "out-of-the-money" up to and through the year ended December 31, 2020.

The following potentially dilutive outstanding securities were excluded from the computation of diluted net loss per share because their effect would have been anti-dilutive for the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Stock Options (1)	23,138	10,832	23,138	10,832

(1) The Stock Options are exercisable, each into one common share, for the period outstanding. Refer to Note 14 for further details.

#### Note 20. Segment Information

The Company operates its business and reports its results through three operating and reportable segments: patient services, dispensary, and clinical trials & other in accordance with ASC 280.

Summarized financial information for the Company's segments is shown in the following tables:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Revenue</b>				
Patient services	\$ 32,967,401	\$ 29,663,884	\$ 92,375,768	\$ 86,985,513
Dispensary	17,918,035	16,162,528	53,317,877	46,347,096
Clinical trials & other	1,389,522	1,423,032	5,004,889	5,216,372
<b>Consolidated revenue</b>	<b>52,274,958</b>	<b>47,249,444</b>	<b>150,698,534</b>	<b>138,548,981</b>
<b>Direct costs</b>				
Patient services	25,390,950	24,078,152	72,050,631	72,830,254
Dispensary	15,279,173	13,431,738	45,639,083	38,896,324
Clinical trials & other	182,230	166,238	493,988	786,992
<b>Total segment direct costs</b>	<b>40,852,353</b>	<b>37,676,128</b>	<b>118,183,702</b>	<b>112,513,570</b>
<b>Depreciation expense</b>				
Patient services	181,392	140,945	447,162	403,027
Dispensary	218	149	653	149
Clinical trials & other	31,265	30,680	86,645	77,156
<b>Total segment depreciation expense</b>	<b>212,875</b>	<b>171,774</b>	<b>534,460</b>	<b>480,332</b>
<b>Amortization of intangible assets</b>				
Patient services	572,646	560,146	1,701,274	1,713,647
Dispensary	—	—	—	—
Clinical trials & other	52,543	52,543	157,628	160,743
<b>Total segment amortization</b>	<b>625,189</b>	<b>612,689</b>	<b>1,858,902</b>	<b>1,874,390</b>
<b>Segment operating income</b>				
Patient services	6,822,413	4,884,641	18,176,701	12,038,585
Dispensary	2,638,644	2,730,641	7,678,141	7,450,623
Clinical trials & other	1,123,484	1,173,571	4,266,628	4,191,481
<b>Total segment operating income</b>	<b>10,584,541</b>	<b>8,788,853</b>	<b>30,121,470</b>	<b>23,680,689</b>
Selling, general and administrative expense	12,729,425	9,492,069	35,119,854	26,861,651
Non-segment depreciation and amortization	12,135	8,012	28,215	33,497
<b>Total consolidated operating (loss)</b>	<b>\$ (2,157,019)</b>	<b>\$ (711,228)</b>	<b>\$ (5,026,599)</b>	<b>\$ (3,214,459)</b>
			<b>September 30, 2021</b>	<b>December 31, 2020</b>
<b>Assets</b>				
Patient services			\$ 42,530,458	\$ 36,445,920
Dispensary			5,039,241	4,318,946
Clinical trials & other			15,509,973	5,486,965
Non-segment assets			27,747,655	19,436,737
<b>Total assets</b>			<b>\$ 90,827,327</b>	<b>\$ 65,688,568</b>

## **Note 21. Related Party Transactions**

Related party transactions include payments to the American Institute of Research, Havencrest Capital Management, L.L.C., M33 Growth L.L.C., Mark L. Pacala, Richey Agajanian M.D., Roca Partners L.L.C. and Veeral Desai. The American Institute of Research provides consulting services to the Company. Havencrest Capital Management L.L.C. and M33 Growth L.L.C. provide management services to the Company. These entities have an equity stake in the Company and payments constitute consideration in exchange for the services provided. Mark L. Pacala and Roca Partners L.L.C. also have an equity stake in the Company and payments to these owners constitute expense reimbursement for traveling to Board meetings. Richey Agajanian M.D. is the representative shareholder of TOI CA. Payments to this individual are compensation for his services related to clinical research trials. Total related party payments for the nine months ended September 30, 2021 and 2020 were \$468,092 and \$532,943, respectively, and for the three months ended September 30, 2021 and 2020, Related Party payments were \$65,880 and \$122,587, respectively.

## **Note 22. Subsequent Events**

The Company has evaluated subsequent events from the balance sheet date through November 18, 2021, the date at which the condensed consolidated financial statements were available to be issued. The following events were identified subsequent to the balance sheet date.

### **SPAC Transaction**

On June 28, 2021, the Company entered into an Agreement and Plan of Merger ("Merger Agreement") with DFP Healthcare Acquisitions Corp. ("DFPH"), a SPAC; Orion Merger Sub I, Inc., a wholly-owned subsidiary of DFPH ("Merger Sub I"), and Orion Merger Sub II, LLC, a wholly-owned subsidiary of DFPH ("Merger Sub II"). Pursuant to the terms of the Merger Agreement, (i) Merger Sub I will merge with and into the Company, with the Company surviving the merger (the "First Merger") and (ii) immediately following the First Merger, the Company will merge with and into Merger Sub II, with Merger Sub II surviving the merger (collectively, the "Business Combination"). Upon completion of the Business Combination, DFPH will be named The Oncology Institute, Inc. and adopt a corresponding ticker symbol. Deferred costs related to this transaction are presented on the consolidated balance sheets.

On October 22, 2021, DFPH issued a press release announcing that it has scheduled the Special Meeting of its stockholders (the "Special Meeting") for November 12, 2021 at 10:00 a.m., Eastern Time, to approve the previously announced Business Combination with the Company, that it has filed its definitive proxy statement/prospectus for the Special Meeting, and that it has commenced mailing the definitive proxy statement/prospectus to its stockholders of record as of the close of business on September 23, 2021 (the "Record Date"). The Business Combination is expected to close immediately following the Special Meeting.

### **Orr Practice Acquisition**

On November 12, 2021, the Company entered into an Asset Purchase Agreement with Leo E. Orr, M.D., Inc., (the "Orr Practice") and Leo E. Orr, M.D., an individual. Leo E. Orr, M.D. owns all of the issued and outstanding equity interests of the Orr Practice. The terms of the agreement state that the Company will purchase from the Orr Practice certain assets, properties, and rights owned by the Orr Practice, and the intangible assets associated with the asset acquisition. The Company will pay \$1,000,000, with \$800,000 of the consideration being paid in cash at closing and the remainder paid equally in two cash installments on each annual anniversary thereafter.

### **Grant Practice Acquisition**

On November 12, 2021, the Company entered into an Asset Purchase Agreement with Ellsworth Grant, M.D., A Medical Corporation, (the "Grant Practice") and Ellsworth Grant, M.D., an individual. Ellsworth Grant, M.D. owns all of the issued and outstanding equity interests of the Grant Practice. The terms of the agreement state that the Company will purchase from the Grant Practice certain assets, properties, and rights owned by the Grant Practice, and the intangible assets associated with the asset acquisition. The Company will pay \$1,000,000, with \$800,000 of the consideration being paid in cash at closing and the remainder paid equally in two cash installments on each annual anniversary thereafter.



**UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION**

The following unaudited pro forma condensed combined balance sheet as of September 30, 2021 and the unaudited pro forma condensed combined statements of operations for the year ended December 31, 2020 and nine months ended September 30, 2021 present the combined financial information of DFP and TOI after giving effect to the Business Combination and related adjustments described in the accompanying notes. DFP and TOI are collectively referred to herein as the “Companies,” and the Companies, subsequent to the Business Combination, are referred to herein as the “Combined Company” or “New TOI.”

The unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X, as amended by the final rule, Release 33 10786 “Amendments to Financial Disclosures about Acquired and Disposed Businesses.” The following unaudited pro forma condensed combined statements of operations for the year ended December 31, 2020 and nine months ended September 30, 2021 give pro forma effect to the Business Combination as if it had occurred on January 1, 2020. The unaudited pro forma condensed combined balance sheet as of September 30, 2021 gives pro forma effect to the Business Combination as if it was completed on September 30, 2021.

The unaudited pro forma condensed combined financial information are based on and should be read in conjunction with the audited historical financial statements of each of DFP and TOI and the related notes thereto as of and for the year ended December 31, 2020, and the unaudited historical financial statements as of and for the nine months ended September 30, 2021, as well as the disclosures contained in the sections titled “*Management’s Discussion and Analysis of Financial Condition and Results of Operations of DFP*” and “*Management’s Discussion and Analysis of Financial Condition and Results of Operations of TOI*.”

The unaudited pro forma condensed combined financial statements have been presented for illustrative purposes only and do not necessarily reflect what the Combined Company’s financial condition or results of operations would have been had the Business Combination occurred on the dates indicated. Further, the unaudited pro forma condensed combined financial information also may not be useful in predicting the future financial condition and results of operations of the Combined Company. The actual financial position and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors. The unaudited pro forma adjustments represent management’s estimates based on information available as of the date of these unaudited pro forma condensed combined financial statements and are subject to change as additional information becomes available and analyses are performed.

On June 28, 2021, DFP and two of its direct, wholly-owned subsidiaries, First Merger Sub and Second Merger Sub entered into a Merger Agreement with TOI under which First Merger Sub will merge with and into TOI with TOI being the surviving corporation of the First Merger. Immediately following the First Merger, TOI, as the surviving corporation of the First Merger will merge with and into Second Merger Sub with the Second Merger Sub being the surviving entity and wholly-owned subsidiary of DFP. Upon Closing, DFP will be renamed “The Oncology Institute, Inc.” and is referred to herein as “New TOI.” The consideration due to TOI stockholders in the Business Combination will consist entirely of cash and shares of DFP Class A Common Stock (to become shares of New TOI Common Stock) valued at \$10.00 per share. Immediately following the closing of the proposed transaction, New TOI expects to trade New TOI Common Stock and Public Warrants on the Nasdaq under the ticker symbol “TOI” and “TOI IW”, respectively, pending Nasdaq approval.

The Closing Share Consideration was 59,546,762 shares of DFP Class A Common Stock valued at \$10 per share and the Closing Cash Consideration was \$166.6 million. Therefore, the Closing Merger Consideration for the Business Combination is \$762.1 million.

Additionally, eligible TOI equity holders have the contingent right to receive up to 12,500,000 additional shares of DFP Class A Common Stock contingent upon achieving certain market share price milestones within a period of 3 years post Business Combination (further described in Note 1 below).

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**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**  
**AS OF SEPTEMBER 30, 2021**  
(in thousands, except number of shares amounts)

	September 30, 2021				September 30, 2021	
	DFP Healthcare Acquisitions Corp. (Historical)	TOI Parent, Inc. (Historical)	Reclassification Adjustments (Note 2)	Transaction Accounting Adjustments	Pro Forma Combined	
<b>Assets</b>						
Current assets						
Cash	\$ 205	\$ 11,532	\$ -	\$ 230,013 (A)	\$ 268,000 (B)	\$ 138,934
				(6,300) (C)		
				(20,597) (D)		
				(145,988) (K)		
				(26,700) (E)		
				(18) (P)		
				(171,213) (G)		
Accounts receivable	-	22,257	-	-		22,257
Other receivables	-	581	-	-		581
Inventories, net	-	5,757	-	-		5,757
Prepaid expenses	82	2,077	-	-		2,159
Deferred transaction costs	-	9,094	-	-		9,094
<b>Total current assets</b>	<b>287</b>	<b>51,298</b>	<b>-</b>	<b>127,197</b>		<b>178,782</b>
Non-current assets						
Property and equipment, net	-	3,517	-	-		3,517
Intangible assets, net	-	18,157	-	-		18,157
Goodwill	-	15,680	-	-		15,680
Other assets	-	250	-	-		250
Deferred income taxes asset	-	1,925	-	-		1,925
Cash and investments held in Trust						
Account	230,013	-	-	(230,013) (A)		-
<b>Total assets</b>	<b>230,300</b>	<b>90,827</b>	<b>-</b>	<b>(102,816)</b>		<b>218,311</b>
<b>Liabilities and Stockholders' Equity</b>						
Current liabilities						
Accounts payable	961	19,014	-	(961) (E)		19,014
Current portion of long-term debt	-	4,895	-	-		4,895
Income taxes payable	-	6,159	-	-		6,159
Accrued expenses and other current liabilities						
	2,626	11,758	-	(12,728) (E)		1,656
Accrued expenses - related parties	18	-	-	(18) (P)		-
Franchise tax payable	29	-	-	-		29
<b>Total current liabilities</b>	<b>3,634</b>	<b>41,826</b>	<b>-</b>	<b>(13,707)</b>		<b>31,753</b>
Non-current liabilities						
Other non-current liabilities	-	1,518	-	65,469 (F)		66,987
Deferred underwriting commissions	6,300	-	-	(6,300) (C)		-
Derivative liability	-	-	15,268	(9,258) (N)		5,115
				(895) (O)		
Derivative warrant liabilities	15,268	-	(15,268)	-		-
<b>Total liabilities</b>	<b>25,202</b>	<b>43,344</b>	<b>-</b>	<b>35,309</b>		<b>103,855</b>
<b>Commitments and Contingencies</b>						
Class A common stock subject to possible redemption						
	230,000	-	-	-		-
				(230,000) (H)		-
6% cumulative Series A Preferred Shares	-	100,113	-	(100,113) (I)		-
<b>Stockholders' equity</b>						
Series A Common Equivalent Preferred Stock						
Stock	-	-	-	2 (L)		2
Class A common stock	-	-	-	2 (H)		7
				3 (B)		
				1 (J)		
				5 (K)		
				(2) (L)		
				(2) (G)		
Class B common stock	1	-	-	(1) (J)		-
Common shares	-	-	-	-		-
Additional paid-in capital	-	447	-	(171,211) (G)		187,614

				229,998	(H)	
				(24,903)	(M)	
				100,113	(I)	
				267,997	(B)	
				(145,993)	(K)	
				(65,469)	(F)	
				(12,623)	(E)	
				9,258	(N)	
Accumulated deficit	(24,903)	(53,077)	-	24,903	(M)	(73,167)
				(20,597)	(D)	
				(388)	(E)	
				895	(O)	
Total stockholders' equity	<u>(24,902)</u>	<u>(52,630)</u>	<u>-</u>	<u>191,988</u>		<u>114,456</u>
<b>Total liabilities and stockholders' equity</b>	<u><u>230,300</u></u>	<u><u>90,827</u></u>	<u><u>-</u></u>	<u><u>(102,816)</u></u>		<u><u>218,311</u></u>

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2021**  
(in thousands, except number of shares and per share amounts)

	<u>Nine months ended September 30, 2021</u>			<u>Nine months ended</u>
	<u>DFP Healthcare</u> <u>Acquisitions Corp.</u> <u>(Historical)</u>	<u>TOI Parent, Inc.</u> <u>(Historical)</u>	<u>Transaction</u> <u>Accounting</u> <u>Adjustments</u>	<u>September 30, 2021</u>  <u>Pro Forma</u> <u>Combined</u>
<b>Revenue</b>				
Patient services	\$ -	\$ 92,376	\$ -	\$ 92,376
Dispensary	-	53,318	-	53,318
Clinical trials & other	-	5,005	-	5,005
<b>Total operating revenue</b>	<b>-</b>	<b>150,699</b>	<b>-</b>	<b>150,699</b>
<b>Operating expenses</b>				
Direct costs - patient services	-	72,051	-	72,051
Direct costs - dispensary	-	45,639	-	45,639
Direct costs - clinical trials & other	-	494	-	494
Selling, general and administrative expense	4,142	35,120	1,040 (AA) 10,707 (BB) (3,587) (GG)	47,422
Depreciation and amortization	-	2,422	-	2,422
General and administrative expenses - related party	158	-	(158) (DD)	-
Franchise tax expense	150	-	-	150
<b>Total operating expenses</b>	<b>4,450</b>	<b>155,726</b>	<b>8,002</b>	<b>168,178</b>
<b>Loss from operations</b>	<b>(4,450)</b>	<b>(5,027)</b>	<b>(8,002)</b>	<b>(17,479)</b>
<b>Other non-operating (income) expense</b>				
Interest expense	-	260	-	260
Gain on debt extinguishment	-	(5,186)	-	(5,186)
Other, net	-	(1,126)	-	(1,126)
Interest income from investments in Trust Account	(58)	-	58 (CC)	-
Change in fair value of derivative warrant liabilities	(3,523)	-	-	(3,523)
<b>Total other non-operating (income) expense</b>	<b>(3,581)</b>	<b>(6,052)</b>	<b>58</b>	<b>(9,575)</b>
<b>Loss before provision for income taxes</b>	<b>(869)</b>	<b>1,025</b>	<b>(8,060)</b>	<b>(7,904)</b>
Provision for income taxes (benefit)	-	1,796	-	1,796
<b>Net loss</b>	<b>(869)</b>	<b>(771)</b>	<b>(8,060)</b>	<b>(9,700)</b>
<b>Weighted average shares outstanding of DFP Class A Common</b>				
<b>Stock, basic and diluted</b>				73,787,558
<b>Basic and diluted net loss per share, DFP Class A Common Stock</b>				\$ (0.11)

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**  
**FOR THE YEAR ENDED DECEMBER 31, 2020**  
(in thousands, except number of shares and per share amounts)

	Year ended December 31, 2020			Year ended December 31, 2020
	DFP Healthcare Acquisitions Corp. (Historical)	TOI Parent, Inc. (Historical)	Transaction Accounting Adjustments	Pro Forma Combined
<b>Revenue</b>				
Patient services	\$ -	\$ 116,817	\$ -	\$ 116,817
Dispensary	-	63,890	-	63,890
Clinical trials & other	-	6,808	-	6,808
<b>Total operating revenue</b>	-	187,515	-	187,515
<b>Operating expenses</b>				
Direct costs - patient services	-	95,747	-	95,747
Direct costs - dispensary	-	53,907	-	53,907
Direct costs - clinical trials & other	-	982	-	982
Selling, general and administrative expense	309	41,897	6,469 (AA) 34,873 (BB)	83,548
Depreciation and amortization	-	3,178	-	3,178
General and administrative expenses - related party	175	-	(175) (DD)	-
Franchise tax expense	200	-	-	200
<b>Total operating expenses</b>	684	195,711	41,167	237,562
<b>Loss from operations</b>	(684)	(8,196)	(41,167)	(50,047)
<b>Other non-operating expense (income)</b>				
Interest expense	-	347	-	347
Other, net	-	6,271	388 (EE)	6,659
Interest income from investments in Trust Account	(254)	-	254 (CC)	-
Change in fair value of derivative warrant liabilities	7,584	-	-	7,584
Offering costs associated with derivative warrant liabilities	315	-	-	315
<b>Total other non-operating expense (income)</b>	7,645	6,618	642	14,905
<b>Loss before provision for income taxes</b>	(8,329)	(14,814)	(41,809)	(64,952)
Provision for income taxes (benefit)	11	(493)	-	(482)
<b>Net loss</b>	(8,340)	(14,321)	(41,809)	(64,470)
<b>Weighted average shares outstanding of DFP Class A Common Stock, basic and diluted</b>				73,385,485
<b>Basic and diluted net loss per share, DFP Class A Common Stock</b>				\$ (0.72)

## NOTES TO THE UNAUDITED PRO FORMA CONDENSED FINANCIAL INFORMATION

### Note 1 – Description of the Business Combination

On June 28, 2021, DFP entered into the Merger Agreement with TOI, under the terms of which, DFP will acquire TOI through a series of transactions and DFP will change its name to New TOI. After giving effect to the Business Combination, New TOI will own all of the issued and outstanding equity interests of TOI and its subsidiaries.

At Closing, each outstanding share of TOI Common Stock as of immediately prior to the effective time of the Business Combination (after giving effect to the Conversion) will be exchanged for Per Share Merger Consideration equal to (i) a number of DFP Class A Common Stock equal to Closing Share Consideration; and (ii) an amount in cash equal to the Closing Cash Consideration divided by the Aggregate Fully Diluted Company Common Stock. The split of cash and stock is based on the available cash after the Public Stockholder redemption. The Closing Merger Consideration will be paid 21.9% cash and 78.1% stock. The Closing Merger Consideration to be transferred to TOI equity holders is \$762.1 million. TOI equity holders are also entitled to the contingent right to receive Earnout Shares (further discussed below) with a fair value of \$69.7 million.

Each Company Option that is an Eligible Cash-Out Vested Company Option will receive cash in an amount equal to (A) the Per Share Merger Consideration multiplied by (B) the number of shares of TOI Common Stock underlying such Eligible Cash-Out Vested Company Option, minus (C) the aggregate exercise price applicable to the shares of TOI Common Stock underlying such Eligible Cash-Out Vested Company Option. Each Vested Company Option will be exchanged for (i) an option to purchase shares of DFP Class A Common Stock (“New TOI Vested Options”) and (ii) the contingent right to receive Earnout Shares. Each Unvested Company Option that is outstanding immediately prior to the Effective Time will receive (i) an option to purchase shares of DFP Class A Common Stock (“New TOI Unvested Options” together with New TOI Vested Options, “New TOI Options”) and (ii) the contingent right to receive Earnout Shares.

Each Company RSU outstanding immediately prior to the Effective Time will (i) be converted into a restricted stock unit denominated in shares of DFP Class A Common Stock equal to the product of (A) the number of TOI Common Stock subject to such Company RSU prior to the Effective Time, and (B) the Exchange Ratio, and (ii) have the contingent right to receive Earnout Shares. Each Restricted Stock will be subject to the same vesting and forfeiture terms on which such Restricted Stock was issued and entitled to receive (i) the Per Share Merger Consideration and (ii) the contingent right to receive Earnout Shares.

Immediately prior to the effective time of the Business Combination, each of the currently issued and outstanding shares of DFP Class B Common Stock will automatically convert into DFP Class A Common Stock on a one-for-one basis in accordance with the terms of DFP’s amended and restated certificate of incorporation. Thereafter, in connection with the Closing, each of the then issued and outstanding shares of DFP Class A Common Stock will become shares of New TOI Common Stock. Further, each of the then issued and outstanding Public Warrants and Private Placement Warrants will convert on a one-for-one basis into warrants to acquire one share of New TOI Common Stock.

Concurrently with the execution of the Merger Agreement, DFP also entered into a Stockholder Support Agreement with Subject Stockholders pursuant to which Subject Stockholders agreed to subject 20% of DFP Class B Common Stock held by Subject Shareholders (1,150,000 shares) (“Subject Shares”) and 20% of Private Placement Warrants held by Sponsor (746,667 warrants) (“Subject Warrants”) to forfeiture. The number of Subject Shares and Subject Warrants to be forfeited will be determined by multiplying the Subject Warrants and a fraction, the numerator of which is (A) the total number of shares of DFP Class A Common Stock redeemed by Public Stockholders prior to closing, and the denominator of which is (B) the total number of shares of DFP Class A Common Stock issued and outstanding as of June 28, 2021 (excluding such shares of DFP Class A Common Stock beneficially owned by the Subject Stockholders). The Subject Stockholders further agreed to subject 10% of DFP Class B Common Stock held by Subject Shareholders (575,000 shares) and 10% of Private Placement Warrants held by Sponsor (373,333 warrants) to earnout based on stock price thresholds, as described below.

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In connection with the execution of the Merger Agreement, DFP entered into subscription agreements with the PIPE Investors, pursuant to which the PIPE Investors agreed to purchase, in aggregate, 27.5 million shares of DFP Class A Common Stock at \$10.00 per share for an aggregate commitment of \$275.0 million (the “PIPE Funds”).

Concurrently with the execution of the Merger Agreement, DFP entered into the Consent and Waiver Letter pursuant to which, among other things, (i) the Sponsor waived any adjustment to the conversion provisions in the Current Charter which would result in DFP Class B Common Stock converting to DFP Class A Common Stock at a ratio of greater than one-for-one upon consummation of the Business Combination, (ii) Deerfield Partners and Deerfield Private Design Fund IV (the “Deerfield Funds”) agreed not to redeem any of the 2,500,000 shares of DFP Class A Common Stock (5,000,000 shares total) included in the units of DFP purchased by each of the Deerfield Funds at the IPO and (iii) DFP, the Deerfield Funds and the Sponsor (collectively, the “Deerfield Holders”) agreed to use reasonable best efforts to negotiate and establish definitive documentation pursuant to which the Deerfield Holders would exchange a number of their shares of DFP Class A Common Stock and DFP Class B Common Stock for and in consideration of a number of shares of DFP preferred stock, par value \$0.0001 per share, to be designated as Series A Common Equivalent Preferred Stock, such that immediately thereafter, the Deerfield Holders collectively will hold an aggregate number of outstanding shares of DFP Class A Common Stock that represents 4.5% of the then outstanding shares of DFP Class A Common Stock (the “Deerfield Exchange”). The terms of the Series A Common Equivalent Preferred Stock will provide that each share is convertible into 100 shares of New TOI Common Stock, at the option of the holder, will be entitled to a de minimis liquidation preference of \$0.0001 per share, will not have any voting rights, will otherwise be substantially similar to the New TOI Common Stock and will be subject to a Blocker/Beneficial Ownership Limitation such that the Series A Common Equivalent Preferred Stock will not be convertible into more than 4.9% of the total number of shares of New TOI Common Stock then outstanding.

New TOI will issue to eligible TOI stockholders, Company Option holders and Company RSU holders up to 12,500,000 additional shares of New TOI Common Stock, in two tranches of 5,000,000 and 7,500,000 Earnout Shares, respectively, upon New TOI achieving a price per share of New TOI Common Stock of \$12.50 during the two-year period following the Closing or a price per share of \$15.00 during the three-year period following the Closing, in each case, as its last reported sales price per share for any 20 trading days within any 30 consecutive trading day period within the applicable period; provided, that (i) if one or both of the share price triggers has not been achieved prior to the end of the three-year period following the Closing, (ii) New TOI enters into a definitive agreement that would result in a change of control and (iii) the price per share of New TOI Common Stock in such transaction is equal to or greater than one or both of the share price triggers, then at the Closing of such transaction, New TOI shall issue the applicable portion of the Earnout Shares as if such share price trigger had been achieved.

Sponsor will deposit up to 575,000 shares of DFP Class A Common Stock in an escrow account that will vest and be released to the Sponsor in two tranches of 50%, each, upon New TOI achieving a price per share of New TOI Common Stock of \$12.50 during the two-year period following the Closing or a price per share of \$15.00 during the three-year period following the Closing in each case, as its last reported sales price per share for any 20 trading days within any 30 consecutive trading day period within the applicable period; provided, that (i) if one or both of the share price triggers has not been achieved prior to the end of the three-year period following the closing, (ii) New TOI enters into a definitive agreement that would result in a change of control and (iii) the price per share of New TOI Common Stock in such transaction is equal to or greater than one or both of the share price triggers, then at the closing of such transaction, New TOI shall issue the applicable portion of the Sponsor Earnout Securities as if such share price trigger had been achieved. To the extent any Sponsor Earnout Securities remain unvested at the expiration of the three-year period following the closing, such Sponsor Earnout Securities shall be forfeited and cancelled without any consideration.

The following summarizes the Closing Cash Consideration and Closing Share Consideration:

**(in thousands, except share and per share amounts)**

Shares transferred to TOI at Closing <sup>(1)</sup>	59,546,762	
Value per share	\$ 10.00	
<b>Total Share Consideration</b>	<b>595,468</b>	<b>78.1%</b>
<b>Total Cash Consideration</b>	<b>166,584</b>	<b>21.9%</b>
<b>Total Consideration</b>	<b>\$ 762,052</b>	<b>100%</b>

<sup>(1)</sup> Inclusive of 1.3 million DFP Class A Common Stock to be issued as Restricted Stock and 6.9 million DFP Class A Common Stock issuable upon exercise of New TOI Options. Total DFP Class A Common Stock issuable to TOI equity holders net of Restricted Stock and New TOI Options is 59.5 million.

The following summarizes the pro forma DFP Class A Common Stock outstanding, excluding the potentially dilutive effect of the Earnout Shares, Sponsor Earnout Securities, exercise of Public Warrants and Private Placement Warrants, New TOI Options and Restricted Stock:

	<b>Final Redemption</b>	
	<b>After Deerfield Exchange</b>	
	<b>DFP Class A Common Shares</b>	<b>% voting</b>
Other DFP Class A Common Shares	879,637	1.2%
Other DFP Class B Common Shares	246,828	0.3%
TOI Parent, Inc.	51,326,470	70.1%
Deerfield Holders	3,296,107	4.5%
Other PIPE shares	17,500,000	23.9%
<b>Total DFP Class A Common Shares at Close</b>	<b>73,249,042</b>	<b>100%</b>
<b>Total Series A Common Equivalent Preferred Stock at Close</b>	<b>163,510</b>	

***Expected Accounting Treatment for the Business Combination***

The Business Combination will be accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with GAAP. Under this method of accounting, DFP will be treated as the “acquired” company for financial reporting purposes. Accordingly, the Business Combination will be treated as the equivalent of TOI issuing stock for the net assets of DFP, accompanied by a recapitalization. The net assets of DFP will be stated at historical cost, with no goodwill or other intangible assets recorded.

TOI has been determined to be the accounting acquirer based on the evaluation of the following facts and circumstances:

- TOI’s stockholders have the greatest voting interest in the combined entity with approximately 70.1% majority voting interest, after giving effect to the Deerfield Exchange;
- TOI’s former executive management will constitute the vast majority of the management of New TOI;
- TOI’s existing directors and individuals designated by, or representing, TOI stockholders will constitute a majority of the initial New TOI board of directors following the consummation of the Business Combination;
- The relative fair values of TOI and DFP indicate that TOI is the accounting acquirer.

The Earnout Shares issuable to eligible TOI’s stockholders and Sponsor Earnout Securities are expected to be accounted for as liability classified equity-linked instruments that are earned upon the achievement of certain triggering events. This portion of the Earnout Shares is liability classified due to failure to meet the equity classification criteria under ASC 815-40 – *Contracts in Entity’s Own Equity*. The Earnout Shares liability will be remeasured at fair value through net income (loss) at each reporting period subsequent to the closing of the Business Combination. For purposes of pro forma Transaction adjustments, however, as subsequent fair value of the Earnout Shares liability cannot be estimated at the closing date of the Business Combination, there will be no pro forma impact to the statement of operations related to the remeasurement of this Earnout Shares liability.

The Earnout Shares issuable to Company Option holders and Company RSU holders is considered a stock-based compensation award due to the requirement that Company Option holders and Company RSU holders must remain employed by New TOI in order not to forfeit such unvested Earnout Shares. The preliminary grant date fair value estimate of the stock-based compensation portion of the Earnout Shares is \$7.5 million.

The fair value of the Earnout Shares and the Sponsor Earnout Securities were determined using a Monte Carlo simulation valuation model using a distribution of potential outcomes on a monthly basis over the derived Earnout Period and Sponsor Earnout Period. The preliminary estimated fair value of the Sponsor Earnout Securities and Earnout Shares was determined using the most reliable information available to estimate current stock price, expected volatility, the risk-free interest rate, the expected term, and expected dividend yield.



Cash payments to holders of Eligible Cash-Out Vested Company Options will be recorded as compensation expense under ASC 718 – *Compensation – Stock Compensation*. New TOI Options and Restricted Stock granted in replacement of Company Options and Company RSUs are accounted for as improbable to probable modifications under ASC 718 and will be recognized over the applicable vesting period based on the fair value of the Company Options and Company RSUs immediately after modification. The preliminary estimated fair value of the New TOI Options and Restricted Stock was determined using a Black Scholes model with inputs based on the most reliable information available to estimate current stock price, expected volatility, the risk-free interest rate, the expected term, and expected dividend yield.

## **Note 2 – Accounting Policies**

As part of preparing these unaudited pro forma condensed combined financial statements, certain reclassifications were made to align DFP and TOI's financial statement presentation. Upon consummation of the merger, management will perform a comprehensive review of the two entities' accounting policies. As a result of the review, management may identify differences between the accounting policies of the two entities which, when conformed, could have a material impact on the financial statements of the post-combination company. Based on its initial analysis, management did not identify any differences that would have a material impact on the unaudited pro forma condensed combined financial information. As a result, the unaudited pro forma condensed combined financial information does not assume any differences in accounting policies.

## **Note 3 – Transaction Adjustments to Unaudited Pro Forma Condensed Combined Balance Sheet as of September 30, 2021**

The unaudited pro forma condensed combined financial information does not give effect to any anticipated synergies, operating efficiencies, tax savings, or cost savings that may be associated with the Business Combination. No tax adjustment has been computed for the pro forma New TOI financial results, as it expects to maintain a full valuation allowance against its U.S. deferred tax assets. The pro forma Transaction adjustments included in the unaudited pro forma condensed combined balance sheet as of September 30, 2021 are as follows:

- (A) Reflects release of the restricted investments and cash held in the Trust Account upon consummation of the Business Combination.
  - (B) Reflects the proceeds of \$275,000,000 from the issuance and sale of 27,500,000 shares of DFP Class A Common Stock at \$10.00 per share with par value of \$0.0001 to PIPE Investors, offset by the issuance costs of \$7.0 million.
  - (C) Reflects the settlement of \$6.3 million of DFP deferred underwriting fees incurred for the IPO that is payable upon consummation of a business combination.
  - (D) Reflects the one time, lump-sum cash settlement of the Eligible Cash-out Vested Company Options. Company Options exchanged for New TOI Options will be subject to ASC 718 on an ongoing basis. See Note 1 for further detail.
  - (E) Represents preliminary estimated transaction costs incurred by DFP and TOI that are capitalized as part of the Business Combination.
  - (F) Reflects the fair value of the Earnout Shares liability potentially issuable to TOI stockholders and the Sponsor Earnout Securities that is not subject to a continued service requirement. The preliminary estimated fair value of the Sponsor Earnout Securities is \$3.3 million. The preliminary estimated fair value of the liability classified portion of the Earnout Shares is \$62.2 million.
  - (G) Represents redemptions of 17,120,363 Public Stockholders at a redemption price of \$10.00 per share as a result of DFP Class A shareholder votes at the Special Meeting.
  - (H) Reflects the reclassification of DFP Class A common stock subject to possible redemption into permanent equity.
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- (I) Reflects the Conversion of TOI Preferred Stock into TOI Common Stock pursuant to the Merger Agreement.
- (J) Reflects the conversion of DFP Class B Common Stock to DFP Class A Common Stock upon consummation of the Business Combination.
- (K) Reflects the recapitalization of TOI and issuance of 51,326,470 shares of DFP Class A Common Stock \$0.0001 per share par value to be issued to TOI stockholders and \$166.6 million cash (which is inclusive of payments for Eligible Cash-Out Vested Company Option of \$20.6 million as noted in (D) above) to TOI equity holders as consideration in the Business Combination.
- (L) To reflect the Deerfield Holders' agreement to exchange its aggregate beneficial ownership of DFP Class A Common Stock for an equivalent amount of Series A Common Equivalent Preferred Stock to reduce Deerfield Holders' voting interest in New TOI to 4.5%.
- (M) Reflects the elimination of DFP's historical accumulated deficit.
- (N) Reflects the change of classification of the Public Warrants from liability to equity upon Closing of the Business Combination resulting in the reduction of the DFP derivative liability. Upon Closing of the Business Combination, shares underlying the Public Warrants are not redeemable and New TOI will have one single class of voting stock, which does not preclude the Public Warrants from being considered indexed to New TOI's equity and allows the Public Warrants to meet the criteria for equity classification per ASC 815-40 *Contracts on an Entity's Own Equity*.
- (O) Reflects the forfeiture of 555,791 Subject Warrants in connection with redemptions of DFP Class A Common Stock pursuant to the terms of the Stockholder Support Agreement.
- (P) Reflects settlement of amounts due to related parties for DFP office space and administrative support services.

**Note 4 - Transaction Adjustments to Unaudited Pro Forma Condensed Combined Statement of Operations for the nine months ended September 30, 2021 and the year ended December 31, 2020.**

- (AA) Reflects compensation expense recognized for the portion of Earnout Consideration subject to a service condition based on a grant date fair value of \$7.5 million with a derived requisite service period of 0.74 years and 1.30 years for the two tranches of Earnout Shares, respectively.
- (BB) Reflects (i) compensation expense recognized on a straight line basis for the exchanged New TOI Options and Restricted Stock over a requisite service period of 3 years as well as (ii) compensation expense in connection with the one time, lump-sum payment to Eligible Cash-out Vested Company Options recognized in full in the unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020.

For the nine months ended September 30, 2021, compensation expense for the exchanged New TOI Options and Restricted Stock is \$10.7 million based on a grant date fair value of \$42.8 million.

For the year ended December 31, 2020, compensation expense for the exchanged New TOI Options and Restricted Stock is \$14.3 million based on a grant date fair value of \$42.8 million.

For the year ended December 31, 2020, compensation expense recognized for the one-time, lump-sum payment to Eligible Cash-out Vested Company Options is \$20.6 million.

- (CC) Reflects the elimination of investment income related to investments held in the Trust Account.
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(DD) Reflects elimination of historical expenses related to DFP's office space and related support services, which will terminate upon consummation of the Business Combination.

(EE) Reflects the pro rata allocation of transaction costs related to Private Placement Warrants.

(GG) Reflects the reversal of transaction costs to be capitalized as part of the Business Combination.

#### Note 5 – Net Loss per Share

Net loss per share is calculated by applying the two-class method and using the weighted average DFP Class A Common Stock outstanding, Series A Common Equivalent Preferred Stock outstanding and weighted average vested Restricted Stock outstanding, and the issuance of additional shares in connection with the Business Combination, assuming the shares were outstanding since January 1, 2020. As the Business Combination is being reflected as if it had occurred at the beginning of the periods presented, the calculation of weighted average shares outstanding for basic and diluted net loss per share assumes that the shares issuable relating to the Business Combination have been outstanding for the entire periods presented.

The unaudited pro forma condensed combined financial information has been prepared for the nine months ended September 30, 2021 and the year ended December 31, 2020 (in thousands, except number of shares and per share amounts):

	<b>Nine months ended September 30, 2021</b>
<b>Basic and Diluted EPS:</b>	
Pro forma net loss	\$ (9,700)
Pro forma loss allocated to participating securities	<u>(1,760)</u>
Pro forma net loss attributable to DFP Class A Common Stockholders	(7,940)
<b>DFP Class A Common Stock</b>	
Weighted average shares outstanding of DFP Class A Common Stock, basic and diluted <sup>(1)</sup>	73,787,558
Basic and diluted net loss per share, DFP Class A Common Stock <sup>(3)</sup>	\$ (0.11)
	<b>Year ended December 31, 2020</b>
<b>Basic and Diluted EPS:</b>	
Pro forma net loss	\$ (64,470)
Pro forma net loss allocated to participating securities	<u>(11,747)</u>
Pro forma net loss attributable to DFP Class A Common Stockholders	(52,723)
<b>DFP Class A Common Stock</b>	
Weighted average shares outstanding of DFP Class A Common Stock, basic and diluted <sup>(2)</sup>	73,385,485
Basic and diluted net loss per share, DFP Class A Common Stock <sup>(3)</sup>	\$ (0.72)

(1) Comprised of 73,249,042 weighted average DFP Class A Common Shares outstanding plus 538,516 weighted average vested Restricted Stock.

(2) Comprised of 73,249,042 weighted average DFP Class A Common Shares outstanding plus 136,443 weighted average vested Restricted Stock.

(3) As the unaudited pro forma condensed combined statement of operations is in a loss position, anti-dilutive instruments were not included in the calculation of diluted weighted average number of common shares outstanding.