

**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): **April 11, 2013 (April 11, 2013)**

SUNSHINE HEART, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of incorporation)

000-35312
(Commission File No.)

68-0533453
(IRS Employer
Identification No.)

12988 Valley View Road
Eden Prairie, Minnesota 55344
(Address of Principal Executive Offices) (Zip Code)

(952) 345-4200
(Registrant's Telephone Number, Including Area Code)

Not Applicable
(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 (see General Instruction A.2. below):

- 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))

Item 1.01 Entry into a Material Definitive Agreement.

On April 11, 2013, Sunshine Heart, Inc. (the "**Company**") entered into an Underwriting Agreement (the "**Underwriting Agreement**") with Canaccord Genuity Inc. (the "**Underwriter**"), pursuant to which the Company agreed to issue and sell 2,500,000 shares of its common stock, \$0.0001 par value per share, at a public offering price of \$5.25 per share (the "**Offering**"). Under the terms of the Underwriting Agreement, the Company granted the Underwriter a 30-day option to purchase up to an additional 375,000 shares of the Company's common stock solely to cover over-allotments, if any. The Company expects to receive approximately \$12.2 million in net proceeds from the Offering (excluding the over-allotment option), after underwriting discounts and estimated expenses. The offering is scheduled to close on or about April 16, 2013, subject to customary closing conditions.

The Underwriting Agreement contains representations, warranties and covenants made by the Company that are customary for transactions of this type. Under the terms of the Underwriting Agreement, the Company has agreed to indemnify the Underwriter against certain liabilities, including liabilities under the Securities Act of 1933, as amended (the "**Securities Act**"). In addition, pursuant to the terms of the Underwriting Agreement, the Company and its executive officers and directors have entered into agreements with the Underwriter providing that the Company and each of these persons may not, without the prior written approval of the Underwriter, subject to limited exceptions, offer, sell, transfer or otherwise dispose of the Company's securities for a period of 90 days following the Offering.

The Offering was made pursuant to the Company's Registration Statement on Form S-3 (Registration No. 333-187273), filed with the Securities and Exchange Commission (the "**SEC**") on March 15, 2013 and declared effective by the SEC on April 5, 2013, and the related prospectus supplement dated April 11, 2013.

A copy of the Underwriting Agreement is filed as Exhibit 1.1 and is incorporated herein by reference. The foregoing description of the Underwriting Agreement does not purport to be complete and is qualified in its entirety by reference to such exhibit.

The opinion of the Company's counsel regarding the legality of the shares issued pursuant to the Offering is also filed as Exhibit 5.1.

Item 8.01 Other Events.

On April 11, 2013, the Company issued a press release announcing the terms of the Offering. A copy of the press release dated April 11, 2013 is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement between the Company and Canaccord Genuity Inc. dated April 11, 2013
5.1	Opinion of Honigman Miller Schwartz and Cohn LLP
23.1	Consent of Honigman Miller Schwartz and Cohn LLP (contained in Exhibit 5.1)
99.1	Press release of Sunshine Heart, Inc. dated April 11, 2013

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SIGNATURES

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

Dated: April 11, 2013

SUNSHINE HEART, INC.

By: /S/ JEFFREY S. MATHIESEN
Name: Jeffrey S. Mathiesen
Title: Chief Financial Officer

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EXHIBIT INDEX

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2,500,000 Shares(1)

Sunshine Heart, Inc.

Common Stock, par value \$0.0001 per share

UNDERWRITING AGREEMENT

April 11, 2013

CANACCORD GENUITY INC.
 As Representative of the several
 Underwriters named in Schedule I hereto
 c/o Canaccord Genuity Inc.
 99 High Street, 12th Floor
 Boston, Massachusetts 02110

Ladies and Gentlemen:

Sunshine Heart, Inc., a Delaware corporation (the “**Company**”), proposes to sell to the several Underwriters named in Schedule I hereto (the “**Underwriters**”) an aggregate of 2,500,000 shares (the “**Firm Shares**”) of Common Stock, \$0.0001 par value per share (the “**Common Stock**”), of the Company. The Company has also granted to the several Underwriters an option to purchase up to 375,000 additional shares of Common Stock on the terms and for the purposes set forth in Section 3 hereof (the “**Option Shares**”). The Firm Shares and any Option Shares purchased pursuant to this Underwriting Agreement are herein collectively called the “**Securities**.”

The Company hereby confirms its agreement with respect to the sale of the Securities to the several Underwriters, for whom you are acting as representative (the “**Representative**”).

1. **Registration Statement and Prospectus.**

The Company has prepared and filed with the Securities and Exchange Commission (the “**Commission**”) a shelf registration statement on Form S-3 (File No. 333-187273) under the Securities Act of 1933, as amended (the “**Act**”), and the rules and regulations (the “**Rules and Regulations**”) of the Commission thereunder, including the base prospectus relating to the registration of certain securities described therein, and such amendments to such registration statement (including any post-effective amendments) as may have been required to the date of this Agreement. Such registration statement, at any given time, including the amendments thereto (including any post-effective amendments) to the date of this Agreement, the exhibits and any schedules thereto to the date of this Agreement and the documents and information otherwise deemed to be a part thereof or included therein by Rule 430B of the Rules and Regulations or otherwise pursuant to the Rules and Regulations to the date of this Agreement, is herein referred to as the “**Registration Statement**.” The base prospectus contained in the Registration Statement, as of the date it was declared effective, or in the form it was most recently filed with the Commission on or prior to the date of this Agreement, is referred to as the “**Base Prospectus**.” If the Company has filed or files an abbreviated registration statement to register additional securities pursuant to Rule 462(b) of the Rules and Regulations (the “**462(b) Registration Statement**”), then any reference herein to the term Registration Statement shall also be deemed to include such 462(b) Registration Statement.

The Company will prepare and file a final prospectus supplement to the Base Prospectus relating to the Securities with the Commission pursuant to Rules 424(b) and 430B of the Rules and Regulations in the form heretofore delivered to the Underwriters. The Base Prospectus, as supplemented by such final prospectus supplement, in the form

(1) Plus an option to purchase up to 375,000 additional shares to cover over-allotments.

in which it is first filed with the Commission pursuant to Rule 424(b) under the Act, is referred to herein as the “**Final Prospectus**.” The Final Prospectus, or any preliminary prospectus supplement or prospectus filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations, including the Base Prospectus, is hereafter called a “**Prospectus**.”

For purposes of this Agreement, all references to the Registration Statement or any Prospectus shall be deemed to refer to and include the documents incorporated by reference therein or otherwise deemed by the Rules and Regulations to be a part thereof. For purposes of this Agreement, all references to amendments or supplements to the Registration Statement, the Time of Sale Information or any Prospectus shall be deemed to refer to and to include the filing of any document under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), that is or is deemed to be incorporated by reference therein or otherwise deemed by the Rules and Regulations to be a part thereof. For purposes of this Agreement, all references to the Registration Statement or any Prospectus, or any amendment or supplement thereto, shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System (“**EDGAR**”). All references in this Agreement to financial statements and schedules and other information that is “described,” “contained,” “included” or “stated” in the Registration Statement or any Prospectus (or other references of like import) shall be deemed to mean and include all such financial statements, pro forma financial information and schedules and other information that is incorporated by reference in or otherwise deemed by the Rules and Regulations to be a part of or included in the Registration Statement or any Prospectus, as the case may be.

2. **Representations and Warranties of the Company.**

(a) The Company represents and warrants to, and agrees with, the several Underwriters as follows:

(i) The Registration Statement has been declared effective by the Commission, no order preventing or suspending the use of any Prospectus has been issued by the Commission, no stop order suspending the effectiveness of the Registration Statement has been issued, and no proceeding for that purpose has been initiated or, to the Company’s knowledge, threatened by the Commission.

(ii) As of the date it was declared effective, at the date hereof and at each Closing Date (as defined in Section 3(b) hereof), the Registration Statement and any post-effective amendment thereto complied or will comply (as applicable) in all material respects with the applicable

requirements and provisions of the Act and the Rules and Regulations and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Time of Sale Disclosure Package (as defined in Section 2(a)(iv) hereof), as of the date hereof and at each Closing Date, and the Final Prospectus, as amended or supplemented, at the time of filing pursuant to Rule 424(b) of the Rules and Regulations and at each Closing Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the two immediately preceding sentences do not apply to statements in or omissions from the Registration Statement or any Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with written information relating to an Underwriter furnished to the Company by or through you, specifically for use in the preparation thereof; it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 6(f). The Registration Statement (including each document incorporated by reference therein) contains all exhibits and schedules required to be filed by the Act or the Rules and Regulations. The Company has complied with all requests of the Commission for additional or supplemental information.

(iii) The documents incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and any Prospectus, when they became or become effective or were or will be filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Act or the Exchange Act, as applicable, and were filed on a timely basis with the Commission. Any further documents so filed and incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act, and will not contain an untrue

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statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(iv) Neither (A) the Issuer General Free Writing Prospectus(es) issued at or prior to the Time of Sale and set forth on Schedule II, the information set forth on Schedule III, the Base Prospectus and the Prospectus most recently filed with the Commission before the time of this Agreement, including any Preliminary Prospectus deemed to be a part thereof, all considered together (collectively, the **“Time of Sale Disclosure Package”**), nor (B) any individual Issuer Limited-Use Free Writing Prospectus, when considered together with the Time of Sale Disclosure Package, includes or included as of the Time of Sale any untrue statement of a material fact or omits or omitted as of the Time of Sale to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Prospectus or any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by or through you specifically for use therein; it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 6(f). As used in this paragraph and elsewhere in this Agreement:

(1) **“Time of Sale”** means 9:00 a.m., Eastern time, on the date of this Agreement.

(2) **“Issuer Free Writing Prospectus”** means any “issuer free writing prospectus,” as defined in Rule 433 of the Rules and Regulations, relating to the Securities that (A) is required to be filed with the Commission by the Company, or (B) is exempt from filing pursuant to Rule 433(d)(5)(i) of the Rules and Regulations because it contains a description of the Securities or of the offering that does not reflect the final terms or is a “bona fide electronic roadshow,” as defined in Rule 433 of the Rules and Regulations, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g) under the Act.

(3) **“Issuer General Free Writing Prospectus”** means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule II to this Agreement.

(4) **“Issuer Limited-Use Free Writing Prospectus”** means any Issuer Free Writing Prospectus that is not an Issuer General Free Writing Prospectus.

(v) (A) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the Prospectus Delivery Period or until any earlier date that the Company notified or notifies the Representative as described in Section 4(c)(ii), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Final Prospectus. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by you specifically for use therein; it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 6(f).

(B) At the time of filing the Registration Statement and at the date hereof, the Company was not and is not (1) an “ineligible issuer,” as defined in Rule 405 under the Act (including, without limitation, because within the past three years the Company or any entity that at the time was a subsidiary of the Company (I) was convicted of a felony or misdemeanor or (II) was made the subject of any judicial or administrative decree or order described in Rule 405, in each case without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer), or (2) an “excluded issuer,” as defined in Rule 164 under the Act.

(C) Each Issuer Free Writing Prospectus satisfied, as of its issue date and at all subsequent times through the Prospectus Delivery Period, all other conditions to use thereof as set forth in Rules 164 and 433 under the Act.

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(vi) The consolidated financial statements of the Company and Sunshine Heart Company Pty. Limited, a proprietary limited company registered under the Australian Corporations Act 2001 (Cth) (the **“Corporations Act”**) and a wholly owned subsidiary of the Company (the **“Subsidiary”**), together with the related notes, included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus comply in all material respects with the requirements of the Act and fairly present, as the case may be, the financial condition of the Company and its consolidated Subsidiary as of the dates indicated and the results of operations and changes in cash flows for the periods therein specified in conformity with generally accepted accounting principles in the United States (**“GAAP”**) consistently applied throughout the periods involved; the supporting schedules included or incorporated by reference in the Registration Statement present fairly the information required to be stated therein; all non-GAAP financial information included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus complies with the requirements of Regulation G and Item 10 of Regulation S-K under the Act; and, except as disclosed in the Time of Sale Disclosure Package and the Final Prospectus, there are no material off-balance sheet arrangements (as defined in Regulation S-K under the Act, Item 303(a)

(4)(ii) or any other relationships with unconsolidated entities or other persons, that may have a material current or, to the Company's knowledge, material future effect on the Company's financial condition, results of operations, liquidity, capital expenditures, capital resources or significant components of revenue or expenses. No other financial statements or schedules are required to be included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus. Ernst & Young LLP, which has expressed its opinion with respect to the applicable financial statements and schedules filed as a part of or incorporated by reference in the Registration Statement and included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, is (x) an independent public accounting firm with respect to the Company within the meaning of the Act and the Rules and Regulations, (y) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**")) and (z) in performing its work for the Company, not in violation of the auditor independence requirements of the Sarbanes-Oxley Act.

(vii) Each of the Company and its Subsidiary has been duly organized and is validly existing as a corporation or similar entity in good standing under the laws of its jurisdiction of incorporation (to the extent such status is possible in the jurisdiction of incorporation). Each of the Company and its Subsidiary has full corporate power and authority to own its properties and conduct its business as currently being carried on and as described in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, and is duly qualified or registered to do business as a foreign corporation in good standing (to the extent such status is possible in the relevant foreign jurisdiction) in each jurisdiction in which it owns or leases real property or in which the conduct of its business makes such qualification or registration necessary and in which the failure to so qualify or register would have a material adverse effect upon the business, prospects (to the extent disclosed in the Final Prospectus), management, properties, operations, condition (financial or otherwise) or results of operations of the Company and its Subsidiary, taken as a whole ("**Material Adverse Effect**").

(viii) Except as contemplated in the Time of Sale Disclosure Package and in the Final Prospectus, subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package, neither the Company nor its Subsidiary has incurred any material liabilities or obligations, other than those incurred in the ordinary course of business, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock; and there has not been any change in the capital stock (other than a change in the number of outstanding shares of Common Stock due to the issuance of shares upon the exercise of outstanding options or warrants), or any material change in the short-term or long-term debt, or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock other than pursuant to the Company's Amended and Restated 2002 Stock Plan or 2011 Equity Incentive Plan, of the Company or its Subsidiary, or any material adverse change in the business, prospects (to the extent disclosed in the Final Prospectus), management, properties, operations, condition (financial or otherwise), or results of operations of the Company and its Subsidiary, taken as a whole ("**Material Adverse Change**") or any development which would reasonably be expected to result in any Material Adverse Change.

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(ix) Except as disclosed in the Time of Sale Disclosure Package and in the Final Prospectus, there is not pending or, to the knowledge of the Company, threatened or contemplated, any action, suit or proceeding (a) to which the Company or its Subsidiary is or would be a party or (b) which has as the subject thereof any officer or director of the Company or its Subsidiary, any employee benefit plan sponsored by the Company or its Subsidiary or any property or assets owned or leased by the Company or its Subsidiary before or by any court or Governmental Authority (as defined below), or any arbitrator, which, individually or in the aggregate, would reasonably be expected to result in any Material Adverse Change, or would reasonably be expected to materially and adversely affect the ability of the Company or its Subsidiary to perform its obligations under this Agreement, or which are otherwise material in the context of the sale of the Securities. There are no current or pending or, to the knowledge of the Company, contemplated or threatened, legal, governmental or regulatory actions, suits or proceedings (x) to which the Company or its Subsidiary is subject or (y) which has as the subject thereof any officer or director of the Company or its Subsidiary, any employee plan sponsored by the Company or its Subsidiary or any property or assets owned or leased by the Company or its Subsidiary, that are required to be described in the Registration Statement, Time of Sale Disclosure Package and the Final Prospectus by the Act or by the Rules and Regulations and that have not been so described.

(x) There are no statutes, regulations, contracts or documents that are required to be described in the Registration Statement, in the Time of Sale Disclosure Package and in the Final Prospectus or required to be filed as exhibits to the Registration Statement by the Act or by the Rules and Regulations that have not been so described or filed.

(xi) This Agreement has been duly authorized, executed and delivered by the Company, and assuming due authorization, execution and delivery by the Underwriters, constitutes a valid, legal and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as rights to indemnity hereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity. The execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated did not or will not (A) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or its Subsidiary pursuant to any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or its Subsidiary is a party or by which the Company or its Subsidiary is bound or to which any of the property or assets of the Company or its Subsidiary is subject, (B) result in any violation of the provisions of the Company's or its Subsidiary's charter, constitution or by-laws (as applicable) or (C) result in the violation of any law or statute or any judgment, order, rule, regulation or decree of any court or arbitrator or federal, state, local or foreign governmental agency or regulatory authority having jurisdiction over the Company or its Subsidiary or any of their properties or assets (each, a "**Governmental Authority**"), except in the cases of clauses (A) and (C) only for such breaches, violations or defaults as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No consent, approval, authorization or order of, or registration or filing with any Governmental Authority is required for the execution, delivery and performance by the Company or its Subsidiary of this Agreement or for the consummation thereby of the transactions contemplated hereby, including the issuance or sale of the Securities by the Company, except with respect to the offer and sale of the Securities, such as may be required under the Act or state or foreign securities laws or the rules of the Financial Industry Regulatory Authority ("**FINRA**"). The Company has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, including the authorization, issuance and sale of the Securities as contemplated by this Agreement.

(xii) All of the issued and outstanding shares of capital stock of the Company, including the outstanding shares of Common Stock, are duly authorized and validly issued, fully paid and nonassessable, have been issued in compliance with all federal, state and applicable foreign securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities that have not been waived in writing (a copy of which has been delivered to counsel to the Representative); the Securities which may be sold hereunder by the Company have been duly authorized and, when issued, delivered and paid for in accordance with the terms of this Agreement, will have been validly issued and will be fully paid and nonassessable; and the capital stock of the Company, including the Common Stock, conforms to the description

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thereof in the Registration Statement, in the Time of Sale Disclosure Package and in the Final Prospectus. There are no preemptive rights, restrictions upon the voting or transfer of any shares of Common Stock or any other rights to subscribe for or to purchase any shares of Common Stock pursuant to the Company's charter, by-laws or any agreement or other instrument to which the Company or its Subsidiary is a party or by which the Company or its Subsidiary is bound. Neither the filing of the Registration Statement nor the offering or sale of the Securities as contemplated by this Agreement gives rise to any rights for or relating to the registration of any shares of Common Stock or other securities of the Company or its Subsidiary. All of the issued and outstanding shares of capital stock of the Subsidiary have been duly and validly authorized and issued and are fully paid and nonassessable, have been issued in compliance with all federal, state and applicable foreign securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities that have not been waived in writing (a copy of which has been delivered to counsel to the Underwriters) and, except as otherwise described in the Registration Statement, in the Time of Sale Disclosure Package and in the Final Prospectus, the Company owns of record and beneficially, free and clear of any security interests, claims, liens, proxies, equities or other encumbrances, all of the issued and outstanding shares of such stock. Except as described in the Registration Statement, in the Time of Sale Disclosure Package and in the Final Prospectus, there are no options, warrants, agreements, contracts or other rights in existence to purchase or acquire from the Company or its Subsidiary any shares of the capital stock of the Company or its Subsidiary. The Common Stock (including the Securities) conforms in all material respects to the description thereof contained in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus. The description of Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights.

(xiii) (A) Each of the Company and its Subsidiary holds, and is operating in compliance in all material respects with, all material franchises, grants, authorizations, licenses, permits, easements, consents, certificates and orders of any Governmental Authority or self-regulatory body required for the conduct of its business as currently conducted, (B) all such franchises, grants, authorizations, licenses, permits, easements, consents, certifications and orders that are material to the Company or its Subsidiary are valid and in full force and effect, (C) neither the Company nor its Subsidiary has received notice of any revocation or modification of any such franchise, grant, authorization, license, permit, easement, consent, certification or order that is material to the Company or its Subsidiary or has reason to believe that any such franchise, grant, authorization, license, permit, easement, consent, certification or order that are material to the Company or its Subsidiary will not be renewed in the ordinary course, and (D) except as would not reasonably be expected to result in a Material Adverse Effect, each of the Company and its Subsidiary is and at all times has been in compliance with all applicable federal, state, local and foreign laws, regulations, orders and decrees.

(xiv) Except as described in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, the Company and its Subsidiary: (A) are and at all times have been in compliance in all material respects with all statutes, rules or regulations applicable to the Company and its Subsidiary regarding the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product manufactured or distributed by the Company or its Subsidiary or to billing, kickbacks, referral relationships or arrangements, ethics, claims processing, claims submission and privacy and security of health information ("**Applicable Laws**"); (B) have not received any notice of a material adverse finding, warning letter, untitled letter or other correspondence or notice from the U.S. Food and Drug Administration (the "**FDA**") or any other Governmental Authority alleging or asserting noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("**Authorizations**"); (C) have not received notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and the Company has no knowledge that any such Governmental Authority is considering such action; and (D) have filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and correct in all material respects on the date filed (or were corrected or supplemented by a subsequent submission).

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(xv) The clinical trials conducted by or on behalf of or sponsored by the Company or its Subsidiary or in which the Company or its Subsidiary or their product candidates have participated have been and, if still pending, are being conducted (i) in material compliance with all statutes, rules, regulations and guidance applicable thereto and (ii) in all material respects in accordance with medical and scientific research procedures that the Company reasonably believes are appropriate. Neither the Company nor its Subsidiary has received any notices or other correspondence from the FDA or any other Governmental Authority requiring the termination, suspension or material modification of any clinical trials.

(xvi) Neither the Company nor its Subsidiary has (A) offered, authorized, promised, made or agreed to make gifts of money, other property, or anything of value to any actual or potential customer, supplier, governmental employee, Medicare or Medicaid beneficiary, or any person in a position to assist or hinder the Company or its Subsidiary in connection with any actual or proposed transaction or (B) maintained any unrecorded fund or asset of the Company or its Subsidiary for any improper purpose or made any false entries on its books and records for any reason.

(xvii) The Company and its Subsidiary have good and marketable title to all property (whether real or personal, except with respect to Intellectual Property, as to which matters of title are addressed in paragraph (xvii) of this Section 2(a)) described in the Registration Statement, in the Time of Sale Disclosure Package and in the Final Prospectus as being owned by them, in each case free and clear of all liens, claims, security interests, other encumbrances or defects except such as (A) are described in the Registration Statement, in the Time of Sale Disclosure Package and in the Final Prospectus or (B) do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or its Subsidiary. The property held under lease by the Company and its Subsidiary is held by them under valid, subsisting and enforceable leases with only such exceptions with respect to any particular lease as do not interfere in any material respect with the conduct of the business of the Company or its Subsidiary.

(xviii) Each of the Company and its Subsidiary owns, possesses, has a valid license to or can acquire or license on reasonable terms, all Intellectual Property necessary for the conduct of the Company's and its Subsidiary's business as now conducted or as described in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus to be conducted, except as such failure to own, possess, or acquire such rights would not reasonably be expected to result in a Material Adverse Effect. Furthermore, (A) except as described in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, there are no rights of third parties to any Intellectual Property owned by the Company or its Subsidiary, or any Intellectual Property described in the Registration Statement, in the Time of Sale Disclosure Package and in the Final Prospectus as being owned by them, other than licenses granted to customers and suppliers of the Company or its Subsidiary in the ordinary course of business of the Company or its Subsidiary, and except as so described, there are no restrictions on the ability of the Company or its Subsidiary to control or transfer any rights to the Intellectual Property so owned or described; (B) to the knowledge of the Company, there is no infringement, misappropriation or violation by third parties of any such Intellectual Property, except as such infringement, misappropriation or violation would not reasonably be expected to result in a Material Adverse Effect; (C) except as described in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, there is no pending or, to the

knowledge of the Company, threatened, action, suit, proceeding or claim by others challenging the Company's or its Subsidiary's rights in or to any such Intellectual Property; (D) the Intellectual Property owned by the Company and its Subsidiary, and to the knowledge of the Company, the Intellectual Property licensed to the Company and its Subsidiary, has not been adjudged invalid or unenforceable, in whole or in part, and, except as disclosed in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, there is no pending or to the knowledge of the Company threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property, and the Company is unaware of any facts which are reasonably likely to form a basis for any such claim; (E) except as described in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, there is no pending or to the knowledge of the Company threatened action, suit, proceeding or claim by others that the Company or its Subsidiary infringes, misappropriates or otherwise violates any Intellectual Property or other proprietary rights of others and neither the Company nor its Subsidiary has received any written notice of such claim and the Company and its Subsidiary are unaware of any other fact

which would be reasonably likely to form a basis for any such action, suit, proceeding or claim; (F) to the Company's knowledge, no employee of the Company or its Subsidiary is in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company or its Subsidiary or actions undertaken by the employee while employed with the Company or its Subsidiary, except for such violations as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; and (G) each former and current employee or consultant of the Company or its Subsidiary is a party to a written contract with the Company or its Subsidiary that assigns to the Company or its Subsidiary all rights to all inventions, improvements, discoveries and information relating to the Company or its Subsidiary. "**Intellectual Property**" means all patents, patent applications, together with any reissues continuations, continuations-in-part, revisions, extensions or reexaminations thereof, trade and service marks, trade and service mark registrations, trade names, copyrights, licenses, inventions, trade secrets, domain names, technology, know-how and other intellectual property.

(xix) Neither the Company nor its Subsidiary (A) is in violation of its respective charter, by-laws, constitution or other organizational documents (as applicable), or (B) is in breach of or otherwise in default, and no event has occurred which, with notice or lapse of time or both, would constitute such a default, in the performance of any material obligation, agreement or condition contained in any bond, debenture, note, indenture, loan agreement or any other material contract, lease or other instrument to which it is subject or by which any of them may be bound, or to which any of the material property or assets of the Company or its Subsidiary is subject, except in the case of this clause (B) only for such breaches or defaults as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(xx) The Company and its Subsidiary have timely filed all relevant federal, state, local and foreign income and franchise tax returns required to be filed and are not in default in the payment of any taxes which were payable pursuant to said returns or any assessments with respect thereto, other than any which the Company or its Subsidiary is contesting in good faith or except as would not reasonably be expected to result in a Material Adverse Effect. There is no pending dispute with any taxing authority relating to any of such returns, and the Company has no knowledge of any liability for any tax to be imposed upon the properties or assets of the Company or its Subsidiary for which there is not an adequate reserve reflected in the financial statements included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus.

(xxi) The Company has not distributed and will not distribute any prospectus or other offering material in connection with the offering and sale of the Securities other than any Preliminary Prospectus, the Time of Sale Disclosure Package or the Final Prospectus or other materials permitted by the Act to be distributed by the Company; *provided, however*, that, except as set forth on Schedule II, the Company has not made and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the Act, except in accordance with the provisions of Section 4(o) of this Agreement.

(xxii) The Common Stock of the Company is registered and listed on the NASDAQ Capital Market ("**NASDAQ**") under the ticker symbol "SSH." The Company has not received any notice that it is not currently in compliance with the listing or maintenance requirements of NASDAQ. The Company believes that it is, and has no reason to believe that it will not in the foreseeable future continue to be, in material compliance with all such listing and maintenance requirements. Except as described in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus, there are no affiliations among the Company's directors and officers and members of FINRA. A Registration Statement relating to the Common Stock on Form 10 under the Exchange Act has become effective;

(xxiii) The Company (i) is not in breach of, or has obtained a waiver of and/or no-action relief with respect to, any provision of the Listing Rules (the "**ASX Listing Rules**") of the Australian Securities Exchange (the "**ASX**") to the extent that it is material to the Company or necessary or required with respect to the sale and delivery of the Securities as contemplated hereby and (ii) has otherwise complied in all material respects with all applicable continuous disclosure requirements under the ASX Listing Rules;

(xxiv) Other than the Subsidiary, the Company and the Subsidiary, directly or indirectly, owns, and upon closing of the offering of the Securities, directly or indirectly, will own, no capital stock or other equity or ownership or proprietary interest in any corporation, partnership, association, trust or other entity.

(xxv) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in the United States and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Registration Statement, in the Time of Sale Disclosure Package and in the Final Prospectus, the Company's internal controls over financial reporting are effective and none of the Company, the Company's board of directors and the Company's audit committee is aware of any "significant deficiencies" or "material weaknesses" (each as defined by the Public Company Accounting Oversight Board) in its internal control over financial reporting, or any fraud, whether or not material, that involves management or other employees of the Company who have a significant role in the Company's internal controls; and since the end of the latest audited fiscal year, there has been no change in the Company's internal control over financial reporting (whether or not remediated) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company's board of directors has, subject to the exceptions, cure periods and the phase-in periods specified in the rules of NASDAQ ("**Exchange Rules**"), validly appointed an audit committee to oversee internal accounting controls whose composition satisfies the applicable requirements of the Exchange Rules and the federal securities laws and the

Company's board of directors and/or the audit committee has adopted a charter that satisfies the applicable requirements of the Exchange Rules and the federal securities laws.

(xxvi) Other than as contemplated by this Agreement and that certain Letter Agreement, dated as of March 27, 2013, by and between the Company and the Representative (the "**Engagement Letter**"), the Company has not incurred any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(xxvii) Each of the Company and its Subsidiary carries, or is covered by, insurance from insurers in such amounts and covering such risks as is adequate for the conduct of their businesses; all policies of insurance and any fidelity or surety bonds insuring the Company or its Subsidiary or their businesses, assets, employees, officers and directors are in full force and effect; the Company and its Subsidiary are in compliance with the terms of such policies and instruments in all material respects; there are no claims by the Company or its Subsidiary under any such policy or instrument as to which any insurance company is denying coverage or defending under a reservation of rights clause, except as would not reasonably be expected to have a Material Adverse Effect; during the past 12 months neither the Company nor its Subsidiary has been refused any insurance coverage sought or applied for; and neither the Company nor its Subsidiary has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect.

(xxviii) The Company is not and, after giving effect to the offering and sale of the Securities, will not be an "investment company," as such term is defined in the Investment Company Act of 1940, as amended.

(xxix) The Company is in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission thereunder.

(xxx) The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Exchange Act) and such controls and procedures are

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effective in ensuring that material information relating to the Company, including its Subsidiary, is made known to the Company's principal executive officer and the principal financial officer. The Company has utilized such controls and procedures in preparing and evaluating the disclosures in the Registration Statement, in the Time of Sale Disclosure Package and in the Final Prospectus.

(xxxi) Each of the Company, its Subsidiary and affiliates and any of their respective officers, directors, supervisors, managers, agents, or employees, has not violated, its participation in the offering will not violate, and the Company has instituted and maintains policies and procedures designed to ensure continued compliance with, each of the following laws: (a) anti-bribery laws, including but not limited to, any applicable law, rule, or regulation of any locality, including but not limited to any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any other law, rule or regulation of similar purposes and scope, (b) anti-money laundering laws, including but not limited to, applicable federal, state, international, foreign or other laws, regulations or government guidance regarding anti-money laundering, including, without limitation, Sections 1956 and 1957 of Title 18 of the U.S. Code, the Patriot Act, the Bank Secrecy Act, and international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, all as amended, and any Executive order, directive, or regulation pursuant to the authority of any of the foregoing, or any orders or licenses issued thereunder or (c) laws and regulations imposing U.S. economic sanctions measures, including, but not limited to, the International Emergency Economic Powers Act, the Trading with the Enemy Act, the United Nations Participation Act, the Syria Accountability and Lebanese Sovereignty Act and the Iran Threat Reduction and Syria Human Rights Act, all as amended, and any Executive Order, directive, or regulation pursuant to the authority of any of the foregoing, including the regulations of the United States Treasury Department set forth under Subtitle B, Chapter V of Title 31 of the Code of Federal Regulations, as amended, or any orders or licenses issued thereunder; and neither the Company nor its Subsidiary nor, to the knowledge of the Company, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or its Subsidiary has (y) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; or (z) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds.

(xxxii) Neither the Company nor its Subsidiary nor, to the knowledge of the Company, any director, officer or employee of the Company or its Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

(xxxiii) Except as disclosed in the Time of Disclosure Package and the Final Prospectus, neither the Company nor its Subsidiary is in violation of any statute, any rule, regulation, decision or order of any Governmental Authority or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "**Environmental Laws**"), owns or operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate be reasonably expected to have a Material Adverse Effect; and the Company is unaware of any pending investigation which might lead to such a claim.

(xxxiv) Each of the Company and its Subsidiary (A) is in compliance, in all material respects, with any and all applicable foreign, federal, state and local laws, rules, regulations, treaties, statutes and codes promulgated by any and all governmental authorities (including pursuant to the Occupational Health and Safety Act) relating to the protection of human health and safety in the workplace ("**Occupational Laws**"); (B) has received all material permits, licenses or other approvals required of it under applicable Occupational Laws to conduct its business as currently conducted; and (C) is in compliance, in all material respects, with all terms and conditions of such permit, license or approval. No action, proceeding, revocation proceeding, writ, injunction or claim is pending or, to the Company's knowledge, threatened against the Company or its Subsidiary relating to Occupational Laws, and the

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Company does not have knowledge of any facts, circumstances or developments relating to its operations or cost accounting practices that could reasonably be expected to form the basis for or give rise to such actions, suits, investigations or proceedings.

(xxxv) (i) To the knowledge of the Company, no “prohibited transaction” as defined under Section 406 of ERISA or Section 4975 of the Code and not exempt under Section 408 of ERISA and the regulations and published interpretations thereunder has occurred with respect to any Employee Benefit Plan. At no time has the Company or any ERISA Affiliate maintained, sponsored, participated in, contributed to or has or had any liability or obligation in respect of any Employee Benefit Plan subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA, or Section 412 of the Code or any “multiemployer plan” as defined in Section 3(37) of ERISA or any multiple employer plan for which the Company or any ERISA Affiliate has incurred or could incur liability under Section 4063 or 4064 of ERISA. No Employee Benefit Plan provides or promises, or at any time provided or promised, retiree health, life insurance, or other retiree welfare benefits except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or similar state law. Each Employee Benefit Plan is and has been operated in material compliance with its terms and all applicable laws, including but not limited to ERISA and the Code and, to the knowledge of the Company, no event has occurred (including a “reportable event” as such term is defined in Section 4043 of ERISA) and no condition exists that would subject the Company or any ERISA Affiliate to any material tax, fine, lien, penalty or liability imposed by ERISA, the Code or other applicable law. Each Employee Benefit Plan intended to be qualified under Section 401(a) of the Code is so qualified and has a favorable determination or opinion letter from the IRS upon which it can rely, and any such determination or opinion letter remains in effect and has not been revoked; to the knowledge of the Company, nothing has occurred since the date of any such determination or opinion letter that is reasonably likely to adversely affect such qualification; (ii) with respect to each Foreign Benefit Plan, such Foreign Benefit Plan (A) if intended to qualify for special tax treatment, meets, in all material respects, the requirements for such treatment, and (B) if required to be funded, is funded to the extent required by applicable law, and with respect to all other Foreign Benefit Plans, adequate reserves therefore have been established on the accounting statements of the Company, as applicable; (iii) neither the Company nor its Subsidiary has any obligations under any collective bargaining agreement with any union and no organization efforts are underway with respect to employees of the Company or its Subsidiary. As used in this Agreement, “**Code**” means the Internal Revenue Code of 1986, as amended; “**Employee Benefit Plan**” means any “employee benefit plan” within the meaning of Section 3(3) of ERISA, including, without limitation, all stock purchase, stock option, stock-based severance, employment, change-in-control, medical, disability, fringe benefit, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA, under which (A) any current or former employee, director or independent contractor of the Company or its Subsidiary has any present or future right to benefits and which are contributed to, sponsored by or maintained by the Company or its Subsidiary, respectively, or (B) the Company or its Subsidiary has had or has any present or future obligation or liability; “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended; “**ERISA Affiliate**” means, as applicable, any member of the Company’s controlled group as defined in Section 414(b), (c), (m) or (o) of the Code; and “**Foreign Benefit Plan**” means any Employee Benefit Plan established, maintained or contributed to outside of the United States of America or which covers any employee working or residing outside of the United States.

(xxxvi) No labor problem or dispute with the employees of the Company or its Subsidiary exists or is to the knowledge of the Company threatened or imminent, and the Company is unaware of any existing or imminent labor disturbance by the employees of any of its or its Subsidiary’s principal suppliers, contractors or customers, that would be reasonably expected to have a Material Adverse Effect.

(xxxvii) Subject to compliance with any applicable requirements under the Corporations Act and the Subsidiary’s constitution, the Subsidiary is currently not prohibited from paying any dividends to the Company, from making any other distribution on such Subsidiary’s shares, from repaying to the Company any loans or advances to such Subsidiary from the Company, or from transferring any of such Subsidiary’s property or assets to the Company or any other subsidiary of the Company that may exist from

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time to time, except as described in or contemplated by the Registration Statement (excluding the exhibits thereto), the Time of Sale Disclosure Package and the Final Prospectus.

(xxxviii) The Company has no reason to believe that any third-party statistical and market-related data included in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus are not based on or derived from sources that are reliable and accurate in all material respects.

(xxxix) The Company has obtained for the benefit of the Underwriter the agreement, in the form set forth as Exhibit A hereto, of each of its directors and “officers” (within the meaning of Rule 16a-1(f) under the Exchange Act) (each a “**Lock-Up Agreement**” and collectively, the “**Lock-Up Agreements**”).

(xl) Neither the Company nor its Subsidiary is, and after giving effect to the offering and sale of the Securities neither the Company nor its Subsidiary will be, a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of a “holding company” or of a “subsidiary company,” as such terms are defined in the Public Utility Holding Company Act of 1935, as amended.

(xli) Neither the Company nor its Subsidiary is engaged in any unfair labor practice; except for matters which would not, individually or in the aggregate, result in a Material Adverse Change, (i) there is (A) no unfair labor practice complaint pending or, to the Company’s knowledge, threatened against the Company or its Subsidiary before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending or, to the Company’s knowledge, threatened, (B) no strike, labor dispute, slowdown or stoppage pending or, to the Company’s knowledge, threatened against the Company or its Subsidiary and (C) no union representation dispute currently existing concerning the employees of the Company or its Subsidiary, (ii) to the Company’s knowledge, no union organizing activities are currently taking place concerning the employees of the Company or its Subsidiary and (iii) there has been no violation of any federal, state, local or foreign law relating to discrimination in the hiring, promotion or pay of employees, any applicable wage or hour laws, any provision of the Worker Adjustment and Retraining Notification Act of 1988, as amended (“**WARN Act**”) or the WARN Act’s state, foreign or local equivalent, or any provision of ERISA or the rules and regulations promulgated thereunder concerning the employees of the Company or its Subsidiary.

(xlii) Each “forward-looking statement” (within the meaning of Section 27A of the Act or Section 21E of the Exchange Act) contained or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package, the Final Prospectus and the Permitted Free Writing Prospectuses, if any, has been made or reaffirmed with a reasonable basis and in good faith.

(xliii) The Company has not received any notice from NASDAQ regarding the delisting of the Common Stock from NASDAQ. Except as disclosed in the Registration Statement, the Time of Disclosure Package and the Final Prospectus, the Company has not received any notice from the ASX regarding the Company’s removal from the official list of the ASX or regarding its CHES Depositary Interests ceasing to be quoted on the ASX.

(xliv) Neither the Company nor its Subsidiary nor any of their respective directors, officers or, to the knowledge of the Company, any of their affiliates or controlling persons has taken, directly or indirectly, any action designed, or which has constituted or might reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xlv) From the time of filing of the Registration Statement with the Commission (or, if earlier, the first date on which the Company engaged directly or through any person authorized to act on its behalf in any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Act (any “**Testing-the-Waters Communication**”)) through the date hereof, the

Company has been and is an “emerging growth company,” as defined in Section 2(a) of the Act (an “**Emerging Growth Company**”).

(xlvi) The Company has not alone engaged in any Testing-the-Waters Communication and has not authorized anyone other than the Representative to engage in Testing-the-Waters Communications. The Company reconfirms that the Representative has been authorized to act on its behalf in undertaking any Testing-the-Waters Communications. The Company has not distributed any written Testing-the-Waters Communications other than those listed on Schedule IV hereto. As of the Time of Sale, none of (A) the Time of Sale Disclosure Package, (B) any individual Issuer Limited-Use Free Writing Prospectus, when considered together with the Time of Sale Disclosure Package, or (C) any individual written Testing-the-Waters Communication, when considered together with the Time of Sale Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(xlvii) The Company was at the time of filing the Registration Statement, and at the date hereof remains, eligible to use Form S-3 under the Act for the offering of the Securities. The conditions for use of Form S-3 set forth in the General Instructions thereto have been satisfied in connection with the Registration Statement and sale of the Securities thereunder.

(b) Any certificate signed by any officer of the Company and delivered to you or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

3. **Purchase, Sale and Delivery of Securities.**

(a) On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell 2,500,000 Firm Shares to the several Underwriters, and each Underwriter agrees, severally and not jointly, to purchase from the Company the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto. The purchase price for each Firm Share shall be \$4.9534 per share. In making this Agreement, each Underwriter is contracting severally and not jointly; except as provided in paragraph (c) of this Section 3 and in Section 8 hereof, the agreement of each Underwriter is to purchase only the respective number of Firm Shares specified in Schedule I.

The Firm Shares will be delivered by the Company to you for the accounts of the several Underwriters against payment of the purchase price therefor by wire transfer of same day funds payable to the order of the Company at the offices of Canaccord Genuity Inc., 99 High Street, 12th Floor, Boston, Massachusetts, or such other location as may be mutually acceptable, at 9:00 a.m., Eastern time, on the third (or if the Securities are priced, as contemplated by Rule 15c6-1(c) under the Exchange Act, after 4:30 p.m., Eastern time, the fourth) full business day following the date hereof, or at such other time and date as you and the Company determine pursuant to Rule 15c6-1(a) under the Exchange Act, such time and date of delivery being herein referred to as the “**First Closing Date**.” The Firm Shares will be credited through full fast transfer to the accounts at The Depository Trust Company as designated by the Representative.

(b) On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company hereby grants to the several Underwriters an option to purchase all or any portion of the Option Shares at the same purchase price as the Firm Shares, for use solely in covering any over-allotments made by the Underwriters in the sale and distribution of the Firm Shares. The option granted hereunder may be exercised in whole or in part at any time (but not more than once) within 30 days after the effective date of this Agreement upon notice (confirmed in writing) by the Representative to the Company setting forth the aggregate number of Option Shares as to which the several Underwriters are exercising the option, the names and denominations in which the Option Shares are to be registered and the date and time, as determined by you, when the Option Shares are to be delivered, such time and date being herein referred to as the “**Second Closing**” and “**Second Closing Date**” (each of the First Closing Date and the Second Closing Date, a “**Closing Date**”), respectively; *provided, however*, that the Second Closing Date shall not be earlier than the First Closing Date nor earlier than the second business day after the date on which the option shall have been exercised, unless the Representative has exercised the option to purchase all or a portion of the Option Shares within one business day after the date of this Agreement, in which case the Company may,

at its option, close the Second Closing on the First Closing Date. The number of Option Shares to be purchased by each Underwriter shall be the same percentage of the total number of Option Shares to be purchased by the several Underwriters as the number of Firm Shares to be purchased by such Underwriter is of the total number of Firm Shares to be purchased by the several Underwriters, as adjusted by the Representative in such manner as the Representative deems advisable to avoid fractional shares. No Option Shares shall be sold and delivered unless the Firm Shares previously have been, or simultaneously are, sold and delivered.

The Option Shares will be delivered by the Company to you for the accounts of the several Underwriters against payment of the purchase price therefor by wire transfer of same day funds payable to the order of the Company at the offices of Canaccord Genuity Inc., 99 High Street, 12th Floor, Boston, Massachusetts, or such other location as may be mutually acceptable at 9:00 a.m., Eastern time, on the Second Closing Date. The delivery of the Option Shares will be credited through full fast transfer to the accounts at The Depository Trust Company as designated by the Representative.

(c) It is understood that you, individually and not as Representative of the several Underwriters, may (but shall not be obligated to) make payment to the Company on behalf of any Underwriter for the Securities to be purchased by such Underwriter. Any such payment by you shall not relieve any such Underwriter of any of its obligations hereunder. Nothing herein contained shall constitute any of the Underwriters an unincorporated association or partner with the Company.

4. **Covenants.** The Company covenants and agrees with the several Underwriters as follows:

(a) If the Company has elected to rely upon Rule 462(b) of the Rules and Regulations to increase the size of the offering registered under the Act and the Rule 462(b) Registration Statement has not yet been filed and become effective, the Company will prepare and file the Rule 462(b) Registration Statement with the Commission within the time period required by, and otherwise in accordance with the provisions of, Rule 462(b) and the Act; prior to the First Closing, the Company will prepare and file with the Commission, promptly upon your reasonable request, any amendments or supplements to the Registration Statement or Prospectus that, based on the advice of counsel, are necessary or advisable in connection with the distribution of the Securities by the Underwriters; and the Company will furnish the Representative and counsel for the Underwriters a copy of any proposed amendment or supplement to the Registration Statement or

Prospectus and will not file any amendment or supplement to the Registration Statement or Prospectus to which you shall reasonably object by notice to the Company after having been furnished a copy a reasonable time prior to the filing.

(b) The Company will advise you, promptly after it shall receive notice or obtain knowledge thereof, of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment thereto or preventing or suspending the use of the Time of Sale Disclosure Package, any Prospectus or any Issuer Free Writing Prospectus, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and after receipt of notice, the Company will use its reasonable best efforts to prevent the issuance of any stop order or to obtain its lifting if such a stop order should be issued. Additionally, the Company agrees that it shall comply with the provisions of Rules 424(b), 430A and 430B, as applicable, under the Act and will use its reasonable efforts to confirm that any filings made by the Company under Rule 424(b), Rule 433 or Rule 462 were received in a timely manner by the Commission.

(c) (i) Within the time during which a prospectus (assuming the absence of Rule 172) relating to the Securities is required to be delivered under the Act by any Underwriter or dealer in connection with sales by an Underwriter or dealer (the “*Prospectus Delivery Period*”), the Company will use reasonable best efforts to comply with all requirements imposed upon it by the Act, as now and hereafter amended, and by the Rules and Regulations, as from time to time in force, so far as necessary to permit the continuance of sales of or dealings in the Securities as contemplated by the provisions hereof, the Time of Sale Disclosure Package and the Final Prospectus. If during such period any event occurs as a result of which the Final Prospectus (or if the Final Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend the Registration Statement or supplement the Final Prospectus (or if the Final Prospectus is not yet available to prospective investors, the Time of Sale Disclosure Package) to comply with the Act, the Company will

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promptly notify you and will amend the Registration Statement or supplement the Final Prospectus (or, if the Final Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(ii) If at any time following issuance of an Issuer Free Writing Prospectus there occurred, or through the Prospectus Delivery Period occurs, an event or development as a result of which such Issuer Free Writing Prospectus conflicted or during such time would conflict with the information contained in the Registration Statement or any Prospectus relating to the Securities or included or during such time would include an untrue statement of a material fact or omitted or during such time would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company has promptly notified or promptly will notify the Representative and has promptly amended or will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(d) The Company shall take or cause to be taken all necessary action to qualify the Securities for sale under the securities laws of such jurisdictions as you reasonably designate or and to continue such qualifications in effect so long as required for the distribution of the Securities, except that the Company shall not be required in connection therewith to qualify as a foreign corporation or to execute a general consent to service of process in any state.

(e) The Company will furnish, at its own expense, to the Underwriters and counsel for the Underwriters copies of the Registration Statement (three of which will be signed and will include all consents and exhibits filed therewith), and to the Underwriters and any dealer each Prospectus, the Time of Sale Disclosure Package, any Issuer Free Writing Prospectus and all amendments and supplements to such documents, in each case as soon as available and in such quantities as you may from time to time reasonably request.

(f) The Company will make generally available to its security holders as soon as practicable, but in no event later than 15 months after the end of the Company’s current fiscal quarter, an earnings statement (which need not be audited) covering a 12-month period that shall satisfy the provisions of Section 11(a) of the Act and Rule 158 of the Rules and Regulations. The parties agree that such obligation may be satisfied by filings with the Commission made on EDGAR.

(g) The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay or cause to be paid (i) all expenses (including transfer taxes allocated to the respective transferees of the Securities) incurred in connection with the delivery to the Underwriters of the Securities, (ii) all expenses and fees (including, without limitation, fees and expenses of the Company’s accountants and legal counsel) in connection with the preparation, printing, filing, delivery, and shipping of the Registration Statement (including the financial statements therein and all amendments, schedules, and exhibits thereto), the Securities, each Preliminary Prospectus, the Time of Sale Disclosure Package, the Final Prospectus, any Issuer Free Writing Prospectus and any amendment thereof or supplement thereto, and the printing, delivery, and shipping of this Agreement and other underwriting documents, including Blue Sky Memoranda (covering the states and other applicable jurisdictions), (iii) all filing fees and fees and disbursements of the Underwriters’ counsel incurred in connection with the qualification of the Securities for offering and sale by the Underwriters or by dealers under the securities or blue sky laws of the states and other jurisdictions which you shall designate, (iv) the fees and expenses of any transfer agent or registrar, (v) the filing fees and fees and disbursements of Underwriters’ counsel incident to any required review and approval by FINRA of the terms of the sale of the Securities, (vi) listing fees, if any, (vii) the cost and expenses of the Company relating to investor presentations or any “roadshow” undertaken in connection with marketing of the Securities, (viii) all other costs and expenses of the Underwriter incident to the performance of its obligations hereunder not otherwise specifically provided for herein, including the fees and expenses of the Underwriter’s legal counsel, *provided, however* that such costs and expenses provided for in this subsection (viii) (which, for the avoidance of doubt, shall include all fees and disbursements of Underwriters’ counsel other than those incurred in connection with the FINRA filing referred to in subsection (v), which fees and disbursements shall be reimbursed in full notwithstanding the cap set forth in this subsection (viii)) shall not exceed \$80,000, and (ix) all other costs and expenses of the Company incident to the performance of its obligations hereunder that are not otherwise specifically provided for herein. If this Agreement is terminated by the Representative pursuant to Section 9 hereof or if the sale of the Securities provided for herein is not consummated by reason of any failure, refusal or inability on the part of the Company to perform any agreement on its or their part to be performed, or because any other condition of the Underwriters’ obligations hereunder required to be

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fulfilled by the Company is not fulfilled, the Company will reimburse the several Underwriters for all reasonable out-of-pocket accountable disbursements (including but not limited to fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges) incurred by the Underwriters in connection with their investigation, preparing to market and marketing the Securities or in contemplation of performing their obligations hereunder. The Company shall not in any event be liable to any of the Underwriters for loss of anticipated profits from the transactions covered by this Agreement.

(h) The Company will apply the net proceeds from the sale of the Securities to be sold by it hereunder for the purposes set forth in the Time of Sale Disclosure Package and in the Final Prospectus and will file such reports with the Commission with respect to the sale of the Securities and the application of the proceeds therefrom as may be required in accordance with Rule 463 of the Rules and Regulations.

(i) The Company will not, without the prior written consent of Canaccord Genuity Inc., from the date of execution of this Agreement and continuing to and including the date 90 days after the date of the Final Prospectus (the “**Lock-Up Period**”), (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (including, for the avoidance of doubt, any sales of shares of Common Stock pursuant to the Common Stock Purchase Agreement, dated as of January 15, 2013, by and between the Company and Aspire Capital Fund, LLC) or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, except (A) to the Underwriters pursuant to this Agreement or (B) in the ordinary course of business pursuant to the Company’s Amended and Restated 2002 Stock Plan or 2011 Equity Incentive Plan. Except as required under any agreement existing on the date of this Agreement, the Company agrees not to accelerate the vesting of any option or warrant or the lapse of any repurchase right prior to the expiration of the Lock-Up Period. Notwithstanding the foregoing, the Company shall be permitted during the Lock-Up Period to file a post-effective amendment to its registration statement on Form S-1 (File No. 333-186259) for the purpose of reflecting in the prospectus contained in such registration statement facts or events representing a fundamental change in the information set forth in such registration statement as required by the undertaking set forth in Item 17(a)(1)(ii) of Part II of such registration statement.

(j) The Company has caused to be delivered to you prior to the date of this Agreement the Lock-Up Agreements from each of the Company’s directors and officers. If any additional persons shall become directors or officers of the Company prior to the end of the Lock-Up Period, the Company shall cause each such person, prior to or contemporaneously with their appointment or election as a director or officer of the Company, to execute and deliver to you a Lock-Up Agreement. The Company will issue stop-transfer instructions to the transfer agent for the Common Stock with respect to any transaction or contemplated transaction that would constitute a breach of or default under the Lock-Up Agreements.

(k) The Company agrees to announce the Underwriters’ intention to release any director or officer of the Company from any of the restrictions imposed by any Lock-Up Agreement, by issuing, through a major news service, a press release in form and substance satisfactory to you promptly following the Company’s receipt of any notification from you in which such intention is indicated, but in any case not later than the close of the third business day prior to the date on which such release or waiver is to become effective; *provided, however*, that nothing shall prevent you, on behalf of the Underwriters, from announcing the same through a major news service, irrespective of whether the Company has made the required announcement; *provided further*, that no such announcement shall be made of any release or waiver granted solely to permit a transfer of securities that is not for consideration and where the transferee has agreed in writing to be bound by the terms of a Lock-Up Agreement, in the form set forth as Exhibit A hereto.

(l) The Company has not taken and will not take any action designed to or which might reasonably be expected to cause or result in, or which has constituted, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(m) During the Prospectus Delivery Period, the Company will file on a timely basis with the Commission such periodic and special reports as required by the Rules and Regulations.

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(n) During the Prospectus Delivery Period, the Company and its Subsidiary will comply with all applicable provisions of the Sarbanes-Oxley Act.

(o) The Company represents and agrees that, unless it obtains the prior written consent of Canaccord Genuity Inc., and each Underwriter severally represents and agrees that, unless it obtains the prior written consent of the Company and Canaccord Genuity Inc., neither it nor its Subsidiary has made and will not make any offer relating to the Securities that would constitute an “issuer free writing prospectus,” as defined in Rule 433 under the Act, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405 under the Act, required to be filed with the Commission; provided that the prior written consent of the parties hereto shall be deemed to have been given in respect of the free writing prospectuses included in Schedule II. Any such free writing prospectus consented to by the Company and Canaccord Genuity Inc. is hereinafter referred to as a “**Permitted Free Writing Prospectus**.” The Company represents that it has treated or agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 164 and Rule 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping. The Company represents that it has satisfied and agrees that it will satisfy the conditions in Rule 433 to avoid a requirement to file with the Commission any electronic roadshow.

(p) The Company will promptly notify the Representative if the Company ceases to be an Emerging Growth Company at any time prior to the later of (i) completion of the distribution of the Securities within the meaning of the Act and (ii) completion of the Lock-Up Period referred to in Section 4(i) hereof. Furthermore, if at any time following the distribution of any Written Testing-the-Waters Communication with respect to Emerging Growth Company status of the Company there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representative and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission.

5. **Conditions of Underwriters’ Obligations.** The obligations of the several Underwriters hereunder are subject to the accuracy, as of the date hereof and at each of the First Closing Date and the Second Closing Date (as if made at such Closing Date), of and compliance with all representations, warranties and agreements of the Company and its Subsidiary contained herein, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) No stop order suspending the effectiveness of the Registration Statement or any part thereof or any amendment thereof, nor suspending or preventing the use of the Time of Sale Disclosure Package, the Final Prospectus or any Issuer Free Writing Prospectus shall have been issued; no proceedings for the issuance of such an order shall have been initiated or, to the Company’s knowledge, threatened; and any request of the Commission for additional information (to be included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package, the Final Prospectus, any Issuer Free Writing Prospectus or otherwise) shall have been complied with to your satisfaction.

(b) If the Company has elected to rely upon Rule 430B of the Rules and Regulations, the information concerning the public offering price of the Securities and price-related information, and such other information omitted from any Prospectus in reliance on Rule 430B of the Rules and Regulations, shall have been filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations in the manner and within the prescribed time period (without reliance on

Rule 424(b)(8) of the Rules and Regulations), and the Company will provide evidence satisfactory to the Representative of such timely filing (or a post-effective amendment providing such information shall have been filed and declared effective in accordance with the requirements of Rules 430B and 424(b) of the Rules and Regulations).

(c) If a Rule 462(b) Registration Statement is required, such Registration Statement shall have been transmitted to the Commission for filing and become effective within the prescribed time period and, prior to the First

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Closing Date, the Company shall have provided evidence of such filing and effectiveness in accordance with Rule 462(b) of the Rules and Regulations.

(d) No Underwriter shall have advised the Company that (i) the Registration Statement or any amendment thereof or supplement thereto contains an untrue statement of a material fact which, in your opinion, is material or omits to state a material fact which, in your opinion based on the advice of your counsel, is required to be stated therein or necessary to make the statements therein not misleading, or (ii) the Time of Sale Disclosure Package or the Final Prospectus, or any amendment thereof or supplement thereto, or any Issuer Free Writing Prospectus contains an untrue statement of fact which, in your reasonable opinion based on the advice of counsel, is material, or omits to state a fact which, based on the advice of your counsel, is material and is required to be stated therein, or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

(e) Except as contemplated in the Time of Sale Disclosure Package and in the Final Prospectus, subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package, neither the Company nor its Subsidiary shall have incurred any material liabilities or obligations, other than those incurred in the ordinary course of business, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock; and there shall not have been any change in the capital stock (other than a change in the number of shares of Common Stock outstanding due to the issuance of shares upon the exercise of outstanding options or warrants), or any material change in the short-term or long-term debt of the Company or its Subsidiary, or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company or its Subsidiary, or any Material Adverse Change or any development which would reasonably be expected to result in a Material Adverse Change (whether or not arising in the ordinary course of business), the effect of which, in any such case described above, in your judgment, makes it impractical or inadvisable to offer or deliver the Securities on the terms and in the manner contemplated in the Time of Sale Disclosure Package and in the Final Prospectus.

(f) On each Closing Date, there shall have been furnished to you, as Representative of the several Underwriters, (i) the opinion of Honigman Miller Schwartz and Cohn LLP, dated such Closing Date and addressed to you, in form and substance satisfactory to the Underwriters, (ii) the opinion of Johnson Winter & Slattery, dated such Closing Date and addressed to you, in form and substance satisfactory to the Underwriters, and (iii) the opinion of Davis, Brown, Koehn, Shors & Roberts, P.C., dated such Closing Date and addressed to you, in form and substance satisfactory to the Underwriters.

(g) On each Closing Date, there shall have been furnished to you, as Representative of the several Underwriters, such opinion or opinions from Jones Day, counsel for the several Underwriters, dated such Closing Date and addressed to you, with respect to the formation of the Company, the validity of the Securities, the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus and other related matters as you reasonably may request, and such counsel shall have received such papers and information as they request to enable them to pass upon such matters.

(h) On each Closing Date you, as Representative of the several Underwriters, shall have received a letter of Ernst & Young LLP, dated such date and addressed to you, confirming that it is an independent public accounting firm within the meaning of the Act and is in compliance with the applicable requirements relating to the qualifications of accountants under Rule 2-01 of Regulation S-X of the Commission, and stating, as of the date of such letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Time of Sale Disclosure Package, as of a date not prior to the date hereof or more than five days prior to the date of such letter), the conclusions and findings of said firm with respect to the financial information and other matters covered by its letter delivered to you concurrently with the execution of this Agreement, and the effect of the letter so to be delivered on such Closing Date shall be to confirm the conclusions and findings set forth in such prior letter.

(i) On each Closing Date, there shall have been furnished to you, as Representative of the several Underwriters, a certificate, dated such Closing Date and addressed to you, signed by the chief executive officer and by the chief financial officer of the Company, to the effect that:

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(i) The representations and warranties of the Company in this Agreement are true and correct as if made at and as of such Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied under this Agreement at or prior to such Closing Date; and

(ii) No stop order or other order suspending the effectiveness of the Registration Statement or any part thereof or any amendment thereof or the qualification of the Securities for offering or sale, nor suspending or preventing the use of the Time of Sale Disclosure Package, the Final Prospectus or any Issuer Free Writing Prospectus, has been issued, and, to their knowledge, no proceeding for that purpose has been instituted or is contemplated by the Commission or any state or regulatory body.

(j) You, as Representative of the several Underwriters, shall have received all of the Lock-Up Agreements referenced in Section 4.

(k) The Company shall have furnished to you and counsel for the Underwriters such additional documents, certificates and evidence as you or they may have reasonably requested.

(l) FINRA shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(m) The Securities to be delivered on such Closing Date will have been approved for listing on NASDAQ, subject to official notice of issuance.

All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof only if they are satisfactory in form and substance to you and counsel for the Underwriters. The Company will furnish you with such conformed copies of such opinions, certificates, letters and other documents as you shall reasonably request.

6. ***Indemnification and Contribution.***

(a) The Company agrees to indemnify and hold harmless each Underwriter from and against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise (including in settlement of any litigation if such settlement is effected with the written consent of the Company), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including the information deemed to be a part of the Registration Statement at the time of effectiveness and at any subsequent time pursuant to Rules 430A and 430B of the Rules and Regulations, the Time of Sale Disclosure Package or any Prospectus, or any amendment or supplement thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Registration Statement or such Prospectus), any written Testing-the-Waters Communication, or any Issuer Free Writing Prospectus, or in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Common Stock ("**Marketing Materials**"), including any roadshow or investor presentations made to investors by the Company (whether in person or electronically), or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of the Time of Sale Disclosure Package or any Prospectus, any Testing-the-Waters Communication or any Issuer Free Writing Prospectus, in light of the circumstances under which they were made) not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by it in connection with investigating or defending against such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, the Time of Sale Disclosure Package or any Prospectus, or any amendment or supplement thereto, any written Testing-the-Waters Communication, any Issuer Free Writing Prospectus or in any Marketing Materials, in reliance upon and in conformity with written information furnished to the Company by you, or by any Underwriter through you, specifically for use in the preparation thereof; it being understood and agreed that the only information furnished by an Underwriter consists of the information described as such in Section 6(f).

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(b) Each Underwriter will, severally and not jointly, indemnify and hold harmless the Company from and against any losses, claims, damages or liabilities to which the Company may become subject, under the Act or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Time of Sale Disclosure Package or any Prospectus, or any amendment or supplement thereto, any written Testing-the-Waters Communication, or any Issuer Free Writing Prospectus or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Time of Sale Disclosure Package or any Prospectus, or any amendment or supplement thereto, any written Testing-the-Waters Communication, or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by you, or by such Underwriter through you, specifically for use in the preparation thereof (it being understood and agreed that the only information furnished by an Underwriter consists of the information described as such in Section 6(f)), and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending against any such loss, claim, damage, liability or action as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have to any indemnified party except to the extent such indemnifying party has been materially prejudiced by such failure (through the forfeiture of substantive rights or defenses). In case any such action shall be brought against any indemnified party, and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in, and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of the indemnifying party's election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that if, in the sole judgment of the Representative, it is advisable for the Underwriters to be represented as a group by separate counsel, the Representative shall have the right to employ a single counsel (in addition to local counsel) to represent the Representative and all Underwriters who may be subject to liability arising from any claim in respect of which indemnity may be sought by the Underwriters under subsection (a) of this Section 6, in which event the reasonable fees and expenses of such separate counsel shall be borne by the indemnifying party or parties and reimbursed to the Underwriters as incurred. An indemnifying party shall not be obligated under any settlement agreement relating to any action under this Section 6 to which it has not agreed in writing. In addition, no indemnifying party shall, without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld or delayed), effect any settlement of any pending or threatened proceeding unless such settlement includes an unconditional release of such indemnified party for all liability on claims that are the subject matter of such proceeding and does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) If the indemnification provided for in this Section 6 is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Final

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Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relevant intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The parties hereto agree that it would not be just and equitable if contributions pursuant to this subsection (d) were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this subsection (d). The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent

misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The obligations of the Company under this Section 6 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the Act; and the obligations of the Underwriters under this Section 6 shall be in addition to any liability that the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each director of the Company (including any person who, with his consent, is named in the Registration Statement as about to become a director of the Company), to each officer of the Company who has signed the Registration Statement and to each person, if any, who controls the Company within the meaning of the Act.

(f) The Underwriters severally confirm and the Company acknowledges that the statements with respect to the public offering of the Securities by the Underwriters set forth in the third paragraph, in the fourth sentence of the eleventh paragraph and in the list of the number of Firm Shares purchased by each Underwriter, in each case under the caption "Underwriting" in the Time of Sale Disclosure Package and in the Final Prospectus, are correct and constitute the only information concerning such Underwriters furnished in writing to the Company by or on behalf of the Underwriters specifically for inclusion in the Registration Statement, the Time of Sale Disclosure Package or any Prospectus, or any amendment or supplement thereto, any written Testing-the-Waters Communication, or any Issuer Free Writing Prospectus.

7. **Representations and Agreements to Survive Delivery.** All representations, warranties, and agreements of the Company herein or in certificates delivered pursuant hereto, and the agreements of the several Underwriters and the Company contained in Section 6 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any Underwriter or any controlling person thereof, or the Company or any of its officers, directors, or controlling persons, and shall survive delivery of, and payment for, the Securities to and by the Underwriters hereunder.

8. **Substitution of Underwriters.**

(a) If any Underwriter or Underwriters shall fail to take up and pay for the amount of Firm Shares agreed by such Underwriter or Underwriters to be purchased hereunder, upon tender of such Firm Shares in accordance with the terms hereof, and the amount of Firm Shares not purchased does not aggregate more than 10% of the total amount of Firm Shares set forth in Schedule I hereto, the remaining Underwriters shall be obligated to take up and pay for (in proportion to their respective underwriting obligations hereunder as set forth in Schedule I hereto except as may otherwise be determined by you) the Firm Shares that the withdrawing or defaulting Underwriters agreed but failed to purchase.

(b) If any Underwriter or Underwriters shall fail to take up and pay for the amount of Firm Shares agreed by such Underwriter or Underwriters to be purchased hereunder, upon tender of such Firm Shares in accordance with the terms hereof, and the amount of Firm Shares not purchased aggregates more than 10% of the total amount of Firm Shares set forth in Schedule I hereto, and arrangements satisfactory to you for the purchase of such Firm

Shares by other persons are not made within 36 hours thereafter, this Agreement shall terminate. In the event of any such termination the Company shall not be under any liability to any Underwriter (except to the extent provided in Section 6 hereof) nor shall any Underwriter (other than an Underwriter who shall have failed, otherwise than for some reason permitted under this Agreement, to purchase the amount of Firm Shares agreed by such Underwriter to be purchased hereunder) be under any liability to the Company (except to the extent provided in Section 6 hereof).

If Firm Shares to which a default relates are to be purchased by the non-defaulting Underwriters or by any other party or parties, the Representative and all Underwriters or the Company shall have the right to postpone the First Closing Date for not more than seven business days in order that the necessary changes in the Registration Statement, in the Time of Sale Disclosure Package, in the Final Prospectus or in any other documents, as well as any other arrangements, may be effected. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 8.

9. **Termination.**

(a) The obligations of the Underwriters hereunder shall be subject to termination at any time at or prior to the First Closing Date or, if the option referred to in Section 3(b) is exercised at or prior to the Second Closing Date, in the absolute discretion of the Representative, on behalf of the Underwriters, if (1) since the time of execution of this Agreement or the earlier respective dates as of which information is given in the Registration Statement, the Final Prospectus and the Permitted Free Writing Prospectuses, if any, there has been any change or any development involving a prospective change in the business, properties, management, financial condition or results of operations of the Company and the Subsidiary taken as a whole, the effect of which change or development is, in the sole judgment of the Representative, so material and adverse as to make it impractical or inadvisable to proceed with the public offering or the delivery of the Securities on the terms and in the manner contemplated in the Registration Statement, the Final Prospectus and the Permitted Free Writing Prospectuses, if any, (2) since the time of execution of this Agreement, there shall have occurred: (A) a suspension in trading in securities generally on NASDAQ or the New York Stock Exchange; (B) a suspension in trading in the Company's securities on NASDAQ; (C) the fixing of minimum or maximum prices for trading, or the setting of maximum ranges for prices for securities, on NASDAQ or the New York Stock Exchange by order of the Commission or any other governmental authority having jurisdiction; (D) a general moratorium on commercial banking activities declared by either federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; (E) an outbreak or material escalation of hostilities or acts of terrorism involving the United States or a declaration by the United States of a national emergency or war; or (F) any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (E) or (F), in the sole judgment of the Representative, makes it impractical or inadvisable to proceed with the public offering or the delivery of the Securities on the terms and in the manner contemplated in the Registration Statement, the Final Prospectus and the Permitted Free Writing Prospectuses, if any, or (3) since the time of execution of this Agreement, there shall have occurred any downgrading, or any notice or announcement shall have been given or made of: (Y) any intended or potential downgrading or (Z) any watch, review or possible change that does not indicate an affirmation or improvement in the rating accorded any securities of or guaranteed by the Company or its Subsidiary by any "nationally recognized statistical rating organization," as that term is defined in Rule 436(g)(2) under the Act. Any such termination shall be without liability of any party to any other party except that the provisions of Sections 4(g) and 6 hereof shall at all times be effective and shall survive such termination.

(b) If you elect to terminate this Agreement as provided in this Section, the Company shall be notified promptly by you by telephone, confirmed by letter.

10. **Default by the Company.** If the Company shall fail at the First Closing Date to sell and deliver the number of Securities which it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of any Underwriter. No action taken pursuant to this Section shall relieve the Company so defaulting from liability, if any, in respect of such default.

11. **Notices.** Except as otherwise provided herein, all communications hereunder shall be in writing and, if to the Underwriters, shall be mailed or delivered to the Underwriters c/o Canaccord Genuity Inc., 99 High Street, 12th Floor, Boston, Massachusetts 02110, with a copy to Jones Day, 1755 Embarcadero Road, Palo Alto, California 94303, Attention: Timothy Curry, Esq.; if to the Company, shall be mailed or delivered to it at c/o Sunshine Heart, Inc., 12988

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Valley View Road, Eden Prairie, Minnesota 55344, Attention: Chief Executive Officer, with a copy to Honigman Miller Schwartz and Cohn LLP, Columbia Plaza, 350 East Michigan Avenue, Suite 300, Kalamazoo, Michigan 49007, Attention: Phillip D. Torrence, Esq.; or in each case to such other address as the person to be notified may have requested in writing. Any party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

12. **Persons Entitled to Benefit of Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and the controlling persons, officers and directors referred to in Section 6. Nothing in this Agreement is intended or shall be construed to give to any other person, firm or corporation any legal or equitable remedy or claim under or in respect of this Agreement or any provision herein contained. The term "successors and assigns" as herein used shall not include any purchaser, as such purchaser, of any of the Securities from any of the several Underwriters.

13. **Absence of Fiduciary Relationship.** The Company acknowledges and agrees that: (a) the Representative has been retained solely to act as an underwriter in connection with the sale of the Securities and that no fiduciary, advisory or agency relationship between the Company or its Subsidiary and the Underwriters have been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Underwriters have advised or are advising the Company or its Subsidiary on other matters; (b) the price and other terms of the Securities set forth in this Agreement were established by the Company following discussions and arms-length negotiations with the Representative and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) it has been advised that the Underwriters and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and its Subsidiary and that the Underwriters have no obligation to disclose such interest and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; (d) it has been advised that the Representative is acting, in respect of the transactions contemplated by this Agreement, solely for the benefit of the Underwriters, and not on behalf of the Company; (e) it waives to the fullest extent permitted by law, any claims it may have against the Underwriters for breach of fiduciary duty or alleged breach of fiduciary duty in respect of any of the transactions contemplated by this Agreement and agrees that the Underwriters shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim on behalf of or in right of the Company and its Subsidiary, including stockholders, employees or creditors of the Company and its Subsidiary.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

15. **Counterparts.** This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original and all such counterparts shall together constitute one and the same instrument.

16. **General Provisions.** This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof, including all provisions of the Engagement Letter that relate to the offer and sale of the Securities described herein. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

[Signature Page Follows]

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Please sign and return to the Company the enclosed duplicates of this letter whereupon this letter will become a binding agreement between the Company and the several Underwriters in accordance with its terms.

Very truly yours,

SUNSHINE HEART, INC.

By: /s/ David A. Rosa
Name: David A. Rosa
Title: Chief Executive Officer

[Signature Page to Underwriting Agreement]

Confirmed as of the date first above mentioned, on behalf of itself and the other several Underwriters named in Schedule I hereto.

CANACCORD GENUITY INC.

By: /s/ Jennifer Pardi
Name: Jennifer Pardi

SCHEDULE I

Underwriter	Number of Firm Shares (1)
Canaccord Genuity Inc.	2,500,000
Total	2,500,000

- (1) The Underwriters may purchase up to an additional 375,000 Option Shares, to the extent the option described in Section 3(b) of the Agreement is exercised, in the proportions and in the manner described in the Agreement.

SCHEDULE II

Issuer General Free Writing Prospectuses

None.

SCHEDULE III

Pricing Information

Price to the public	\$	5.25 per share
Price to the Underwriters	\$	4.9534 per share
Number of Firm Shares		2,500,000
Number of Option Shares		375,000

SCHEDULE IV

Written Testing-The-Waters Communications

None.

EXHIBIT A

Form of Lock-Up Agreement

, 2013

Canaccord Genuity Inc.
as representative of the underwriters
c/o Canaccord Genuity Inc.
99 High Street, 12th Floor
Boston, Massachusetts 02110

Ladies and Gentlemen:

Sunshine Heart, Inc., a Delaware corporation (the “*Company*”), intends to engage in a public offering (the “*Offering*”) of its common stock (the “*Common Stock*”). As an inducement to the underwriters (the “*Underwriters*”) to execute an underwriting agreement (the “*Underwriting Agreement*”) providing for the Offering, the undersigned hereby agrees that without, in each case, the prior written consent of Canaccord Genuity Inc. (“*Canaccord*”) during the period specified in the next succeeding paragraph (the “*Lock-Up Period*”), the undersigned will not, and will cause any member of the undersigned’s “immediate family” not to, (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into, exercisable or exchangeable for or that represent the right to receive Common Stock (including without limitation, Common Stock or any other shares of capital stock which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant) whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the “*Undersigned’s Securities*”), or exercise any right with respect to the registration of any of the Undersigned’s Securities, or (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned’s Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such

other securities, in cash or otherwise. The foregoing restriction is expressly agreed to preclude the undersigned from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of the Undersigned's Securities even if such securities would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include without limitation any short sale or any purchase, sale or grant of any right (including without limitation any put or call option) with respect to any of the Undersigned's Securities or with respect to any security that includes, relates to, or derives any significant part of its value from such Undersigned's Securities. For purposes of this Agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin.

The Lock-Up Period will commence on the date of this Agreement and continue and include the date 90 days after the date of the final prospectus used to sell Common Stock in the Offering pursuant to the Underwriting Agreement, to which you are or expect to become parties.

Notwithstanding the foregoing, the undersigned may transfer the Undersigned's Securities (i) as a *bona fide* gift or gifts, (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, (iii) by will or intestacy to the undersigned's legal representative, heir or legatee, or (iv) if the undersigned is a partnership or corporation or similar entity, as a distribution to partners or stockholders of the undersigned; *provided*, in each case, that (x) such transfer shall not involve a disposition for value, (y) the transferee agrees in writing with the Underwriters to be bound by the terms of this Lock-Up Agreement, and (z) no filing by any party under Section 16(a) of the Exchange Act, shall be required or shall be made voluntarily in connection with such transfer.

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In addition, the foregoing restrictions shall not apply to (i) the exercise of stock options granted pursuant to the Company's equity incentive plans; *provided* that it shall apply to any of the Undersigned's Securities issued upon such exercise, or (ii) the establishment of any contract, instruction or plan (a "*Plan*") that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act; *provided* that no sales of the Undersigned's Securities shall be made pursuant to such a Plan prior to the expiration of the Lock-Up Period, and such a Plan may only be established if no public announcement of the establishment or existence thereof and no filing with the Securities and Exchange Commission or other regulatory authority in respect thereof or transactions thereunder or contemplated thereby, by the undersigned, the Company or any other person, shall be required, and no such announcement or filing is made voluntarily, by the undersigned, the Company or any other person, prior to the expiration of the Lock-Up Period.

If the undersigned is an officer or director of the Company, (i) Canaccord agrees that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of the Undersigned's Securities, Canaccord will notify the Company of the impending release or waiver, and (ii) the Company (in accordance with the provisions of the Underwriting Agreement) will announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by Canaccord hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if both (a) the release or waiver is effected solely to permit a transfer not for consideration and (b) the transferee has agreed in writing to be bound by the same terms described in this Agreement that are applicable to the transferor to the extent and for the duration that such terms remain in effect at the time of the transfer.

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Common Stock if such transfer would constitute a violation or breach of this Agreement.

In addition, the undersigned agrees that, without the prior written consent of Canaccord, it will not, during the Lock-Up Period, make any demand for or exercise any right with respect to, the registration of any Common Stock or any security convertible into or exercisable or exchangeable for Common Stock.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that the undersigned shall be released from all obligations under this Agreement if (i) the Company notifies the Underwriters that it does not intend to proceed with the Offering, (ii) the Underwriting Agreement does not become effective, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, or (iii) the Offering is not completed by June 30, 2013.

The undersigned understands that the Underwriters are entering into the Underwriting Agreement and proceeding with the Offering in reliance upon this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

[Signature Page Follows]

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Very truly yours,

Printed Name of Holder

By: _____
Signature

Printed Name of Person Signing
(and indicate capacity of person signing if signing as custodian, trustee, or on behalf of an entity)

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HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

(269) 337-7700
Fax: (269) 337-7701

April 11, 2013

Sunshine Heart, Inc.
12988 Valley View Road
Eden Prairie, MN 55344
Ladies and Gentlemen:

We have acted as counsel to Sunshine Heart, Inc., a Delaware corporation (the "**Issuer**"), in connection with the preparation and filing with the Securities and Exchange Commission (the "**Commission**") of the Registration Statement on Form S-3 (File No. 333-187273) (the "**Registration Statement**") under the Securities Act of 1933, as amended (the "**Act**"), and the prospectus supplement dated April 11, 2013 filed with the Commission pursuant to Rule 424(b) of the rules and regulations under the Act (the "**Prospectus Supplement**") for the issuance and sale by the Issuer of up to 2,875,000 shares (the "**Shares**") of the Issuer's common stock, par value \$0.0001 per share.

The law covered by the opinion expressed in this opinion letter is limited to the federal laws of the United States and the Delaware General Corporation Law.

Based on our examination of such documents and other matters as we deem relevant, we are of the opinion that the Shares have been duly authorized and, when issued, delivered and sold by the Issuer as described in the Registration Statement and the Prospectus Supplement and in the manner set forth in the Underwriting Agreement dated as of April 11, 2013, between the Issuer and Canaccord Genuity Inc., as representative of the underwriters named in Schedule I thereto, against payment of the consideration therefor as provided therein, will be validly issued, fully paid and nonassessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the heading "Legal Matters" in the Prospectus Supplement and the prospectus included in the Registration Statement. In giving such consent, we do not admit that we come within the category of persons whose consent is required under Section 7 of the Act, or the rules or regulations of the Commission thereunder.

Very truly yours,

/S/ HONIGMAN MILLER SCHWARTZ AND COHN LLP

350 East Michigan Avenue · Suite 300 · Kalamazoo, Michigan 49007-3800
Detroit · Lansing · Oakland County · Ann Arbor · Kalamazoo



Sunshine Heart, Inc. Prices \$13.1 Million Public Offering of Common Shares

Eden Prairie, MN and Sydney, Australia: April 11, 2013: Sunshine Heart, Inc. (NASDAQ: SSH /ASX: SHC) announced today the pricing of its previously announced offering of 2,500,000 shares of its common stock at a price to the public of \$5.25 per share in an underwritten public offering pursuant to its effective shelf registration statement previously filed with the U.S. Securities and Exchange Commission (SEC). Canaccord Genuity is acting as sole book-running manager for the offering. In addition, Sunshine Heart has granted the underwriter a 30-day option to purchase up to an additional 375,000 shares solely to cover over-allotments, if any. The offering is expected to close on or about April 16, 2013, subject to customary closing conditions.

Sunshine Heart currently intends to use the net proceeds from the offering for general corporate purposes, including its ongoing clinical trial and product development activities.

The offering is being made pursuant to a shelf registration statement (File No. 333-187273) (including a prospectus) previously filed with and declared effective by the SEC. Prospective investors should read the prospectus in that registration statement, the final prospectus relating to the offering, and other documents that Sunshine Heart has filed with the SEC for more complete information about Sunshine Heart and the offering. A copy of the prospectus supplement and the accompanying prospectus relating to these securities may be obtained by contacting Canaccord Genuity Inc., Attention: Syndicate Department, 99 High Street, 12th Floor, Boston, Massachusetts 02110, or by telephone at (617) 371-3900. Electronic copies of the prospectus supplement and the accompanying prospectus are also available free of charge on the website of the SEC at www.sec.gov.

The prospectus has not been lodged with the Australian Securities and Investments Commission and is not a prospectus under Chapter 6D of the Australian Corporations Act 2001 (Cth) (Corporations Act). The offering of securities will be made in Australia only to persons to whom it is lawful to offer shares without disclosure under one or more of the exemptions set out in section 708 of the Corporations Act.

The proposed capital raising does not require securityholder approval under the ASX Listing Rules as the Company has received a waiver from ASX Listing Rule 7.1 in light of its imminent delisting.

This press release does not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

About the C-Pulse® Heart Assist System

The C-Pulse Heart Assist System, or C-Pulse System, an investigational device in the United States, Canada and countries that do not recognize the CE mark approval, utilizes the scientific principles of intra-aortic balloon counter-pulsation applied in an extra-aortic approach to assist the left ventricle by reducing the workload required to pump blood throughout the body, while increasing blood flow to the coronary arteries. Combined, these potential benefits may help sustain the patient's current condition or, in some cases, reverse the heart failure process, thereby potentially preventing the need for later-stage heart failure devices, such as left ventricular assist devices (LVADs), artificial hearts or transplants. It may also provide relief from the symptoms of Class III and ambulatory Class IV heart failure and improve quality of life and cardiac function. Based on the results from our feasibility trial, we also believe that some patients treated with our C-Pulse System will be able to stop using the device due to sustained improvement in their conditions as a result of the therapy.

Caution: Investigational device, limited by Federal (or United States) Law to Investigational use.

About Sunshine® Heart

Sunshine Heart, Inc. (NASDAQ: SSH / ASX: SHC) is an early-stage medical device company focused on developing, manufacturing and commercializing the C-Pulse System for treatment of Class III and ambulatory Class IV heart failure. Sunshine Heart has completed an approved U.S. Food and Drug Administration (FDA) feasibility clinical trial of the C-Pulse System and presented the results in November 2011. In March 2012, the FDA notified the Company that it could move forward with an investigational device exemption (IDE) application. Sunshine Heart received unconditional approval from the FDA in November 2012 to initiate its pivotal trial. In July 2012 Sunshine Heart received CE Mark approval for its C-Pulse System in Europe. Sunshine Heart is a Delaware corporation headquartered in Minneapolis with a wholly owned subsidiary in Australia. The Company has been listed on the Australian Securities Exchange (ASX) since September 2004 and on the NASDAQ Capital Market since February 2012.

Forward-Looking Statements

Certain statements in this release are forward-looking statements that are based on management's beliefs, assumptions and expectations and information currently available to management. All statements that address future operating performance, events or developments that we expect or anticipate will occur in the future are forward-looking statements, including, without limitation, our expectations with respect to the closing of the offering and the timing thereof, future clinical trial activities and results including patient enrollment in trials. These forward-looking statements are subject to numerous risks and uncertainties, including, without limitation, that the offering may not close due to failure of any condition precedent or otherwise or may close later than we currently anticipate, the possibility that our clinical trials do not meet their enrollment goals, meet their end-points or otherwise fail, that regulatory authorities do not accept our application or approve the marketing of the C-Pulse System, the possibility that we may be unable to raise the funds necessary for the development and commercialization of our products, that we may not be able to commercialize our products successfully in the EU and the other risk factors described under the caption "Risk Factors" and elsewhere in our filings with the SEC and ASX. You should not place undue reliance on forward-looking statements because they speak only as of the date when made and may turn out to be inaccurate. We do not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. We may not actually achieve the plans, projections or expectations disclosed in forward-looking statements, and actual results, developments or events could differ materially from those disclosed in the forward-looking statements.

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For further information, please contact:

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Blueprint Life Science Group
T: +1-415-375-3340

Investor Relations:
Jeff Mathiesen
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