As confidentially submitted to the U.S. Securities and Exchange Commission on January 29, 2021

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

NEUROPACE, INC.

(Name of Registrant as Specified in Its Charter)

Delaware	3841	22-3550230
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

455 N. Bernardo Avenue
Mountain View, CA 94043
(650) 237-2700
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Michael Favet
President and Chief Executive Officer
NeuroPace, Inc.
455 N. Bernardo Avenue
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(650) 237-2700
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities To Be Registered	Proposed Maximum Aggregate Offering Price (1)(2)	Amount of Registration Fee
Common Stock, $0.001 par value per share	$	$

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
(2) Includes the aggregate offering price of additional shares that the underwriters have the option to purchase.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to completion, dated , 2021

shares

Common stock

This is our initial public offering of our common stock. We are offering shares of common stock. Prior to this offering, there has been no public market for our common stock. We expect that the initial public offering price will be between $ and $ per share. We intend to apply to list our common stock on the Nasdaq Global Market under the symbol "NPCE."

We are an "emerging growth company" and a "smaller reporting company" as defined under the U.S. federal securities laws and, as such, have elected to comply with certain reduced public company reporting requirements.

Investing in our common stock involves a high degree of risk. See "Risk factors" beginning on page 15.

Neither the Securities and Exchange Commission nor any state securities regulators have approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per share	Total
Initial public offering price	$	$
Underwriting discounts and commissions[(1)]	$	$
Proceeds to NeuroPace, Inc., before expenses	$	$

(1) See "Underwriting" for additional information regarding compensation payable to the underwriters.

Delivery of the shares of common stock is expected to be made on or about , 2021.

We have granted the underwriters an option, for a period of 30 days from the date of this prospectus, to purchase up to an additional shares of common stock at the initial public offering price less underwriting discounts and commissions.

J.P. Morgan **Morgan Stanley**

Wells Fargo Securities **SVB Leerink**

Prospectus dated , 2021.

NEUROPACE

Brain-Responsive Neuromodulation for Drug-Resistant Epilepsy

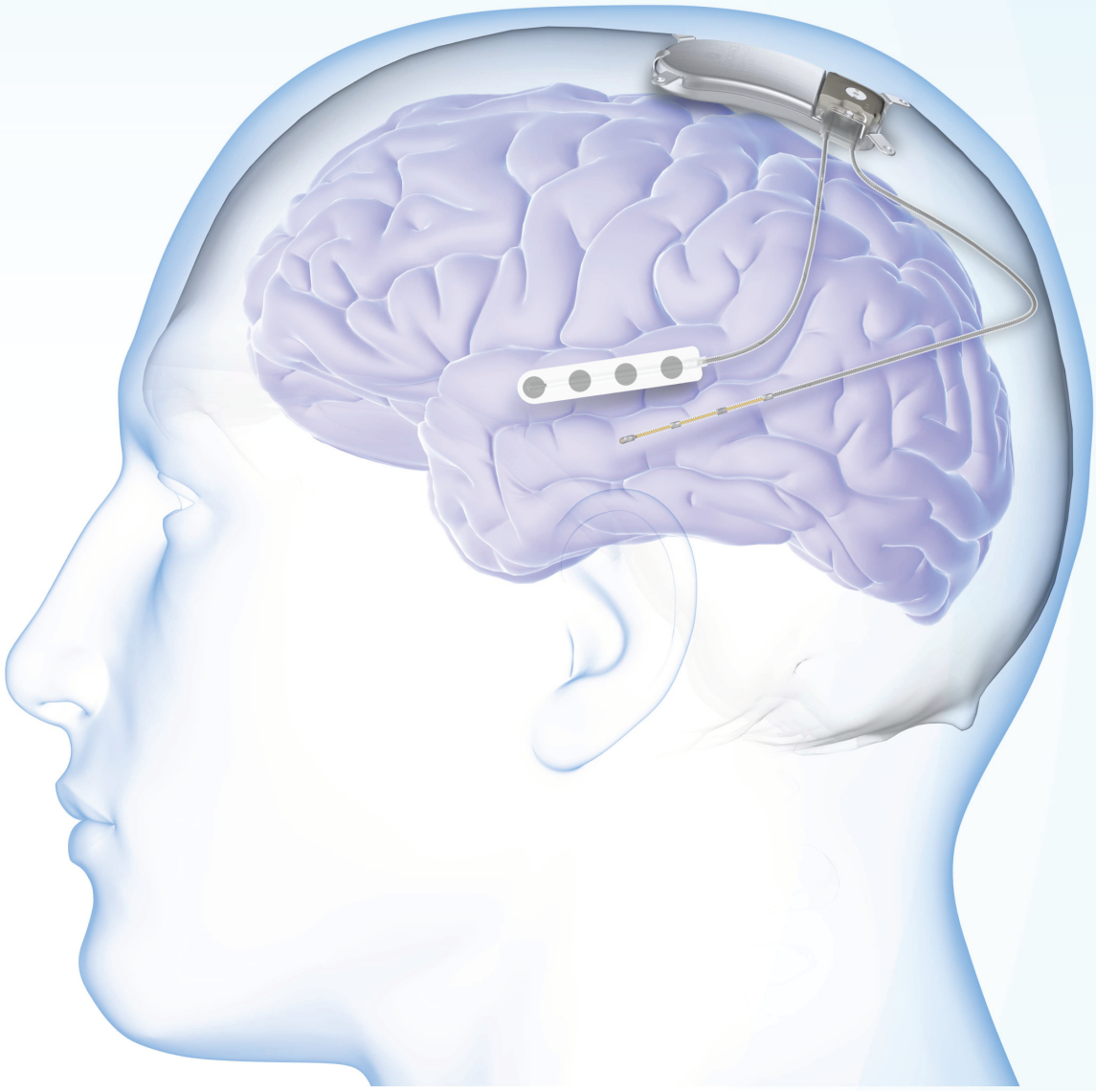


TABLE OF CONTENTS

Through and including , 2021 (the 25th day after the date of this prospectus), all dealers effecting transactions in shares of our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

We and the underwriters have not authorized anyone to provide you with any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses we have prepared. We and the underwriters take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus or in any applicable free writing prospectus is accurate only as of the date of this prospectus or any such free writing prospectus, as applicable, regardless of its time of delivery or of any sale of our common stock. Our business, financial condition, results of operations and future growth prospects may have changed since that date.

For investors outside the United States: Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside of the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of our common stock and the distribution of this prospectus outside of the United States.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus. This summary does not contain all of the information you should evaluate and consider before investing in our common stock. You should carefully read, consider, and evaluate this entire prospectus, including "Risk factors," "Management's discussion and analysis of financial condition and results of operations," and our financial statements and the related notes included elsewhere in this prospectus, before making an investment decision. Unless the context otherwise requires, all references in this prospectus to "NeuroPace," "we," "us," "our" and "our company" refer to NeuroPace, Inc.

Overview

We are a commercial-stage medical device company focused on transforming the lives of people suffering from epilepsy by reducing or eliminating the occurrence of debilitating seizures. Our novel and differentiated RNS System is the first and only commercially available, brain-responsive neuromodulation system that delivers personalized, real-time treatment at the seizure source. By continuously monitoring the brain's electrical activity, recognizing patient-specific abnormal electrical patterns, and responding in real time with imperceptible electrical pulses to prevent seizures, our RNS System delivers the precise amount of therapy when and where it is needed and provides exceptional clinical outcomes with approximately three minutes of stimulation on average per day. Our RNS System is also the only commercially available device that records continuous brain activity data and allows clinicians to monitor patients not only in person, but also remotely, providing them the data they need to make more informed treatment decisions, thus optimizing patient care. We believe the therapeutic advantages of our RNS System, combined with the insights obtained from our extensive brain data set, offer a significant leap forward in epilepsy treatment. As of December 31, 2020, over 3,000 patients have received our RNS System. We believe our compelling body of long-term clinical data, demonstrating continuous improvement in outcomes over time, will support the continued adoption of our RNS System among the approximately 575,000 adults in the United States with drug-resistant focal epilepsy. Over time, we plan to seek indication expansion more broadly for use across the entire approximately 1.2 million drug-resistant epilepsy patients in the United States and may additionally seek to expand our operations to reach the approximately 16.5 million drug-resistant epilepsy patients globally.

Epilepsy is a devastating chronic disorder characterized by a tendency of the brain to produce sudden abnormal bursts of electrical energy that disrupt brain functions and cause seizures. The goal for treating epilepsy is to reduce the number and intensity of seizures that a patient experiences, without causing treatment-related side effects. While antiepileptic drugs are considered first-line treatment and are effective at controlling seizures in a large portion of the epilepsy population, approximately one-third of epilepsy patients are considered drug-resistant because they do not achieve complete seizure control or cannot tolerate the side effects of these drugs. These drug-resistant epilepsy patients struggle with a variety of life-impacting challenges including psychological dysfunction, social stigmatization, reduced quality of life, and increased risk of mortality, and are disproportionately responsible for the approximately $28 billion spent annually on epilepsy care in the United States.

Epilepsy is further classified into two main categories– focal epilepsy and generalized epilepsy. Approximately 60% of epilepsy patients have focal epilepsy, which is characterized by electrical discharges that originate in a specific part of the brain. The remaining 40% of patients have generalized epilepsy, which is characterized by widespread electrical discharges that involve the entire brain at once. Our paradigm-shifting RNS System is currently indicated in the United States for use in adult epilepsy patients, or patients who are 18 years of age or older, with drug-resistant focal epilepsy, which we believe represents an approximately $26 billion total addressable market. While we are presently focused on this significant market opportunity, in the future we may seek regulatory approval to treat drug-resistant epilepsy in patients under the age of 18 and in generalized epilepsy, as well as in markets outside the United States.

Our commercial efforts are focused on the comprehensive epilepsy centers, or Level 4 CECs, in the United States that facilitate appropriate care for drug-resistant epilepsy patients, including procedures for implantation of epilepsy neuromodulation devices such as our RNS System. While most drug-resistant epilepsy patients begin their care at physician offices or community hospitals, we estimate that approximately 24,000 adult drug-resistant focal epilepsy patients are treated in Level 4 CECs in the United States each year. We estimate that this patient pool represents an annual core market opportunity of approximately $1.1 billion for initial RNS System implants, and we

expect that it will continue to grow as the number of Level 4 CECs and epilepsy specialists increases, and as more patients are referred to these CECs. In addition, our RNS System currently has an average battery life of approximately eight years, which, through the sale of replacement neuromodulation devices, provides a recurring revenue stream that is additive to our current $1.1 billion annual market opportunity for initial implants.

Resective or ablative surgery that removes or destroys the brain tissue at the source of the seizure onset has historically been considered the best treatment option for drug-resistant focal epilepsy. However, resective or ablative surgery carries risk, including neurological risk, and only approximately half of resective or ablative surgery patients are seizure free two years after surgery. We estimate that only approximately 20% of drug-resistant focal epilepsy patients have a focus that is both safe to remove and likely to result in seizure control if removed, and are also willing to undergo the procedure.

There are currently two other neuromodulation devices, Vagus Nerve Stimulation, or VNS, and Deep Brain Stimulation, or DBS, that are also approved to address the approximately 80% of drug-resistant focal epilepsy patients who are not ideal candidates for resective or ablative surgery. However, we believe the technology attributes of these devices limit their utility in practice. Both VNS and DBS devices stimulate an anatomical target that is not specific to where seizures start and use the same treatment paradigm for all patients, regularly stimulating the vagus nerve in the case of VNS or one specific location deep in the brain in the case of DBS, using a non-varying schedule in an attempt to prevent seizures. These devices stimulate for multiple hours per day, increasing the occurrence of stimulation-related side effects such as memory impairment, depression, sleep disruption, and vocal disturbances. Additionally, neither of these devices record the brain electrical data known as intracranial electroencephalograms, or iEEGs, that we believe are important to physicians in helping guide the therapy decisions that improve patient results over time. We believe there is a significant unmet need for a personalized, targeted therapy that collects brain data and improves outcomes over time without causing stimulation-related side effects or presenting the neurocognitive risks that are associated with resective or ablative surgery.

We developed our RNS System to address the individualized nature of drug-resistant epilepsy and deliver a safe and effective therapy for focal onset seizures anywhere in the brain. Unlike other neuromodulation devices, our RNS System continuously monitors the brain's electrical activity, recognizes patient-specific abnormal patterns, and delivers treatment at the seizure source when needed, providing significant, sustained, and improving reductions in seizure frequency, including, in some cases, eliminating seizures, without stimulation-related side effects at therapeutic settings. As such, we believe our RNS System is superior in tolerability and efficacy to other neuromodulation approaches, gathering insights from individual patients' brain activity which help in making better treatment decisions and optimizing patient care. In addition, the non-destructive, reversible nature of the implant procedure makes it an attractive option for drug-resistant focal epilepsy patients, the majority of whom are not candidates for, or are unwilling to undergo, resective or ablative surgery.

The key efficacy and safety benefits of our RNS System are demonstrated by four multi-center FDA approved prospective studies that collectively include approximately 600 patients with up to nine years of follow-up, as well as multiple retrospective studies reporting real-world outcomes. Evidence generated from patients enrolled in our initial clinical studies demonstrated a 44% median reduction in seizure frequency at one year that improved to a 75% median reduction at nine years, with enduring improvements in quality of life and cognition. Importantly, the more recently published real-world results from a post-approval retrospective study showed a median seizure frequency reduction of 67% at one year, which is consistent with the interim one year results of our ongoing prospective Post-Approval Study, increasing to 82% at three or more years, demonstrating the utility of our unique brain data set in driving improvements in therapy effectiveness across patient cohorts over time. Over the 2,500 patient implant years reported in our prospective studies, our RNS System has been shown to be well tolerated without any adverse stimulation-related side effects at therapeutic settings. We believe our extensive and growing body of clinical data is being used to improve patient outcomes, which we believe will support increased adoption.

We received Pre-Market Approval, or PMA, from the FDA for our RNS System in late 2013 and began the commercial rollout of our RNS System in early 2014. We market our RNS System in the United States through a direct sales organization primarily to the epileptologists and neurosurgeons who respectively prescribe and implant neuromodulation devices in the approximately 200 Level 4 CECs in the United States. As of December 31, 2020, our commercial organization of 21 Therapy Consultants and 21 Field Clinical Engineers have established a

significant account base at these Level 4 CECs. Given the concentrated and underpenetrated nature of our target market, we believe there is a significant opportunity to efficiently grow our account base, drive higher utilization within these centers, and increase the number of drug-resistant patients referred to Level 4 CECs without significant salesforce expansion.

The implant procedure for our RNS System and the ongoing patient treatment provided by clinicians, including monitoring and programming, are reimbursed under well-established physician and hospital codes. In addition, we believe that our RNS System is currently the only neuromodulation system for epilepsy with reimbursement available for periodic in-person or remote review of brain activity data. Given the relatively young average age of our patient population, our payor mix has historically been more heavily weighted towards commercial payors. As of December 31, 2020, commercial payors have written positive coverage policies that address approximately 200 million covered lives in the United States. Medicare and Medicaid also routinely provide coverage for implantation of our RNS System and follow-up care. Based on our experience, less than 1% of potential RNS System patients have been unable to undergo an implant procedure with our RNS System due to lack of payor coverage. We believe the established, differentiated, and favorable reimbursement paradigm for our RNS System will continue to support its broad commercial adoption.

Our near-term research, development, and clinical efforts are focused on continuing to improve therapy effectiveness, enhance the patient and provider experience, and expand the population of patients that can be treated with our RNS System. Our near-term product development pipeline includes enhanced offerings that leverage our extensive brain activity database and our advanced data analysis capabilities. In the near-term, we also intend to pursue studies to support label expansion for our RNS System in additional epilepsy populations.

We have experienced considerable growth since we began commercializing our RNS System. Our revenue increased from $28.5 million for the year ended December 31, 2018 to $37.0 million for the year ended December 31, 2019, representing approximately 30% growth. The COVID-19 pandemic and the measures imposed to contain the pandemic impacted our business during 2020, with the most pronounced negative impact during the second quarter of the year. Revenue increased to $ million for the year ended December 31, 2020, representing year over year growth of %. Our net losses were $30.0 million and $ million for the years ended December 31, 2019 and December 31, 2020, respectively.

Competitive Strengths

We are focused on transforming the lives of people suffering from epilepsy by developing, manufacturing, continuously improving, and commercializing our innovative and clinically-validated RNS System that we believe offers significant advances in the treatment of drug-resistant epilepsy. We believe our continued growth will be driven by the following competitive strengths:

- Novel and differentiated closed-loop, brain-responsive technology that provides targeted, personalized care;
- Unique data recording capability that supports an extensive database of detailed brain activity information;
- Compelling body of long-term clinical data that continues to demonstrate improved outcomes over time;
- Efficient commercial model supported by an established, specialized field team;
- Established, differentiated, and favorable reimbursement supporting commercial growth;
- Strategic approach to our intellectual property portfolio; and
- Experienced senior management team.

Our Market and Industry

Overview of Drug-Resistant Epilepsy

Epilepsy is a devastating chronic disorder characterized by a tendency of the brain to produce sudden abnormal bursts of electrical energy that disrupt brain functions and cause seizures. According to the World Health Organization, approximately 50 million people worldwide had epilepsy in 2019 and according to the Centers for Disease Control and Prevention, 3.4 million people in the United States were living with epilepsy in 2015, making it the fourth most common neurological disorder in the United States.

First line treatment for epilepsy is antiepileptic drugs, or AEDs. While AEDs can help control seizures for many individuals, approximately one third of patients do not achieve complete seizure control, which is defined as seizure freedom without life-impacting side effects associated with treatment. This population of epilepsy patients is referred to as drug-resistant and we estimate that there are approximately 1.2 million drug-resistant epilepsy patients in the United States.

Epilepsy can be classified into two categories– focal epilepsy and generalized epilepsy. Approximately 60% of epilepsy patients have focal epilepsy, which is characterized by electrical discharges that originate in a specific part of the brain. Focal epilepsy patients typically have one or two seizure foci, or sites in the brain from which the electrical discharge originates. Generalized epilepsy, which describes approximately 40% of epilepsy patients, is characterized by widespread electrical discharges that involve the entire brain at once.

Onset of epilepsy can occur at any age. Of the approximately 1.2 million patients in the United States with drug-resistant epilepsy, we estimate that approximately 80% are adults, or 18 years of age or older, of whom approximately 575,000 have focal epilepsy. The remaining approximately 20% of patients are pediatric, or under the age of 18, and we estimate that approximately 145,000 of these pediatric patients have focal epilepsy.

Today, most epilepsy patients in the United States begin their care at physician offices or community hospitals, in the care of primary care physicians or general neurologists. Patients who have drug-resistant epilepsy may then be referred for advanced treatment at the approximately 200 Level 4 CECs in the United States. In 2019, we estimate that approximately 50,000 drug-resistant epilepsy patients were admitted to, and treated at, Level 4 CECs, of which approximately 48% were adults with focal epilepsy.

Our Market Opportunity

Our paradigm-shifting RNS System is currently indicated for use in adult epilepsy patients with drug-resistant focal epilepsy and we believe that it is an attractive therapeutic option for these patients. We estimate that there are approximately 575,000 adult drug-resistant focal epilepsy patients in the United States, which reflects a total addressable market opportunity of approximately $26 billion for our RNS System.

Our commercial efforts are focused on the Level 4 CECs in the United States that provide comprehensive epilepsy care. As such, we view our core annual market as the 50,000 drug-resistant epilepsy patients who are treated at Level 4 CECs each year, of which 48% are adult drug-resistant focal epilepsy patients. We estimate that this addressable patient pool of 24,000 patients represents an annual market opportunity of approximately $1.1 billion for initial RNS System implants, and we expect that it will continue to grow as the number of Level 4 CECs increase, the number of epilepsy specialists grows, and as more patients are referred to Level 4 CECs. Our RNS System currently has a battery life of approximately eight years, which, through the sale of replacement neuromodulation devices, provides a recurring revenue stream that is additive to our current $1.1 billion annual market opportunity.

Supported by evidence published in peer reviewed journals, we believe that our current RNS System may also be able to effectively treat patients under age 18 with drug-resistant focal epilepsy as well as drug-resistant generalized epilepsy patients and we intend to pursue clinical studies to support label expansion for these indications. We have FDA approval for an IDE study to treat drug-resistant focal epilepsy in adolescent patients ages 12 through 17 and expect to begin enrollment in 2021. In the second half of 2021, we also plan to seek IDE approvals to initiate clinical studies in generalized epilepsy.

Current Treatment Alternatives and Their Limitations

There are two primary treatment alternatives for drug-resistant focal epilepsy patients: (i) an ablative or resective surgery to remove or destroy the brain tissue associated with the seizure onset, or (ii) implantation of a neuromodulation device to stimulate seizure-causing brain circuits and prevent or abort seizures.

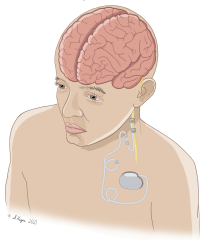
Resective and ablative surgery

Surgery has been used to treat epilepsy for more than 100 years. Resective or ablative surgery is used in current clinical practice as a treatment alternative for the approximately 20% of drug-resistant epilepsy patients who are willing to have the surgery and have a discrete, single seizure focus that is determined to be safe to resect or ablate in a way that is likely to result in complete seizure control. Resective surgeries are invasive procedures that involve permanently removing the part of the brain that is primarily responsible for the seizure onset. Ablative surgeries, which use thermal energy to permanently destroy brain tissue, have emerged as a less invasive alternative to surgical resection.

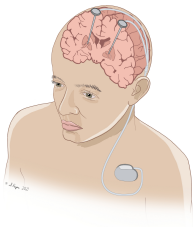
While these surgical options have the potential to result in complete seizure control, studies have demonstrated that only approximately half of resective or ablative surgery patients are seizure-free two years after surgery and many experience impairment in some aspect of neurological function. The most common and successful type of resective surgery, temporal lobectomy, leaves 30 to 40% of patients with disabling seizures one year after surgery and many patients are left with neurological side effects, including impaired memory, reduced naming ability, and loss of some part of their visual field.

Implantable neuromodulation devices

In addition to our RNS System, there are two neuromodulation devices that are approved by the FDA to treat focal epilepsy: Vagus Nerve Stimulation, or the VNS System, marketed by LivaNova; and Deep Brain Stimulation, or the DBS System, marketed by Medtronic.



The VNS System provides scheduled extracranial stimulation delivered from a pectorally implanted pulse generator with the lead tunneled under the skin to the left vagus nerve in the neck next to the carotid artery. Therapy is typically delivered in a repeating pattern of 30 seconds of stimulation followed by five minutes without stimulation.



The DBS System relies on bilaterally implanted intracranial electrodes that are placed in each anterior thalamic nucleus, each located deep in the brain. The electrodes are attached to a pectorally implanted pulse generator using connecting wires that are tunneled under the scalp and skin of the neck and chest. DBS delivers non-responsive, sometimes referred to as open-loop, scheduled stimulation and has limited sensing and recording capability. Therapy is typically delivered in a repeating pattern of one minute of stimulation followed by five minutes without stimulation.

Published data from separate prospective FDA approved studies run by LivaNova and Medtronic in adults with focal epilepsy demonstrated that the VNS System and DBS System achieved median reductions in seizure frequency at one year of 35% and 44%, respectively. Both VNS and DBS devices stimulate a fixed anatomical target that is not specific to where seizures start in the brain. They also use the same treatment paradigm for all patients and are intermittently stimulating the brain using a non-varying schedule in an attempt to prevent seizures rather than responding in real-time to the patient-specific electrical activity that precedes a seizure. As a result, both devices stimulate the brain for multiple hours per day, increasing the likelihood of stimulation side effects including voice alterations, hoarseness, throat pain, cough, difficulty swallowing, depression, memory impairment, and sleep disruption.

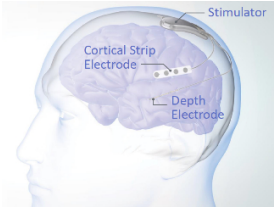
Additionally, neither of these devices record the brain electrical data known as intracranial electroencephalograms, or iEEGs, that we believe are important to physicians in helping guide the therapy decisions that improve patient results over time.

We believe our RNS System addresses the significant unmet need for an epilepsy treatment option that can improve outcomes without causing stimulation-related side effects for the large portion of drug-resistant focal epilepsy patients who are not ideal candidates for surgery or who do not want to undergo a destructive surgical procedure.

Our Solution

We developed our RNS System, which is a compilation of several of our products, to address the individualized nature of drug-resistant epilepsy with a differentiated technology that provides personalized, data-driven treatment. Our RNS System is the first and only closed-loop, brain-responsive neuromodulation device approved by the FDA for treatment of drug-resistant focal epilepsy. By continuously monitoring the brain's electrical activity, recognizing patient-specific abnormal electrical patterns, and responding in real-time with imperceptible electrical pulses to prevent seizures, we believe our RNS System addresses the primary unmet needs in epilepsy care today.

The implantable portion of our RNS System consists of a neurostimulator, which is placed within the patient's skull and our RNS System leads with electrodes that can be positioned in one or two seizure foci. The electrodes are used to sense electrical activity from the brain, provide targeted stimulation, and capture the iEEG signals that are recorded by the neurostimulator. Because our RNS System provides targeted, responsive stimulation only when abnormal electrical activity is detected, patients receive approximately three minutes of stimulation on average per day and do not experience stimulation-related side effects at therapeutic settings.



The external components of our RNS System include our Patient Remote Monitor, our Physician Tablet, and our Patient Data Management System.

Our Patient Remote Monitor consists of a handheld wand and a specially programmed laptop computer that collects and transmits data from the neurostimulator to the Patient Data Management System, a secure online database.

Our Physician Tablet allows the patient's managing physician to retrieve stored iEEG data, programmed parameters, detections, and stimulations from the neurostimulator for review and optimization of the patient's treatment protocol. Clinicians also utilize the Physician Tablet to program new detection and stimulation settings, as needed.

Our Patient Data Management System, or PDMS, is a secure online database that collects data that have been recorded in our RNS System. These data, which include all programmed parameters, detections, stimulations, and stored iEEG activity for RNS System patients, can be accessed through our secure Physician Tablet or from any internet browser. Clinicians can use their patients' data to facilitate treatment decisions. We believe that we are able to continue to learn and innovate by leveraging our comprehensive data set, which includes approximately 6.6 million iEEG records, and our data analytics capabilities. This allows us to improve our products, creating actionable insights for clinicians who can help improve clinical outcomes for patients.

Key Clinical Advantages of our RNS System

We believe the key advantages of our RNS System relative to both alternative neuromodulation devices and resective or ablative surgery include:

Significant and improving seizure reduction in all areas of the brain. Our initial clinical studies demonstrated a 44% median reduction in seizure frequency at one year that improved to a 75% median reduction at nine years, with enduring improvements in quality of life and cognition. Importantly, the more recently published real-world results from a post-approval retrospective study showed a median seizure frequency reduction of 67% at

one year, which is consistent with the interim one-year results of our ongoing prospective Post-Approval Study, increasing to 82% at three or more years, demonstrating the utility of our unique brain data set in driving improvements in therapy effectiveness across patient cohorts over time.

Lack of stimulation-related side effects. Our RNS System stimulates the precise seizure targets and only when needed, resulting in a highly effective therapy with approximately three minutes of stimulation on average per day. Our clinical studies have collectively demonstrated that our RNS System therapy is well-tolerated with no adverse stimulation-related side effects at therapeutic settings.

Quality of life, cognition, and mood improvement. In our Pivotal Study, patients achieved statistically significant improvements in quality of life scores, cognition, and mood that were sustained over the follow up periods.

Low risk, reversible procedure. Our RNS System has a favorable safety profile relative to resective or ablative surgical procedures for epilepsy and a comparable risk profile to the implantation of other neuromodulation devices. The non-destructive RNS System implant procedure has not demonstrated a negative impact on neurological or cognitive function.

Reduction in sudden unexpected death in epilepsy, or SUDEP. Data from 707 patients across our clinical studies and post-market experience indicated that our RNS System was associated with a lower rate of dying from SUDEP relative to other treatment-resistant epilepsy groups.

Benefits to Other Stakeholders

In addition to offering important clinical benefits to patients, we believe our RNS System offers important distinctions for providers and payors.

Providers: We believe that our RNS System's differentiated ability to record iEEG data offers clinicians the opportunity to better manage and optimize treatment for their patients. Importantly, because our RNS System is the only neuromodulation device that records iEEG data, we believe it is also the only neuromodulation device with established reimbursement for data review during and between in-person clinician visits, which we believe is an important element of optimizing patient care.

Payors: We believe our RNS System has the potential to reduce the cost burden associated with drug-resistant epilepsy. We also believe that the unique ability for physicians to review their patients' RNS System data online can facilitate telehealth delivery, potentially reducing the overall cost of care, while improving the patient experience.

Our Growth Strategies

We expect that the near-term growth of our business will be driven primarily by new patients being treated with our RNS System. We believe the following strategies will contribute to growth in initial patient implants and advance our mission to dramatically improve clinical outcomes and quality of life for patients suffering from epilepsy and other disabling brain disorders:

- Drive adoption of our RNS System across all Level 4 CECs;
- Increase utilization of our RNS System within CECs by growing the number of epileptologists recommending our system, increasing utilization by prescribers, and driving increased patient referrals to Level 4 CECs;
- Broaden indications for our RNS System to include patients under age 18 and patients with generalized epilepsy;
- Expand into international markets; and
- Pursue additional indications, including outside of epilepsy.

Risks Associated With Our Business

Our business is subject to numerous risks and uncertainties, including those described in "Risk factors" and elsewhere in this prospectus. You should carefully read, consider, and evaluate these risks before making an investment. These risks include, among others, the following:

- Our sales, business, financial condition and results of operations have been and continue to be impacted by the COVID-19 pandemic;
- We currently rely on our RNS System, which can only be marketed in the United States for use in adults with drug-resistant focal epilepsy, and is recommended as well as implanted primarily at Level 4 CECs. If we are not successful in enhancing awareness of our RNS System, driving adoption across our current target population, increasing referrals to Level 4 CECs, and expanding the population of eligible patients, our sales, business, financial condition and results of operations will be negatively affected;
- Our commercial success will continue to depend on attaining significant market acceptance of our RNS System among patients, clinicians and hospital facilities, primarily Level 4 CECs and increasing the number of patients treated at Level 4 CECs. If we are unable to successfully achieve substantial market acceptance and adoption of our RNS System, our sales, business, financial condition and results of operations would be harmed;
- We depend on a limited number of single-source suppliers and vendors in connection with the manufacture of our products, which makes us vulnerable to supply shortages and price fluctuations that could harm our business, financial condition, and results of operations;
- We may be unable to compete successfully with other treatment options for drug-resistant focal epilepsy, which could harm our sales, business, financial condition and results of operations;
- If adequate reimbursement becomes unavailable for the procedures to implant our RNS System and for clinicians to provide ongoing care for patients treated with our RNS System, it could diminish our sales or affect our ability to sell our RNS System profitably;
- Our operations are subject to pervasive and continuing FDA regulatory requirements, and failure to comply with these requirements could harm our business, financial condition and results of operations;
- If we are unable to obtain, maintain, protect, enforce and defend patent or other intellectual property protection for our products, or if the scope of the patent and other intellectual property protection obtained is not sufficiently broad, or as a result of our existing or any future out-licenses of our intellectual property, our competitors could develop and commercialize products competitive with ours, and our ability to continue to commercialize our RNS System, or our other products, may be harmed;
- Our collection, use, storage, disclosure, transfer and other processing of sensitive and personal information could give rise to significant costs, liabilities and other risks, including as a result of investigations, inquiries, litigation, fines, legislative and regulatory action and negative press about our privacy and data protection practices, which may harm our business, financial conditions, results of operations and prospects;
- We have a history of net losses, and we expect to continue to incur losses for the foreseeable future. If we do achieve profitability, we may not be able to sustain it; and
- We have identified a material weakness in our internal control over financial reporting. If we are unable to remediate this material weakness, or if we identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations.

If we are unable to adequately address these and other risks we face, our business may be harmed.

Implications of being an emerging growth company and a smaller reporting company

As a company with less than $1.07 billion in revenue during our last fiscal year, we qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. For as long as we are an emerging growth company, we may take advantage of certain reduced reporting requirements that are otherwise applicable to other public companies that are not emerging growth companies. These provisions include, but are not limited to:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act;
- reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and the exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved; and
- being permitted to present only two years of audited financial statements and only two years of related management's discussion and analysis of financial condition and results of operations disclosure in this prospectus.

We may choose to take advantage of some or all of these reduced burdens. We have taken advantage of many of these reduced burdens in this prospectus, and intend to do so in future filings. As a result, the information that we provide stockholders may be different than you might get from other public companies in which you hold equity. In addition, the JOBS Act provides that an emerging growth company can delay adopting new or revised accounting standards until those standards apply to private companies. We have elected to avail ourselves of this exemption.

We will remain an emerging growth company until the earliest to occur of: the last day of the fiscal year in which we have more than $1.07 billion in annual revenue; the last day of the fiscal year in which we qualify as a "large accelerated filer;" the date on which we have, during the previous three-year period, issued more than $1.0 billion in non-convertible debt securities; and the last day of the fiscal year in which the fifth anniversary of this offering occurs.

We are also a "smaller reporting company," meaning that the market value of our stock held by non-affiliates plus the proposed aggregate amount of gross proceeds to us as a result of this offering is less than $700 million and our annual revenue was less than $100 million during the most recently completed fiscal year. We may continue to be a smaller reporting company after this offering if either (i) the market value of our stock held by non-affiliates is less than $250 million as of the last business day of the second fiscal quarter or (ii) our annual revenue is less than $100 million during the most recently completed fiscal year and the market value of our stock held by non-affiliates is less than $700 million as of the last business day of the second fiscal quarter. If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies. Specifically, as a smaller reporting company we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K and, similar to emerging growth companies, smaller reporting companies have reduced disclosure obligations regarding executive compensation.

Corporate information

We were incorporated under the laws of the state of Delaware in November 1997 under the name NeuroPace, Inc. Our principal executive offices are located at 455 N. Bernardo Avenue, Mountain View, California 94043. Our telephone number is (650) 237-2700. Our website is www.neuropace.com. Information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus.

"NeuroPace," "RNS," the NeuroPace logo and our other registered or common law trade names, trademarks or service marks appearing in this prospectus are our property. Trade names, trademarks and service marks of other companies appearing in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and tradenames referred to in this prospectus appear without the ® and ™ symbols, but those references

are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the right of the applicable licensor to these trademarks and tradenames.

THE OFFERING

Common stock offered by us	shares
Option to purchase additional shares of common stock from us	shares
Common stock to be outstanding after this offering	shares (or shares if the underwriters exercise their option to purchase additional shares in full)
Use of proceeds	We estimate that the net proceeds from the sale of shares of common stock in this offering will be approximately $ million (or approximately $ million if the underwriters exercise their option to purchase additional shares in full), based upon an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The principal purpose of this offering is to provide us with additional capital. We intend to use the net proceeds from this offering to expand our sales and marketing efforts, increase our research and development activities, conduct or sponsor clinical studies, expand internationally, and provide for working capital and other general corporate purposes. We will also use a portion of the net proceeds we receive from this offering to repay approximately $4.0 million of indebtedness under our Paycheck Protection Program loan. We may use a portion of the net proceeds to acquire complementary products, technologies, intellectual property or businesses; however, we currently do not have any agreements or commitments to complete any such transactions and are not involved in negotiations regarding such transactions. See “Use of Proceeds” for additional information.
Risk factors	See “Risk factors” and the other information included in this prospectus for a discussion of risks you should carefully read, consider, and evaluate these risks before investing in our common stock.
Proposed Nasdaq trading symbol	“NPCE”

The number of shares of common stock that will be outstanding after this offering is based on shares of common stock outstanding as of December 31, 2020 (including our convertible preferred stock on an as-converted basis), and excludes:

- shares of common stock issuable upon the exercise of outstanding stock options as of December 31, 2020 with a weighted-average exercise price of $ per share, under our equity incentive plans;
- shares of common stock available under our existing equity incentive plan, which will expire upon the execution of the underwriting agreement in this offering;
- shares of common stock issuable upon the exercise of warrants outstanding as of December 31, 2020, with a weighted-average exercise price of $ per share (other than warrants that will automatically be net exercised upon the closing of this offering);
- shares of common stock reserved for future issuance under our 2021 Equity Incentive Plan, or 2021 Plan, which will become effective upon the execution of the underwriting agreement for this offering, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan; and
- shares of common stock reserved for future issuance under our 2021 Employee Stock Purchase Plan, or the ESPP, which will become effective upon the execution of the underwriting agreement for this offering, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan.

Unless we specifically state otherwise, all information in this prospectus reflects and assumes:

- a 100-for-1 reverse stock split of our common stock and convertible preferred stock effected on August 18, 2020;
- a -for- reverse stock split of our common stock and convertible preferred stock to be effected on , 2021;
- the conversion of shares of convertible preferred stock outstanding as of December 31, 2020 into an aggregate of shares of common stock upon the closing of this offering;
- the net exercise of warrants to purchase shares of Series B' convertible preferred stock, with an exercise price of $ per share, outstanding as of December 31, 2020, prior to the closing of this offering that would otherwise expire upon the closing of this offering, which will result in the issuance of an aggregate of shares of Series B' convertible preferred stock that will convert into an equal number of shares of common stock upon the closing of this offering (based on the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus);
- the net exercise of warrants to purchase shares of common stock, with an exercise price of $ per share, outstanding as of December 31, 2020, prior to the closing of this offering that would otherwise expire upon the closing of this offering, which will result in the issuance of an aggregate of shares of common stock upon the closing of this offering (based on the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus);
- no exercise of outstanding options or warrants, other than as provided for above;
- no exercise of the underwriters' option to purchase additional shares of common stock; and
- the filing and effectiveness of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws upon the closing of this offering.

SUMMARY FINANCIAL DATA

The following tables summarize our financial and other data. The summary statements of operations and comprehensive loss data for the years ended December 31, 2019 and 2020 and the balance sheet data as of December 31, 2020 have been derived from our audited financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected for any other period in the future. You should carefully read, consider, and evaluate the financial and other data set forth below in conjunction with our financial statements and the accompanying notes, the information in "Selected financial data" and the information in "Management's discussion and analysis of financial condition and results of operations" contained elsewhere in this prospectus.

(in thousands, except share and per share amounts)	Year Ended December 31,	
	2019	2020
Statements of operations data:		
Revenue	$ 36,972	
Cost of goods sold	10,508	
Gross profit	26,464	
Operating expenses		
Research and development	18,294	
Selling, general and administrative	30,201	
Total operating expenses	48,495	
Loss from operations	(22,031)	
Interest income	261	
Interest expense	(9,485)	
Other income (expense), net	1,282	
Net loss	$ (29,973)	
Net loss per share attributable to common stockholders, basic and diluted [1]	(57.07)	
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	525,193	
Pro forma net loss per share, basic and diluted (unaudited) [1]		
Weighted-average shares outstanding used in computing pro forma net loss per share, basic and diluted (unaudited)		

(1) See Note 11, "Net Loss per Share Attributable to Common Stockholders" to our financial statements included elsewhere in this prospectus for further information on the calculation of net loss per share attributable to common stockholders and pro forma net loss per share.

(in thousands)	As of December 31, 2020		
	2020	Pro forma [1]	Pro forma as adjusted [2][3]
Balance sheet data:			
Cash and cash equivalents			
Working capital [4]			
Total assets			
Short-term debt			
Long-term debt			
Total liabilities			
Convertible preferred stock			
Accumulated deficit			
Total stockholders' deficit			

(1) The pro forma balance sheet data gives effect to: (i) the conversion of shares of convertible preferred stock outstanding as of December 31, 2020 into an aggregate of shares of common stock upon the closing of this offering; (ii) the issuance of shares of Series B' convertible preferred stock upon the net exercise of outstanding warrants as of December 31, 2020 to purchase shares of Series B' convertible preferred stock, with an exercise price of $ per share, prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and the conversion of such shares of Series B' convertible preferred stock into an equal number of shares of common stock upon the closing of this offering; (iii) the reclassification of the Series B' convertible preferred stock warrant liability to total stockholders' deficit as the warrants will be net exercised, (iv) the issuance of shares of common stock upon the net exercise of outstanding warrants as of December 31, 2020 to purchase shares of common stock, with an exercise price of $ per share, prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus; and (v) the filing and effectiveness of our amended and restated certificate of incorporation upon the closing of this offering.

(2) Reflects (i) the pro forma adjustments described in footnote (1); (ii) the issuance and sale of shares of common stock in this offering at the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us; and (iii) the repayment of approximately $4.0 million of indebtedness under our Paycheck Protection Program loan.

(3) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share of common stock, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) each of cash, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, an increase (decrease) of 1,000,000 shares of common stock offered by us would increase (decrease) each of cash, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming the assumed initial public offering price of $ per share of common stock, the midpoint of the price range set forth on the cover page of this prospectus, remains the same, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma and pro forma as adjusted information is illustrative only and we will adjust this information based on the actual initial public offering price and other terms of this offering determined at pricing.

(4) We define working capital as current assets less current liabilities. See our audited financial statements and the related notes included elsewhere in this prospectus for further details regarding our current assets and current liabilities as of December 31, 2020.

RISK FACTORS

Investing in our common stock involves a high degree of risk and uncertainty. You should carefully read, consider, and evaluate the risks described below, as well as all of the other information contained in this prospectus, including "Management's Discussion and Analysis of Results of Operations" and our financial statements and related notes, before investing in our common stock. While we believe that the risks and uncertainties described below are the material risks currently facing us, additional risks that we do not yet know of or that we currently think are immaterial may also arise and materially affect our business. If any of the following risks materialize, our business, financial condition and results of operations could be materially and adversely affected. In that case, the market price of our common stock could decline, and you may lose some or all of your investment.

Summary Risk Factors

Investing in our common stock involves a high degree of risk because our business is subject to numerous risks and uncertainties, as fully described below. The principal factors and uncertainties that make investing in our common stock speculative or risky include, among others:

- Our sales, business, financial condition and results of operations have been and continue to be impacted by the COVID-19 pandemic;
- We currently rely on our RNS System, which can only be marketed in the United States for use in adults with drug-resistant focal epilepsy, and is recommended as well as implanted primarily at Level 4 CECs. If we are not successful in enhancing awareness of our RNS System, driving adoption across our current target population, increasing referrals to Level 4 CECs, and expanding the population of eligible patients, our sales, business, financial condition and results of operations will be negatively affected;
- Our commercial success will continue to depend on attaining significant market acceptance of our RNS System among patients, clinicians and hospital facilities, primarily Level 4 CECs and increasing the number of patients treated at Level 4 CECs. If we are unable to successfully achieve substantial market acceptance and adoption of our RNS System, our sales, business, financial condition and results of operations would be harmed;
- We depend on a limited number of single-source suppliers and vendors in connection with the manufacture of our products, which makes us vulnerable to supply shortages and price fluctuations that could harm our business, financial condition, and results of operations;
- We may be unable to compete successfully with other treatment options for drug-resistant focal epilepsy, which could harm our sales, business, financial condition and results of operations;
- If adequate reimbursement becomes unavailable for the procedures to implant our RNS System and for clinicians to provide ongoing care for patients treated with our RNS System, it could diminish our sales or affect our ability to sell our RNS System profitably;
- Use of our RNS System requires appropriate neurosurgeon training for implantation and epileptologist training for programming and ongoing patient care, and inadequate training may lead to negative patient outcomes, which could harm our business, financial condition, and results of operations;
- We may not be able to achieve or maintain satisfactory pricing and margins for our RNS System, which could harm our business and results of operations;
- We intend to seek expanded FDA labeling for our RNS System and to be able to treat patients under the age of 18 with drug-resistant focal epilepsy, as well as patients with generalized drug-resistant epilepsy, but if we are unable to broaden the indications for our RNS System to include patients under the age of 18 as well as patients with generalized drug-resistant epilepsy, our growth potential could be harmed;

- If we fail to comply with U.S. federal and state fraud and abuse and other healthcare laws and regulations, including those relating to kickbacks and false claims for reimbursement, we could face substantial penalties and our business, financial condition and results of operations could be harmed;
- Regulatory compliance is expensive, complex and uncertain, and a failure to comply could lead to enforcement actions against us and other negative consequences for our business;
- Our operations are subject to pervasive and continuing FDA regulatory requirements, and failure to comply with these requirements could harm our business, financial condition and results of operations;
- If we are unable to obtain, maintain, protect, enforce and defend patent or other intellectual property protection for our products, or if the scope of the patent and other intellectual property protection obtained is not sufficiently broad, or as a result of our existing or any future out-licenses of our intellectual property, our competitors could develop and commercialize products competitive with ours, and our ability to continue to commercialize our RNS System, or our other products, may be harmed;
- Our collection, use, storage, disclosure, transfer and other processing of sensitive and personal information could give rise to significant costs, liabilities and other risks, including as a result of investigations, inquiries, litigation, fines, legislative and regulatory action and negative press about our privacy and data protection practices, which may harm our business, financial conditions, results of operations and prospects;
- We have a history of net losses, and we expect to continue to incur losses for the foreseeable future. If we do achieve profitability, we may not be able to sustain it;
- We have identified a material weakness in our internal control over financial reporting. If we are unable to remediate this material weakness, or if we identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations;
- To support our continued operations and the growth of our business, we may need to seek additional capital through new equity or debt financings, which sources of additional capital may not be available to us on acceptable terms or at all. If we are unable to obtain, if needed, adequate financing or financing on terms satisfactory to us, it could harm our business and growth prospects;
- Our stock price may be volatile, and the value of our common stock may decline; and
- There has been no prior market for our common stock. An active market may not develop or be sustainable and investors may not be able to resell their shares at or above the initial public offering price.

Risks related to operational, commercial and manufacturing matters

Our sales, business, financial condition and results of operations have been and continue to be impacted by the COVID-19 pandemic.

The global spread of the COVID-19 pandemic and measures introduced by local, state and federal governments to contain the virus and mitigate its public health effects have significantly impacted the global economy and negatively impacted our business. Given the uncertainty around the duration and extent of the COVID-19 pandemic, we expect continued, lingering, and far-reaching adverse impacts to our business, results of operations, financial condition, and liquidity, but cannot accurately predict at this time the extent of the future potential impacts.

Multiple states and local jurisdictions have imposed and continue to maintain “shelter-in-place” and “safer-at-home” orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread and ameliorate the impact of COVID-19. Additionally, the Centers for Disease Control and Prevention, or the CDC, and other federal agencies have and may continue to issue additional requirements and guidance relative to actions to be taken by individuals and corporations to reduce the spread of COVID-19. Such orders or restrictions, as well as the perceived need by individuals to continue such practices to avoid infection,

among other factors, continue to result in business closures, work stoppages, slowdowns and delays, work-from-home policies, travel restrictions and cancellation of events, among other effects. The states in which our RNS System is made, manufactured, distributed, sold, or implanted are and may continue to be in varying stages of addressing the COVID-19 pandemic. We continue to monitor our operations and government mandates. Our primary operations are in Mountain View, California, and as a result of various shelter-in-place and quarantine orders issued by Santa Clara Country and the State of California starting in March 2020, most of our Mountain View-based employees have been telecommuting during the pandemic, which has impacted and may continue to impact certain of our operations over the near and long term. Similar restrictions and orders in other states have limited the ability of our remote sales force to work with physicians and hospitals during the pandemic, which has further impacted and may continue to impact certain of our operations, including our sales process, over the near and long term.

Certain U.S. governmental authorities and certain hospitals have recommended, and in certain cases required, that various elective procedures, including implant procedures for our RNS System, be suspended or canceled to avoid nonessential patient exposure to medical environments and potential infection with COVID-19 and to focus limited healthcare resources and personnel capacity toward the treatment of COVID-19 patients. In addition, hospitals delayed or canceled admissions for epilepsy diagnostic procedures. These actions have resulted in an adverse impact to our ability to sell our RNS System to new and existing customers, customer adoption of our RNS System, and customer use of our RNS System. The disruptions to our activities and operations have negatively impacted and may continue to negatively impact our business, operating results and financial condition. Our sales were particularly negatively impacted in the second quarter of 2020, and while we saw a significant upswing in sales in the third quarter of 2020, in part as a result of procedures completed on the backlog of patients that were not treated during the slowdown in procedures in the second quarter of 2020, there has been a dramatic increase in COVID-19 infections and deaths in the fourth quarter of 2020 and the beginning of 2021, which resulted in further adverse impact to sales of our RNS System, which we expect to continue in 2021.

The widespread pandemic has also had a significant negative effect on the U.S. and global economies and, if the COVID-19 pandemic results in a prolonged economic recession, it would continue to harm our sales, business, operating results, and financial condition.

The impact of COVID-19 on our sales and operations has resulted in changes to the way our resources are allocated, including reduced resources to conduct further clinical studies. Additionally, restrictions on the ability to travel, social distancing policies, orders and restrictions, including those described above, and fears of COVID-19 spreading within hospital facilities, continue to limit access to hospitals or other clinical study sites and create challenges for enrolling and monitoring patients in clinical studies, which has and may further impact our current and future clinical study plans.

Quarantines or government reaction or shutdowns for COVID-19 have disrupted and may disrupt our supply chain, especially for components we source from single-source suppliers. Travel and cargo restrictions may also disrupt our ability to distribute our RNS System or engage with our customers in the ordinary course of business. Any cargo restrictions related to raw materials used to manufacture our RNS System or its components may restrict our ability to manufacture and ship devices and harm our sales, business, operating results, and financial condition.

Our key personnel and other employees have and could continue to be affected by COVID-19. Illness, or the fear of illness, in our workforce as a result of COVID-19 have resulted and may result in reduced availability and productivity. In addition, we may take cost saving measures that lead to reductions in force, furloughs, or altered job responsibilities. These measures could reduce the efficiency of our operations or prove insufficient. Additionally, we have delayed and reduced, and may continue to delay or reduce, certain critical research, development, capital spending, and other projects as a result of COVID-19, which will delay the completion of such projects.

We rely on strong working relationships with epileptologists, neurosurgeons and other medical professionals, as well as the support of key opinion leaders, to market our RNS System. Our sales and marketing personnel rely significantly on in-person and onsite access to clinicians and hospital facilities, primarily Level 4 CECs and programming centers, which has been restricted as hospital facilities reduce access to essential personnel and patients. The COVID-19 pandemic has restrained, and will likely continue to restrain, access to clinicians and

hospital facilities by our sales and marketing team, which will harm our ability to contract with new Level 4 CECs or programming centers, expand our reach within Level 4 CECs and programming centers, and drive referrals to Level 4 CECs. These restrictions have harmed our sales and marketing efforts, and continued restrictions would have a negative impact on adoption of our RNS System and, as a result, a negative impact on our sales, results of operations and financial condition.

Limited supplies of personal protective equipment and COVID-19 testing supplies may further reduce onsite access for our personnel and may delay the lifting of restrictions on elective procedures, including implant procedures for our RNS System.

We currently rely on our RNS System, which can only be marketed in the United States for use in adults with drug-resistant focal epilepsy, and is recommended as well as implanted primarily at Level 4 CECs. If we are not successful in enhancing awareness of our RNS System, driving adoption across our current target population, increasing referrals to Level 4 CECs, and expanding the population of eligible patients, our sales, business, financial condition and results of operations will be negatively affected.

Our business currently depends entirely on our ability to successfully market our RNS System, which includes increasing the number of patients treated at Level 4 CECs, increasing adoption of our RNS System across Level 4 CECs, and driving utilization by clinicians within Level 4 CECs. Currently, our RNS System can only be marketed for use in adults with drug-resistant focal epilepsy in the United States. Additionally, our RNS System is primarily recommended and implanted at Level 4 CECs, which provide advanced diagnosis and management of epilepsy. Therefore, we are dependent on widespread market adoption of our RNS System within a limited number of accounts. We are aiming to expand the population of patients we can treat with our RNS System, as well as the number of physicians that can prescribe and the number of centers at which neurosurgeons can implant our RNS System, but there can be no assurance that we will succeed.

The commercial success of our RNS System will continue to depend on a number of factors, including the following:

- the degree to which drug-resistant epilepsy remains a chronic and debilitating condition;
- the actual and perceived effectiveness, safety and reliability, and clinical benefit, of our RNS System, especially relative to alternative neuromodulation devices such as VNS or DBS;
- the prevalence and severity of any adverse patient events involving our RNS System;
- the degree to which clinicians, patients and hospital facilities, primarily Level 4 CECs, adopt our RNS System;
- the continued effects of the COVID-19 pandemic;
- the availability, relative cost and perceived advantages and disadvantages of alternative technologies or treatment methods for epilepsy;
- the results of additional clinical and other studies relating to the health, safety, economic or other benefits of our RNS System;
- whether key thought leaders in the medical community accept that our clinical efficacy and safety results are sufficiently meaningful to influence their decision to adopt our RNS System over other neuromodulation therapies;
- the extent to which we are successful in educating clinicians, patients, and hospital facilities about the benefits of our RNS System;
- our reputation among clinicians, patients and hospital facilities, primarily Level 4 CECs;

- the strength of our marketing and distribution infrastructure, including our ability to drive adoption and utilization of our RNS System at Level 4 CECs, as well as our ability to develop and maintain relationships with programming centers;
- our ability to obtain, maintain, protect, enforce and defend our intellectual property rights, including in and to our RNS System;
- our ability to maintain compliance with all legal and regulatory requirements, including those applicable to our RNS System;
- our ability to continue to maintain a commercially viable manufacturing process at our manufacturing facility that is compliant with current Good Manufacturing Practices, or cGMP, and Quality Systems Regulations, or QSR;
- our ability to maintain our contractual relationships with our vendors and component suppliers, including single-source vendors and suppliers, through which we obtain critical components for our RNS System;
- the continued coverage of and adequate payment for the implantation procedure and for clinicians to provide ongoing care for patients implanted with our RNS System by third party payors, including both private and government payors; and
- our ability to continue to attract and retain key talent.

If we fail to successfully market and sell our RNS System cost-effectively and maintain and expand our market share, our sales, business, financial condition and results of operations will be negatively affected.

Our commercial success will continue to depend on attaining significant market acceptance of our RNS System among patients, clinicians and hospital facilities, primarily Level 4 CECs and increasing the number of patients treated at Level 4 CECs. If we are unable to successfully achieve substantial market acceptance and adoption of our RNS System, our sales, business, financial condition and results of operations would be harmed.

Our commercial success will depend in large part on the further acceptance by clinicians, patients and hospital facilities, primarily Level 4 CECs, of our RNS System as safe, useful, and cost-effective, and increasing the number of patients treated at Level 4 CECs. We cannot predict how quickly, if at all, additional clinicians, patients, and hospital facilities will adopt our RNS System over competing neuromodulation devices or surgical treatment options at Level 4 CECs that are appropriate for implant of our RNS System. For example, clinicians may be reluctant to use our RNS System due to familiarity with neuromodulation devices that are more established. Clinicians, patients, and hospital facilities may continue to prefer resective or ablative surgery or alternative neuromodulation therapies such as VNS and DBS. Moreover, we cannot predict how quickly, if at all, those currently suffering from epilepsy but who are not being treated will seek treatment or utilize Level 4 CECs for treatment. Our ability to grow sales of our RNS System and drive market acceptance will depend on successfully educating clinicians, patients, and hospital facilities of the relative benefits of our RNS System.

Additionally, patients rely on their healthcare providers, including epileptologists and neurosurgeons to recommend a course of treatment. If we are unable to successfully achieve substantial market acceptance and adoption of our RNS System by additional clinicians, patients, and hospital facilities, patients may be reluctant to use our products over alternative neuromodulation therapies. If we are unable to successfully drive patient interest in our RNS System, our business, financial condition and results of operations would be harmed.

Our commercial success will depend on a continued flow of patient referrals to Level 4 CECs from treating primary care physicians, neurologists, and other healthcare providers and from caregiver support and encouragement around physician referrals and self-referrals to Level 4 CECs. If we are unable to successfully achieve an increased patient referral pipeline into Level 4 CECs, our sales, business, financial condition and results of operations would be harmed.

Our commercial success will depend in large part on continued referrals of appropriate patients from treating primary care physicians, neurologists, and other healthcare providers to epileptologists, neurosurgeons, and other

clinicians, primarily at Level 4 CECs. We estimate that of the approximately 575,000 adults with drug-resistant focal epilepsy in the United States, approximately 24,000 adult drug-resistant focal epilepsy patients are treated in Level 4 CECs annually. We cannot predict how quickly, if at all, we can build that pipeline through our sales and marketing efforts and whether primary care physicians, neurologists, and other healthcare providers, as well as caregivers will support patient referrals to epileptologists and neurosurgeons at Level 4 CECs over other therapy options.

Primary care physicians, neurologists, and other healthcare providers may continue to prefer traditional treatments, such as additional attempts to treat with new therapeutic drugs that become available from time to time, including for fear of losing management of the patient's care. If we are unable to educate clinicians to follow national guidelines, which recommend that patients whose seizures have not been brought under control after three months of care by a primary care physician or after 12 months of seeing a general neurologist be referred to a Level 3 or Level 4 CEC, we may be unable to successfully build our patient pipeline. This could harm our business, financial condition and results of operations.

Various factors outside our direct control, including the COVID-19 pandemic, may negatively impact our manufacturing of our RNS System, which could harm our business, financial condition, and results of operations.

We manufacture our RNS System at our manufacturing facility in Mountain View, California. This facility supports our production operations, including manufacturing, quality control, and raw material and finished goods storage. We believe that we currently have adequate manufacturing capacity and supplies for our products sufficient to meet our demand forecasts. If demand for our RNS System increases more rapidly than we anticipate, if we encounter problems with one or more of our suppliers, or if we secure regulatory approval to commercialize our products in additional geographies or indications, we may need to either expand our manufacturing capabilities, qualify new suppliers, or outsource to other manufacturers.

Our manufacturing and distribution operations are subject to regulatory requirements of the FDA's Quality System Regulation, or QSR, for medical devices sold in the United States. Manufacturers of medical device products often encounter difficulties in production, including difficulties with production costs and yields, quality control, quality assurance testing, shortages of qualified personnel, as well as compliance with strictly enforced FDA requirements, other federal and state regulatory requirements, and foreign regulations, to the extent applicable. If we fail to manufacture our products in compliance with QSR, or if our manufacturing facility suffers disruptions, supply chain issues, machine failures, slowdowns or disrepair, we may not be able to fulfill customer demand and our business would be harmed. Further, we typically do not maintain more than several months of inventory on hand and we manufacture our products using near term demand forecasts. As a result, deviations from our forecasts could cause us to fail to meet demand for our products.

Since we produce our products in one manufacturing facility, any contamination of the controlled environment, equipment malfunction, supply issues, personnel issues, including human error, or failure to strictly follow procedures can significantly reduce our yield. A drop in yield can increase our cost to manufacture our products or, in more severe cases, require us to halt the manufacture of our products until the problem is resolved. Identifying and resolving the cause of a drop in yield can require substantial time and resources. In addition, if demand for our products shifts such that our manufacturing facility is operated below our forecasts for an extended period, we may adjust our manufacturing operations to reduce fixed costs, which could lead to uncertainty and delays in manufacturing times and quality during any transition period.

The manufacturing, sterilization and distribution of our products are technically challenging. Changes that our suppliers may make, or additional requirements from regulatory agencies, outside of our direct control can have an impact on our processes, on quality and on the successful or timely delivery of our products to our customers. Mistakes and mishandling may occur, which can affect supply and delivery. As a result, our dependence on third-

party, including single source, suppliers, subjects us to a number of risks that could impact our ability to manufacture our products and harm our business, financial condition, and results of operations, including:

- interruption of supply resulting from modifications to, or discontinuation of, a supplier's operations, including due to the COVID-19 pandemic;
- delays in product shipments resulting from uncorrected defects, reliability issues or a supplier's failure to produce components that consistently meet our quality specifications;
- delays in analytical results or failure of analytical techniques that we depend on for quality control and release of our products;
- price fluctuations due to a lack of long-term supply arrangements with our suppliers for key components;
- inability to obtain adequate supply in a timely manner or on commercially reasonable terms;
- difficulty identifying and qualifying alternative suppliers for components in a timely manner;
- inability of suppliers to comply with applicable provisions of the QSR or other applicable laws or regulations enforced by the FDA and other Federal and state regulatory authorities;
- delays in regulatory approvals of any changes to manufacturing, including the use of new suppliers;
- latent defects that may become apparent after our products have been released and that may result in an adverse event or a recall of such products;
- inclusion of vendors of raw materials not in compliance with regulatory requirements;
- natural or other disasters, global pandemics, labor disputes, financial distress, lack of raw material supply, issues with facilities and equipment or other forms of disruption to business operations affecting our manufacturer or its suppliers;
- production delays related to the evaluation and testing of our products or the use of components from alternative suppliers;
- failure to complete sterilization on time or in compliance with the required regulatory standards; and
- delays in delivery by our suppliers of components, materials, or services due to changes in demand from us or their other customers.

The occurrence of any of these issues could significantly harm our ability to manufacture our products and maintain sufficient quality standards, which would negatively impact our sales, business, financial condition, and results of operations.

We depend on a limited number of single-source suppliers and vendors in connection with the manufacture of our RNS System, which makes us vulnerable to supply shortages and price fluctuations that could harm our business, financial condition, and results of operations.

We source and rely upon materials, components, and sub-assemblies of our RNS System, as well as manufacturing services from approved suppliers, most of which are single source suppliers. In addition, certain of our suppliers are not under long-term contracts with us.

These components, materials, and services are critical and there are relatively few alternative sources of supply. We believe our single source suppliers are capable of continuing to meet our specifications and maintaining quality, but any significant problem experienced by one of our single source suppliers may result in a delay or interruption in the supply of components, materials, or services to us. Our suppliers may experience manufacturing delays or issues, stop producing our components, materials, or services, increase the prices they charge us, or elect to terminate their relationships with us. In any of these cases, we could face a delay of several months to identify, perform appropriate

testing, and qualify alternative suppliers and service providers with regulatory authorities, as we do not currently have supplier transition plans. In addition, the failure of our third-party suppliers and service providers to maintain acceptable quality requirements could result in the recall of our products. If one of our suppliers fails to maintain acceptable quality requirements, we may have to identify and qualify a new supplier. Although we require our third-party suppliers to supply us with materials, components and services that meet our specifications and comply with applicable provisions of the FDA's QSR and other applicable legal and regulatory requirements in our agreements and contracts, and we perform incoming inspection, testing or other acceptance activities to ensure the materials and components meet our requirements, there is a risk that our suppliers will not always act consistent with our best interests, and may not always supply components that meet our requirements or supply components in a timely manner.

The number of third-party suppliers with the necessary manufacturing and regulatory expertise and facilities is limited and certification of a new supplier may be complex and time consuming. Any delay or interruption would likely lead to a delay or interruption in our manufacturing operations. The inclusion of substitute components must meet our product specifications and could require us to qualify the new supplier with the appropriate regulatory authorities, including the FDA. The added time and cost to arrange for alternative suppliers could harm our business. New manufacturers of any planned product would be required to qualify under applicable regulatory requirements and would need to have sufficient rights under applicable intellectual property laws to the method of manufacturing the planned product. Obtaining the necessary FDA or international approvals or other qualifications under applicable regulatory requirements and ensuring non-infringement of third-party intellectual property or other proprietary rights could result in a significant interruption of supply and could require the new manufacturer to bear significant additional costs that may be passed on to us.

If we fail to optimize our sales and marketing capabilities and develop widespread brand awareness cost-effectively, our growth will be impeded and our business may suffer.

We are actively expanding our presence in the United States through additional sales and education efforts to drive adoption of our RNS System at Level 4 CECs and increase utilization of our RNS System within new and existing accounts. We also plan to explore regulatory and reimbursement approval pathways to expand our presence in international territories.

We take a measured approach to optimize our sales infrastructure to grow our customer base and our business. Identifying and recruiting qualified personnel and training them on the use of our RNS System, on applicable federal and state laws and regulations and on our internal policies and procedures, requires significant time, expense and attention, particularly given our strategy of having each Therapy Consultant, or sales representative, cover many accounts. It can take significant time before our Therapy Consultants are fully trained and productive and before they have established relationships with their target accounts. Our business may be harmed if our efforts to optimize do not generate a corresponding increase in revenue or result in a decrease in our operating margin. In particular, if we are unable to hire, develop and retain talented sales personnel or if new sales personnel are unable to achieve desired productivity levels in a reasonable period of time, we may not be able to realize the expected benefits of this investment or increase our revenue.

We dedicate significant financial and other resources to our customer outreach and training programs, which may require us to incur significant upfront costs. For example, we may need to conduct additional physician trainings across hospital facilities, including Level 4 CECs. Our sales force may also need to develop additional efficiencies and approaches to address potential growth as we expand into additional existing Level 4 CECs, new Level 4 CECs and the increasing number of epileptologists recommending, and neurosurgeons implanting, our RNS System within each Level 4 CEC. Our business would be harmed if our programs and associated expenditures do not generate a corresponding increase in revenue.

In addition, we believe that developing and maintaining awareness of our brand in a cost-effective manner is critical to achieving broad acceptance of our products and attracting new customers. Brand promotion activities may not generate customer awareness or increase revenue and, even if they do, any increase in revenue may not offset the costs and expenses we incur in building our brand. If we fail to successfully promote, maintain and protect our

brand, we may fail to realize a sufficient return on our brand-building efforts, or to achieve the widespread brand awareness that is critical for broad adoption of our RNS System.

We may be unable to compete successfully with other treatment options for drug-resistant focal epilepsy, which could harm our sales, business, financial condition and results of operations.

Our industry is competitive and has been evolving rapidly with not only existing treatment options, but also the introduction of new products and technologies as well as the market activities of industry participants. Our RNS System is indicated for adult patients with drug-resistant focal epilepsy in the United States and we primarily market our device to customers, primarily consisting of the clinicians within Level 4 CECs that treat these patients. In our target patient population, there are two primary treatment options (i) an ablative or resective surgery, or (ii) implantation of a neuromodulation device. Patients may also choose not to actively seek additional treatment for epilepsy or may choose to try new therapeutic drugs that become available from time to time. We estimate that approximately 80% of drug-resistant focal epilepsy patients are either not ideal candidates for ablative or resective surgery or are unwilling to undergo a destructive surgical procedure and we compete primarily with two manufacturers of neuromodulation devices for the treatment of these patients. Our primary competitors are LivaNova plc, which manufactures the VNS System, and Medtronic plc, which manufactures the DBS System. Third-party payors may encourage the use of competitors' products or other neuromodulation therapies due to lower costs of competing products or alternatives. Additionally, treating physicians, including epileptologists and neurosurgeons may promote the use of other competitors' products or alternative therapies. Further, as existing competitors and other companies develop new or improved products, we cannot predict what the standard of care will be in the future.

Our primary competitors are large, well-capitalized companies with significant market share and resources. They have more established sales and marketing programs than we do and have greater name recognition. These competitors also have long operating histories and may have more established relationships with potential customers. In addition to competing for market share, competitors may develop or acquire patents or other rights that may limit our ability to compete.

The medical device industry is intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. There can be no assurance that other companies or institutions will not succeed in developing or marketing devices and products that are more effective or safer than our RNS System or that would render our RNS System obsolete or noncompetitive.

We believe that the clinical advantages of our RNS System and our focus on neuromodulation will be important factors in our future success. Our continued success depends on, among other things, our ability to:

- continue to demonstrate safety and efficacy in our Post-Approval Study and in ongoing commercial use;
- expand the number of Level 4 CECs implanting our RNS System and increase utilization across these Level 4 CECs;
- drive awareness to increase the number of drug-resistant epilepsy patients referred to Level 4 CECs;
- maintain adequate reimbursement for implant procedures and for clinicians to provide ongoing care of patients treated with our RNS System;
- attract and retain skilled research, development, sales, marketing and clinical personnel;
- continue to innovate in order to improve therapy effectiveness and enhance the patient and provider experience;
- obtain and maintain regulatory clearances and approvals, including for expanded indications;
- cost-effectively manufacture, market and sell our RNS System;

- obtain, maintain, protect, enforce and defend our intellectual property rights and operate our business without infringing, misappropriating or otherwise violating the intellectual property rights of others;
- acquire products or technologies complementary to or necessary for our business; and
- source materials, components, and sub-assemblies from suppliers on a cost-effective and timely basis.

Adoption of our RNS System depends on positive clinical data as well as clinician acceptance of the data and our products, and negative clinical data or perceptions among these clinicians would harm our sales, business, financial condition, and results of operations.

The rate of adoption and sales of our products are heavily influenced by clinical data. Although we have positive clinical data across four multi-center FDA approved prospective clinical studies going out as far as nine years, there can be no assurance that clinical data will continue to be positive for our ongoing studies, such as our Post-Approval Study. Additionally, there can be no assurance that future clinical studies, including those to continue demonstrating the efficacy of our products in currently approved patient populations and those to support label retention and expansion for our products will demonstrate safety and effectiveness. Unfavorable or inconsistent clinical data from ongoing or future clinical studies conducted by us, our competitors, or third parties, the negative interpretation of our clinical data internally and externally, including by customers, competitors, patients, and regulators, or findings of new or more frequent adverse events, could harm our business, financial condition, and results of operations.

The rate of adoption and sales of our products are also influenced by clinician perceptions. Negative perceptions of our products by clinicians, including due to negative clinical data, could result in decreased adoption or use of our products, which would harm our business, financial condition, and results of operations. Additionally, if key opinion leaders who support our products cease to recommend our products, our business, financial condition and results of operations will be harmed. Further, if we cannot maintain strong working relationships with clinicians and continue to receive their advice and input, the marketing of our products could suffer, which could harm our business, financial condition and results of operations. The COVID-19 pandemic and related restrictions on access to clinicians have impacted, and will likely continue to impact, our ability to maintain such relationships. Finally, although we have demonstrated the safety, effectiveness and clinical advantages of our products in pivotal clinical studies, neuromodulation is still a relatively new approach to treating drug-resistant focal epilepsy. The results of clinical studies of the products conducted to date and from commercial use do not necessarily predict future results. Any negative long-term results or adverse events from use of our products that arise in the future could harm our business, financial condition, and results of operations.

Our future success also depends upon patients having an understanding of how to properly use our RNS System and an experience with our products that meets their expectations in order to increase clinician demand for our products as a result of positive feedback and word-of-mouth. Patients may be dissatisfied if their expectations of the procedure and results are not met or if they are not adequately trained on use of our RNS System. Patients may be dissatisfied if they experience adverse events or insufficient reduction in frequency of seizures. If the results of our products do not meet the expectations of the patients, or the patient experiences adverse events, it could discourage the patient from referring our products to others. Dissatisfied patients may express negative opinions through social media, advocacy, or other publicity. Any failure to meet patient expectations and any resulting negative publicity could harm our reputation and future sales.

If adequate reimbursement becomes unavailable for the procedures to implant our RNS System and for clinicians to provide ongoing care for patients treated with our RNS System, it could diminish our sales or affect our ability to sell our RNS System profitably.

The implant procedure for our RNS System and the ongoing patient care provided by clinicians, including monitoring and programming, are reimbursed under well-established physician and hospital codes. Our ability to increase sales of our RNS System depends, in significant part, on the availability of adequate financial coverage and reimbursement from third-party payors, including governmental payors (such as the Medicare and Medicaid programs in the United States), managed care organizations, and private health insurers. Third-party payors decide which treatments they will cover and establish reimbursement rates for those treatments. We do not bill any third-

party payors for our RNS System. Instead, our RNS System is bundled as part of the payment received by healthcare providers for the procedures in which our RNS System is used.

We expect our RNS System will continue to be purchased by hospital facilities, primarily Level 4 CECs, and other providers who will then seek reimbursement from third-party payors for brain-responsive neuromodulation for drug resistant focal epilepsy. While third-party payors currently cover and provide reimbursement for both implant procedures of our RNS System as well as for clinicians providing ongoing patient care, we can give no assurance that these third-party payors will continue to provide coverage and adequate reimbursement, or that current reimbursement levels for implant procedures as well as clinician-provided ongoing patient care will continue.

Furthermore, the overall amount of reimbursement available for brain-responsive neuromodulation for drug resistant focal epilepsy could decrease in the future. Changes in reimbursement may not necessarily impact our sales. Additionally, we cannot be sure that the reimbursement amounts available for brain-responsive neuromodulation for drug resistant focal epilepsy will not reduce or otherwise negatively impact the demand for our marketed RNS System. Failure by Level 4 CECs and other users of our RNS System to obtain coverage and adequate reimbursement for the implant procedures or for clinicians providing ongoing patient care would cause our business, financial condition, and results of operations to suffer.

Use of our RNS System requires appropriate neurosurgeon training for implantation and epileptologist training for programming and ongoing patient care, and inadequate training may lead to negative patient outcomes, which could harm our business, financial condition, and results of operations.

The successful use of our RNS System depends in part on the training and skill of the neurosurgeon performing the implant procedure as well as the clinician, typically an epileptologist, performing the subsequent programming of our RNS System and monitoring the patient response. Clinicians could experience difficulty with the technique necessary to successfully implant and program our RNS System, and monitor patients if they do not receive appropriate training. Moreover, epileptologists and neurosurgeons rely on their previous medical training and experience when recommending or implanting our RNS System, and we cannot guarantee that all neurosurgeons will have the necessary implantation skills to properly perform the procedure. We cannot be certain that physicians or healthcare providers that use our RNS System have received sufficient training, and physicians or healthcare providers who have not received adequate training may nonetheless attempt to use our RNS System with their patients. If neurosurgeons or epileptologists implant or utilize our RNS System incorrectly, or without adhering to or completing all relevant training, their patient outcomes may not be consistent with the outcomes achieved in our clinical studies. Adverse safety outcomes that arise from improper or incorrect use of our RNS System may negatively impact the perception of patient benefit and safety of our RNS System, notwithstanding results from our clinical studies. These results could limit adoption of our RNS System in treatment for drug-resistant focal epilepsy, which would harm our sales, business, financial condition, and results of operations.

We are highly dependent on our senior management team and key personnel, and our business could be harmed if we are unable to attract and retain personnel necessary for our success.

We are highly dependent on our senior management and key personnel. Our success will depend on our ability to retain senior management and to attract and retain qualified personnel in the future, including sales and marketing professionals, engineers, scientists, clinical trial specialists and other highly skilled personnel and to integrate current and additional personnel in all departments. The loss of members of our senior management, marketing professionals, engineers, scientists and clinical trial specialists could result in delays in product development and harm our business.

Competition for skilled personnel in our market is intense and may limit our ability to hire and retain highly qualified personnel on acceptable terms, or at all. To induce valuable employees to remain at our company, in addition to salary and cash incentives, we have issued stock options that vest over time. The value to employees of stock options that vest over time may be significantly affected by fluctuations in our stock price that are beyond our control, and may at any time be insufficient to counteract more lucrative offers from other companies. Despite our efforts to retain valuable employees, members of our management and other key personnel may terminate their employment with us on short notice. Our employment arrangements with our employees provide for at-will

employment, which means that any of our employees could leave our employment at any time, with or without notice. We also do not maintain “key man” insurance policies on the lives of these individuals or the lives of any of our other employees.

We rely on our own direct sales force to market and sell our RNS System, and if we are unable to optimize our sales force, it could harm our business. Our operating results are directly dependent upon the sales and marketing efforts of our sales and customer support team. If our employees fail to adequately promote, market and sell our products, our sales could significantly decrease. As we launch new products, expand our product offerings and increase our marketing efforts with respect to existing products, we will need to expand the reach of our marketing and sales networks. Our future success will depend largely on our ability to continue to hire, train, retain and motivate skilled employees with significant technical knowledge in various areas. An inability to attract, hire, train and retain employees will harm our sales, business, financial condition, and results of operations.

We expect to increase the size of our organization in the future, and we may experience difficulties in managing this growth. If we are unable to manage the anticipated growth of our business, our future revenue and operating results may be harmed.

As of December 31, 2020, we had 152 employees. As our sales and marketing strategies develop and as we transition into operating as a public company, we expect to need additional managerial, operational, sales, marketing, financial and other personnel. Future growth would impose significant added responsibilities on members of management, including:

- identifying, recruiting, integrating, maintaining and motivating additional employees;
- managing our internal development efforts effectively, while complying with our contractual obligations to contractors and other third parties; and
- improving our operational, financial and management controls, reporting systems and procedures.

Our future financial performance and our ability to successfully market and sell our RNS System will depend, in part, on our ability to effectively manage any future growth, and our management may also have to divert a disproportionate amount of attention away from day-to-day activities in order to devote a substantial amount of time to managing these growth activities.

As demand for our RNS System increases, we will need to continue to scale our capacity at our manufacturing facility, expand customer service, billing and systems processes and enhance our internal quality assurance program. We cannot be certain that any increases in scale, related improvements and quality assurance will be successfully implemented or that appropriate personnel will be available to facilitate the growth of our business. If we encounter difficulty meeting market demand, quality standards or physician expectations, our reputation will be harmed and our business will suffer. Additionally, additional growth may result in higher fixed costs and may slow our ability to reduce costs in the face of a sudden decline in demand for our products.

We may not be able to achieve or maintain satisfactory pricing and margins for our RNS System, which could harm our business and results of operations.

Manufacturers of medical devices have a history of price competition, and we can give no assurance that we will be able to maintain satisfactory prices for our RNS System at the levels we have historically achieved. The pricing of our products could be impacted by several factors, including pressure to reduce prices by our customers due to a decline in the amount that third-party payors reimburse for implant procedures using our RNS System for clinicians providing ongoing patient care. A decline in the amount that third-party payors reimburse our customers for ongoing patient care could also make it difficult for programming centers to conduct ongoing patient support without a corresponding reduction in prices for our products. If we are forced to lower the price we charge for our RNS System, our gross margins will decrease, which will harm our ability to invest in and grow our business. If we are unable to maintain our prices, or if our costs increase and we are unable to offset such increase with an increase in our prices, our margins could erode, which could harm our business and results of operations.

Business disruptions could seriously harm our future revenue and financial condition and increase our costs and expenses.

Our operations could be subject to earthquakes, power shortages, telecommunications failures, water shortages, floods, hurricanes, typhoons, fires, extreme weather conditions, medical epidemics or pandemics, and other natural or man-made disasters or business interruptions, for which we are predominantly self-insured. Our ability to obtain components for our products could be disrupted if the operations of our suppliers were affected by a man-made or natural disaster or other business interruption. In addition, our corporate headquarters and manufacturing facility is located in Mountain View, California, near major earthquake faults and fire zones. Should our facilities be significantly damaged or destroyed, it could take months to relocate or rebuild, during which time our manufacturing would cease or be delayed and our RNS System may be unavailable. Moreover, the use of a new facility or new manufacturing, quality control, or environmental control equipment or systems generally requires FDA review and approval of a PMA supplement. Because of the time required to authorize manufacturing in a new facility under FDA regulatory requirements, we may not be able to resume production on a timely basis even if we are able to replace production capacity. While we maintain property and business interruption insurance, such insurance has limits and would only cover the cost of rebuilding and relocating and, to some extent, lost revenue, but not general damage or losses caused by earthquakes or losses we may suffer due to our products being replaced by competitors' products. The inability to perform our manufacturing activities, combined with our limited inventory of materials and components and manufactured products, may cause physicians to discontinue using our products or harm our reputation, and we may be unable to reestablish relationships with such physicians in the future. Consequently, a catastrophic event at our facility could harm our business, financial condition, and results of operations.

Our results of operations may be harmed if we are unable to accurately forecast customer demand for our products.

We do not maintain large amounts of excess inventory at any given time. To ensure adequate supply, we must forecast inventory needs and manufacture our products based on our estimates of future demand. Our ability to accurately forecast demand for our products could be negatively affected by many factors, including our failure to accurately manage our expansion strategy, product introductions by competitors, an increase or decrease in customer demand for our products or for competitor products, our failure to accurately forecast customer adoption of new products, unanticipated changes in general market conditions or regulatory matters and weakening of economic conditions or consumer confidence in future economic conditions, as well as the ongoing COVID-19 pandemic. Inventory levels in excess of customer demand may result in inventory write-downs or write-offs, which would cause our gross margin to be adversely affected and could impair the strength of our brand. Conversely, if we underestimate customer demand for our products, our manufacturing team may not be able to deliver products to meet our requirements, and this could result in damage to our reputation and customer relationships. In addition, if we experience a significant increase in demand, additional supplies of components, materials, or services, or additional manufacturing capacity may not be available when required on terms that are acceptable to us, or at all, which may negatively affect our business, financial condition, and results of operations.

We intend to seek expanded FDA labeling for our RNS System to be able to treat patients under the age of 18 with drug-resistant focal epilepsy, as well as patients with generalized drug-resistant epilepsy, but if we are unable to broaden the indications for our RNS System to include these patients, our growth potential could be harmed.

Our products are subject to extensive regulation by the FDA in the United States. Before a new medical device or a new intended use for an existing medical device can be marketed in the United States, we must first submit and receive either 510(k) clearance pursuant to Section 510(k) of the Food, Drug and Cosmetic Act, or the FDCA, or approval of a premarket approval, or PMA, application from the FDA, unless an exemption applies.

If clinical studies do not produce results necessary to support regulatory clearance or approval to expand our indications to include patients under the age of 18 with drug-resistant focal epilepsy or patients with generalized drug-resistant epilepsy, we will be unable to obtain and maintain necessary approvals to expand our indications to include these patients in accordance with our expected timelines, which could harm our growth potential. Furthermore, we could incur substantial costs and the attention of management could be diverted throughout this process.

We may expand sales of our RNS System internationally in the future, but we may experience difficulties in obtaining regulatory clearance or approval or in successfully marketing our RNS System internationally even if approved. A variety of risks associated with marketing our RNS System internationally could harm our growth potential.

While our RNS System is not yet approved for sale outside the United States, we may pursue regulatory and reimbursement approval pathways in markets outside of the United States. Sales of our RNS System outside of the United States will be subject to foreign regulatory requirements governing clinical studies and marketing approval, as well as additional post-approval requirements. We would incur substantial expenses in connection with any international expansion. Additional risks related to operating in foreign countries include:

- differing regulatory requirements in foreign countries, including with respect to data privacy and security;
- differing reimbursement regimes in foreign countries, including price controls;
- unexpected changes in tariffs, trade barriers, price and exchange controls and other regulatory requirements;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses or reduced revenue;
- difficulties staffing and managing foreign operations;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- potential liability under the U.S. Foreign Corrupt Practices Act of 1977, as amended, or the FCPA, or comparable foreign regulations;
- challenges enforcing our contractual and intellectual property rights as well as intellectual property theft or compulsory licensing, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as the United States; and
- business interruptions resulting from geopolitical actions, including war and terrorism.

These and other risks associated with international operations may harm our ability to attain or maintain profitable operations internationally, which would harm our growth potential.

In addition, there can be no guarantee that we will receive approval to sell our RNS System in every international market we target, nor can there be any guarantee that any sales would result even if such approval is received. Approval in the United States, or in any other jurisdiction, does not ensure approval in other jurisdictions. Obtaining foreign approvals could result in significant delays, difficulties and costs for us and require additional studies and additional expenses. Regulatory requirements can vary widely from country to country and could delay the introduction of our RNS System in those countries. If we fail to comply with these regulatory requirements or to obtain and maintain required approvals, our target market will be reduced and our ability to generate revenue will be diminished. Our inability to successfully enter all our desired international markets and manage business on a global scale could harm our growth potential.

Further, there are foreign privacy laws and regulations that impose restrictions on the collection, use, storage, disclosure, transfer and other processing of personal data, including health information. For example, the European Union General Data Protection Regulation, or the GDPR, imposes stringent data protection requirements, including, for example, more robust disclosures to individuals, a strengthened individual data rights regime, shortened timelines for data breach notifications, limitations on retention of information, increased requirements pertaining to special categories of data, such as health data, and additional obligations regarding third-party processors in

connection with the processing of the personal data. Our failure to comply with the GDPR or other applicable foreign privacy laws or regulations or significant changes in the laws and regulations restricting our ability to obtain or use required patient information could significantly impact our business and our future business plans.

Risks related to government regulation and our industry

If we fail to comply with U.S. federal and state fraud and abuse and other healthcare laws and regulations, including those relating to kickbacks and false claims for reimbursement, we could face substantial penalties and our business, financial condition and results of operations could be harmed.

Healthcare providers play a primary role in the distribution, recommendation, ordering and purchasing of any medical device for which we have or obtain marketing clearance or approval. Through our arrangements with healthcare professionals and hospital facilities, we are exposed to broadly applicable anti-fraud and abuse, anti-kickback, false claims and other healthcare laws and regulations that may constrain our business, our arrangements and relationships with customers, and how we market, sell and distribute our marketed medical devices. We have a compliance program, code of conduct and associated policies and procedures, but it is not always possible to identify and deter misconduct by our employees, contractors, and other third parties, including our customers, and the precautions we take to detect and prevent noncompliance may not be effective in protecting us from governmental investigations for failure to comply with applicable fraud and abuse or other healthcare laws and regulations.

In the United States, we are subject to various state and federal anti-fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute and federal civil False Claims Act, or the FCA. Our relationships with physicians, other health care professionals and hospitals are subject to scrutiny under these laws. There are also similar laws in other countries that we may become subject to if we expand internationally.

The laws that may affect our ability to operate include, among others:

- the Anti-Kickback Statute, which prohibits, among other things, knowingly and willingly soliciting, offering, receiving or paying remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward either the referral of an individual, or the purchase, order or recommendation of, items or services for which payment may be made, in whole or in part, under a federal healthcare program, such as the Medicare and Medicaid programs;
- federal civil and criminal false claims laws, including the FCA, and civil monetary penalties laws, which prohibits, among other things, persons or entities from knowingly presenting, or causing to be presented, a false or fraudulent claim for payment of government funds and knowingly making, using or causing to be made or used, a false record or statement to get a false claim paid or to avoid, decrease or conceal an obligation to pay money to the federal government;
- the Health Insurance Portability & Accountability Act of 1996, or HIPAA, which applies to our customers and some of their downstream vendors and contractors, imposes criminal and civil liability for, among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payors, or knowingly and willfully falsifying, concealing or covering up a material fact or making a materially false, fictitious or fraudulent statement or representation, or making or using any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry in connection with the delivery of or payment for healthcare benefits, items or services;
- various state laws governing the privacy and security of personal information, including the California Consumer Privacy Act, or the CCPA, which became effective on January 1, 2020, and regulates the processing of personal information of California residents and increases the privacy and security obligations of covered companies handling such personal information. The CCPA requires covered companies to, amongst other things, provide new and additional disclosures to California residents, and affords such residents new abilities to access their personal information and opt out of certain sales of personal information; and

- the federal Physician Payments Sunshine Act, also known as Open Payments, which requires manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program to report annually, with certain exceptions to the Centers for Medicare & Medicaid Services, or CMS, information related to payments or other "transfers of value" made to physicians, as defined by such law, and teaching hospitals, and requires applicable manufacturers and group purchasing organizations to report annually to CMS ownership and investment interests held by physicians and their immediate family members.

State and federal regulatory and enforcement agencies continue to actively investigate violations of healthcare laws and regulations, and the U.S. Congress continues to strengthen the arsenal of enforcement tools. Most recently, the Bipartisan Budget Act of 2018, or the BBA, increased the criminal and civil penalties that can be imposed for violating certain federal health care laws, including the Anti-Kickback Statute. Enforcement agencies also continue to pursue novel theories of liability under these laws. In particular, government agencies have increased regulatory scrutiny and enforcement activity with respect to manufacturer reimbursement support activities and patient care programs, including bringing criminal charges or civil enforcement actions under the Anti-Kickback Statute, federal civil FCA and HIPAA's healthcare fraud and privacy provisions.

Achieving and sustaining compliance with applicable federal and state anti-fraud and abuse laws may prove costly. If we or our employees are found to have violated any of the above laws we may be subjected to substantial criminal, civil and administrative penalties, including imprisonment, exclusion from participation in federal healthcare programs, such as Medicare and Medicaid, and significant fines, monetary penalties, forfeiture, disgorgement and damages, contractual damages, reputational harm, administrative burdens, diminished profits and future earnings and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our financial results. Any action or investigation against us for the violation of these healthcare fraud and abuse laws, even if successfully defended, could result in significant legal expenses and could divert our management's attention from the operation of our business. Companies settling federal civil FCA, Anti-Kickback Statute or civil monetary penalties law cases also may be required to enter into a Corporate Integrity Agreement with the OIG, in order to avoid exclusion from participation (such as loss of coverage for their products) in federal healthcare programs such as Medicare and Medicaid. Corporate Integrity Agreements typically impose substantial costs and operational burdens on companies to ensure compliance. Defending against any such actions can be detrimental to our reputation and brand and can otherwise be costly, time-consuming and may require significant personnel resources, and may harm our business, financial condition and results of operations.

In addition, the medical device industry's relationship with physicians is under increasing scrutiny by the OIG, the U.S. Department of Justice, or the DOJ, the state attorney generals and other foreign and domestic government agencies. Our failure to comply with requirements governing the industry's relationships with physicians or an investigation into our compliance by the OIG, the DOJ, state attorney generals and other government agencies, could harm our business, financial condition and results of operations.

Our employees, independent contractors, consultants, commercial partners and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could harm our business, financial condition and results of operations.

We are exposed to the risk that our employees, independent contractors, consultants, commercial partners and vendors may engage in fraudulent or illegal activity. Misconduct by these parties could include intentional, reckless or negligent conduct or disclosure of unauthorized activities to us that violates: (i) the laws of the FDA and other similar foreign regulatory bodies, including those laws requiring the reporting of true, complete and accurate information to such regulators; (ii) manufacturing standards; (iii) healthcare fraud and abuse laws in the United States and similar foreign fraudulent misconduct laws; or (iv) laws that require the true, complete and accurate reporting of financial information or data. These laws may impact, among other things, future sales, marketing and education programs. In particular, the promotion, sales and marketing of healthcare items and services, as well as certain business arrangements in the healthcare industry, are subject to extensive laws designed to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, structuring and commissions, certain customer incentive programs

and other business arrangements generally. Activities subject to these laws also involve the improper use of information obtained in the course of patient recruitment for clinical studies.

We have adopted a code of conduct, employee handbook, and compliance policies, but it is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent these activities may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could result in the imposition of significant fines or other sanctions, including the imposition of civil, criminal and administrative penalties, damages, monetary fines, disgorgement, imprisonment, reporting and oversight obligations, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, diminished profits and future earnings and curtailment of operations, any of which could adversely affect our ability to operate our business and our results of operations. If any such actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could result in integrity issues, or a negative impact to our reputation or brand. Whether or not we are successful in defending against any such actions or investigations, we could incur substantial costs, including legal fees, and divert the attention of management in defending ourselves against any of these claims or investigations, which could harm our business, financial condition and results of operations.

Regulatory compliance is expensive, complex and uncertain, and a failure to comply could lead to enforcement actions against us and other negative consequences for our business.

The FDA and similar agencies regulate our products as medical devices. Complying with these regulations is costly, time-consuming, complex and uncertain. For instance, before a new medical device, or a new intended use for an existing device, can be marketed in the United States, a company must first submit and receive either 510(k) clearance or approval of a PMA from the FDA, unless an exemption applies. FDA regulations and regulations of similar agencies are wide-ranging and include, among other things, oversight of:

- product design, development, manufacturing (including suppliers) and testing;
- laboratory, preclinical and clinical studies;
- product safety and effectiveness;
- product labeling;
- product storage and shipping;
- record keeping;
- pre-market clearance or approval;
- marketing, advertising and promotion;
- product sales and distribution;
- product changes;
- product recalls; and
- post-market surveillance and reporting of deaths or serious injuries and certain malfunctions.

Our products are subject to extensive regulation by the FDA and if we expand internationally in the future may be subject to extensive regulation by non-U.S. regulatory agencies. Further, improvements of our existing products, any potential new products, and new indications for use of our current products will be subject to extensive regulation, and we may require permission from regulatory agencies and ethics boards to conduct clinical studies, as well as clearance or approval from the FDA prior to commercial sale. In order to commercialize and distribute our products in markets outside of the United States, it will require approval from non-U.S. regulatory agencies.

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

- our inability to demonstrate to the satisfaction of the FDA or the applicable regulatory entity or notified body that our products are safe or effective for their intended uses;
- the disagreement of the FDA or the applicable foreign regulatory body with the design or implementation of our clinical studies or the interpretation of data from clinical studies;
- serious and unexpected adverse device effects experienced by participants in our clinical studies;
- the data from our preclinical studies and clinical studies may be insufficient to support clearance or approval, where required;
- our inability to demonstrate that the clinical and other benefits of the device outweigh the risks;
- the manufacturing process or facilities we use may not meet applicable requirements; and
- the potential for approval policies or regulations of the FDA or applicable foreign regulatory bodies to change significantly in a manner rendering our clinical data or regulatory filings insufficient for clearance or approval.

Failure to comply with applicable U.S. requirements regarding, for example, promoting, manufacturing or labeling our RNS System, may subject us to a variety of administrative or judicial actions and sanctions, such as Form 483 observations, warning letters, untitled letters, product recalls, product seizures, and total or partial suspension of production or distribution, injunctions, fines, civil penalties and criminal prosecution. Any enforcement action by the FDA and other comparable non-U.S. regulatory agencies could harm our business, financial condition and results of operations.

Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA or state agencies, which may include any of the following actions:

- untitled letters, warning letters, fines, injunctions, consent decrees and civil penalties;
- removal from FDA's Voluntary Improvement Program pilot
- unanticipated expenditures to address or defend such actions;
- form 483s, or other compliance or enforcement notices, communications or correspondence, including customer notifications for repair, replacement or refunds;
- recall, detention or seizure of our RNS System;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying our requests for 510(k) clearance or PMA of new products or modified products;
- operating restrictions;
- seizure or detention of products;
- withdrawing 510(k) clearances or PMAs that have already been granted;
- refusal to grant export approval for our RNS System;
- criminal prosecution; or
- civil penalties.

If any of these events were to occur, it would have a negative impact on our business, financial condition and results of operations.

The FDA also regulates the advertising and promotion of our RNS System to ensure that the claims we make are consistent with our regulatory clearances and approvals, that there are adequate and reasonable data to substantiate the claims and that our promotional labeling and advertising is neither false nor misleading in any respect. If the FDA determines that any of our advertising or promotional claims are misleading, not substantiated or not permissible, we may be subject to enforcement actions, including warning letters, and we may be required to revise our promotional claims and make other corrections or restitutions. Additionally, our manufacturing facility is required to comply with extensive requirements imposed by the FDA, including ensuring that quality control and manufacturing procedures conform to the QSR. As such, we will be subject to continual review and inspections to assess compliance with the QSR and adherence to commitments made in any 510(k) or PMA application.

The 510(k) or PMA process can be expensive, lengthy and unpredictable and we will continue to expend time, money and effort in all areas of regulatory compliance, including manufacturing, production and quality control. We may not be able to obtain necessary clearances or approvals or may be unduly delayed in doing so, which would negatively affect our business, financial condition and results of operations. Furthermore, even if we are granted regulatory clearances or approvals, they may include significant limitations on the indicated uses for the product, which may limit the market for the product. Although we have obtained PMA approval to market our RNS System, our approval can be revoked if safety or efficacy problems develop.

Our operations are subject to pervasive and continuing FDA regulatory requirements, and failure to comply with these requirements could harm our business, financial condition and results of operations.

Before a new medical device or service, or a new intended use for an existing product or service, can be marketed in the United States, a company must first submit and receive either 510(k) clearance or PMA from the FDA, unless an exemption applies. In the 510(k) clearance process, before a device may be marketed, the FDA must determine that a proposed device is substantially equivalent to a legally-marketed predicate device, which includes a device that has been previously cleared through the 510(k) process, a device that was legally marketed prior to May 28, 1976 (pre-amendments device), a device that was originally on the U.S. market pursuant to an approved PMA and later down-classified, or a 510(k)-exempt device.

In the process of obtaining PMA approval, which was required for our RNS System, the FDA must determine that a proposed device is safe and effective for its intended use based, in part, on extensive data, including, but not limited to, technical, preclinical, clinical study, manufacturing and labeling data. The PMA process is typically required for devices that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable device

The FDA and state and international authorities have broad enforcement powers. The medical device industry is now experiencing greater scrutiny and regulation by federal, state and foreign governmental authorities. Companies in our industry are subject to more frequent and more intensive reviews and investigations, often involving the marketing, business practices and product quality management. Such reviews and investigations may result in: civil and criminal proceedings; the imposition of substantial fines and penalties; the receipt of warning letters, untitled letters, demands for recalls or the seizure of our products; the requirement to enter into corporate integrity agreements, stipulated judgments or other administrative remedies; and result in our incurring substantial unanticipated costs and the diversion of key personnel and management’s attention from their regular duties, any of which may harm our business, financial condition and results of operations, and may result in greater and continuing governmental scrutiny of our business in the future.

Additionally, federal, state and foreign governments and entities have enacted laws and issued regulations and other standards requiring increased visibility and transparency of interactions with healthcare providers. For example, Open Payments requires us to annually report to CMS payments and other transfers of value to U.S. physicians and certain other clinicians and U.S. teaching hospitals, with the reported information made publicly available on a searchable website. Failure to comply with these legal and regulatory requirements could impact our business, and we have had and will continue to spend substantial time and financial resources to develop and

implement enhanced structures, policies, systems and processes to comply with these legal and regulatory requirements, which could harm our business, financial condition and results of operations.

Modifications to our products may require new 510(k) clearances or pre-market approvals or may require us to recall or cease marketing our products until clearances or approvals are obtained, which could harm our business, financial condition and results of operations.

In the United States, our RNS System is marketed pursuant to a PMA order issued by the FDA. Any modifications to a PMA-approved device that could significantly affect its safety or effectiveness, including significant design and manufacturing changes, or that would constitute a major change in its intended use, manufacture, design, components, or technology requires approval of a new PMA application or PMA supplement. However, certain changes to a PMA-approved device do not require submission and approval of a new PMA or PMA supplement and may only require notice to FDA in a PMA 30-Day Notice, Special PMA Supplement - Changes Being Effected or PMA Annual Report. The FDA requires every manufacturer to make this determination in the first instance, but the FDA may review any manufacturer's decision. The FDA may not agree with our decisions regarding whether new approvals are necessary. If the FDA disagrees with our determination and requires us to seek new PMA approvals for modifications to our previously approved products for which we have concluded that new approvals are unnecessary, we may be required to cease marketing or to recall the modified product until we obtain clearance or approval, and we may be subject to significant regulatory fines or penalties.

For products that have received 510(k) clearance, such as our Burr Hole Cover product, modifications that could significantly affect safety and effectiveness, such as changes to the intended use or technological characteristics, may require new 510(k) clearances or PMAs or require us to recall or cease marketing the modified devices until these clearances or approvals are obtained. Based on FDA published guidelines, the FDA requires device manufacturers to initially make and document a determination of whether or not a modification requires a new approval, supplemental approval or clearance; however, the FDA can review a manufacturer's decision. Any modification to an FDA-cleared device that could significantly affect its safety or efficacy or that would constitute a major change in its intended use would require a new 510(k) clearance, or if such modification put the device into Class III, possibly a PMA. We may not be able to obtain additional 510(k) clearances or PMAs for new products or for modifications to, or additional indications for, our products in a timely fashion, or at all. Delays in obtaining required future clearances or approvals would adversely affect our ability to introduce new or enhanced products in a timely manner, which in turn would harm our future growth.

We have made modifications to our RNS System in the past and expect to make additional modifications in the future that we believe do not or will not require additional clearances or approvals. If the FDA disagrees and requires new clearances or approvals for these modifications, we may be required to recall and to stop selling or marketing such products as modified, which could harm our operating results and require us to redesign such products. In these circumstances, we may be subject to significant enforcement actions. The FDA may also change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions which may impact our ability to modify our currently approved or cleared products on a timely basis. Any of these actions could harm our business, financial condition and results of operations.

Our products may be subject to recalls after receiving FDA approval or clearance, which could divert managerial and financial resources, harm our reputation and our business.

The FDA has the authority to require the recall of our products because of any failure to comply with applicable laws and regulations, or defects in design or manufacture. A government mandated or voluntary product recall by us could occur because of, for example, component failures, device malfunctions or other adverse events, such as serious injuries or deaths, or quality-related issues, such as manufacturing errors or design or labeling defects. Any future recalls of our products could divert managerial and financial resources, harm our reputation and negatively impact our business.

If we initiate a correction or removal of one of our products to reduce a risk to health posed by the device, we would be required to submit a publicly available Correction and Removal report to the FDA and, in many cases, similar reports to other regulatory agencies. This report could be classified by the FDA as a device recall which

could lead to increased scrutiny by the FDA and our customers regarding the quality and safety of our products. Furthermore, the submission of these reports has been and could be used by competitors against us and could harm our reputation, which could cause customers to delay purchase decisions, cancel orders or decide not to purchase our products and could cause patients to lose trust in and decide not to implant our RNS System.

If any of our products cause or contribute to a death or a serious injury or malfunction in certain ways, we will be required to report under applicable medical device reporting regulations, or MDRs, which can result in voluntary corrective actions or agency enforcement actions and harm our reputation, business, financial condition and results of operations.

Under MDRs, medical device manufacturers are required to report to the FDA information that a device has or may have caused or contributed to a death or serious injury or has malfunctioned in a way that would likely cause or contribute to death or serious injury if the malfunction of the device or one of our similar devices were to recur. If we fail to report events required to be reported to the FDA within the required timeframes, or at all, the FDA could take enforcement action and impose sanctions against us. Any such adverse event involving our products also could result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection or enforcement action. Any corrective action, whether voluntary or involuntary, as well as defending ourselves in a lawsuit, would be costly, distract management from operating our business, could be used by competitors against us, and may harm our reputation, business, financial condition and results of operations.

From time to time, we engage outside parties to perform services related to certain of our clinical studies. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may not be able to complete our clinical studies on our planned timelines, or at all, and may incur significant additional costs.

From time to time, we engage consultants to help design, monitor and analyze the results of certain of our clinical studies and trials. The consultants we engage may interact with clinical investigators to enroll patients in our clinical studies. We depend on these consultants and clinical investigators to conduct clinical studies and trials and monitor and analyze data from these studies and trials under the investigational plan and protocol for the study or trial and in compliance with applicable regulations and standards, such as the FDA's Good Clinical Practice, or GCP, guidelines and FDA human subject protection regulations. We may face delays in completing our clinical studies if these parties do not perform their obligations in a timely, compliant or competent manner. If these third parties do not successfully carry out their duties or meet expected deadlines, or if the quality, completeness or accuracy of the data they obtain is compromised due to the failure to adhere to our clinical study protocols or for other reasons, our clinical studies or trials may need to be extended, delayed or terminated or may otherwise prove to be unsuccessful, and we may have to conduct additional studies, which would significantly increase our costs.

Healthcare reform initiatives and other administrative and legislative proposals may harm our business, financial condition, results of operations and cash flows in our key markets.

There have been and continue to be proposals by the federal government, state governments, regulators and third-party payors to control or manage the increased costs of healthcare and, more generally, to reform the U.S. healthcare system. Certain of these proposals could limit the prices we are able to charge for our products or the coverage and reimbursement available for our products and could limit the acceptance and availability of our products. The adoption of proposals to control costs could harm our business, financial condition and results of operations.

There likely will continue to be legislative and regulatory proposals at the federal and state levels directed at containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future or their full impact. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may harm:

- our ability to set a price that we believe is fair for our products;
- our ability to generate revenue and achieve or maintain profitability; and
- the availability of capital.

Further, recently there has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several U.S. Congressional inquiries and proposed and enacted federal legislation designed to bring transparency to product pricing and reduce the cost of products and services under government healthcare programs. Additionally, individual states in the United States have also increasingly passed legislation and implemented regulations designed to control product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures. Moreover, regional healthcare authorities and individual hospitals are increasingly using bidding procedures to determine what products to purchase and which suppliers will be included in their healthcare programs. Adoption of price controls and other cost-containment measures, and adoption of more restrictive policies in jurisdictions with existing controls and measures may prevent or limit our ability to generate revenue and attain profitability.

Various new healthcare reform proposals are emerging at the federal and state level. It is also possible that additional governmental action will be taken in response to the COVID-19 pandemic. Any new federal and state healthcare initiatives that may be adopted could limit the amounts that federal and state governments will pay for healthcare products and services, and could harm our business, financial condition and results of operations.

Our collection, use, storage, disclosure, transfer and other processing of sensitive and personal information could give rise to significant costs, liabilities and other risks, including as a result of investigations, inquiries, litigation, fines, legislative and regulatory action and negative press about our privacy and data protection practices, which may harm our business, financial conditions, results of operations and prospects.

In the course of our operations, we collect, use, store, disclose, transfer and otherwise process an increasing volume of sensitive, and personal information, including detailed recordings of iEEGs from patients as well as information from our employees and third parties with whom we conduct business. The collection, use, storage, disclosure, transfer and other processing of personal information is increasingly subject to a wide array of federal, state and foreign laws, rules, regulations, and standards regarding data privacy and security, including comprehensive laws of broad application, such as the CCPA and the GDPR, that are intended to protect the privacy of personal information that is collected, used, stored, disclosed, transferred or otherwise processed in or from the governing jurisdiction. As we seek to expand our business, we are, and may increasingly become, subject to various laws, rules, regulations and standards, as well as contractual obligations, relating to data privacy and security in the jurisdictions in which we operate or in the jurisdictions where our patients may be. When conducting clinical studies, we face risks associated with collecting trial participants' data, especially health data, in a manner consistent with applicable laws and regulations, such as GCP guidelines or FDA human subject protection regulations.

In many cases, these laws, rules, regulations and standards apply not only to third-party transactions, but also to transfers of information between or among us, any of our affiliates and other parties with whom we conduct business. These laws, rules, regulations and standards may be interpreted and applied differently over time and from jurisdiction to jurisdiction, and it is possible that they will be interpreted and applied in ways that may harm our business, financial condition and results of operations. The regulatory framework for data privacy and security worldwide is continuously evolving and developing and, as a result, interpretation and implementation standards and enforcement practices are likely to remain uncertain for the foreseeable future.

We are subject to many diverse laws and regulations relating to data privacy and security. In the United States, various federal and state regulators have adopted, or are considering adopting, laws and regulations concerning personal information and data security. Additionally, our customers may be subject to additional federal and state privacy and security laws, rules, regulations and standards, including HIPAA, that they may require us to comply with through contractual obligations. This patchwork of legislation and regulation may give rise to conflicts or differing views of personal privacy rights. For example, certain state laws may be more stringent or broader in scope, or offer greater individual rights, with respect to personal information than federal, foreign or other state laws, and such laws may differ from each other, all of which may complicate compliance efforts. Additionally, new privacy rules are being enacted in the United States and globally, and existing ones are being updated and strengthened. For example, the CCPA, which became effective on January 1, 2020, regulates the processing of personal information of California residents and increases the privacy and security obligations of covered companies handling such personal information. The CCPA requires covered companies to, amongst other things, provide new

and additional disclosures to California consumers and provide such consumers new data protection and privacy rights, including the ability to access their personal information and opt out of certain sales of personal information. The CCPA provides for civil penalties for violations, as well as a private right of action for certain data breaches that result in the loss of personal information. This private right of action may increase the likelihood of, and risks associated with, data breach litigation. The CCPA was amended in September 2018 and November 2019, and it is possible that further amendments will be enacted, but even in its current form it remains unclear how various provisions of the CCPA will be interpreted and enforced. Moreover, a new privacy law, the California Privacy Rights Act, or the CPRA – a consumer privacy ballot initiative that amends and expands the CCPA – was recently passed. The CPRA affords California residents significantly more control over their personal information, imposes heightened compliance obligations on covered companies, and establishes a new enforcement agency dedicated to consumer privacy. The CPRA's substantive provisions become effective January 1, 2023, and new regulations are expected to be introduced by July 1, 2022. While aspects of the CPRA and its interpretation remain to be determined in practice, they create further uncertainty and may result in additional costs and expenses in an effort to comply. Further, all 50 states have passed laws regulating the actions that a business must take if it experiences a data breach, such as prompt disclosure to affected customers. In addition to data breach notification laws, some states have enacted statutes and rules requiring businesses to reasonably protect certain types of personal information they hold or to otherwise comply with certain specified data security requirements for personal information. We are also subject to the supervisory and enforcement authority of the Federal Trade Commission with regard to the collection, use, sharing, and disclosure of certain data collected from or about individuals. State laws are changing rapidly and there is discussion in Congress of a new federal data protection and privacy law to which we would become subject if it is enacted. All of these evolving compliance and operational requirements impose significant costs that are likely to increase over time, may require us to modify our data processing practices and policies, divert resources from other initiatives and projects, and could restrict the way products and services involving data are offered, all of which may harm our business, financial condition and results of operations.

In the event we expand our operations internationally, we may become subject to additional foreign data privacy and security laws, rules, regulations, requirements, and standards, which in the European Union, for instance, have been significantly reformed. On May 25, 2018, the GDPR entered into force and became directly applicable in all European Union member states. The GDPR implements more stringent operational requirements than its predecessor legislation. For example, the GDPR requires companies to make more detailed disclosures to data subjects, requires disclosure of the legal basis on which companies can process personal data, makes it harder for companies to obtain valid consent for processing, requires the appointment of data protection officers when sensitive personal data, such as health data, is processed on a large scale, provides more robust rights for data subjects, introduces mandatory data breach notification through the European Union, imposes additional obligations on companies when contracting with service providers and requires companies to adopt appropriate privacy governance including policies, procedures, training and data audits. The GDPR permits data protection authorities to impose large penalties for violations of the GDPR, including potential fines of up to €20 million or four percent of annual global revenues, whichever is greater. The GDPR also confers a private right of action on data subjects and consumer associations to lodge complaints with supervisory authorities, seek judicial remedies, and obtain compensation for damages resulting from violations of the GDPR. If we become subject to the GDPR and do not comply with our obligations under the GDPR, we could be exposed to significant fines. Compliance with the GDPR will be a rigorous and time-intensive process that may increase our cost of doing business or require us to change our business practices, and despite those efforts, there is a risk that we may be subject to fines and penalties, litigation, and reputational harm in connection with our European activities. In addition, we may be the subject of litigation or adverse publicity, which could negatively affect our business, financial condition and results of operations.

We expect that there will continue to be new proposed laws and regulations concerning data privacy and security, and we cannot yet determine the impact such future laws, rules, regulations and standards may have on our business. New laws, amendments to or re-interpretations of existing laws, regulations, standards and other obligations may require us to incur additional costs and restrict our business operations. Because the interpretation, scope, and application of laws, regulations, standards and other obligations relating to data privacy and security are still uncertain, it is possible that these laws, regulations, standards and other obligations may be interpreted and applied in a manner that is inconsistent with our data processing practices and policies or the features of our

products and services. If so, in addition to the possibility of fines, lawsuits, regulatory investigations, public censure, other claims and penalties, and significant costs for remediation and damage to our reputation, we could be materially and adversely affected if legislation or regulations are expanded to require changes in our data processing practices and policies or if governing jurisdictions interpret or implement their legislation or regulations in ways that negatively impact our business, financial condition and results of operations. We may be unable to make such changes and modifications in a commercially reasonable manner, or at all. In addition to government regulation, privacy advocates and industry groups have and may in the future propose self-regulatory standards from time to time. These and other industry standards may legally or contractually apply to us, or we may elect to comply with such standards. Any inability to adequately address data privacy or security-related concerns, even if unfounded, or to comply with applicable laws, regulations, standards and other obligations relating to data privacy and security, could result in additional cost and liability to us, harm our reputation and brand, damage our relationships with consumers and harm our business, financial condition and results of operations.

We make public statements about our use and disclosure of personal information through our privacy policies, information provided on our website and press statements. Although we endeavor to comply with our public statements and documentation, we may at times fail to do so or be alleged to have failed to do so. The publication of our privacy policies and other statements that provide promises and assurances about data privacy and security can subject us to potential government or legal action if they are found to be deceptive, unfair or misrepresentative of our actual practices. Any concerns about our data privacy and security practices, even if unfounded, could damage the reputation of our business and harm our business, financial condition and results of operations.

Complying with these numerous, complex and often changing laws, rules, regulations, and standards is expensive and difficult. Any failure or perceived failure by us or our service providers to comply with our posted privacy policies or with any applicable or potentially applicable federal or state laws, rules, regulations, standards, certifications or orders relating to data privacy, security or consumer protection, or any compromise of security that results in the theft, unauthorized access, acquisition, use, disclosure, or misappropriation of personal information or other user data, could result in significant fines or penalties, negative publicity or proceedings or litigation by governmental agencies or consumers, including class action privacy litigation in certain jurisdictions, which would subject us to significant awards, penalties or judgments, one or all of which could require us to change our business practices or increase our costs and could materially and adversely affect our business, financial condition and results of operations. In addition, if our practices are not consistent, or viewed as not consistent, with applicable legal and regulatory requirements, including changes in laws, regulations and standards or new interpretations or applications of existing laws, regulations and standards, we may also become subject to audits, inquiries, whistleblower complaints, adverse media coverage, investigations, criminal or civil sanctions, all of which may harm our business, financial condition and results of operations.

Significant disruptions in our information technology systems, whether through breaches or failures of our systems, unauthorized access or otherwise, may result in both an adverse impact to our products, as well as the unauthorized use, disclosure, modification or misappropriation of patient personal information, the occurrence of fraudulent activity, or other data security-related incidents, all of which could have a material and adverse impact on our business, financial condition and results of operations.

We are increasingly dependent on complex information technology systems for the efficient functioning of our business, including the manufacture, distribution and maintenance of our products, as well as for accounting, data storage, compliance, purchasing and inventory management purposes. Further, our products collect, use, store, disclose, transfer, and otherwise process sensitive patient data, such as detailed recordings of iEEGs to help clinicians make more informed treatment decisions and optimize their patients' care. These data are recorded by our RNS System and can be viewed by the physician during regular patient visits using the Physician Tablet or on demand through a secure website. We also collect, use, store, disclose, transfer, and otherwise process a growing volume of other personal information and confidential, proprietary and sensitive data, which may include procedure-based information and sensitive healthcare data, credit card, and other financial information, insurance information, and other potentially personally identifiable information. Our information technology systems or those of our service providers may be subject to computer viruses, phishing, social engineering, denial or degradation of service attacks, ransomware, malware attacks or other threats, cyberattacks, or dishonest acts by computer hackers or terrorists, failures during the process of upgrading or replacing software, databases or components thereof, power outages,

damage or interruption from fires or other natural disasters, hardware failures, telecommunication failures and user errors, among other malfunctions. Technological interruptions or threats would disrupt our operations, including the ability of our clinicians to use our products as intended to treat patients, the ability of patients to safely and securely upload their data using and into our products, as well as our ability to adequately manufacture our products, timely ship and track product orders, project inventory requirements, manage our supply chain and otherwise adequately service our customers. Additionally, any of these incidents could result in the theft, unauthorized access, acquisition, use, disclosure, modification, or misappropriation of personal information of patients that use our products, trial participants, employees, third parties with whom we conduct business, as well as other confidential, proprietary, and sensitive data, and can also result in fraudulent activity, system disruptions or shutdowns.

The occurrence of any actual or attempted breach, failure of security or fraudulent activity, the reporting of such an incident, whether accurate or not, or our failure to make adequate or timely disclosures to the public or law enforcement agencies following any such event, whether due to delayed discovery or a failure to follow existing protocols, could result in claims made against us or our service providers, which could result in state and/or federal litigation and related financial liabilities, as well as criminal penalties or civil liabilities, regulatory actions from state and/or federal governmental authorities, and significant fines, orders, sanctions, litigation and claims against us by consumers or third parties and related indemnification obligations. Actual or perceived security breaches or failures could also cause financial losses, increased costs, interruptions in the operations of our businesses, misappropriation of assets, significant damage to our brand and reputation with customers, patients, employees, and third parties with whom we do business, and result in adverse publicity, loss of consumer confidence, distraction to our management, and reduced sales and profits, any or all of which could harm our business, financial condition and results of operations.

Our systems are also subject to compromise from internal threats, such as theft, misuse, unauthorized access or other improper actions by employees, service providers and other third parties with otherwise legitimate access to our systems and website. Data security-related incidents and fraudulent activity are increasing in frequency and evolving in nature. We rely on a framework of security processes, procedures, tools, and controls designed to protect our information and assets but, given the unpredictability of the timing, nature and scope of data security-related incidents and fraudulent activity, there can be no assurance that any security procedures and controls that we or our service providers have implemented will be sufficient to prevent data security-related incidents or other fraudulent activity from occurring. Furthermore, because the methods of attack and deception change frequently, are increasingly complex and sophisticated, and can originate from a wide variety of sources, including third parties such as service providers and even nation-state actors, despite our reasonable efforts to ensure the integrity of our systems and website, it is possible that we may not be able to anticipate, detect, appropriately react and respond to, or implement effective preventative measures against, all security breaches and failures and fraudulent activity. In the event we experience significant disruptions, we may be unable to repair our systems in an efficient and timely manner.

We also face risks associated with security breaches affecting third parties with whom we are affiliated or otherwise conduct business. Due to applicable laws and regulations or contractual obligations, we may be held responsible for any breach, failure or fraudulent activity attributed to our service providers as they relate to the information we share with them. In addition, while we take precautions in selecting service providers, because we do not control our service providers and our ability to monitor their data security is limited, we cannot ensure the security measures they take will be sufficient to protect our information. Any of the foregoing could harm our business, financial condition and results of operations.

As data security-related threats continue to evolve, we may be required to expend significant additional resources to continue to modify or enhance our protective measures or to investigate and remediate any information security vulnerabilities, or to protect against, respond to and recover from any potential, attempted, or existing security breaches. In addition, our remediation efforts may not be successful. The inability to implement, maintain and upgrade adequate safeguards could have a material and adverse impact on our business, financial condition and results of operations. Moreover, there could be public announcements regarding any data security-related incidents and any steps we take to respond to or remediate such incidents, and if securities analysts or investors perceive these announcements to be negative, it could, among other things, have a substantial adverse effect on the price of our common stock. Any of the foregoing could harm our business, financial condition and results of operations.

We currently maintain a cybersecurity insurance policy and business interruption coverage to mitigate certain potential losses but this insurance is limited in amount, and we cannot be certain that such potential losses will not exceed our policy limits, or will cover all potential claims to which we are exposed and may not be adequate to indemnify us for all liability that may be imposed. Therefore, failure to maintain or protect our information systems and data integrity effectively could harm our business, financial condition, and results of operations.

We face potential liability related to the privacy of health information we obtain.

We may maintain, use, and share sensitive health information that we receive directly from patients that use our products, throughout the clinical study process, in the course of our research collaborations, and from healthcare providers in the course of using our products and systems. Most healthcare providers, including hospitals from which we obtain patient health information, are subject to privacy and security regulations promulgated under HIPAA, as amended by the HITECH. We are not currently classified as a covered entity or business associate under HIPAA and thus are not subject to its requirements or penalties. However, any person may be prosecuted under HIPAA's criminal provisions either directly or under aiding-and-abetting or conspiracy principles. Consequently, depending on the facts and circumstances, we could face substantial criminal penalties if we knowingly receive, maintain, use, or transfer individually identifiable health information from a HIPAA-covered healthcare provider or research institution that has not satisfied HIPAA's requirements for disclosure of individually identifiable health information. Furthermore, certain health privacy laws, data breach notification laws, consumer protection laws and genetic testing laws may apply directly to our operations or those of our collaborators and may impose restrictions on our collection, use and dissemination of individuals' health information As such, we may be subject to state laws requiring notification of affected individuals and state regulators in the event of a breach of personal information, including certain health information, which is a broader class of information than the health information protected by HIPAA. To the extent we engage in clinical studies outside the United States, we may implicate foreign data privacy and security laws and regulations, including the GDPR and legislation of the European Union member states implementing it.

If we do business in international markets in the future, any failure by us or our third-party contractors to comply with the strict rules on the transfer of personal data outside of the European Union and the United Kingdom into the United States in accordance with such laws and regulations may result in the imposition of criminal and administrative sanctions on such contractors, which could adversely affect our business.

Moreover, patients about whom we or our contractors or collaborators obtain or share health information, as well as the providers who share this information with us or whom we share this data with, may have statutory or contractual rights that limit our ability to use and disclose the information. We may be required to expend significant capital and other resources to ensure ongoing compliance with applicable privacy and data security laws. Claims that we have violated individuals' privacy rights or breached our contractual obligations, even if we are not found liable, could be expensive and time consuming to defend and could result in adverse publicity that could negatively affect our business, financial condition and results of operations. If we or third-party contractors or consultants fail to comply with applicable federal, state or local regulatory requirements, we could be subject to a range of regulatory actions that could affect our or our contractors' ability to develop and commercialize our products and could harm or prevent sales of our products, or could substantially increase the costs and expenses of developing, commercializing and marketing our products. Any threatened or actual government enforcement action could also generate adverse publicity and require that we devote substantial resources that could otherwise be used in other aspects of our business.

Additionally, data collection, privacy and security have become the subject of increasing public concern and changing preferences towards data collection, privacy and security could adversely affect patient willingness to consent to our collection of their health information. Patients may be reluctant or unwilling to consent to the collecting of their health information, and patients that have opted-in to the collection of their health information may revoke their consent at any time, including as a result of these concerns or as a result of changes to our data policies that we have implemented or may implement in the future. In particular, the success of our business depends in part on our ability to lawfully obtain health information from our patients. If patients choose not to consent to the collection of their health information as a result of these concerns, or our consent practices are found to be unlawful, this could negatively impact the growth potential for our business.

Compliance with environmental laws and regulations could be expensive, and the failure to comply with these laws and regulations could subject us to significant liability.

Our research, development and manufacturing operations involve the use of hazardous substances, and we are subject to a variety of federal, state and local environmental laws and regulations relating to the storage, use, handling, generation, manufacture, treatment, discharge and disposal of hazardous substances. Our products may also contain hazardous substances, and they are subject laws and regulations relating to labeling requirements and to their sale, collection, recycling, treatment, storage and disposal. Compliance with these laws and regulations may be expensive and noncompliance could result in substantial fines and penalties. Environmental laws and regulations also impose liability for the remediation of releases of hazardous substances into the environment and for personal injuries resulting from exposure to hazardous substances, and they can give rise to substantial remediation costs and to third-party claims, including for property damage and personal injury. Liability under environmental laws and regulations can be joint and several and without regard to fault or negligence, and they tend to become more stringent over time, imposing greater compliance costs and increased risks and penalties associated with violations. We cannot be certain that violations of these laws and regulations, or releases of or exposure to hazardous substances, will not occur in the future or have not occurred in the past, including as a result of human error, accidents, equipment failure or other causes. The costs of complying with environmental laws and regulations, and liabilities that may be imposed for violating them, or for remediation obligations or responding to third-party claims, could negatively affect our business, financial condition and results of operations.

We may become subject to numerous laws and regulations related to anti-bribery and anti-corruption laws, such as the FCPA and the U.K. Bribery Act, in which violations of these laws could result in substantial penalties and prosecution.

We currently do not market and sell our products outside the United States. However, if we choose to conduct business outside the United States, our business will be subject to various heavily-enforced anti-bribery and anti-corruption laws, such as the FCPA and similar laws around the world. These laws generally prohibit U.S. companies and their employees and intermediaries from offering, promising, authorizing or making improper payments to foreign government officials for the purpose of obtaining or retaining business or gaining any advantage. We face significant risks if we, which includes our third-party business partners and intermediaries, fail to comply with the FCPA or other anti-corruption and anti-bribery laws. In many foreign countries, particularly in countries with developing economies, it may be a local custom that businesses engage in practices that are prohibited by the FCPA or other applicable laws and regulations. To that end, we may have to incur substantial costs to enhance our controls if we begin doing business outside the United States, and even so, such compliance measures ultimately may not be effective in prohibiting our employees, contractors, business partners, intermediaries or agents from violating or circumventing our policies and/or the law.

Responding to any enforcement action or related investigation may result in a significant diversion of management’s attention and resources and significant defense costs and other professional fees. Any violation of the FCPA or other applicable anti-bribery, anti-corruption or anti-money laundering laws to which we become subject could result in whistleblower complaints, adverse media coverage, investigations, loss of export privileges, severe criminal or civil sanctions and, in the case of the FCPA, suspension or debarment from U.S. government contracts, which could harm our business, financial condition and results of operations.

Future clinical studies may be delayed, suspended or terminated for many reasons, which will increase our expenses and delay the time it takes to support label expansion for additional indications.

We plan to continue to develop and execute clinical studies to support label retention for our products and label expansion for our products into additional epilepsy populations. We may also develop and execute clinical studies for new products or for label expansion for our current products into patient populations suffering from other neurologic conditions. We do not know whether future clinical studies will begin on time, need to be redesigned, enroll an adequate number of patients or be completed on schedule, if at all. The commencement and completion of

clinical studies to support label retention and expansion for additional indications or for new products may be delayed, suspended or terminated as a result of many factors, including:

- the delay or refusal of regulators or Institutional Review Boards, or IRBs, to authorize us to commence a clinical study at a prospective trial site;
- changes in regulatory requirements, policies and guidelines;
- delays or failure to reach agreement on acceptable terms with prospective clinical research organizations, or CROs, and clinical study sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- delays in patient enrollment and variability in the number and types of patients available for clinical studies, including due to COVID-19, and delays in or the inability to monitor enrolled patients, including due to COVID-19;
- the inability to enroll a sufficient number of patients in studies to observe statistically significant treatment effects in the trial;
- having clinical sites deviate from the trial protocol or dropping out of a study;
- safety or tolerability concerns that could cause us to suspend or terminate a trial if we find that the participants are being exposed to unacceptable health risks;
- regulators or IRBs requiring that we or our investigators suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or safety concerns, among others;
- lower than anticipated retention rates of patients and volunteers in clinical studies;
- our CROs or clinical studies sites failing to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all, deviating from the protocol or dropping out of a trial;
- delays relating to adding new clinical study sites; and
- exceeding budgeted costs due to difficulty in accurately predicting costs associated with clinical studies.

We could also encounter delays if a clinical study is suspended or terminated by us, by the IRBs or the Ethics Committees of institutions at which such studies are being conducted, by the Data Safety Monitoring Board for such trial or by the FDA or other regulatory authorities. Such authorities may suspend or terminate a clinical study due to a number of factors, including failure to conduct the clinical study in accordance with regulatory requirements, including GCP regulations, or our clinical protocols, inspection of the clinical study operations or trial site by the FDA resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, failure to demonstrate safety and effectiveness, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical study.

In addition, we may encounter delays if the FDA concludes that our financial relationships with investigators result in a perceived or actual conflict of interest that may have affected the interpretation of a study, the integrity of the data generated at the applicable clinical study site or the utility of the clinical study itself. Principal investigators for our clinical studies may serve as scientific advisors or consultants to us from time to time and receive cash compensation and/or stock options in connection with such services. If these relationships and any related compensation to or ownership interest by the clinical investigator carrying out the study result in perceived or actual conflicts of interest, or if the FDA concludes that the financial relationship may have affected interpretation of the study, the integrity of the data generated at the applicable clinical study site may be questioned and the utility of the clinical study itself may be jeopardized, which could result in the delay or rejection by the FDA. Any such delay or rejection could prevent us from supporting label retention and expansion for our RNS System.

Risks related to our intellectual property

If we are unable to obtain, maintain, protect, enforce and defend patent or other intellectual property protection for our products, or if the scope of the patent and other intellectual property protection obtained is not sufficiently broad, or as a result of our existing or any future out-licenses of our intellectual property, our competitors could develop and commercialize products similar to or competitive with our products, and our ability to continue to commercialize our RNS System, or our other products, may be harmed.

As with other medical device companies, our success depends in large part on our ability to obtain, maintain, protect, enforce and defend a proprietary position for our products, which will depend upon our success in obtaining and maintaining effective patent and other intellectual property protection in the United States and other countries into which we may expand our business in the future that covers our RNS System and any other products, their manufacturing processes and their intended methods of use. Furthermore, our success will also depend on our ability to enforce and defend those patents, as well as our other intellectual property. In some cases, we may not be able to obtain patents covering our products which are sufficient to prevent third parties, such as our competitors, from utilizing our products, or our competitors may have rights under current or future out-licenses of our intellectual property, which could result in our competitors developing and commercializing products similar to or competitive with our products. Any failure to obtain, maintain, protect, enforce or defend patent and other intellectual property protection with respect to our RNS System or other aspects of our business could harm our business, competitive position, financial condition and results of operations.

Changes in either the patent laws or their interpretation in the United States and other countries may diminish our ability to protect our inventions, obtain, maintain, protect, enforce, and defend our intellectual property rights and, more generally, could affect the value of our intellectual property or narrow the scope of our patents. Additionally, we cannot predict whether the patent applications we are currently pursuing will issue as patents in any particular jurisdiction or whether the claims of any issued patents will provide sufficient protection from competitors or other third parties.

The patent prosecution process is expensive, time-consuming and complex, and we may not be able to file, prosecute, maintain, enforce or license all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of our research and development output in time to obtain patent protection in one, several, or all geographies. Although we enter into non-disclosure and confidentiality agreements with parties who have access to confidential or patentable aspects of our research and development output, such as our employees, corporate collaborators, outside scientific collaborators, suppliers, consultants, advisors and other third parties, any of these parties may breach the agreements and disclose such output before a patent application is filed, thereby jeopardizing our ability to seek patent protection. In addition, our ability to obtain and maintain valid and enforceable patents depends on whether the differences between our inventions and the prior art allow our inventions to be patentable over the prior art. Furthermore, the publication of discoveries in scientific literature often lags behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. As such, we cannot be certain that we were the first to make the inventions claimed in any of our patents or pending patent applications, or that we were the first to file for patent protection of such inventions. Moreover, in some circumstances, we may not have the right to control the preparation, filing and prosecution of patent applications, or to maintain the patents, covering technology that we license from or license to third parties, including by way of our cross-license with Medtronic, and we are therefore reliant on our licensors or licensees. Therefore, these and any of our patents and patent applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. Furthermore, our license agreements may be terminated by the licensor. Defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, for example, with respect to proper priority claims, inventorship and the like, although we are unaware of any such defects that we believe are of importance. If we or any of our current or future licensors or licensees fail to obtain, maintain, protect, enforce or defend such patents and other intellectual property rights, such rights may be reduced or eliminated. If any of our current or future licensors or licensees are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised. If there are material defects in the form, preparation or prosecution of our patents or patent applications, such patents or applications may

be invalid and unenforceable. Any of these outcomes could impair our ability to prevent competition from third parties, which may harm our business.

The strength of patent rights generally, and particularly the patent position of medical device companies, involves complex legal and scientific questions, can be uncertain, and has been the subject of much litigation in recent years. This uncertainty includes changes to the patent laws through either legislative action to change statutory patent law or court action that may reinterpret existing law or rules in ways affecting the scope or validity of issued patents. Our current or future patent applications may fail to result in issued patents in the United States or foreign countries with claims that cover our products, including our RNS System. Even if patents do successfully issue from our patent applications, third parties may challenge the validity, enforceability or scope of such patents, which may result in such patents being narrowed, invalidated or held unenforceable. Any successful challenge to our patents could deprive us of exclusive rights necessary for the successful commercialization of our products, including our RNS System. Furthermore, even if they are unchallenged, our patents may not adequately protect our RNS System or any other products we develop, provide exclusivity for these products or prevent others from designing around our claims. If the scope of any patent protection we obtain is not sufficiently broad, or if we lose any of our patent protection, our ability to prevent our competitors from commercializing similar or identical products could be adversely affected. If the breadth or strength of protection provided by the patents we hold or pursue with respect to our products is challenged, it could dissuade companies from collaborating with us to develop, or threaten our ability to commercialize, our products.

Patents have a limited lifespan. In the United States, the natural expiration of a utility patent is generally 20 years after its effective filing date and the natural expiration of a design patent is generally 14 years after its issue date, unless the filing date occurred on or after May 13, 2015, in which case the natural expiration of a design patent is generally 15 years after its issue date. However, the actual protection afforded by a patent varies from country to country, and depends upon many factors, including the type of patent, the scope of its coverage, the availability of regulatory-related extensions, the availability of legal remedies in a particular country and the validity and enforceability of the patent. Various extensions may be available; however, the life of a patent, and the protection it affords, is limited. Without patent protection for our products, we may be open to competition. Further, if we encounter delays in our development efforts, the period of time during which we could market our products under patent protection would be reduced and, given the amount of time required for the development, testing and regulatory review of planned or future products, patents protecting such products might expire before or shortly after such products are commercialized. For information regarding the expiration dates of patents in our patent portfolio, see “Business—Intellectual Property.” Our issued patents are expected to expire between April 2021 and August 2038 without taking into account all possible patent term adjustments, extensions, or abandonments, and assuming payment of all appropriate maintenance, renewal, annuity, and other governmental fees. As our patents expire, the scope of our patent protection will be reduced, which may reduce or eliminate any competitive advantage afforded by our patent portfolio. As a result, our patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

Moreover, the coverage claimed in a patent application can be significantly reduced before the patent is issued, and its scope can be reinterpreted after issuance. Even if patent applications we license or own, currently or in the future, issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors or other third parties from competing with us, or otherwise provide us with any competitive advantage. Any patents that we own may be challenged, narrowed, circumvented or invalidated by third parties. Consequently, we do not know whether our RNS System or our other products will be protectable or remain protected by valid and enforceable patents. Our competitors or other third parties may be able to circumvent our patents by developing similar or alternative products in a non-infringing manner, which could harm our business, financial condition and results of operations.

Some of our patents and patent applications may be co-owned or cross-licensed with third parties. If we give up, do not pursue, or are unable to obtain an exclusive license to any such third-party co-owners’ or licensee’s interest in such patents or patent applications, such co-owners may be able to license their rights to other third parties, including our competitors, and our competitors could market competing products and technology. In addition, we may need the cooperation of any such co-owners of our patents in order to enforce such patents against third parties,

and such cooperation may not be provided to us. Any of the foregoing could harm our business, financial condition and results of operations.

We may not be successful in obtaining necessary rights to any products or processes we may develop through acquisitions and in-licenses.

We may find it necessary or prudent to acquire or obtain licenses to intellectual property or proprietary rights held by third parties that we may identify as necessary or important to our business operations. However, we may be unable to acquire or secure such licenses to any intellectual property or proprietary rights from third parties that we identify as necessary for our RNS System or any future products we may develop. The acquisition or licensing of third-party intellectual property or proprietary rights is a competitive area, and our competitors may pursue strategies to acquire or license third party intellectual property or proprietary rights that we may consider attractive or necessary. Our competitors may have a competitive advantage over us due to their size, capital resources and greater development and commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to acquire or license third party intellectual property or proprietary rights on terms that would allow us to make an appropriate return on our investment or at all. If we are unable to successfully acquire or license required third-party intellectual property or proprietary rights or maintain the existing licenses to intellectual property rights we have, we may have to abandon development of the relevant product, which could harm our business, financial condition and results of operations.

Patents covering our products, including our RNS System could be found invalid or unenforceable if challenged in court or before administrative bodies in the United States or abroad, which could harm our business, financial condition and results of operations.

The issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, and our patents may be challenged in the courts or patent offices in the United States and abroad. We may be subject to a third-party preissuance submission of prior art to the U.S. Patent and Trademark Office, or the USPTO, or become involved in opposition, derivation, revocation, reexamination, post-grant and *inter partes* review, or IPR, or interference proceedings or other similar proceedings challenging our patent rights. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate or render unenforceable, such patent rights, allow third parties to commercialize our products and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights. Moreover, we may have to participate in interference proceedings declared by the USPTO to determine priority of invention or in post-grant challenge proceedings, such as oppositions in a foreign patent office, that challenge our priority of invention or other features of patentability with respect to our patents and patent applications. Such challenges may result in loss of patent rights, in loss of exclusivity, or in patent claims being narrowed, invalidated or held unenforceable, which could limit our ability to stop others from using or commercializing similar or identical products or limit the duration of the patent protection of our products. Such proceedings also may result in substantial cost and require significant time from our management, even if the eventual outcome is favorable to us.

In addition, if we initiate legal proceedings against a third party to enforce a patent covering our products, the defendant could counterclaim that such patent is invalid or unenforceable. In patent litigation in the United States, defendant counterclaims alleging invalidity or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO or made a misleading statement during prosecution. Defenses of these types of claims, regardless of their merit, would involve substantial litigation expense, would result in reputational harm, and would be a substantial diversion of employee resources from our business. Third parties may also raise claims challenging the validity or enforceability of our patents before administrative bodies in the United States or abroad, even outside the context of litigation, including through re-examination, post-grant review, IPR, interference proceedings, derivation proceedings and equivalent proceedings in foreign jurisdictions (such as opposition proceedings). Such proceedings could result in the revocation of, cancellation of or amendment to our patents in such a way that they no longer cover our products. The outcome for any particular patent following legal assertions of invalidity and unenforceability is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we and the

patent examiner were unaware during prosecution. If a defendant or other third party were to prevail on a legal assertion of invalidity or unenforceability, we would lose at least part, and perhaps all, of the patent protection for the patents raised in such a claim. Such a loss of patent protection would harm our business, financial condition and results of operations.

The medical device industry is characterized by patent litigation and in the future we could become subject to patent or other intellectual property litigation that could be costly, result in the diversion of management's time and efforts, require us to pay damages or prevent us from marketing our existing or future products.

Patent litigation is prevalent in the medical device and diagnostic sectors. Our commercial success depends in part upon our ability and that of our suppliers to manufacture, market, sell, and use our proprietary products without infringing, misappropriating or otherwise violating the intellectual property or proprietary rights of third parties. We may in the future become party to, or be threatened with, adversarial proceedings or litigation regarding intellectual property rights with respect to our products. Additional third parties may assert infringement claims against us based on existing or future intellectual property rights, regardless of merit. If we are found to infringe a third party's intellectual property rights, we could be required to incur costs to obtain a license from such third party to continue developing and marketing our products. We may also elect to enter into such a license in order to settle pending or threatened litigation. However, we may not be able to obtain any required license on commercially reasonable terms, or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors access to the same technologies licensed to us, and could require us to pay significant royalties and other fees. We could be forced, including by court order, to cease commercializing the infringing product. In addition, we could be found liable for monetary damages, which may be significant. If we are found to have willfully infringed a third-party patent, we could be required to pay treble damages and attorneys' fees. A finding of infringement could prevent us from commercializing our planned products in commercially important territories, or force us to cease some of our business operations, which could harm our business and cause brand and reputational harm. We could also be forced to redesign those products that contain the allegedly infringing intellectual property, which could be costly, disruptive and infeasible. Many of our employees were previously employed at, and many of our current advisors and consultants are employed by, universities or other biotechnology, medical device, healthcare, or pharmaceutical companies, including our competitors or potential competitors. Although we try to ensure that our employees, advisors and consultants do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we, or these employees, have used or disclosed intellectual property, including trade secrets or other proprietary information, of any such employee's former employer. Furthermore, although these agreements may be difficult to enforce, we may in the future be subject to claims that these individuals are violating non-compete agreements with their former employers. These and other claims that we have misappropriated the confidential information or trade secrets of third parties can have a similar negative impact on our business to the infringement claims discussed above.

Even if we are successful in defending against intellectual property claims, litigation or other legal proceedings relating to such claims may cause us to incur significant expenses, cause reputational harm, and could distract our technical and management personnel from their normal responsibilities. If we fail in defending any such claims, in addition to paying monetary damages or other settlements, we may lose valuable intellectual property rights or personnel, which could harm our business, financial condition and results of operations. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these results to be negative, it could have a substantial negative impact on the price of our common shares. Such litigation or proceedings could substantially increase our operating losses and reduce our resources available for development activities. We may not have sufficient financial or other resources to adequately conduct such litigation or proceedings. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their substantially greater financial resources. Uncertainties resulting from the initiation and continuation of litigation or other intellectual property related proceedings could harm our business, financial condition and results of operations.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by government patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Obtaining and maintaining our patent protection depends on compliance with various procedural measures, document submissions, fee payments and other requirements imposed by government patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance fees, renewal fees, annuity fees and various other government fees on patents and patent applications will be due to be paid to the USPTO and various government patent agencies outside of the United States over the lifetime of our patents and applications. The USPTO and various non-U.S. government agencies require compliance with several procedural, documentary, fee payment and other similar provisions during the patent application process. In some cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. There are situations, however, in which non-compliance can result in the abandonment or lapse of the patent or patent application, resulting in a partial or complete loss of patent rights in the relevant jurisdiction. In such an event, potential competitors might be able to enter the market with similar or identical products or technology, which could harm our business, financial condition and results of operations.

Certain of our patents are, and our future owned and in-licensed patents may be, discovered through government funded programs and thus may subject to federal regulations such as "march-in" rights, certain reporting requirements and a preference for U.S.-based companies. Compliance with such regulations may limit our exclusive rights, and limit our ability to contract with non-U.S. manufacturers.

Certain of our patents are, and our future owned and in-licensed patents may be, discovered through government funded programs. As a result, the U.S. government may have certain rights to intellectual property embodied in our current or future products pursuant to the Bayh-Dole Act of 1980, or the Bayh-Dole Act, and implementing regulations, which are amended from time to time. These U.S. government rights in certain inventions developed under a government-funded program include a non-exclusive, non-transferable, irrevocable worldwide license to use inventions for any governmental purpose. In addition, the U.S. government has the right to require us or our licensors to grant exclusive, partially exclusive, or non-exclusive licenses to any of these inventions to a third party if it determines that: (i) adequate steps have not been taken to commercialize the invention; (ii) government action is necessary to meet public health or safety needs; or (iii) government action is necessary to meet requirements for public use under federal regulations, which are also referred to as "march-in rights." The U.S. government also has the right to take title to these inventions if we, or the applicable licensor, fail to disclose the invention to the government and fail to file an application to register the intellectual property within specified time limits. These time limits have recently been changed by regulation, and may change in the future. Intellectual property generated under or in collaboration with a government funded program is also subject to certain reporting requirements, compliance with which may require us or the applicable licensor to expend substantial resources. In addition, the U.S. government requires that any products embodying the subject invention or produced through the use of the subject invention be manufactured substantially in the United States. The manufacturing preference requirement can be waived if the owner of the intellectual property can show that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible. This preference for U.S. manufacturers may limit our future ability to contract with non-U.S. product manufacturers for products covered by such intellectual property. If the U.S. government decides to exercise these rights, it is not required to engage us as its contractor in connection with doing so. These rights may permit the U.S. government to disclose our confidential information to third parties. To the extent any of our current or future intellectual property is generated through the use of U.S. government funding, the provisions of the Bayh-Dole Act may similarly apply. Any exercise by the government of any of the foregoing rights could harm our business, financial condition, results of operations and prospects.

If we fail to comply with our obligations in any current or future agreements under which we license intellectual property rights from third parties or otherwise experience disruptions to our business relationships with our licensors, we could lose license rights that are important to our business.

We are and may become party to license or collaboration agreements with third parties to advance our research or allow commercialization of our products. Such agreements may impose numerous obligations, such as development, diligence, payment, commercialization, funding, milestone, royalty, sublicensing, insurance, patent prosecution, enforcement and other obligations on us and may require us to meet development timelines, or to exercise certain efforts to develop and commercialize licensed products, in order to maintain the licenses. In spite of our best efforts, our licensors might conclude that we have materially breached such license agreements and might therefore terminate the license agreements, thereby removing or limiting our ability to develop and commercialize products and technologies covered by these license agreements.

Any termination of these licenses could result in the loss of significant rights and could harm our ability to commercialize our products, and competitors or other third parties would have the freedom to seek regulatory approval of, and to market, products identical to ours. We may further be required to cease our development and commercialization of certain of our products. Any of the foregoing could have a material adverse effect on our competitive position, business, financial conditions, results of operations, and prospects.

Disputes may also arise between us and our licensors regarding intellectual property subject to a license agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- whether and the extent to which our technology and processes infringe, misappropriate or otherwise violate intellectual property rights of the licensor that are not subject to the license agreement;
- our right to sublicense patent and other rights to third parties under collaborative development relationships;
- our diligence obligations with respect to the use of the licensed technology in relation to our development and commercialization of our products, and what activities satisfy those diligence obligations;
- the priority of invention of any patented technology; and
- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our future licensors and us and our partners.

In addition, the agreements under which we may license intellectual property or technology from third parties are likely to be complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property, or increase what we believe to be our financial or other obligations under the relevant agreement, either of which could have a material adverse effect on our sales, business, financial condition or results of operations. Moreover, if disputes over intellectual property that we may license prevent or impair our ability to maintain future license agreements on acceptable terms, we may be unable to successfully develop and commercialize the affected products, which could have a material adverse effect on our sales, business, financial conditions or results of operations.

If we are unable to obtain patent term extension under the Hatch-Waxman Amendments, our business may be materially harmed.

Depending upon the timing, duration and specifics of FDA marketing approval of our products, one or more of the U.S. patents we own or license may be eligible for limited patent term restoration under the Drug Price Competition and Patent Term Restoration Act of 1984, referred to as the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent restoration term of up to five years for a patent covering an approved product as compensation for effective patent term lost during product development and the FDA regulatory review process. However, even if, at the relevant time, we have an issued patent covering our product, we may not be granted an

extension if we were, for example, to fail to exercise due diligence during the testing phase or regulatory review process, to fail to apply within applicable deadlines or prior to expiration of relevant patents or otherwise to fail to satisfy applicable requirements. Moreover, the time period of the extension or the scope of patent protection afforded could be less than we request. Only one patent per approved product can be extended, the extension cannot extend the total patent term beyond 14 years from approval and only those claims covering the approved product, a method for using it or a method for manufacturing it may be extended. If we are unable to obtain patent term extension or restoration or the term of any such extension is less than we request, the period during which we can enforce our patent rights for the applicable product will be shortened and our competitors may obtain approval of competing products following our patent expiration. As a result, our ability to generate revenues could be adversely affected. Further, if this occurs, our competitors may take advantage of our investment in development and studies by referencing our clinical and preclinical data and launch their product earlier than might otherwise be the case. If we do not have adequate patent protection or other exclusivity for our products, our business, financial condition or results of operations could be adversely affected**.**

We have limited foreign intellectual property rights and may not be able to protect our intellectual property and proprietary rights throughout the world, which could harm our business, financial condition and results of operations.

We have limited intellectual property rights outside the United States. Filing, prosecuting and defending patents on our products in all countries throughout the world would be prohibitively expensive, and the laws of foreign countries may not protect our rights to the same extent as the laws of the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States, or from selling or importing products made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories where we have patent protection but enforcement is not as strong as in the United States. While we do not currently operate or sell our products outside of the United States, these products may compete with our products, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing. Patent protection must ultimately be sought on a country-by-country basis, which is an expensive and time-consuming process with uncertain outcomes. Accordingly, we may choose not to seek patent protection in certain countries, and we will not have the benefit of patent protection in such countries, which may impede on our ability to grow outside of the United States.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets and other intellectual property protection, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our intellectual property and proprietary rights generally. Proceedings to enforce our intellectual property and proprietary rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly, could put our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property and proprietary rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

Many countries have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, many countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of such patent. If we are forced to grant a license to third parties with respect to any patents relevant to our business, our competitive position may be impaired, and our business, financial condition and results of operations may be harmed.

Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our products.

Changes in either the patent laws or interpretation of the patent laws in the United States could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. Assuming that other requirements for patentability are met, prior to March 2013, in the United States, the first to invent the claimed invention was entitled to the patent, while outside the United States, the first to file a patent application was entitled to the patent. After March 2013, under the Leahy-Smith America Invents Act, or the America Invents Act, enacted in September 2011, the United States transitioned to a first inventor to file system in which, assuming that other requirements for patentability are met, the first inventor to file a patent application will be entitled to the patent on an invention regardless of whether a third party was the first to invent the claimed invention. A third party that files a patent application in the USPTO after March 2013, but before us could therefore be awarded a patent covering an invention of ours even if we had made the invention before it was made by such third party. This will require us to be cognizant of the time from invention to filing of a patent application. Since patent applications in the United States and most other countries are confidential for a period of time after filing or until issuance, we could continue incurring costs without being certain that we were the first to file any patent application related to our products or invent any of the inventions claimed in our patents or patent applications.

The America Invents Act also includes a number of significant changes that affect the way patent applications are prosecuted and also may affect patent litigation. These include allowing third-party submission of prior art to the USPTO during patent prosecution and additional procedures to attack the validity of a patent by USPTO administered post-grant proceedings, including post-grant review, inter partes review and derivation proceedings. Because of a lower evidentiary standard in USPTO proceedings compared to the evidentiary standard in U.S. federal courts necessary to invalidate a patent claim, a third party could potentially provide evidence in a USPTO proceeding sufficient for the USPTO to hold a claim invalid even though the same evidence would be insufficient to invalidate the claim if first presented in a district court action. Accordingly, a third party may attempt to use the USPTO procedures to invalidate our patent claims that would not have been invalidated if first challenged by the third party as a defendant in a district court action. Additionally, USPTO proceedings provide a venue for challenging the validity of patents at a cost must lower than district court litigation and on much faster timelines. This lower-cost, faster and potentially more potent tribunal for challenging patents could itself increase the likelihood that our own patents will be challenged. Therefore, the America Invents Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. In addition, future actions by the U.S. Congress, the federal courts and the USPTO could cause the laws and regulations governing patents to change in unpredictable ways. Any of the foregoing could harm our business, financial condition and results of operations.

In addition, recent U.S. Supreme Court rulings have narrowed the scope of patent protection available in certain circumstances and weakened the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the validity and enforceability of patents, once obtained. Depending on future actions by the U.S. Congress, the federal courts, and the USPTO, the laws and regulations governing patents could change in unpredictable ways that could weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future. We cannot predict how this and future decisions by the courts, the U.S. Congress or the USPTO may impact the value of our patents. Any similar adverse changes in the patent laws of other jurisdictions could also harm our business, financial condition, results of operations and prospects.

We may be subject to claims, including third-party claims of intellectual property infringement, misappropriation or other violations against us or our collaborators, challenging the ownership or inventorship of our intellectual property and, if unsuccessful in any of these proceedings, we may be required to obtain licenses from third parties, which may not be available on commercially reasonable terms, or at all, or to cease the development, manufacture and commercialization of one or more of our products.

The medical device industry is highly competitive and dynamic. Due to the focused research and development that is taking place by several companies, including us and our competitors, in this field, the intellectual property landscape is in flux, and it may remain uncertain in the future. As such, we may be subject to claims that current or

former employees, collaborators or other third parties have an interest in our patents, trade secrets or other intellectual property as an inventor or co-inventor. Additionally, we could become subject to significant intellectual property-related litigation and proceedings relating to our or third-party intellectual property and proprietary rights. For example, we may have inventorship disputes arise from conflicting obligations of employees, consultants or others who are involved in developing our products, or could face third-party claims of intellectual property infringement, misappropriation or other violations, including by a licensor from whom we've licensed certain intellectual property.

Litigation may be necessary to defend against these and other claims challenging inventorship of our patents, trade secrets or other intellectual property. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, intellectual property that is important to our products. If we were to lose exclusive ownership of such intellectual property, other owners may be able to license their rights to other third parties, including our competitors. We also may be required to obtain and maintain licenses from third parties, including parties involved in any such disputes. Such licenses may not be available on commercially reasonable terms, or at all, or may be non-exclusive. If we are unable to obtain and maintain such licenses, we may need to cease the development, manufacture and commercialization of one or more of our products. The loss of exclusivity or the narrowing of our patent claims could limit our ability to stop others from using or commercializing similar or identical technology and products. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees. Any of the foregoing could harm our business, financial condition and results of operations.

Additionally, our commercial success depends in part on our and any potential future collaborators' ability to develop, manufacture, market and sell any products that we may develop and use our proprietary technologies without infringing, misappropriating or otherwise violating the patents and other intellectual property or proprietary rights of third parties. It is uncertain whether the issuance of any third-party patent would require us or any potential collaborators to alter our development or commercial strategies, obtain licenses or cease certain activities. The medical device industry is characterized by extensive litigation regarding patents and other intellectual property rights, as well as administrative proceedings for challenging patents, including interference, *inter partes* or post-grant review, derivation and reexamination proceedings before the USPTO or oppositions and other comparable proceedings in foreign jurisdictions.

Third parties, including our competitors, may currently have patents or obtain patents in the future and claim that the manufacture, use or sale of our products infringes upon these patents. We have not conducted an extensive search of patents issued or assigned to other parties, including our competitors, and no assurance can be given that patents containing claims covering our products, parts of our products, technology or methods do not exist, have not been filed or could not be filed or issued. In addition, because patent applications can take many years to issue and because publication schedules for pending patent applications vary by jurisdiction, there may be applications now pending of which we are unaware and which may result in issued patents which our current or future products infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. Unintentionally abandoned patents or applications can also be revived, so there may be recently revived patents or applications of which we are unaware. As the number of competitors in our market grows and the number of patents issued in this area increases, the possibility of patent infringement claims against us escalates. Moreover, we may face claims from non-practicing entities, or NPEs, which have no relevant product revenue and against whom our own patent portfolio may have no deterrent effect. Third parties, including NPEs, may in the future claim, that our products infringe or violate their patents or other intellectual property rights.

In the event that any third-party claims that we infringe their patents or that we are otherwise employing their proprietary technology without authorization and initiates litigation against us, even if we believe such claims are without merit, there is no assurance that a court would find in our favor on questions of infringement, validity, enforceability or priority. A court of competent jurisdiction could hold that these third-party patents are valid, enforceable and infringed by our products, which could harm our ability to commercialize any product we may develop and any other technologies covered by the asserted third-party patents. In order to successfully challenge the validity of any such U.S. patent in federal court, we would need to overcome a presumption of validity. As this

burden is a high one requiring us to present clear and convincing evidence as to the invalidity of any such U.S. patent claim, there is no assurance that a court of competent jurisdiction would invalidate the claims of any such U.S. patent. If we are found to infringe third-party intellectual property rights, including patents, and we are unsuccessful in demonstrating that such patents or other intellectual property rights are invalid or unenforceable, such third parties may be able to block our ability to commercialize the applicable products or technology unless we obtain a license under the applicable patents, or until such patents expire or are finally determined to be held invalid or unenforceable. Such a license may not be available on commercially reasonable terms, or at all. Even if we are able to obtain a license, the license would likely obligate us to pay significant license fees and/or royalties, and the rights granted to us might be non-exclusive, which could result in our competitors gaining access to the same technology. If we are unable to obtain a necessary license to a third-party patent on commercially reasonable terms, or at all, we may be unable to commercialize our products, or such commercialization efforts may be significantly delayed, which could in turn significantly harm our business.

Defense of infringement claims, regardless of their merit or outcome, would involve substantial litigation expense and would be a substantial diversion of management and other employee resources from our business, and may impact our reputation. In the event of a successful claim of infringement against us, we may be enjoined from further developing or commercializing the infringing products and/or have to pay substantial damages for use of the asserted intellectual property, including treble damages and attorneys' fees were we found to willfully infringe such intellectual property. Claims that we have misappropriated the confidential information or trade secrets of third parties could harm our business, financial condition and results of operations. We also might have to redesign our infringing products or technologies, which may be impossible or require substantial time and monetary expenditure.

Engaging in litigation, including to defend against third-party infringement claims is very expensive, particularly for a company of our size, and time-consuming. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial negative impact on our common stock price. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of litigation or administrative proceedings more effectively than we can because of greater financial resources and more mature and developed intellectual property portfolios. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings against us could impair our ability to compete in the marketplace. The occurrence of any of the foregoing could harm our business, financial condition and results of operations.

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

Competitors may infringe our patents, or the patents of any current or future licensing partners, or we may be required to defend against claims of infringement. Our ability to enforce our patent rights against competitors who infringe our patents depends on our ability to detect such infringement. It may be difficult to detect infringers who do not advertise the components that are used in their products. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor's or potential competitor's product. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded if we were to prevail may not be commercially meaningful.

In addition, our patents or the patents of our licensing partners also may become involved in inventorship, priority or validity disputes. For example, although we try to ensure that our employees, consultants and advisors are not in breach of any past contractual obligations and do not use the proprietary information or know-how of others in the work that they do for us, we may in the future become subject to claims that we or these individuals have, inadvertently or otherwise, used or disclosed intellectual property, including trade secrets or other proprietary information, of their former university or employer. Additionally, we may be subject to claims from third parties challenging intellectual property rights we regard as our own, based on claims that our agreements with employees or consultants obligating them to assign intellectual property to us are ineffective or in conflict with prior or competing contractual obligations to assign inventions to a previous employer, or to another person or entity.

Furthermore, while it is our policy to require all employees and contractors to execute agreements assigning relevant intellectual property to us, we may also be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own. These assignment agreements may not be self-executing or adequate in scope, and may be breached or challenged, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. We may not have adequate remedies for any such breaches, and such claims could harm our business, financial condition and results of operations.

To counter or defend against such claims can be expensive and time-consuming and it may be necessary or we may desire to enter into a license to settle any such claims; however, there can be no assurance that we would be able to obtain a license on commercially reasonable terms, if at all. In an infringement proceeding, a court may decide that our patent is invalid or unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover such technology. An adverse result in any litigation proceeding could put one or more of our patents at risk of being invalidated or interpreted narrowly. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our management and other personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial negative impact on our common stock price. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources and more mature and developed intellectual property portfolios. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could harm our ability to compete in the marketplace, including ability to hire new employees or contract with independent sales representatives. Additionally, we may lose valuable intellectual property rights or personnel. Any of the foregoing could harm our business, financial condition and results of operations.

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

Our registered and unregistered trademarks or trade names may be challenged, infringed, circumvented, declared generic or determined to be violating or infringing on other marks. We may not be able to protect our rights to these trademarks and trade names, which we need to build or sustain name recognition among potential partners, customers and patients in our markets of interest. At times, competitors or other third parties may adopt trade names or trademarks similar to ours, thereby impeding our ability to continue to build brand identity and possibly leading to market confusion. In addition, there could be potential trade name or trademark infringement or dilution claims brought by owners of other trademarks. Over the long term, if we are unable to establish name recognition based on our trademarks, trade names, domain names or other intellectual property, then we may not be able to compete effectively and our business may be adversely affected. Our efforts to enforce or protect our proprietary rights related to trademarks, trade secrets, domain names or other intellectual property may be ineffective, could result in substantial costs, diversion of resources, or adverse impact to our brand and could harm our business, financial condition and results of operations.

Intellectual property rights do not necessarily address all potential threats, and limitations in intellectual property rights could harm our business, financial condition and results of operations.

The degree of future protection afforded by our intellectual property rights is uncertain because intellectual property rights have limitations, may evolve, and may not adequately protect our business or permit us to maintain our competitive advantage. For example:

- others may be able to make products that are similar to our products or utilize similar technology but that are not covered by the claims of our patents or that incorporate certain technology in our products that is in the public domain;
- our intellectual property strategy may be limited, we may not seek protection for intellectual property that may ultimately become relevant to our business or our invention disclosure process may prove insufficient to encourage inventors to come forward with protectable intellectual property;
- we, or our current or future licensors or collaborators, might not have been the first to make the inventions covered by the applicable issued patent or pending patent application that we own now or may own or license in the future;
- we, or our current or future licensors or collaborators, might not have been the first to file patent applications covering certain of our or their inventions;
- we, or our current or future licensors or collaborators, may fail to meet our obligations to the U.S. government regarding any future patents and patent applications funded by U.S. government grants, leading to the loss or unenforceability of patent rights;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- it is possible that our current or future pending patent applications will not lead to issued patents;
- it is possible that there are prior public disclosures that could invalidate our patents, or parts of our patents;
- it is possible that there are unpublished applications or patent applications maintained in secrecy that may later issue with claims covering our products or technology similar to ours;
- it is possible that our patents or patent applications omit individuals that should be listed as inventors or include individuals that should not be listed as inventors, which may cause these patents or patents issuing from these patent applications to be held invalid or unenforceable;
- issued patents that we hold rights to may be held invalid or unenforceable, including as a result of legal challenges by our competitors or other third parties;
- the claims of our patents or patent applications, if and when issued, may not cover our products or technologies;
- the laws of foreign countries may not protect our proprietary rights or the rights of current or future licensors or collaborators to the same extent as the laws of the United States;
- the inventors of our patents or patent applications may become involved with competitors, develop products or processes that design around our patents, or become hostile to us or the patents or patent applications on which they are named as inventors;
- our competitors or other third parties might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;

- we have engaged in scientific collaborations in the past and will continue to do so in the future and our collaborators may develop adjacent or competing products that are outside the scope of our patents;
- we may not develop additional proprietary technologies that are patentable;
- the patents of others may harm our business; or
- we may choose not to file a patent in order to maintain certain trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property.

Any of the foregoing could harm our business, financial condition and results of operations.

If we are unable to protect the confidentiality of our other proprietary information, our business and competitive position may be harmed.

In addition to patent protection, we also rely on other proprietary rights, including protection of trade secrets, know-how and other confidential or proprietary information that is not patentable or that we elect not to patent. However, such information can be difficult to protect, and some courts, for instance, are less willing or unwilling to protect trade secrets. To maintain the confidentiality of our trade secrets and proprietary information, we rely heavily on confidentiality provisions that we have in contracts with our employees, consultants, collaborators, suppliers, customers, and others upon the commencement of their relationship with us. We cannot guarantee that we have entered into such agreements with each party that may have or have had access to our trade secrets or proprietary technology and processes. Furthermore, we may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by such third parties, despite the existence generally of these confidentiality restrictions. These contracts may not provide meaningful protection or equitable remedies for our trade secrets, know-how, or other proprietary information in the event of any unauthorized use, misappropriation, or disclosure of such trade secrets, know-how, or other proprietary information. There can be no assurance that such third parties will not breach their agreements with us, that we will have adequate remedies for any breach, or that our trade secrets will not otherwise become known or independently developed by competitors. Despite the protections we do place on our intellectual property or other proprietary rights, monitoring unauthorized use and disclosure of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property or other proprietary rights have or will be adequate. Trade secret violations are often a matter of state law, and the criteria for protection of trade secrets can vary among different jurisdictions. In addition, the laws of many foreign countries will not protect our intellectual property or other proprietary rights to the same extent as the laws of the United States. Consequently, we may be unable to prevent our proprietary technology from being exploited abroad, which could affect our ability to expand to foreign markets or require costly efforts to protect our products.

We also license rights to use certain proprietary information and technology from third parties. The use of such proprietary information and technology is therefore subject to the obligations of the applicable license agreement between us and the owner. For example, the software we developed for our RNS System includes the use of open source software that is subject to the terms and conditions of the applicable open source software licenses that grant us permission to use such software. The owner of any such proprietary information or technology also might not enforce or otherwise protect its rights in the proprietary information or technology with the same vigilance that we would, which would allow competitors to use such proprietary information and technology without having to adhere to a license agreement with the owner.

To the extent our intellectual property or other proprietary information protection is incomplete, we are exposed to a greater risk of direct competition. A third party could, without authorization, copy or otherwise obtain and use our products or technology, or develop similar products or technology. Our competitors could purchase our products and attempt to reverse engineer or replicate some or all of the competitive advantages we derive from our development efforts or design around our protected products or technology. Our failure to secure, protect and enforce our intellectual property rights could substantially harm the value of our products, brand and business. The theft or unauthorized use or publication of our trade secrets and other confidential business information could reduce the differentiation of our products, substantially and adversely impact our sales and commercial operations and harm our business. Additionally, the value of our investment in development or business acquisitions could be reduced

and third parties might make claims against us related to losses of their confidential or proprietary information. Any of the foregoing could materially and adversely affect our business, financial condition and results of operations.

Further, it is possible that others will independently develop the same or similar technology or product or otherwise obtain access to our unpatented technology, and in such cases, we could not assert any trade secret rights against such parties. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our trade secret rights and related confidentiality and nondisclosure provisions. If we fail to obtain or maintain trade secret protection, or if our competitors otherwise obtain our trade secrets or independently develop technology or products similar to and potentially competing with our products, our competitive market position could be materially and adversely affected. In addition, some courts are less willing or unwilling to protect trade secrets and agreement terms that address non-competition are difficult to enforce in many jurisdictions and might not be enforceable in certain cases.

We also seek to preserve the integrity and confidentiality of our data and other confidential information by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have confidence in these individuals, organizations, systems and tools, agreements or security measures may be breached, whereby detecting the disclosure or misappropriation of confidential information and enforcing a claim that a party illegally disclosed or misappropriated confidential information is difficult, expensive and time-consuming, and the outcome is unpredictable. Further, we may not be able to obtain adequate remedies for any breach.

Our inability to use software licensed from third parties, or our use of open source software under license terms that interfere with our proprietary rights, could disrupt our business.

Our products, including our RNS System, includes the use of open source software that is subject to the terms and conditions of the applicable open source software licenses that grant us permission to use such software. Although we monitor our use of open source software, the terms of many open source licenses to which we are subject have not been interpreted by U.S. or foreign courts, and there is a risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to provide our technology to our customers. Moreover, we cannot ensure that we have not incorporated additional open source software in our products in a manner that is inconsistent with the terms of the applicable license or our current policies and procedures. In the future, we could be required to seek licenses from third parties in order to continue offering our solutions, which licenses may not be available on terms that are acceptable to us, or at all. Claims related to our use of open source software could also result in litigation, require us to purchase costly licenses or require us to devote additional research and development resources to change the software underlying our technology, any of which would have a negative effect on our business, financial condition and operating results and may not be possible in a timely manner. We and our customers may also be subject to suits by parties claiming infringement due to the reliance by our products on certain open source software, and such litigation could be costly for us to defend or subject us to injunctions enjoining us from the sale of our products that contain open source software.

Alternatively, we may need to re-engineer our products or discontinue using portions of the functionality provided by our products. In addition, the terms of open source software licenses may require us to provide software that we develop using such software to others on unfavorable terms, such as by precluding us from charging license fees, requiring us to disclose our source code, requiring us to license certain of our own source code under the terms of the applicable open source license or requiring us to provide notice on our products using such code. Any such restriction on the use of our own software, or our inability to use open source or third-party software, could result in disruptions to our business or operations, or delays in our development of future products or enhancements of our existing products, such as our RNS System, which could impair our business.

Risks related to financial matters

We have a history of net losses, and we expect to continue to incur losses for the foreseeable future. If we do achieve profitability, we may not be able to sustain it.

We have incurred losses since our inception and expect to continue to incur losses for the foreseeable future. For the years ended December 31, 2019 and 2020, we reported net losses of $30.0 million and $ million,

respectively. As a result of these losses, as of December 31, 2020, we had an accumulated deficit of approximately $ million. We expect to continue to incur significant business expenses as we continue to enhance our efforts to promote our brand, increase sales, improve therapy effectiveness, enhance the patient and provider experience, and expand the population of eligible patients. In addition, we expect our selling, general and administrative expenses to increase following this offering due to the additional costs associated with being a public company. The net losses that we incur may fluctuate significantly from period to period. We will need to generate significant additional revenue and improve our gross margins in order to achieve and sustain profitability. It is possible that we will not achieve profitability or that, even if we do achieve profitability, we may not remain profitable for any substantial period of time. Our failure to achieve or maintain profitability could negatively impact the value of our common stock.

We have received funding under the Coronavirus Aid, Relief and Economic Security Act, or the CARES Act.

In April 2020, we executed a note in favor of Silicon Valley Bank evidencing an unsecured loan, or PPP loan, in the aggregate principal amount of approximately $4.0 million, which was made pursuant to the Paycheck Protection Program, or the PPP. The PPP was established under the CARES Act, which was enacted on March 27, 2020, and is administered by the U.S. Small Business Administration, the SBA. We have used all proceeds from the loan to retain employees, maintain payroll and make lease and utility payments and we intend to use a portion of the proceeds from this offering to repay this loan.

The PPP loan application required us to certify, among other things, that the current economic uncertainty made the PPP loan request necessary to support our ongoing operations. In 2020, the SBA, in consultation with the Department of Treasury, issued new guidance requiring borrowers to consider their ability to access other sources of liquidity before certifying in their loan applications that current economic uncertainty makes this loan request necessary to support the ongoing operations. The SBA further stated that it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith. We made the certification in good faith after analyzing our financial situation and access to capital and believe that we have satisfied all eligibility criteria for the PPP loan. However, the SBA guidance and criteria are subject to interpretation, including by the new administration, and while we intend to use proceeds from this offering to repay the loan, if we are found to be ineligible, we could be subject to significant penalties. If we become subject to penalties, it could result in harm to its business, results of operation and financial condition.

We are party to an existing Term Loan Agreement, which contain restrictive covenants that restrict activities we may engage in, and if we are unable to comply with these covenants then the lenders could declare an event of default wherein we may need to immediately repay the amounts due under the Term Loan Agreement.

In September 2020, we entered into a new Term Loan Agreement, or the New Term Loan, pursuant to which the lender has made available to us an aggregate principal amount not to exceed $60.0 million, of which, as of December 31, 2020, we have drawn $50 million and the remainder may be drawn only if we meet certain financial thresholds. The New Term Loan contains customary affirmative and restrictive covenants, including with respect to our ability to enter into fundamental transactions, incur additional indebtedness, grant liens, pay any dividend or make any distributions to our holders, make investments, merge or consolidate with any other person or engage in transactions with our affiliates, as well as financial maintenance covenants, including minimum liquidity and annual revenue covenants. If we fail to comply with the covenants or payments specified in the New Term Loan, the lenders could declare an event of default, which would give it the right to terminate its commitment to provide additional loans and declare all borrowings outstanding, together with accrued and unpaid interest and fees, to be

immediately due and payable. In addition, borrowings under the New Term Loan are secured by substantially all of our properties, rights and assets, including intellectual property.

To support our continued operations and the growth of our business, we may need to seek additional capital through new equity or debt financings, which sources of additional capital may not be available to us on acceptable terms or at all. If we are unable to obtain, if needed, adequate financing or financing on terms satisfactory to us, it could harm our business and growth prospects.

Our operations have consumed substantial amounts of cash since inception and we intend to continue to make significant investments to support our continued business operations and growth, respond to business challenges or opportunities, enhance our products, expand the population of eligible patients, and potentially acquire complementary businesses and technologies. For the years ended December 31, 2019 and 2020, our net cash used in operating activities was $25.0 million and $ million, respectively. As of December 31, 2020, we had $ million of cash and $ million in current liabilities.

Our future capital requirements may be significantly different from our current estimates and will depend on many factors, including our growth rate, the growth of sales and marketing activities, the expansion of the population of eligible patients, geographies we may choose to enter and commercialize in, updates to our products, potential introduction of new products, either developed internally or acquired, the continued oversight of regulatory agencies, and the continuing market acceptance of our products. Accordingly, we may need to engage in equity or debt financings or collaborative arrangements to secure additional funds. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing secured by us in the future could involve additional restrictive covenants relating to our capital-raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. In addition, during times of economic instability, it has been difficult for many companies to obtain financing in the public markets or to obtain debt financing, and we may not be able to obtain additional financing, if needed, on commercially reasonable terms, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us, if needed, it could harm our business and growth prospects.

Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations.

In general, under Section 382 of the U.S. Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change net operating losses, or NOLs, to offset future taxable income. A Section 382 “ownership change” generally occurs if one or more stockholders or groups of stockholders who own at least 5% of our stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. Similar rules may apply under state tax laws. As of December 31, 2020, we had $ million of federal net operating loss carryforwards and $ million of state and local net operating loss carryforwards. The federal net operating loss carryforwards of $ million arising in taxable years beginning after December 31, 2017 carry forward indefinitely, but the deduction for these carryforwards is limited to 80% of current-year taxable income. We have conducted a Section 382 study and determined that we experienced an ownership change in 2016 which resulted in permanent limitation of our pre-change NOL and research and development credit carryforwards. In addition, future changes in our stock ownership, some of which are outside of our control, could result in an additional ownership change under Section 382 of the Code, further limiting our ability to utilize NOLs arising prior to such ownership change in the future. There is also a risk that due to statutory or regulatory changes, such as suspensions on the use of NOLs (including California legislation enacted in June 2020 that limits the ability to use California net operating losses to offset California income for tax years beginning after 2019 and before 2023), or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to offset future income tax liabilities.

We have identified a material weakness in our internal control over financial reporting. If we are unable to remediate this material weakness, or if we identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations.

In the course of preparing our financial statements for fiscal year 2019, we identified a material weakness in our internal control over financial reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements may not be prevented or detected in a timely manner. We did not design controls to address segregation of duties over the review and approval of account reconciliations and manual journal entries. This material weakness could result in a misstatement of account balances or disclosures that would result in a material misstatement to the annual or interim financial statements that would not be prevented or detected.

We are in the process of implementing measures designed to improve our internal control over financial reporting and remediate the control deficiencies that led to the material weakness, including hiring additional accounting personnel and implementing improved accounting and financial reporting procedures and controls and more formal accounting policies.

We cannot be certain that the measures we have taken to date, and actions we may take in the future, will be sufficient to remediate the control deficiencies that led to our material weakness in our internal control over financial reporting or that they will prevent or avoid potential future material weaknesses. In addition, neither our management nor an independent registered public accounting firm has performed an evaluation of our internal control over financial reporting because no such evaluation has been previously required. If we are unable to successfully remediate our existing or any future material weaknesses in our internal control over financial reporting, or identify any additional material weaknesses, the accuracy and timing of our financial reporting may be negatively impacted, we may be unable to maintain compliance with securities law requirements regarding timely filing of periodic reports in addition to applicable stock exchange listing requirements, investors may lose confidence in our financial reporting, and our stock price may decline as a result.

Our history of recurring losses and anticipated expenditures raises substantial doubts about our ability to continue as a going concern. Our ability to continue as a going concern requires that we obtain sufficient funding to finance our operations.

We have incurred operating losses to date and it is possible we may never generate a profit. Our financial statements included elsewhere in this prospectus have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business. These financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of these uncertainties related to our ability to operate on a going concern basis.

We have concluded that our recurring losses from operations and need for additional financing to fund future operations raise substantial doubt about our ability to continue as a going concern. Similarly, our independent registered public accounting firm included an explanatory paragraph in its report on our financial statements as of and for the year ended December 31, 2019 with respect to this uncertainly. If we are unable to raise sufficient capital when needed, our business, financial condition and results of operations will be harmed, and we will need to significantly modify our operational plans to continue as a going concern. If we are unable to continue as a going concern, we might have to liquidate our assets and the values we receive for our assets in liquidation or dissolution could be significantly lower than the values reflected in our financial statements.

We will incur increased costs as a result of operating as a public company, and our management and board of directors will be required to devote substantial time to compliance with our public company responsibilities and corporate governance practices.

As a public company, we will incur significant legal, accounting, and other expenses that we did not incur as a private company. We expect such expenses to further increase after we are no longer an emerging growth company. The Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing

requirements of the Nasdaq Global Market, and other applicable securities rules and regulations impose various requirements on public companies. Furthermore, most senior members of our management team as well as our board of directors do not have significant experience with operating a public company. As a result, our management, board of directors, and other personnel will have to devote a substantial amount of time to compliance with these requirements. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. We cannot predict or estimate the amount of additional costs we will incur as a public company or the timing of such costs.

Other risks facing our company

The estimates of market opportunity and forecasts of market and revenue growth included in this prospectus, including growth in the number of Level 4 CECs, epileptologists and neurosurgeons, may prove to be inaccurate, and even if the market in which we compete achieves the forecasted growth, our business could fail to grow at similar rates, if at all.

Market opportunity estimates and growth forecasts are subject to significant uncertainty. Our estimates of the annual total addressable markets for our RNS System are based on a number of internal and third-party estimates and assumptions, including, without limitation, our assumptions relative to the number of adults with drug-resistant focal epilepsy in the United States who are treated at Level 4 CECs each year; the number of neuromodulation procedures annually in the United States; the growth in number of Level 4 CECs, epileptologists, and neurosurgeons; the growth in number of patients referred to Level 4 CECs; and the potential growth of our market opportunity with the expansion of treatment to patients under age 18. While we believe our assumptions and the data underlying our estimates are reasonable, these assumptions and estimates may not be correct and the conditions supporting our assumptions or estimates may change at any time, including as a result of the COVID-19 pandemic, thereby reducing the predictive accuracy of these underlying factors. As a result, our estimates of the annual total addressable market for our RNS System may prove to be incorrect. If the actual annual total addressable market for our RNS System is smaller than we have estimated, it may impair our sales growth and have an adverse impact on our business. Alternatively, if the actual annual total addressable market for our RNS System is bigger than we have estimated, we may not be ready to manage such growth, which may impair our sales and have an adverse impact on our business.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit or halt the marketing and sale of our products. The expense and potential unavailability of insurance coverage for liabilities resulting from our products could harm our business and our ability to sell our products, including our RNS System.

We face an inherent risk of product liability as a result of the marketing and sale of our products. Although we have established internal procedures designed to minimize risks that may arise from quality issues, there can be no assurance that we will eliminate or mitigate occurrences of these issues and associated liabilities. For example, we may be sued if our RNS System causes or is perceived to cause injury or is found to be otherwise unsuitable during manufacturing, marketing, sale, or distribution. Any such product liability claim may include, but not be limited to, allegations of defects in manufacturing, defects in design, defects in clinical study design or performance, a failure to warn of dangers inherent in the product, negligence, strict liability or a potential breach of implied or expressed warranties. In addition, we may be subject to claims against us even if the apparent injury is due to the actions of others or the pre-existing health of the patient. For example, we rely on healthcare providers to properly and correctly implant and use our RNS System as part of a patient's treatment protocol. If these healthcare providers are not properly trained, are negligent in implanting or using our RNS System or implant or use our RNS System "off-label," the capabilities or reputation of our RNS System may be diminished or the patient may suffer critical injury. While we believe that we clearly describe the limitations of our label, we cannot prevent an epileptologist from referring a patient for an RNS System implant for off-label indications, prevent a neurosurgeon from implanting our RNS System for off-label applications, or having our RNS System programmed based on off-label considerations. In addition, we cannot guarantee that healthcare providers are adequately trained prior to incorporating our RNS System into their practice. Complications resulting from the use of our products, including use of our RNS System off-label or use by healthcare providers who have not been trained appropriately, or at all, may expose us to product liability claims and harm our reputation. We may also be subject to claims that are caused by the activities of our

suppliers and vendors, such as those who provide us with components, materials, or services, which may have an impact on our products and result in product liability claims brought against us.

If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit or halt commercialization of our products. Even a successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our products;
- injury to our brand or reputation;
- initiation of investigations by regulators;
- costs to defend the related litigation;
- increased insurance premiums;
- a diversion of management's time and our resources;
- substantial monetary awards to trial participants or patients;
- regulatory investigations, product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenue;
- exhaustion of any available insurance and our capital resources; and
- the inability to market and sell our products.

We believe we have adequate product liability insurance, but it may not prove to be adequate to cover all liabilities that we may incur. Insurance coverage is increasingly expensive. We currently carry product liability insurance in the amount of $5.0 million in the aggregate. In the future, we may not be able to maintain or obtain insurance at a reasonable cost or in an amount adequate to satisfy any liability that may arise. Our insurance policy contains various exclusions, and we may be subject to a product liability claim for which we have no coverage. The potential inability to obtain sufficient product liability insurance at an acceptable cost to protect against product liability claims could prevent or inhibit the marketing and sale of products we may develop. We may have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts, which would harm our business, financial condition and results of operations. In addition, any product liability claims brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing continuing coverage, harm our patient-focused brand, negatively impact our reputation in the industry, significantly increase our expenses and reduce product sales.

Some of our customers may also have difficulty in procuring or maintaining liability insurance to cover their operations, including their use of our products. Medical malpractice carriers are withdrawing coverage in certain states or substantially increasing premiums. If this trend continues or worsens, our customers may discontinue using our products and potential additional customers may opt against purchasing our products due to the cost or inability to procure insurance coverage.

The failure of third parties to meet their contractual, regulatory and other obligations could adversely affect our business.

We rely on suppliers, vendors, partners, consultants, and other third parties to research, develop, and partake in both the manufacturing and commercialization of our products, as well as manage certain parts of our business. Using these third parties poses a number of risks, such as:

- they may not perform to our standards or legal requirements;

- they may not produce reliable results;
- they may not perform in a timely manner;
- they may not maintain confidentiality of our proprietary information;
- disputes may arise with respect to ownership of rights to products developed with our partners; and
- disagreements could cause delays in, or termination of, the research, development or commercialization of our products or result in litigation or arbitration.

Moreover, some third parties may be located in markets subject to political and social risk, corruption, infrastructure problems and natural disasters, in addition to country-specific privacy and data security risk given current legal and regulatory environments. Failure of third parties to meet their contractual, regulatory and other obligations may materially affect our business.

Litigation and other legal proceedings may harm our business.

We are involved in, and from time to time in the future we may become involved in, legal proceedings relating to patent and other intellectual property matters, product liability claims, employee matters, tort or contract claims, federal regulatory investigations, private rights of action, securities class action and other legal proceedings or investigations, which could have a negative impact on our reputation, business and financial condition and divert the attention of our management from the operation of our business.

Litigation is inherently unpredictable and can result in excessive or unanticipated verdicts, judgements, and/or injunctive relief that affect how we operate our business. We could incur judgments or enter into settlements of claims for monetary damages or for agreements to change the way we operate our business, or both. There may be an increase in the scope of these or other matters or there may be additional lawsuits, claims, proceedings or investigations in the future, which could harm our business, financial condition and results of operations. Adverse publicity about regulatory or legal action against us, irrespective of outcome, could damage our reputation and brand image, undermine our customers' confidence and reduce long-term demand for our products, even if the regulatory or legal action is unfounded or not material to our operations.

Future legislation, potential changes in federal regulatory agency leadership, and new policies and priorities under the Biden Administration may adversely impact our company.

With a new Congress having taken office in January 2021, Democrats retain control of the U.S. House of Representatives and have taken control of the U.S. Senate. This means unified Democratic control of both chambers of Congress and the White House. We anticipate that Congress will devote substantial attention in 2021 to healthcare matters, through greater oversight of the FDA. Although the prospects for the enactment of major legislation in 2021 are not certain at this time, the enactment of more targeted measures may be more likely due to the increased possibility of bipartisan support for consideration of such measures. It is too early to know what any such legislation may be, as the relevant Congressional committees are still in the process of being organized for the new Congress and their respective agendas are in early planning stages. In addition, although it is too early to know the details of the new administration's proposed safety protocols, the new administration could impose new or modified COVID-19 programs and restrictions, including more stringent shelter-in-place" and "safer-at-home" orders, quarantines, executive orders and similar government orders and restrictions to control the spread and ameliorate the impact of COVID-19. Additionally, the new administration may propose COVID-19-related fiscal and tax measures and/or revise or create new regulatory requirements that would apply to us or our customers, thereby impacting our business, operations and profitability. Moreover, changes in the leadership and senior staffs of the FDA could impact the rulemaking, supervision, examination and enforcement priorities and policies of the agency. The potential impact of any changes in agency personnel, policies and priorities on the medical device sector, including us, cannot be predicted at this time.

In addition, the new administration is expected to bring an increased focus on enforcement of federal consumer protection laws and appoint consumer-oriented regulators. It is possible that regulators in the new administration

could promulgate rulemakings and bring enforcement actions that materially impact our business and the business of our customers. These regulators may, for example, augment requirements that apply to the medical device approval process, impose additional clinical studies requirements, or change privacy rules that impact how we maintain, use, and share sensitive healthcare data, and could otherwise revise or create new regulatory requirements that apply to us.

We may not be able to respond quickly or effectively to regulatory, legislative, and other developments, and these changes may in turn impair our ability to offer our current or planned products, or increase our cost of doing business. In addition, if our practices are not consistent or viewed as not consistent with legal and regulatory requirements, we may become subject to audits, inquiries, whistleblower complaints, adverse media coverage, investigations, or criminal or civil sanctions, all of which may have an adverse effect on our reputation, business, financial condition and results of operations.

As a result of being a public company, we are obligated to develop and maintain proper and effective internal control over financial reporting and any failure to maintain the adequacy of these internal controls may negatively impact investor confidence in our company and, as a result, the value of our common stock.

We will be required pursuant to Section 404 of the Sarbanes-Oxley Act to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. In addition, our independent registered public accounting firm will be required to attest to the effectiveness of our internal control over financial reporting in our first annual report required to be filed with the Securities and Exchange Commission, or the SEC, following the date we are no longer an emerging growth company. We have not yet commenced the costly and challenging process of compiling the system and processing documentation necessary to perform the evaluation required under Section 404. We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge and compile the system and process documentation necessary to perform the evaluation needed to comply with Section 404. Any failure to maintain effective internal control over financial reporting could severely inhibit our ability to accurately report our financial condition or results of operations. If we are unable to conclude that our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness in our internal control over financial reporting, our reputation could be negatively impacted, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, we could be subject to sanctions or investigations by the Nasdaq Global Market, the SEC or other regulatory authorities and our access to the capital markets could be restricted in the future.

We may acquire other businesses, which could require significant management attention, disrupt our business, dilute stockholder value and harm our results of operations.

As part of our business strategy, we may in the future make acquisitions or investments in complementary companies, products or technologies that we believe fit within our business model and can address the needs of our customers and the patients they serve. In the future, we may not be able to acquire and integrate other companies, products or technologies in a successful manner. We may not be able to find suitable acquisition candidates, and we may not be able to complete such acquisitions in an appropriate timeframe and on favorable terms, if at all. In addition, the pursuit of potential acquisitions may divert the attention of management and cause us to incur additional expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, including increases in revenue, and any acquisitions we complete could be viewed negatively by management, as well as our employees, customers, investors and industry analysts.

Future acquisitions may reduce our cash available for operations and other uses and could result in amortization expense related to identifiable assets acquired. We may have to pay cash, incur debt or issue equity securities to pay for any such acquisition, each of which could adversely affect our financial condition or the value of our common stock. The sale or issuance of equity to finance any such acquisitions would result in dilution to our stockholders. The incurrence of indebtedness to finance any such acquisition would result in fixed obligations and could also

include covenants or other restrictions that could impede our ability to manage our operations. In addition, our future results of operations may be harmed by the dilutive effect of an acquisition, performance earn-outs or contingent bonuses associated with an acquisition. Furthermore, acquisitions may require large, one-time charges and can result in increased debt or contingent liabilities, adverse tax consequences, additional stock-based compensation expenses and the recording and subsequent amortization of amounts related to certain purchased intangible assets, any of which items could negatively affect our future results of operations. We may also incur goodwill impairment charges in the future if we do not realize the expected value of any such acquisitions.

Risks related to this offering and ownership of our common stock

Our stock price may be volatile, and the value of our common stock may decline.

The market price of our common stock may be highly volatile and may fluctuate or decline substantially as a result of a variety of factors, some of which are beyond our control or are related in complex ways, including:

- actual or anticipated fluctuations in our financial condition and results of operations;
- variance in our financial performance from expectations of securities analysts or investors;
- changes in the coverage decisions, reimbursement or pricing of our products;
- changes in our projected operating and financial results;
- changes in laws or regulations applicable to our products;
- announcements by us or our competitors of significant business developments, acquisitions, or new offerings;
- publicity associated with issues related to our products;
- our involvement in regulatory investigations or litigation;
- future sales of our common stock or other securities, by us or our stockholders, as well as the anticipation of lock-up releases;
- changes in senior management or key personnel;
- the trading volume of our common stock;
- changes in the anticipated future size and growth rate of our market;
- general economic, regulatory, and market conditions, including economic recessions or slowdowns;
- the impact of the COVID-19 pandemic;
- changes in the structure of healthcare payment systems; and
- developments or disputes concerning our intellectual property or other proprietary rights.

Broad market and industry fluctuations, as well as general economic, political, regulatory, and market conditions, may negatively impact the market price of our common stock. In addition, given the relatively small expected public float of shares of our common stock on the Nasdaq Global Market, the trading market for our shares may be subject to increased volatility. In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us, because medical device companies have experienced significant stock price volatility in recent years. If we face such litigation, it could result in substantial costs and a diversion of management's attention and resources, which could harm our reputation and our business.

There has been no prior market for our common stock. An active market may not develop or be sustainable and investors may not be able to resell their shares at or above the initial public offering price.

There has been no public market for our common stock prior to this offering. The initial public offering price for our common stock will be determined through negotiations between the underwriters and us and may vary from the market price of our common stock following this offering. If you purchase shares of our common stock in this offering, those shares may not be able to be resold at or above the initial public offering price, if at all. An active or liquid market in our common stock may not develop after this offering or, if it does develop, it may not be sustainable.

Immediate and substantial dilution in the net tangible book value of the shares of common stock purchased in this offering.

The assumed initial public offering price of our common stock is substantially higher than the pro forma net tangible book value per share of our common stock immediately after this offering. If you purchase shares of our common stock in this offering, you will suffer immediate dilution of $ per share, or $ per share if the underwriters exercise their option to purchase additional shares in full, representing the difference between our pro forma as adjusted net tangible book value per share after giving effect to the sale of common stock in this offering and the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus. See "Dilution." If outstanding options or warrants are exercised in the future, you will experience additional dilution.

We will have broad discretion in the use of proceeds from this offering and may invest or spend the proceeds in ways with which you do not agree and in ways that may not yield a return.

We will have broad discretion over the use of proceeds from this offering. Investors may not agree with our decisions, and our use of the proceeds may not yield any return on your investment. We currently intend to use the net proceeds from this offering to expand our sales and marketing efforts, increase our research and development activities, conduct or sponsor clinical studies, expand internationally, and provide for working capital and other general corporate purposes. We also intend to use a portion of the net proceeds we receive from this offering to repay up to approximately $4.0 million of indebtedness under our Paycheck Protection Program loan. Our failure to apply the net proceeds of this offering effectively could impair our ability to pursue our growth strategy or could require us to raise additional capital. In addition, pending their use, the proceeds of this offering may be placed in investments that do not produce income or that may lose value.

Purchases of shares of common stock in this offering by our existing stockholders and their affiliated entities may further reduce the public float for our common stock.

To the extent certain of our existing stockholders and their affiliated entities purchase shares of our common stock in this offering, such purchases would reduce the non-affiliate public float of our shares, meaning the number of shares of our common stock that are not held by officers, directors and our principal stockholders. A reduction in the public float could reduce the number of shares that are available to be traded at any given time, thereby adversely impacting the liquidity of our common stock and depressing the price at which you may be able to sell shares of common stock purchased in this offering.

Future sales of our common stock in the public market could cause the market price of our common stock to decline.

Sales of a substantial number of shares of our common stock in the public market following the closing of this offering, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. We are unable to predict the effect that such sales may have on the prevailing market price of our common stock.

Based on shares outstanding as of December 31, 2020, upon the closing of this offering, we will have outstanding a total of shares of common stock, assuming no exercise of the underwriters' option to purchase additional shares and no exercise of outstanding options or warrants, and after giving effect to the conversion of all

outstanding shares of convertible preferred stock into shares of common stock upon the closing of this offering. All of our executive officers and directors and the holders of substantially all the shares of our capital stock not acquired as part of this public offering are subject to lock-up agreements that restrict their ability to transfer shares of our common stock, stock options and other securities convertible into, exchangeable for, or exercisable for our common stock during the period ending on, and including, the 180th day after the date of this prospectus, subject to specified exceptions. J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC may, in their discretion, permit our stockholders who are subject to these lock-up agreements to sell shares prior to the expiration of the lock-up agreements. All of our shares will become eligible for sale after the lock-up agreements expire, of which shares are held by directors, executive officers and other affiliates and will be subject to volume limitations under Rule 144 under the Securities Act, and may also be subject to vesting requirements.

As of December 31, 2020, there were approximately shares of common stock subject to outstanding stock options. We intend to register all of the shares of common stock issuable upon exercise of outstanding stock options, and upon exercise of settlement of any options or other equity incentives we may grant in the future, for public resale under the Securities Act. Accordingly, these shares will be able to be freely sold in the public market upon issuance as permitted by any applicable vesting requirements, subject to the lock-up agreements and, for our affiliates, volume limitations described above.

In addition, holders of shares of common stock issuable upon the conversion of outstanding shares of convertible preferred stock and shares issuable upon the exercise of outstanding warrants have rights, subject to some conditions, to require us to file registration statements for the public resale of the common stock issuable upon conversion of such shares or to include such shares in registration statements that we may file on our behalf or for other stockholders. See “Shares eligible for future sale.”

Our operating results may fluctuate across periods, which makes our future operating results difficult to predict and could cause our operating results to fall below expectations or any guidance we may provide.

Our quarterly and annual operating results may fluctuate across periods, which makes it difficult for us to predict our future operating results. Accordingly, the results of any one quarter or period should not be relied upon as an indication of future performance. Our quarterly and annual operating results may fluctuate due to a variety of factors, many of which are outside of our control, including, but not limited to:

- the level of demand for our products and any future products, which may vary significantly from period to period;
- expenditures that we may incur to acquire, develop or commercialize additional products and technologies;
- the timing and cost of obtaining regulatory approvals or clearances to expand our indications and get future approvals of any future products or features;
- pricing pressures;
- our ability to expand the geographic reach of our commercial efforts;
- the degree of competition in our industry and any change in the competitive landscape of our industry, including consolidation among our competitors or future partners;
- coverage and reimbursement policies with respect to our products, and potential future products that compete with our products;
- the timing and success or failure of preclinical or clinical studies for expanding the indications of our RNS System or any future products we develop or competing products;
- positive or negative coverage in the media or clinical publications of our products or products of our competitors or our industry;

- the timing of customer orders or scheduling of implants using our products and the number of available selling days in any quarterly period, which can be impacted by holidays, the mix of products sold and the geographic mix of where products are sold, including any related foreign currency impact;
- the impact of COVID-19 on procedure volume or otherwise;
- the timing and cost of, and level of investment in, research, development, licenses, regulatory approval, commercialization activities, acquisitions and other strategic transactions, or other significant events relating to our products, which may change from time to time;
- the cost of manufacturing our products, which may vary depending on the quantity of production and the terms of our agreements with third-party suppliers; and
- future accounting pronouncements or changes in our accounting policies.

The cumulative effects of these factors could result in fluctuations and unpredictability in our quarterly and annual operating results. As a result, comparing our operating results on a period-to-period basis may not be meaningful. Further, our historical results are not necessarily indicative of results expected for any future period, and quarterly results are not necessarily indicative of the results to be expected for the full year or any other period. Investors should not rely on our past results as an indication of our future performance.

This variability and unpredictability could also result in our failing to meet the expectations of industry or financial analysts or investors for any period. If our revenue or operating results fall below the expectations of analysts or investors or below any forecasts we may provide to the market, it could harm our business, financial condition, and results or operations.

Concentration of ownership of our common stock among our executive officers, directors and principal stockholders may prevent new investors from influencing significant corporate decisions.

Based on the number of shares of common stock outstanding as of December 31, 2020 and including the shares to be sold in this offering, upon the closing of this offering, our executive officers, directors and current beneficial owners of 5% or more of our common stock will, in the aggregate, beneficially own approximately % of our common stock (assuming no exercise of the underwriters' option to purchase an additional shares of common stock). These stockholders, acting together, will be able to significantly influence all matters requiring stockholder approval, including the election and removal of directors and any merger or other significant corporate transactions. The interests of this group of stockholders may not coincide with the interests of other stockholders.

Some of these persons or entities may have interests different than investors purchasing shares in this offering. For example, because many of these stockholders purchased their shares at prices substantially below the price at which shares are being sold in this offering and have held their shares for a longer period, they may be more interested in selling our company to an acquirer than other investors, or they may want us to pursue strategies that deviate from the interests of other stockholders.

If securities or industry analysts do not publish research or publish unfavorable or inaccurate research about our business, our common stock price and trading volume could decline.

Our stock price and trading volume will be heavily influenced by the way analysts and investors interpret our financial information and other disclosures. If securities or industry analysts do not publish research or reports about our business, delay publishing reports about our business or publish negative or unfavorable reports about our business, regardless of accuracy, our common stock price and trading volume could decline.

The trading market for our common stock will depend, in part, on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. We expect that only a limited number of analysts will cover our company following our initial public offering. If the number of analysts that cover us declines, demand for our common stock could decrease and our common stock price and trading volume may decline.

Even if our common stock is actively covered by analysts, we do not have any control over the analysts or the measures that analysts or investors may rely upon to forecast our future results. Over-reliance by analysts or investors on any particular metric to forecast our future results may result in forecasts that differ significantly from our own.

Regardless of accuracy, unfavorable interpretations of our financial information and other public disclosures could have a negative impact on our stock price. If our financial performance fails to meet analyst estimates, for any of the reasons discussed above or otherwise, or one or more of the analysts who cover us downgrade our common stock or change their opinion of our common stock, our reputation may be adversely impacted and our stock price would likely decline.

We do not intend to pay dividends for the foreseeable future and, as a result, stockholder ability to achieve a return on their investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividends on our capital stock, and we do not intend to pay any cash dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors and may be restricted by the terms of any then-current credit facility, including the New Term Loan. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

We are an emerging growth company and a smaller reporting company, and our compliance with the reduced reporting and disclosure requirements applicable to emerging growth companies and smaller reporting companies could make our common stock less attractive to investors.

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the JOBS Act), and we expect to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including the auditor attestation requirements of Section 404, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved and extended adoption period for accounting pronouncements.

Even after we no longer qualify as an emerging growth company, we may still qualify as a “smaller reporting company,” which would allow us to continue to take advantage of many of the same exemptions from disclosure requirements, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding executive compensation in this prospectus and our periodic reports and proxy statements.

We cannot predict whether investors will find our common stock less attractive as a result of our reliance on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain an emerging growth company until the earliest of (i) the end of the fiscal year following the fifth anniversary of the completion of this offering, (ii) the first fiscal year after our annual gross revenues exceed $1.07 billion, (iii) the date on which we have, during the immediately preceding three-year period, issued more than $1.00 billion in non-convertible debt securities, or (iv) the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeds $700 million as of the end of the second quarter of that fiscal year.

Anti-takeover provisions in our charter documents to be in effect upon the closing of this offering and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our common stock.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws to be in effect upon the closing of this offering may have the effect of delaying or preventing a change of control or changes

in our management without the consent of our board of directors. Our amended and restated certificate of incorporation and amended and restated bylaws will include provisions that:

- provide for a classified board of directors whose members serve staggered terms;
- authorize our board of directors to issue, without further action by the stockholders, shares of undesignated convertible preferred stock with terms, rights, and preferences determined by our board of directors that may be senior to our common stock;
- require that any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent;
- specify that special meetings of our stockholders can be called only by our board of directors, the chairperson of our board of directors, or our chief executive officer;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors;
- prohibit cumulative voting in the election of directors;
- provide that our directors may be removed for cause only upon the vote of the holders of at least 662/3% of our outstanding shares of common stock;
- provide that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum; and
- require the approval of our board of directors or the holders of at least 662/3% of our outstanding shares of common stock entitled to vote at an election of directors to adopt, to amend our bylaws and certain provisions of our certificate of incorporation.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally, subject to certain exceptions, prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any "interested" stockholder for a period of three years following the date on which the stockholder became an "interested" stockholder. Any delay or prevention of a change of control transaction or changes in our management could cause the market price of our common stock to decline.

Our amended and restated certificate of incorporation that will be in effect upon the closing of this offering will provide that the Court of Chancery of the State of Delaware or, under certain circumstances, the federal district courts of the United States of America will be the exclusive forums for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.

Our amended and restated certificate of incorporation that will be in effect upon the closing of this offering will provide that the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) is the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law for:

- any derivative action or proceeding brought on our behalf;
- any action asserting a breach of fiduciary duty;
- any action arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation, or our amended and restated bylaws; and

- any action asserting a claim against us that is governed by the internal-affairs doctrine.

These provisions would not apply to suits brought to enforce a duty or liability created by the Exchange Act or any claim for which the federal district courts of the United States of America have exclusive jurisdiction. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims.

Our stockholders cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of, and consented to, the provisions of our amended and restated certificate of incorporation described in the preceding sentences.

To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated certificate of incorporation to be in effect upon the closing of this offering will further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions. In such instance, we would expect to vigorously assert the validity and enforceability of the exclusive forum provisions of our amended and restated certificate of incorporation to be in effect upon the closing of this offering. This may require significant additional costs associated with resolving such action in other jurisdictions and there can be no assurance that the provisions will be enforced by a court in those other jurisdictions.

These exclusive forum provisions may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage lawsuits against us and our directors, officers and other employees. If a court were to find either exclusive-forum provision in our amended and restated certificate of incorporation to be in effect upon the closing of this offering to be inapplicable or unenforceable in an action, we may incur further significant additional costs associated with resolving the dispute in other jurisdictions, all of which could harm our business and financial condition.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations, financial condition, business strategy and plans and objectives of management for future operations, are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will,” or “would,” or the negative of these words or other similar terms or expressions.

We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. These forward-looking statements are subject to a number of risks, uncertainties, factors and assumptions described in “Risk factors” and elsewhere in this prospectus, regarding, among other things:

- our expected future growth;
- the size and growth potential of the markets for our products, and our ability to serve those markets;
- our ability to accurately forecast demand for our products;
- our expectations regarding the impact of the COVID-19 pandemic on our sales, business, financial condition and results of operations;
- the rate and degree of market acceptance of our products;
- coverage and reimbursement for procedures performed using our products, including pre-implant evaluations, implant procedures, and follow-up care;
- the performance of third parties in connection with the manufacturing and development of our products, including single-source suppliers;
- regulatory developments in the United States and in any foreign countries in which we make seek to do business;
- our ability to retain regulatory approval for our products or obtain regulatory approval for new products or indications in the United States and in any foreign countries in which we make seek to do business;
- our research and development for existing products and new products;
- our reliance on third-party suppliers for product components, some of which are single source suppliers;
- our ability to manufacture our products in conformity with FDA requirements and with regulatory requirements of any foreign countries in which we make seek to do business;
- our ability to scale our organizational culture;
- the development, regulatory approval, efficacy and commercialization of competing products;
- our ability to retain and hire our senior management and operational personnel;
- our expectations regarding the period during which we will qualify as an emerging growth company under the JOBS Act and as a smaller reporting company under the federal securities laws;
- our ability to develop and maintain our corporate infrastructure, including our ability to remediate our existing material weakness and to design and maintain an effective system of internal controls;
- our use of the proceeds from this offering;

- our financial performance and capital requirements; and
- our expectations regarding our ability to obtain, maintain and enforce intellectual property protection for our products and technology, as well as our ability to operate our business without infringing, misappropriating or otherwise violating the intellectual property rights of others.

These risks are not exhaustive. Other sections of this prospectus may include additional factors that could harm our business and financial performance. New risk factors may emerge from time to time and it is not possible for our management to predict all risk factors, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in, or implied by, any forward-looking statements.

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this prospectus primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition and operating results. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors, many of which are described in the section titled “Risk Factors” and elsewhere in this prospectus. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this prospectus. We undertake no obligation to update any forward-looking statements made in this prospectus to reflect events or circumstances after the date of this prospectus or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments.

In addition, statements that “we believe” or “we expect” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this prospectus. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

You should carefully read, consider, and evaluate this prospectus and the documents that we reference in this prospectus and have filed as exhibits to the registration statement of which this prospectus is a part with the understanding that our actual future results, levels of activity, performance and achievements may be different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

MARKET AND INDUSTRY DATA

This prospectus contains estimates and information concerning our industry and our business, including estimated market size. Unless otherwise expressly stated, we obtained this industry, business, market, medical and other information from reports, research surveys, studies and similar data prepared by third parties, industry, medical and general publications, government data and similar sources.

This information involves a number of assumptions and limitations. Although we are responsible for all of the disclosure contained in this prospectus and we believe the market position, market opportunity and market size in this prospectus is reliable, we have not independently verified the accuracy or completeness of this third-party data. In addition, projections, assumptions and estimates of our future performance and the future performance of the industry in which we operate are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in “Risk factors.” These and other factors may cause results to differ materially from those expressed in these publications and reports.

USE OF PROCEEDS

We estimate that we will receive net proceeds from this offering of approximately $ million (or approximately $ million if the underwriters exercise their option to purchase an additional shares in full), based on the assumed initial public offering price of $ per share of common stock, the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share of common stock, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, an increase (decrease) of 1,000,000 shares of common stock offered by us would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the assumed initial public offering price of $ per share of common stock, the midpoint of the price range set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purpose of this offering is to provide us with additional capital. We intend to use the net proceeds from this offering to expand our sales and marketing efforts, increase our research and development activities, conduct or sponsor clinical studies, expand internationally, and provide for working capital and other general corporate purposes. We will also use a portion of the net proceeds we receive from this offering to repay approximately $4.0 million of indebtedness under our Paycheck Protection Program loan. We may use a portion of the net proceeds to acquire complementary products, technologies, intellectual property or businesses; however, we currently do not have any agreements or commitments to complete any such transactions and are not involved in negotiations regarding such transactions.

The approximately $4.0 million of outstanding indebtedness under our Paycheck Protection Program loan that we will repay with the proceeds from this offering is scheduled to mature in April 2022 and interest on such amount accrues at a rate of 1.0% per year. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Paycheck Protection Program.”

We cannot predict with certainty all of the particular uses for the proceeds of this offering or the amounts that we will actually spend on the uses set forth above. Accordingly, our management will have broad discretion in applying the net proceeds of this offering. The timing and amount of our actual expenditures will be based on many factors, including cash flows from operations and the anticipated growth of our business. We intend to invest the net proceeds to us from the offering that are not used as described above in interest-bearing, investment-grade instruments.

DIVIDEND POLICY

We have never declared or paid cash dividends on our capital stock and we do not currently intend to pay any cash dividends on our capital stock for the foreseeable future. We currently intend to retain all available funds and any future earnings to fund the development and expansion of our business. Any future determination regarding the declaration and payment of dividends will be at the discretion of our board of directors and will depend on then-existing conditions, including our financial condition, operating results, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant. In addition, we have entered into, and may enter into agreements in the future, that contain restrictions on payments of cash dividends, including our New Term Loan.

CAPITALIZATION

The following table sets forth our cash and our capitalization as of December 31, 2020, on:

- an actual basis;
- a pro forma basis to give effect to: (i) the conversion of shares of convertible preferred stock outstanding as of December 31, 2020 into an aggregate of shares of common stock upon the closing of this offering; (ii) the issuance of shares of Series B' convertible preferred stock upon the net exercise of outstanding warrants as of December 31, 2020 to purchase shares of Series B' convertible preferred stock, with an exercise price of $ per share, prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and the conversion of such shares of Series B' convertible preferred stock into an equal number of shares of common stock upon the closing of this offering; (iii) the reclassification of the Series B' convertible preferred stock warrant liability to total stockholders' deficit as the warrants will be net exercised, (iv) the issuance of shares of common stock upon the net exercise of outstanding warrants as of December 31, 2020 to purchase shares of common stock, with an exercise price of $ per share, prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus; and (v) the filing and effectiveness of our amended and restated certificate of incorporation upon the closing of this offering; and
- a pro forma as adjusted basis to give further effect to (i) the issuance and sale of shares of common stock in this offering at the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us and (ii) the repayment of approximately $4.0 million of indebtedness under our Paycheck Protection Program loan.

The pro forma and pro forma as adjusted information below is illustrative only, and our capitalization following the completion of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should carefully read, consider, and evaluate this information in conjunction with our financial statements and the related notes included elsewhere in this prospectus, the information set forth in "Management's discussion and analysis of financial condition and results of operations" and other financial information contained elsewhere in this prospectus.

(in thousands, except share and per share data)	As of December 31, 2020		
	Actual	**Pro forma**	**Pro forma as adjusted[1]**
Cash and cash equivalents	$	$	$
Short-term debt			
Long-term debt[2]	$	$	$
Redeemable convertible preferred stock warrant liability			
Redeemable convertible preferred stock, $0.001 par value— shares authorized, shares issued and outstanding, actual; no shares authorized, issued, or outstanding, pro forma and pro forma as adjusted			
Stockholders' (deficit) equity:			
Convertible preferred stock, $0.001 par value—no shares authorized, issued, or outstanding, actual; shares authorized, no shares issued or outstanding, pro forma and pro forma as adjusted			
Common stock, $0.001 par value— shares authorized, shares issued and outstanding, actual; shares authorized, shares issued and outstanding, pro forma; shares authorized, shares issued and outstanding, pro forma as adjusted			
Additional paid-in capital			
Accumulated deficit			
Total stockholders' (deficit) equity			
Total capitalization	$	$	$

(1) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share of common stock, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) each of cash, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, an increase (decrease) of 1,000,000 shares of common stock offered by us would increase (decrease) each of cash, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming the assumed initial public offering price of $ per share of common stock, the midpoint of the price range set forth on the cover page of this prospectus, remains the same, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(2) Net of discount and issuance costs of $ million.

The outstanding share information in the table above is based on shares of common stock outstanding as of December 31, 2020 (including our convertible preferred stock on an as-converted basis), and excludes:

- shares of common stock issuable upon the exercise of outstanding stock options as of December 31, 2020 with a weighted-average exercise price of $ per share, under our equity incentive plans;
- shares of common stock available under our existing equity incentive plan, which will expire upon the execution of the underwriting agreement in this offering;
- shares of common stock issuable upon the exercise of warrants outstanding as of December 31, 2020, with a weighted-average exercise price of $ per share (other than warrants that will automatically be net exercised upon the closing of this offering);
- shares of common stock reserved for future issuance under our 2021 Equity Incentive Plan, or 2021 Plan, which will become effective upon the execution of the underwriting agreement for this offering, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan; and
- shares of common stock reserved for future issuance under our ESPP, which will become effective upon the execution of the underwriting agreement for this offering, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan.

DILUTION

If you invest in our common stock in this offering, your ownership interest will be immediately diluted to the extent of the difference between the initial public offering price per share and the pro forma as adjusted net tangible book value per share of common stock immediately after this offering.

As of December 31, 2020, our historical net tangible book deficit was $ million, or $ per share of common stock. Our historical net tangible book deficit represents our total tangible assets (total assets less deferred offering costs) less total liabilities and convertible preferred stock, and our historical net tangible book deficit per share is that number divided by the number of shares of common stock outstanding as of December 31, 2020.

As of December 31, 2020, our pro forma net tangible book deficit was $ million, or $ per share of common stock, after giving effect to (i) the conversion of all shares of convertible preferred stock outstanding as of December 31, 2020 into an aggregate of shares of common stock upon the closing of this offering; (ii) the issuance of shares of Series B' convertible preferred stock upon the net exercise of outstanding warrants as of December 31, 2020 to purchase shares of Series B' convertible preferred stock, with an exercise price of $ per share, prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and the conversion of such shares of Series B' convertible preferred stock into an equal number of shares of common stock upon the closing of this offering; (iii) the reclassification of the Series B' convertible preferred stock warrant liability to total stockholders' deficit as the warrants will be net exercised, and (iv) the issuance of shares of common stock upon the net exercise of outstanding warrants as of December 31, 2020 to purchase shares of common stock, with an exercise price of $ per share, prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus. Pro forma net tangible book deficit per share represents pro forma net tangible book deficit divided by the total number of common shares outstanding as of December 31, 2020, after giving effect to the pro forma adjustments described above.

After giving further effect to the receipt of the net proceeds from our sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us and the repayment of approximately $4.0 million of indebtedness under our Paycheck Protection Program loan, our pro forma as adjusted net tangible book value as of December 31, 2020 would be $ million, or $ per share of common stock. This represents an immediate increase in pro forma as adjusted net tangible book value of $ per share to our existing stockholders and immediate dilution of $ in pro forma as adjusted net tangible book value per share to investors purchasing common stock in this offering.

The following table illustrates this dilution on a per share basis to investors in this offering, which is determined by subtracting pro forma as adjusted net tangible book value per share after this offering from the initial public offering price per share paid by new investors (without giving effect to any exercise by the underwriters of their option to purchase additional shares):

Assumed initial public offering price per share		$
Historical net tangible book deficit per share as of December 31, 2020	$	
Increase per share attributable to the pro forma adjustments described above		
Pro forma net tangible book deficit per share as of December 31, 2020		
Increase in pro forma net tangible book value per share attributed to investors purchasing shares in this offering		
Pro forma as adjusted net tangible book value per share after this offering		
Dilution per share to new investors purchasing common shares in this offering		$

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted net tangible book value per share after this offering by approximately $ and dilution to new investors in this offering by approximately $, assuming that the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase of 1,000,000 shares in the number of shares of common stock offered by us would increase the pro forma as adjusted net tangible book value by $ per share and the dilution to new investors in this offering would decrease by $ per share, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. A decrease of 1,000,000 shares in the number of shares of common stock offered by us would decrease the pro forma as adjusted net tangible book value by $ per share and the dilution to new investors in this offering would increase by $ per share, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional shares in full, the pro forma as adjusted net tangible book value after the offering would be $ per share, the increase in pro forma net tangible book value per share to existing stockholders would be $ per share and the dilution per share to new investors in this offering would be $ per share, in each case assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus.

The dilution information above is for illustration purposes only. Our pro forma as adjusted net tangible book value following the closing of this offering will depend on the actual initial public offering price and other terms of this offering determined at pricing.

The following table summarizes, as of December 31, 2020, on a pro forma basis:

- the total number of shares of common stock purchased from us by our existing stockholders and by investors purchasing shares in this offering;
- the total consideration paid to us by our existing stockholders and by investors purchasing shares in this offering, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us in connection with this offering; and
- the average price per share paid by existing stockholders and by investors purchasing shares in this offering.

	Shares purchased		Total consideration		Average price per share
	Number	Percent	Amount	Percent	
Existing stockholders		%	$	%	$
New investors					
Total		100 %	$	100 %	

Except as otherwise indicated, the above discussion and tables assume no exercise of the underwriters' option to purchase additional shares. If the underwriters exercise their option to purchase an additional shares in full, our existing stockholders would own % and investors in this offering would own % of the total number of shares of common stock outstanding upon the closing of this offering.

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase (decrease), respectively, the total consideration paid by investors in this offering by $ million and increase (decrease), respectively, the total consideration paid by investors in this offering by %, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and before deducting estimated underwriting discounts and commissions.

The outstanding share information in the tables above is based on shares of common stock outstanding as of December 31, 2020 (including our convertible preferred stock on an as-converted basis), and excludes:

- shares of common stock issuable upon the exercise of outstanding stock options as of December 31, 2020 with a weighted-average exercise price of $ per share, under our equity incentive plans;
- shares of common stock available under our existing equity incentive plan, which will expire upon the execution of the underwriting agreement in this offering;
- shares of common stock issuable upon the exercise of warrants outstanding as of December 31, 2020, with a weighted-average exercise price of $ per share (other than warrants that will automatically be net exercised upon the closing of this offering);
- shares of common stock reserved for future issuance under our 2021 Equity Incentive Plan, or 2021 Plan, which will become effective upon the execution of the underwriting agreement for this offering, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan; and
- shares of common stock reserved for future issuance under our ESPP, which will become effective upon the execution of the underwriting agreement for this offering, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan.

SELECTED FINANCIAL DATA

The statements of operations and comprehensive loss data for the years ended December 31, 2019 and 2020 and balance sheet data as of December 31, 2019 and 2020 have been derived from our audited financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected for any other period in the future. You should carefully read, consider, and evaluate the selected financial data set forth below in conjunction with our financial statements and the accompanying notes and the information in "Management's discussion and analysis of financial condition and results of operations" contained elsewhere in this prospectus. The selected financial data included in this section are not intended to replace the financial statements and related notes included elsewhere in this prospectus.

(in thousands, except per share amounts)	Year Ended December 31,	
	2019	2020
Statements of operations data:		
Revenue	$ 36,972	
Cost of goods sold	10,508	
Gross profit	26,464	
Operating expenses		
Research and development	18,294	
Selling, general and administrative	30,201	
Total operating expenses	48,495	
Loss from operations	(22,031)	
Interest income	261	
Interest expense	(9,485)	
Other income (expense), net	1,282	
Net loss	$ (29,973)	
Net loss per share attributable to common stockholders, basic and diluted [(1)]	$ (57.07)	
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	525	
Pro forma net loss per share, basic and diluted (unaudited) [(1)]		
Weighted-average shares outstanding used in computing pro forma net loss per share, basic and diluted (unaudited)		

(1) See Note 11, "Net Loss per Share Attributable to Common Stockholders" to our financial statements included elsewhere in this prospectus for further information on the calculation of net loss per share attributable to common stockholders and pro forma net loss per share.

(in thousands)	As of December 31,	
	2019	2020
Balance sheet data:		
Cash and cash equivalents	$ 4,123	
Working capital [(1)]	(54,888)	
Total assets	21,095	
Short-term debt	44,162	
Short-term convertible notes	18,637	
Total liabilities	76,877	
Convertible preferred stock	73,568	
Accumulated deficit	(363,641)	
Total stockholders' deficit	(129,350)	

(1) We define working capital as current assets less current liabilities. See our audited financial statements and the related notes included elsewhere in this prospectus for further details regarding our current assets and current liabilities.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should carefully read, consider, and evaluate the following discussion and analysis of our financial condition and results of operations together with the section titled "Selected Financial Data" and our audited financial statements and related notes thereto included elsewhere in this prospectus. This discussion and other parts of this prospectus contain forward-looking statements that involve risks and uncertainties, such as statements of our plans, objectives, expectations and intentions, which are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Our actual results could differ materially from those discussed in these forward-looking statements. Please also see the section of this prospectus titled "Special Note Regarding Forward-Looking Statements." Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section of this prospectus titled "Risk Factors."

Overview

We are a commercial-stage medical device company focused on transforming the lives of people suffering from epilepsy by reducing or eliminating the occurrence of debilitating seizures. Our novel and differentiated RNS System is the first and only commercially available, brain-responsive neuromodulation system that delivers personalized, real-time treatment at the seizure source. By continuously monitoring the brain's electrical activity, recognizing patient-specific abnormal electrical patterns, and responding in real time with imperceptible electrical pulses to prevent seizures, our RNS System delivers the precise amount of therapy when and where it is needed and provides exceptional clinical outcomes with approximately three minutes of stimulation on average per day. Our RNS System is also the only commercially available device that records continuous brain activity data and allows clinicians to monitor patients not only in person, but also remotely, in order to make more informed treatment decisions, thus optimizing patient care. We believe the therapeutic advantages of our RNS System, combined with the insights obtained from our extensive brain data set, offer a significant leap forward in epilepsy treatment.

Our RNS System is currently indicated in the United States for use in adult epilepsy patients, or patients who are 18 years of age or older, with drug-resistant focal epilepsy. As of December 31, 2020, over 3,000 epilepsy patients have received our RNS System. We believe our compelling body of long-term clinical data, demonstrating continuous improvement in outcomes over time, will support the continued adoption of our RNS System among the approximately 575,000 adults in the United States with drug-resistant focal epilepsy. Over time, we plan to seek indication expansion more broadly for use across the entire approximately 1.2 million drug-resistant epilepsy patients in the United States and may additionally seek to expand our operations to reach the approximately 16.5 million drug-resistant epilepsy patients globally.

Our commercial efforts are focused on the comprehensive epilepsy centers, or Level 4 CECs, that facilitate appropriate care for drug-resistant epilepsy patients, including procedures for implantation of epilepsy neuromodulation devices such as our RNS System. While most drug-resistant epilepsy patients begin their care at physician offices or community hospitals, we estimate that approximately 24,000 adult drug-resistant focal epilepsy patients are treated in Level 4 CECs in the United States each year. We estimate that this patient pool represents an annual core market opportunity of approximately $1.1 billion for initial RNS System implants, and we expect that it will continue to grow as the number of Level 4 CECs and epilepsy specialists increases, and as more patients are referred to these CECs. In addition, our RNS System currently has an average battery life of approximately eight years, which, through the sale of replacement neuromodulation devices, provides a recurring revenue stream that is additive to our current $1.1 billion annual market opportunity for initial implants.

We received Pre-Market Approval, or PMA, from the FDA for our RNS System in late 2013 and began the commercial rollout of our RNS System in early 2014. We market our RNS System in the United States through a direct sales organization primarily to the epileptologists and neurosurgeons who respectively prescribe and implant neuromodulation devices in the approximately 200 Level 4 CECs in the United States. As of December 31, 2020, our commercial organization of 21 Therapy Consultants and 21 Field Clinical Engineers has established a significant account base at these Level 4 CECs. Given the concentrated and underpenetrated nature of our target market, we believe there is a significant opportunity to efficiently grow our account base, drive higher utilization within these

centers, and increase the number of drug-resistant patients referred to Level 4 CECs without significant salesforce expansion.

The implant procedure for our RNS System and the ongoing patient treatment provided by clinicians, including monitoring and programming, are reimbursed under well-established physician and hospital codes. In addition, we believe that our RNS System is currently the only neuromodulation system for epilepsy with reimbursement available for periodic in-person or remote review of brain activity data. Given the relatively young average age of our patient population, our payor mix has historically been more heavily weighted towards commercial payors. As of December 31, 2020, commercial payors have written positive coverage policies that address approximately 200 million covered lives in the United States. Medicare and Medicaid also routinely provide coverage for implantation of our RNS System and follow-up care. Based on our experience, less than 1% of potential RNS System patients have been unable to undergo an implant procedure with our RNS System due to lack of payor coverage. We believe the established, differentiated, and favorable reimbursement paradigm for our RNS System will continue to support its broad commercial adoption.

We currently manufacture our RNS System at and distribute all of our products from our approximately 53,000 square foot facility in Mountain View, California. This facility provides approximately 20,000 square feet of space for our production and distribution operations, including manufacturing, quality control and storage. We believe our existing facility will be sufficient to meet our current and near-term manufacturing needs.

Since our inception, we have generated significant losses. To date, we have financed our operations primarily through private placements of equity securities, debt financing arrangements and sales of our products. We generated revenue of $37.0 million, with a gross margin of 71.6% and a net loss of $30.0 million, for the year ended December 31, 2019. As of December 31, 2019, we had an accumulated deficit of $363.6 million, cash, cash equivalents and short-term marketable debt securities of $5.1 million, and $62.8 million of outstanding term loans and convertible notes, net of debt discount and issuance costs. In January and March 2020, we raised $7.1 million and $5.4 million, respectively, through the sale and issuance of additional convertible notes. In August 2020, we received $33.0 million in gross proceeds by issuing and selling 19,759,290 shares of our Series B' convertible preferred stock at a price of $1.6701 per share. In addition, in connection with the Series B' offering, all of our outstanding convertible notes were converted into 21,786,482 shares of Series B' convertible preferred stock.

In September 2020, we entered into a new Term Loan Agreement, or the New Term Loan, with CRG Partners IV L.P. and its affiliates for total borrowings of up to $60 million and borrowed $50 million. We used the proceeds from the New Term Loan to repay the principal, interest, and fees due under the previously existing term loan. The remaining $10.0 million will be available to us for borrowing until March 31, 2022, if we achieve a revenue-based milestone in 2021.

We have invested heavily and expect to continue to invest in research and development and commercial activities. These research and development expenses include clinical studies to demonstrate the safety and efficacy of our RNS System and obtain, as well as retain FDA approval. We intend to continue making significant investments in research and development, clinical studies and regulatory affairs to support future regulatory submissions for retaining and expanding indications of our RNS System, support continuous improvements to our RNS System, and develop future products that address neurological disorders. We have also made significant investments in building our field commercial team and intend to make significant investments in sales and marketing efforts in the future, including initiatives to drive awareness and increase the number of drug-resistant epilepsy patients referred to Level 4 CECs. Moreover, we expect to incur additional expenses associated with operating as a public company. We may in the future seek to acquire or invest in additional businesses, products, or technologies that we believe could complement or enhance our products, enhance our technical capabilities or otherwise offer growth opportunities, although we currently have no agreements or understandings with respect to any such acquisitions or investments. Because of these and other factors, we expect to continue to incur net losses and negative cash flows for the next several years. We may require additional funding to support operations and pay our obligations or may opportunistically seek to raise additional capital, which may include future equity or debt financings.

Recent Developments

Impact of the COVID-19 Pandemic

Since it was reported to have surfaced in December 2019, a novel strain of coronavirus (COVID-19) has spread across the world and has been declared a pandemic by the World Health Organization. Efforts to contain the spread of COVID-19 have been significant and governments around the world, including in the United States, have implemented severe travel restrictions, social distancing requirements, quarantines, stay-at-home orders and other significant restrictions. As a result, the current COVID-19 pandemic has presented a substantial public health and economic challenge and is affecting hospitals, physicians, patients, communities and business operations, as well as contributing to significant volatility and negative pressure on the U.S. and world economy and in financial markets.

The COVID-19 pandemic has negatively impacted our business, financial condition and results of operations by decreasing and delaying procedures performed to implant our RNS System, and we expect the pandemic will continue to negatively impact our business, financial condition and results of operations. Beginning in March 2020, our net sales were negatively impacted by the COVID-19 pandemic as hospitals delayed or canceled elective procedures, including because patients feared potential exposure. Many state and local governments in the U.S. issued orders that temporarily precluded elective procedures in order to conserve scarce health system resources in view of the pandemic and to protect patient health. The decrease in hospital admission rates and elective surgeries reduced the demand for elective procedures, including implantation of our RNS System. In addition, hospitals delayed or cancelled admissions for epilepsy diagnostic procedures which we believe has reduced and will continue to temporarily reduce our patient pipeline.

In response to the COVID-19 pandemic, we have implemented a variety of measures intended to help us manage its impact while maintaining business continuity to support our customers and patients. These measures include:

- Establishing safety protocols, facility enhancements, and work-from-home strategies to protect our employees;
- Ensuring that our manufacturing and supply chain operations remain intact and operational;
- Keeping our workforce intact, including our experienced and specialized U.S. sales and clinical support team;
- Developing new methods of supporting physicians remotely in their use of our RNS System;
- Implementing virtual physician training programs to support opening new accounts with minimal in person interaction;
- Continuing our physician education programs and direct-to-patient marketing efforts through social media and other virtual forums; and
- Increasing our capital resources through the issuance of our Series B' convertible preferred stock for gross proceeds of $33.0 million in August 2020.

While our hospital customers began to gradually perform elective epilepsy procedures again during the second half of 2020, we saw another reduction in these procedures in late 2020 and early 2021. Although the growth of our business has slowed during the pandemic and we cannot give any assurance that the growth of our business will stabilize, we believe the recovery of our business in the second half of 2020 is an encouraging sign for when shelter-in-place and hospital limitations are lifted. We believe the following key indicators are contributing to the stabilization of our business:

- Strong physician participation in our virtual educational events;
- Expansion into new accounts;

- A significant patient pipeline;
- Hospitals accepting patients for elective procedures at closer to normal levels.

Despite the encouraging signs of recovery of our business, we believe the challenges resulting from COVID-19 will likely continue for the duration of the pandemic, which is uncertain, and will continue to impact our revenue and negatively impact our business, financial condition and results of operations while the pandemic continues. As a result, we cannot provide assurance that the increase in sales of our RNS System in the second half of 2020 compared to the first half of 2020 is indicative of future results or that we will not experience additional negative impacts associated with COVID-19, which could be significant. In particular, we believe the backlog of patients who cancelled or postponed their procedures in the second quarter of 2020 significantly contributed to the number of RNS Systems implanted in the third quarter of 2020 as hospitals began accepting patients for elective procedures again. We believe that we may see similar fluctuations as the impact of COVID-19 continues. In addition, due to the pandemic, our patient pipeline may be reduced temporarily due to a delay in the diagnostic procedures that are used to identify appropriate patients for our RNS System. Further, once the pandemic subsides, there may be a substantial backlog of patients seeking appointments with physicians and procedures to be performed at hospitals for a variety of medical conditions and, as a result, patients seeking treatment with our RNS System may have to navigate limited provider capacity. We believe this limited provider and hospital capacity could have a significant adverse effect on our business, financial condition and results of operations following the end of the pandemic. The extent to which the COVID-19 pandemic impacts our business will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity and spread of COVID-19 and the actions to contain the spread of COVID-19 or treat its impact, among others.

Our financial statements reflect judgments and estimates that could change in the future as a result of the COVID-19 pandemic.

Factors Affecting our Performance

We believe there are several important factors that have impacted and that we expect will continue to impact our business and results of operations. These factors include:

Clinician, Hospital and Patient Awareness and Acceptance of Our RNS System

Our goal is to establish our RNS System as a standard of care for drug-resistant epilepsy. We intend to continue to promote awareness of our RNS System through training and educating clinicians and epilepsy centers on the clinical benefits of our RNS System. In addition, we intend to publish additional clinical data in scientific journals and to continue presenting at medical conferences. We plan to continue building patient awareness through increasing direct-to-patient marketing initiatives, which include advertising, social media and online education. We also intend to continue supporting patient and referring clinician outreach efforts to help increase the number of patients with drug-resistant epilepsy being treated at Level 4 CECs. These efforts require significant investment by our marketing and sales organization. In order to grow our business within existing and new accounts, we will need to continue to make significant investments in educating clinicians, hospitals, and patients on the advantages of our RNS System for the treatment of drug-resistant epilepsy.

Our Ability to Retain Our Experienced Commercial Team and Increase its Productivity

We have made significant investments in, and will continue to invest in, recruiting, training and retaining our experienced and specialized direct sales team, which includes Therapy Consultants and Field Clinical Engineers. Significant education and training is required for our team to achieve the level of technical competency with our products that is expected by clinicians and to gain experience building demand for our RNS System. Upon completion of initial training, our personnel typically require time in the field to grow their network of accounts, build relationships with clinicians and increase their productivity to the levels we expect. We believe successfully training, developing and retaining our Therapy Consultants and Field Clinical Engineers will be required to achieve growth. In addition, the loss of any productive sales personnel would have a negative impact on our ability to grow our business.

Competition

Our industry is highly competitive and subject to rapid change from the introduction of new products and technologies and the marketing activities of industry participants. There are two primary treatment alternatives for adults with drug-resistant epilepsy: (i) an ablative or resective surgery; and (ii) implantation of a neuromodulation device. Within neuromodulation, we currently compete with two manufacturers of neuromodulation devices. These companies have longer operating histories, significantly greater resources and name recognition, and established relationships with physicians and hospitals that treat patients with epilepsy. In addition to competing for market share, we also compete against these companies for personnel, including qualified sales and other personnel that are necessary to grow our business.

Leveraging Our Manufacturing Capacity to Further Improve Our Gross Margin

With our current operating model and infrastructure, we believe that we have the capacity to significantly increase our manufacturing production. If we grow our revenue and sell more RNS Systems, our fixed manufacturing costs will be spread over more units, which we believe will reduce our manufacturing costs on a per-unit basis and in turn improve our gross margin. In addition, we intend to continue investing in manufacturing efficiencies in order to reduce our overall manufacturing costs. However, other factors will continue to impact our gross margin such as the cost of materials, components and subassemblies, pricing, procedure mix, and geographic sales mix to the extent that we commercialize our RNS System outside of the United States.

Investing in Research and Development, Including Clinical Studies, to Expand Our Addressable Market

We intend to continue investing in clinical studies and existing and next generation technologies to further improve our RNS System and clinical outcomes, enhance the patient and provider experience and broaden the patient population that can be treated with our RNS System. In addition, we are continuing to leverage our extensive database of iEEG data and our advanced data analysis capabilities to equip clinicians with the data they need to establish optimal program settings for each patient.

While research and development and clinical studies are time consuming and costly, we believe that a pipeline of product enhancements and new products that improve efficacy, safety and ease of use is important for supporting increased adoption of our RNS System.

Change in Procedure Mix Due to Longer Device Replacement Cycle

We derive revenue from sales of our RNS System to hospital facilities both for initial RNS System implant procedures and for replacement procedures when our implanted devices reach end of service. We launched our current neurostimulator model in 2018. This this device has an average battery life of approximately eight years, twice as long as the battery life of our prior neurostimulator model. The longer battery life results in fewer replacement procedures over a patient's life time, providing a significant benefit to the patient. While our revenue from our replacement procedures represented approximately % of our total revenue for the fiscal year ended December 31, 2020, we expect that our revenue from replacement procedures will decrease over the next few years as a result of the extended replacement cycle of the newer device. In addition, a change in procedure mix between initial and replacement procedures may have a negative impact on our gross margin.

Components of Our Results of Operations

Revenue

We derive substantially all our revenue from sales of our RNS System to hospitals facilities (typically Level 4 CECs) that implant our RNS System. We currently deliver our RNS System to a hospital on the date of the scheduled procedure. There is no commitment to purchase our RNS System until the delivery of the product; the procedure may be canceled at any time.

Our revenue fluctuates primarily based on the volume of procedures performed and the procedure mix between initial and replacement implants. Our revenue also fluctuates and in the future will continue to fluctuate from

quarter-to-quarter due to a variety of factors, including the success of our sales force in expanding adoption of our RNS System in new accounts and the number of physicians who are aware of and prescribe our RNS System.

Cost of Goods Sold and Gross Margin

Cost of goods sold consists primarily of costs related to materials, components and subassemblies, payroll and personnel-related expenses for our manufacturing and quality assurance employees, including expenses related to stock-based compensation, manufacturing overhead, charges for excess, obsolete and non-sellable inventories, and royalties. Overhead costs include the cost of quality assurance, testing, material procurement, inventory control, operations supervision and management personnel, an allocation of facilities and information technology expenses, including rent and utilities, and equipment depreciation. Cost of goods sold also includes certain direct costs such as those incurred for shipping our RNS System. We record adjustments to our inventory valuation for estimated excess, obsolete and non-sellable inventories based on assumptions about future demand, past usage, changes to manufacturing processes and overall market conditions. We expect cost of goods sold to increase in absolute dollars as more of our RNS Systems are sold.

We calculate gross margin as gross profit divided by revenue. Our gross margin has been and will continue to be affected by a variety of factors, primarily by our manufacturing costs and pricing. Our gross margin may increase over the long term to the extent our production volume increases as our fixed manufacturing costs would be spread over a larger number of units, thereby reducing our per-unit manufacturing costs. We expect our gross margin to fluctuate from period to period, however, based upon the factors described above.

Operating Expenses

Our operating expenses consist of research and development costs and selling, general and administrative costs.

Research and Development Expenses

Our research and development activities primarily consist of engineering and research programs associated with our products under development and clinical studies. Research and development expenses include payroll and personnel-related costs for our research and development employees, including expenses related to stock-based compensation, consulting services, clinical trial expenses, regulatory expenses, prototyping, testing, materials and supplies, and allocated overhead including facilities and information technology expenses. Our clinical trial expenses include costs associated with clinical trial design, clinical trial site development and study costs, data management costs, related travel expenses, the cost of products used for clinical activities, and costs associated with our regulatory compliance. We expense research and development costs as they are incurred. We expect our research and development expenses to increase in absolute dollars as we hire additional personnel to develop new product offerings and product enhancements and conduct studies for expanded indications for use.

Selling, General and Administrative Expenses

Our selling, general and administrative expenses consist primarily of payroll and personnel-related costs for our sales and marketing personnel, including stock-based compensation and sales-based variable compensation, travel expenses, consulting, public relations costs, direct marketing, customer training, trade show and promotional expenses and allocated facility and information technology expenses, and for administrative personnel that support our general operations such as executive management, information technology, finance, accounting, customer services, human resources and legal personnel. We expense sales variable compensation when revenue related to the underlying sale is recognized. Selling, general and administrative expenses also include costs attributable to professional fees for legal, accounting and tax services, insurance and recruiting fees.

We intend to continue to increase our marketing spending to support increased adoption of our RNS System. We expect our sales and marketing expenses to increase in absolute dollars as we add programs in order to more fully penetrate the market opportunity. We expect our administrative expenses, including stock-based compensation expense, to increase as we increase our headcount and expand our systems to support our operations as a public company. Additionally, we anticipate increased expenses related to audit, legal, regulatory and tax-related services associated with being a public company, compliance with exchange listing and Securities and Exchange

Commission (SEC) requirements, director and officer insurance premiums and investor relations costs. Our selling, general and administrative expenses may fluctuate from period to period as we continue to grow.

Interest Expense and Income

Interest expense consists primarily of interest expense related to our term loan facilities and convertible notes, including amortization of debt discount and issuance costs. Interest income is predominantly derived from investing surplus cash in money market funds and short-term marketable debt securities.

Other Income (Expense), Net

Other income (expense), net primarily consists of changes in the fair value of our derivative instrument.

Results of Operations

The following table summarizes our results of operations for the period indicated (in thousands):

	Year Ended December 31, 2019
Revenue	$ 36,972
Cost of goods sold	10,508
Gross profit	26,464
Operating expenses	
Research and development	18,294
Selling, general and administrative	30,201
Total operating expenses	48,495
Loss from operations	(22,031)
Interest income	261
Interest expense	(9,485)
Other income (expense), net	1,282
Net loss	$ (29,973)

Revenue

Revenue was $37.0 million for the year ended December 31, 2019, which consisted of sales of our RNS System primarily to Level 4 CECs. All of our revenue was generated from sales in the United States.

Cost of Goods Sold and Gross Margin

Cost of goods sold was $10.5 million for the year ended December 31, 2019, which consisted of the cost of materials, components and subassemblies used in manufacturing our RNS System, payroll and personnel-related expenses, including expenses related to stock-based compensation, allocated facilities and information technology overhead costs, expenses related to excess, obsolete and non-sellable inventories, royalties, and the costs of supplies, equipment depreciation, shipping and other expenses. Our gross margin for the year ended December 31, 2019 was 71.6%.

Research and Development Expenses

Research and development expenses were $18.3 million for the year ended December 31, 2019. Research and development expenses primarily consisted of $11.8 million of payroll and personnel-related expenses, including expenses related to stock-based compensation, $1.7 million of product development costs, including contractors, materials, and technical equipment, $0.8 million of costs associated with our clinical studies and $2.5 million of allocated facilities related expenses, including rent, depreciation, information technology costs and utilities.

Selling, General and Administrative Expenses

Selling, general and administrative expenses were $30.2 million for the year ended December 31, 2019. Selling, general and administrative expenses primarily consisted of $18.9 million of payroll and personnel-related expenses, including expenses related to stock-based compensation, $3.2 million of sales and field support costs including travel related expenses, $2.7 million of marketing costs including contractors, advertising, technical materials and travel related costs, $3.0 million of general and administrative costs including outside services, legal expenses, and recruiting related expenses and $1.7 million of allocated facilities related expenses, including rent, depreciation, information technology costs and utilities.

Interest Expense and Income

Interest expense consists primarily of $9.5 million of interest expense related to our short-term debt and convertible notes, including amortization of debt discount and issuance costs, of which $6.2 million related to the Term Loan, as defined below, and $3.3 million related to the 2019 Convertible Notes, as defined below. Interest income of $0.3 million is primarily attributable to interest income from money market funds and short-term marketable debt securities.

Other Income (Expense), net

Other income (expense), net consists primarily of $1.3 million of changes in the fair value of our derivative instrument.

Liquidity and Capital Resources

To date, we have financed our operations primarily through private placements of equity securities, debt financing arrangements and sales of our RNS System. As of December 31, 2019, we had cash, cash equivalents and short-term marketable debt securities of $5.1 million, an accumulated deficit of $363.6 million, $44.2 million outstanding under the Term Loan, net of debt discount and issuance costs, and $18.6 million outstanding under the 2019 Convertible Notes, net of debt discount and issuance costs. In January and March 2020, we received $7.1 million and $5.4 million, respectively, in gross proceeds through the sale and issuance of additional convertible notes, or the 2020 Convertible Notes. In August 2020, we received $33.0 million in gross proceeds from the sale and issuance of our Series B' convertible preferred stock. In September 2020, we entered into the New Term Loan for total borrowings of up to $60 million and borrowed $50 million. We used the proceeds from the New Term Loan to repay principal of $44.1 million, interest of $1.3 million and fees of $2.2 million due under the outstanding Term Loan.

2014 Term Loan

In November 2014, we entered into a Term Loan Agreement, as amended, for total borrowings of up to $40.0 million with Capital Royalty Partners II L.P. and its affiliates. As of December 31, 2019, $40.0 million had been funded under this Term Loan Agreement, or the Term Loan. The Term Loan bore interest at a rate of 12.5% per annum based on a 360-day year and actual days elapsed. Payments under the Term Loan were to be made quarterly with payment dates fixed at the end of each calendar quarter, or the Payment Dates. Through September 30, 2017, we had the option to pay interest as follows: 8.0% per annum paid in cash and 4.5% per annum paid-in-kind, or the PIK, by increasing the principal of the loan. On each Payment Date through September 30, 2016, we elected the PIK option, issuing PIK notes totaling $2.7 million. On each Payment Date from December 31, 2016 through December 31, 2019, we paid all interest due in cash.

The Term Loan was interest-only through September 30, 2019. Following the interest-only period, principal payments were to be made in equal installments at the end of the next four calendar quarters, with the final payment due on September 30, 2020. The Term Loan included a fee upon repayment of the loan equal to 5% of the aggregate principal amount being prepaid or repaid. We ratably accreted the fee over the life of the loan.

In connection with the Term Loan, we paid total closing fees of $0.8 million and issued warrants to purchase 576 shares of our Series I convertible preferred stock at $718.0 per share. The initial fair value of the warrants was

$0.3 million and resulted in a discount to the Term Loan, which was amortized to interest expense over the life of the loan using the effective interest method. Prior to 2019, these warrants were modified to be exercisable for 576 shares of common stock at $1.00 per share, all of which were outstanding as of December 31, 2019.

In October 2019, the Term Loan was amended to extend the interest-only period through December 31, 2019. Further, through June 2020, the Term Loan was amended to extend the interest-only period through June 30, 2020 and to allow us to pay such interest entirely in kind by adding it to the aggregate principal of the loan. We paid $1.4 million interest due on March 31, 2020 in kind and paid $1.4 million interest due on June 30, 2020 in cash. In September 2020, we repaid the entire obligation under the Term Loan using the proceeds received from the New Term Loan.

The Term Loan contained customary representations and warranties, covenants, events of default and termination provisions. The affirmative covenants included, among other things, that we were required to achieve minimum annual revenue thresholds and maintain a minimum balance of cash and cash equivalents. As of December 31, 2019, we were in compliance with all applicable covenants of the Term Loan.

2019 Convertible Notes

In March and September 2019, we issued convertible notes, or the 2019 Convertible Notes, to certain investors for aggregate proceeds of $21.3 million. The 2019 Convertible Notes were subordinated to the Term Loan. The 2019 Convertible Notes bore a simple interest on the outstanding principal amount at the rate of 8.0% per annum and had a maturity date of December 31, 2020. In connection with the sale and issuance of our Series B' convertible preferred stock, our 2019 Convertible Notes converted into shares of our Series B' convertible preferred stock.

The 2019 Convertible Notes contained embedded derivative instruments, including automatic conversion into equity securities upon completion of a Qualified Financing, that were required to be bifurcated and accounted for separately as a single derivative instrument initially and were subsequently measured at fair value with the change in fair value recorded in other income (expense), net in the statement of operations and comprehensive loss. The issuance date estimated fair values of the derivative instruments issued with the March and September 2019 Convertible Notes were $4.1 million and $1.9 million, respectively, which were recorded as debt discounts. As of December 31, 2019, the estimated fair value of the aggregate outstanding derivative instrument was $4.7 million.

The discount on the 2019 Convertible Notes was amortized over the contractual term ending on December 31, 2020, using the effective interest method. The annual effective interest rate was estimated at 11.1% per year. Interest expense for the year ended December 31, 2019 was $3.3 million, consisting of $1.1 million of contractual interest expense and $2.2 million in amortization of debt discount arising from separation of the embedded derivative instrument.

2020 Convertible Notes

In January and March 2020, we raised $7.1 million and $5.4 million, respectively, through the sale and issuance of additional convertible notes, or the 2020 Convertible Notes. Proceeds received from the issuance of 2020 Convertible Notes were used to fund operating expenses and other liquidity needs. The notes bore interest at 8.0% per year and had a maturity date of December 31, 2020. In connection with the sale and issuance of our Series B' convertible preferred stock, our 2020 Convertible Notes converted into shares of our Series B' convertible preferred stock.

Series B' convertible preferred stock

In August 2020, we received gross proceeds of $33.0 million by issuing and selling 19,759,290 shares of our Series B' convertible preferred stock at a price of $1.6701 per share. All outstanding convertible notes and accrued unpaid interest were converted into shares of Series B' convertible preferred stock at such price. The conversion of the 2019 Convertible Notes and the 2020 Convertible Notes into shares of Series B' convertible preferred stock was accounted for as a debt extinguishment with $4.1 million recognized as extinguishment gain in additional paid-in capital in the quarter ended September 30, 2020.

2020 Term Loan

In September 2020, we entered into a new Term Loan Agreement, or the New Term Loan, with CRG Partners IV L.P. and its affiliates for total borrowings of up to $60 million and borrowed $50 million. We used the proceeds from the New Term Loan to repay principal of $44.1 million, interest of $1.3 million and fees of $2.2 million due under the outstanding Term Loan. The remaining $10.0 million will be available to us for borrowing until March 31, 2022 if we achieve a revenue-based milestone in 2021.

The loan bears interest at a rate of 12.5% per year. Payments under the loan are made quarterly with payment dates fixed at the end of each calendar quarter. The loan is interest-only through September 30, 2023. Following the interest-only period, principal payments are made in equal installments at the end of the next eight calendar quarters, with the final payment due on September 30, 2025. We will have the option and intend to extend the interest-only period through September 30, 2025 upon completion of this offering. The New Term Loan includes a fee upon repayment of the loan equal to 10% of the aggregate principal amount being prepaid or repaid.

We paid $0.7 million in fees to the lender and third parties which is reflected as a discount on the loan and is being accreted over the life of the loan using the effective interest method.

Paycheck Protection Program

In April 2020, we received $4.0 million from a federal Small Business Administration loan under the Paycheck Protection Program. The note bears interest at 1.0% per year on the outstanding principal amount and matures 24 months from the date of the note. No payments are due for the ten-month period beginning on the date of the note. Payments of principal and interest are due over the following 14 months. We intend to use a portion of the proceeds from this offering to repay this loan.

Future Funding Requirements

We expect to incur continued expenditures in the future in support of our commercialization efforts in the United States. In addition, we intend to continue to make investments in clinical studies, development of new products, and other ongoing research and development programs. We also expect to incur additional costs associated with operating as a public company. We may incur additional expenses to expand our commercial organization and efforts, further enhance our research and development efforts and pursue commercial opportunities outside of the United States.

As of December 31, 2019, we had cash, cash equivalents and short-term marketable debt securities of $5.1 million. We have concluded that our history of recurring losses and negative cash flows raise substantial doubt about our ability to continue as a going concern. See Note 1 to our audited financial statements included elsewhere in this prospectus for additional information on our assessment. Similarly, our independent registered public accounting firm included an explanatory paragraph in its report on our financial statements as of and for the year ended December 31, 2019, describing the existence of substantial doubt about our ability to continue as a going concern. However, based on our current planned operations, we expect that our cash and cash equivalents, together with the funding received in 2020 and the anticipated proceeds of this offering, will enable us to fund our operating expenses for at least 12 months following the date of this offering. We have based these estimates on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we expect.

Because of the numerous risks and uncertainties associated with research, development and commercialization of medical devices, we are unable to estimate the exact amount of our working capital requirements. Our future funding requirements will depend on many factors, including:

- the costs of activities related to commercializing and marketing our RNS System in the United States and elsewhere, and manufacturing and distribution costs;
- the research and development activities we intend to undertake, including clinical studies and product enhancements that we intend to pursue;
- the impact of the COVID-19 pandemic on our business;

- the cost of obtaining maintaining, defending, enforcing, and protecting any patents and other intellectual property rights;
- whether or not we pursue acquisitions or investments in businesses, products or technologies that are complementary to our current business;
- the degree and rate of increased market acceptance of our RNS System in the United States and market acceptance elsewhere;
- our need to implement additional infrastructure and internal systems;
- our ability to hire additional personnel to support our operations as a public company; and
- the emergence of competing technologies or other adverse market developments.

If we do raise additional capital through public or private equity or convertible debt offerings, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may adversely affect our stockholders' rights. If we raise additional capital through debt financing, we may be subject to covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we are unable to raise capital when needed, we will need to delay, limit, reduce or terminate planned commercialization or product development activities in order to reduce costs. In addition, COVID-19 has negatively impacted our business by decreasing and delaying procedures performed to implant our RNS System, and we expect the pandemic will continue to negatively impact our business, which may negatively impact our future liquidity.

Summary Statement of Cash Flows

The following table sets forth the primary sources and uses of cash and cash equivalents for the period presented below (in thousands):

	Year Ended December 31, 2019
Net cash provided by (used in):	
Operating activities	$ (25,026)
Investing activities	3,618
Financing activities	21,370
Net decrease in cash and cash equivalents	$ (38)

Cash Flows Used in Operating Activities

Net cash used in operating activities was $25.0 million for the year ended December 31, 2019. Cash used in operating activities was primarily a result of the net loss of $30.0 million, adjusted for non-cash charges of $4.9 million and an immaterial change in operating assets and liabilities. The non-cash charges primarily consisted of $2.4 million of amortization of debt discount and issuance costs and $1.6 million of non-cash interest expense related to our New Term Loan and convertible notes, and $1.4 million of stock-based compensation, offset in part by $1.3 million in change in fair value of derivative instrument. The change in operating assets and liabilities was due to an increase in inventories of $1.6 million largely due to an increase in finished goods, an increase in accounts receivable of $0.8 million largely due to revenue growth, and an increase in prepaid expenses and other assets of $0.5 million, offset by an increase in accrued liabilities of $2.3 million, and an increase in deferred rent of $0.7 million due to due to amending our facility lease agreement. The increase in accrued liabilities and prepaid expenses and other assets were primarily the result of the timing of payments to our vendors.

Cash Flows Provided by Investing Activities

Net cash provided by investing activities was $3.6 million for the year ended December 31, 2019, which consisted of proceeds from sale of marketable debt securities of $22.1 million, which amounts were partially offset by purchases of marketable debt securities of $18.0 million and purchases of property and equipment of $0.5 million.

Cash Flows Provided by Financing Activities

Net cash provided by financing activities was $21.4 million for the year ended December 31, 2019, which primarily relates to proceeds of $21.3 million from the issuance of convertible notes.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of December 31, 2019 (in thousands):

	Payments Due by Period				
	Less than 1 year	1-3 years	3-5 years	More than 5 years	Total
Operating lease obligations[1]	$ 2,990	$ 9,518	$ 1,666	$ —	$ 14,174
Short-term convertible notes[2]	21,343	—	—	—	21,343
Short-term debt[3]	44,812	—	—	—	44,812
Total contractual obligations	$ 69,145	$ 9,518	$ 1,666	$ —	$ 80,329

(1) We lease our office and manufacturing facilities in Mountain View, California under a non-cancelable operating lease which expires in June 2024. We have an option to extend the lease through June 2029. The minimum lease payments above do not include any related common area maintenance charges or real estate taxes.
(2) In August 2020, all outstanding convertible notes and accrued unpaid interest were converted into shares of Series B' convertible preferred stock.
(3) In September 2020, we entered into the New Term Loan and borrowed $50 million and paid off in full all amounts outstanding under the Term Loan. In April 2020, we received $4.0 million from a federal Small Business Administration loan under the Paycheck Protection Program.

We enter into contracts with third parties in the normal course of business, including with suppliers of components and subassemblies used in manufacturing our RNS System and for other products and services used for operating purposes. These contracts generally provide for termination following a certain period after notice, and therefore we believe that our non-cancelable obligations under these agreements are not material.

Off-Balance Sheet Arrangements

Since our inception, we have not engaged in any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

Critical Accounting Policies, Significant Judgments and Use of Estimates

Our financial statements have been prepared in accordance with GAAP. The preparation of our financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses incurred during the reporting periods. Our estimates are based on our knowledge of current events and actions we may undertake in the future and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may materially differ from these estimates under different assumptions or conditions. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates. For more detail on our significant accounting policies, refer to Note 2 to the financial statements appearing elsewhere in this prospectus.

Revenue Recognition

We derive substantially all our revenue from sales of our RNS System to hospitals facilities (typically Level 4 CECs) that implant our RNS System.

On January 1, 2019, we adopted Accounting Standards Codification, or ASC, Topic 606, "Revenue from Contracts with Customers," using the modified retrospective method. Under ASC 606, revenue is recognized when a customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606, we perform the following five steps:

(i) identify the contract(s) with a customer;

(ii) identify the performance obligations in the contract;

(iii) determine the transaction price;

(iv) allocate the transaction price to the performance obligations in the contract; and

(v) recognize revenue when (or as) the entity satisfies a performance obligation.

A contract with a customer exists when (i) we enter into a legally enforceable contract with a customer that defines each party's rights regarding the products or services to be transferred and identifies the payment terms related to these products or services, (ii) the contract has commercial substance, and (iii) we determine that collection of substantially all consideration for products or services that are transferred is probable based on the customer's intent and ability to pay the promised consideration.

At contract inception, we assess the products or services promised within each contract and determine those that are performance obligations and assess whether each promised product or service is distinct. Our contracts with customers often include a promise to transfer products, as well as an implied promise to provide a service to the customer, which is access to our PDMS. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. We evaluate each product or service promised in a contract to determine whether it represents a distinct performance obligation. A performance obligation is distinct if (i) the customer can benefit from the product or service on its own or with other resources that are readily available to the customer and (ii) the product or service is separately identifiable from other promises in the contract.

Our RNS System is a compilation of our products that includes our RNS neurostimulator, our cortical strip leads and depth leads, and our Patient Remote Monitor, as well as other implantable and non-implantable accessories. In addition, our products also include external components such as our Physician Tablet, which is used by clinicians to retrieve and review information from and program the implanted devices, as well as access to our Patient Data Management System, or PDMS, a secure online database that collects data transmitted from our Patient Remote Monitor and our Physician Tablet. We have determined that our RNS System and our Physician Tablet are not capable of being distinct as they are not sold separately, the customer cannot benefit from the products individually, and there are no other resources readily available to the customer. The products are highly interdependent and we are not able to fulfill each promise in the contract independently of the others. Therefore, we have concluded that our RNS System and our Physician Tablet represent a single performance obligation. We have determined that access to our PDMS is capable of being distinct because clinicians can utilize it with other components of the RNS System that are readily available, and it is separately identifiable from other promises in the contract. Therefore, we have concluded that access to our PDMS represents a separate performance obligation. In addition, training services generally occur prior to entering into a contract with the customer and therefore the training services are not considered to be a separate performance obligation.

We determine the transaction price based on the amount we expect to be entitled to in exchange for transferring the promised product to the customer, which is based on the invoiced price for the products. All prices are at fixed

amounts per the sales agreement with the customer and there are no discounts, rebates or other price concessions or a right of return.

When a contract contains multiple performance obligations, we allocate the transaction price to each performance obligation based on its relative standalone selling price. Standalone selling prices are based on observable prices at which we separately sell our products or services. If a standalone selling price is not directly observable, we estimate the standalone selling price considering market data, cost, gross margin, and other available information.

We deliver our products to a hospital on the date of the scheduled procedure. There is no commitment or contract until the delivery of the product and the procedure may be canceled at any time. Once the device has been implanted in or otherwise provided to a patient, the customer is considered to have accepted the delivery (i.e., has approved the contract) and both parties are committed to perform their respective obligations. Assuming all other revenue recognition criteria are met, we recognize revenue from the sale of our products at a point in time when the procedure is completed and the device is implanted in a patient. We recognize service revenue related to our PDMS on a ratable basis over the period in which we expect to provide access to clinicians. We have concluded that the service revenue is immaterial.

We recognize revenue for arrangements where we have satisfied our performance obligations but have not issued invoices. These amounts are recorded as unbilled receivables, which are included in accounts receivable on the balance sheet, as we have an unconditional right to payment at the end of the applicable period.

Payment terms are typically 30 days from the fulfillment of the orders and fall within the one-year guidance for the practical expedient which allows us to forgo adjustment of the promised amount of consideration for the effects of a significant financing component. We account for sales taxes that we collect from customers and remit to governmental authorities on a net basis and therefore they are excluded from net sales; however, most of our sales are tax exempt. We believe that collection is probable as we have no history of uncollectible accounts and the customers are large, creditworthy institutions.

As allowed under the practical expedient, we do not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less. Costs associated with product sales include commissions, where we apply the practical expedient and recognize commissions as expense when incurred because the expense is incurred over a period of time less than one year. Commissions are reported in selling, general and administrative expense in the statements of operations and comprehensive loss.

Inventories

We value inventories at the lower of cost or net realizable value. We determine cost using the first-in, first-out method for all inventories. We determine net realizable value as the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. We regularly review inventory quantities in consideration of actual loss experiences, projected future demand, and remaining shelf life to record a provision for excess and obsolete inventory when appropriate. Our policy is to write down inventory that has become obsolete, inventory that has a cost basis in excess of its expected lower of cost or net realizable value, and inventory in excess of expected requirements. The estimate of excess quantities is judgmental and primarily dependent on our estimate of future demand for a particular product. If the estimate of future demand is too high, we may have to write-down excess inventory for that product and record a charge to cost of goods sold.

Research and Development

We expense research and development costs as incurred. Research and development expenses consist primarily of engineering, product development, clinical studies to develop and support our products, regulatory expenses, medical affairs and other costs associated with products and technologies that are in development including quality assurance. Research and development expenses include employee compensation, including stock-based compensation, supplies, consulting, prototyping, testing, materials, travel expenses, depreciation and an allocation of facility overhead expenses. Additionally, research and development expenses include costs associated with our clinical studies including clinical trial design, clinical site reimbursement, data management, travel expenses, the

cost of products used for studies and costs associated with regulatory compliance and submitting and maintaining regulatory filings.

Derivative Instruments

The convertible notes issued in 2019 and 2020 contain embedded features that provide the lenders with multiple settlement alternatives. Certain of these settlement features provide the lenders the right to receive cash or a variable number of shares upon the completion of a capital raising transaction, change of control or default by us, or the Redemption Features.

The Redemption Features of the convertible notes meet the requirements for separate accounting and are accounted for as a single derivative instrument. The derivative instruments were recorded at fair value at inception and are subject to remeasurement to fair value at each balance sheet date, with any changes in fair value recognized in the statements of operations and comprehensive loss. The primary inputs for the valuation approach included the probability of achieving various settlement scenarios that provide the lenders the rights or the obligations to receive cash or a variable number of shares upon the completion of a capital transaction, and the fair value of the stock. The estimated fair value of the derivative instrument related to the 2019 Convertible Notes was $6.0 million as of the issuance dates and $4.7 million as of December 31, 2019. In August 2020, all outstanding convertible notes converted into shares of Series B' convertible preferred stock. The conversion was accounted for as a debt extinguishment with $4.1 recognized as extinguishment gain in additional paid-in capital in the quarter ended September 30, 2020.

Common Stock Valuation and Stock-Based Compensation

We use a fair value-based method to account for all stock-based compensation arrangements with employees and non-employees, including stock options and stock awards. Our determination of the fair value of stock options on the date of grant utilizes the Black-Scholes option pricing model.

We recognize the fair value of the option granted on a straight-line basis over the period during which an optionee is required to provide services in exchange for the option award, known as the requisite service period, which usually is the vesting period. We account for forfeitures as they occur.

Estimates of the fair value of equity awards as of the grant date using valuation models such as the Black-Scholes option pricing model are affected by assumptions with a number of complex variables. Changes in the assumptions can materially affect the fair value and ultimately the amount of stock-based compensation expense recognized. These inputs are subjective and generally require significant analysis and judgment to develop. Changes in the following assumptions can materially affect the estimate of the fair value of stock-based compensation:

- *Expected Term*. We calculate the expected term using the simplified method, which is available where there is insufficient historical data about exercise patterns and post-vesting employment termination behavior. The simplified method is based on the vesting period and the contractual term for each grant, or for each vesting-tranche for awards with graded vesting. The mid-point between the vesting date and the maximum contractual expiration date is used as the expected term under this method. For awards with multiple vesting-tranches, the periods from grant until the mid-point for each of the tranches are averaged to provide an overall expected term.

- *Expected Volatility*. For all stock options granted to date, we estimated the volatility data based on a study of publicly traded industry peer companies as we did not have any trading history for our common stock. For purposes of identifying these peer companies, we considered the industry, stage of development, size and financial leverage of potential comparable companies. For each grant, we measured historical volatility over a period equivalent to the expected term. We will continue to apply this process until a sufficient amount of historical information regarding the volatility of our own stock price becomes available.

- *Risk-free Interest Rate*. The risk-free interest rate is based on the U.S. Treasury yield in effect at the time of the grant for zero-coupon U.S. Treasury notes with remaining terms similar to the expected term of the options.

- *Dividend Rate*. We assumed the expected dividend to be zero as we have never paid dividends and have no current plans to do so.

Common Stock Valuation

The estimated fair value of the common stock underlying our stock options and stock awards was determined at each grant date by our board of directors, with input from management. All options to purchase shares of our common stock are intended to be exercisable at a price per share not less than the per-share fair value of our common stock underlying those options on the date of grant.

In the absence of a public trading market for our common stock, on each grant date, we develop an estimate of the fair value of our common stock based on the information known to us on the date of grant, upon a review of any recent events and their potential impact on the estimated fair value per share of the common stock, and in part on contemporaneous input from an independent third-party valuation firm. Our estimate of fair value is reviewed and approved by our board of directors.

We determined our valuations of our common stock in accordance with the guidelines outlined in the American Institute of Certified Public Accountants Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, or the Practice Aid. We based the assumptions used to determine the estimated fair value of our common stock on numerous objective and subjective factors, combined with management judgment, including:

- external market conditions affecting the pharmaceutical and medical devices industry and trends within the industry;
- our stage of development and business strategy;
- the rights, preferences and privileges of our convertible preferred stock relative to those of our common stock;
- the prices at which we sold shares of our convertible preferred stock;
- our financial condition and operating results, including our levels of available capital resources;
- the progress of our research and development efforts;
- equity market conditions affecting comparable public companies; and
- general U.S. market conditions and the lack of marketability of our common stock.

The Practice Aid identifies various available methods for allocating enterprise value across classes and series of capital stock to determine the estimated fair value of common stock at each valuation date. In accordance with the Practice Aid, we considered the following methods:

- *Option Pricing Method*. Under the option pricing method, or the OPM, shares are valued by creating a series of call options with exercise prices based on the liquidation preferences and conversion terms of each equity class. The estimated fair values of the preferred and common stock are inferred by analyzing these options.
- *Probability-Weighted Expected Return Method*. The probability-weighted expected return method, or the PWERM, is a scenario-based analysis that estimates value per share based on the probability-weighted present value of expected future investment returns, considering each of the possible outcomes available to us, as well as the economic and control rights of each share class.

For our valuations performed in July 2019 and March 2020, we used the market approach and the transaction approach outlined in the Practice Aid for the valuation of our equity. We used the market approach to represent the fair market value and fair value of our equity based upon the continuing operations as a private entity in the remain private scenario. We used the transaction approach to determine an indication of fair market value and fair value for

us under an initial public offering and merger and acquisition scenario. Once we determined our equity values for each exit event, we applied the PWERM to determine the fair market value and fair value of our common stock. All probabilities and future exit events were based on our expectations regarding the timing and method of liquidity.

For our valuation performed in August 2020, we utilized the OPM as the primary method to determine the indication of common stock value by "backsolving" the value implied by the Series B' convertible preferred stock pricing. We closed our Series B' convertible preferred stock financing round on August 19, 2020. To derive a value indication from the Series B' redeemable convertible preferred round of financing, we applied the Option Pricing Model to determine the implied value of our common stock based on the Series B' convertible preferred stock pricing. Based on the Series B' redeemable preferred share price, we solved for our equity value given the post-transaction liquidation preferences, participation caps, dividends, conversion features, and our capital structure immediately following the issuance of the Series B' convertible preferred stock.

In determining the estimated fair value of our common stock, our board of directors also considered the fact that our stockholders could not freely trade our common stock in the public markets. Accordingly, we applied discounts to reflect the lack of marketability of our common stock based on the weighted-average expected time to liquidity. The estimated fair value of our common stock at each grant date reflected a non-marketability discount partially based on the anticipated likelihood and timing of a future liquidity event.

Following the closing of this offering, our board of directors intends to determine the fair value of our common stock based on the closing sales price of our common stock on the date of grant of equity awards.

The intrinsic value of all outstanding options as of December 31, 2020 was approximately $ million, based on an assumed initial public offering price of $ per share (the midpoint of the estimated price range set forth on the cover of this prospectus), of which approximately $ million is related to vested options and approximately $ million is related to unvested options.

Income Taxes

We account for income taxes under the liability method. Under this method, we determine deferred tax assets and liabilities based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. We establish valuation allowances when necessary to reduce deferred tax assets to the amounts expected to be realized. We have established a full valuation allowance against our deferred tax assets due to the uncertainties surrounding the realization of such assets.

We assess all material positions taken in any income tax return, including all significant uncertain positions, in all tax years that are still subject to assessment or challenge by relevant taxing authorities. Assessing an uncertain tax position begins with the initial determination of the position's sustainability and is measured at the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. As of each balance sheet date, unresolved uncertain tax positions must be reassessed, and we will determine whether (i) the factors underlying the sustainability assertion have changed and (ii) the amount of the recognized tax benefit is still appropriate. The recognition and measurement of tax benefits requires significant judgment. Judgments concerning the recognition and measurement of a tax benefit might change as new information becomes available.

Utilization of our NOL and tax credit carryforwards may be subject to a substantial annual limitation due to the ownership change provisions included in the Internal Revenue Code, or Section 382, and similar state provisions. An annual limitation may result in the expiration of NOL and credit carryforwards before utilization. We have determined that we experienced a Section 382 ownership change in 2016, resulting in permanent limitations of our NOL and credit carryforwards. It has been determined that $233.6 million and $150.7 million of federal and state NOL carryforwards have been permanently limited, respectively. It has also been determined that $10.5 million of federal research and development credits have been permanently limited. We do not expect any additional NOL or credit carryforwards as of December 31, 2019 to expire as a result of Section 382.

JOBS Act Accounting Election

The Jumpstart Our Business Startups Act of 2012, or the JOBS Act, permits an "emerging growth company" such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies until those standards would otherwise apply to private companies. We have elected to use this extended transition period under the JOBS Act until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies, which may make comparison of our financials to those of other public companies more difficult.

We will cease to be an emerging growth company on the date that is the earliest of (i) the last day of the fiscal year in which we have total annual gross revenues of $1.07 billion or more, (ii) the last day of our fiscal year following the fifth anniversary of the date of the closing of this offering, (iii) the date on which we have issued more than $1.0 billion in nonconvertible debt during the previous three years or (iv) the date on which we are deemed to be a large accelerated filer under the rules of the Securities and Exchange Commission.

Further, even after we no longer qualify as an emerging growth company, we may still qualify as a "smaller reporting company," which would allow us to take advantage of many of the same exemptions from disclosure requirements, including reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We cannot predict if investors will find our common shares less attractive because we may rely on these exemptions. If some investors find our common shares less attractive as a result, there may be a less active trading market for our common shares and our share price may be more volatile.

Recent Accounting Pronouncements

See "Recent Accounting Pronouncements" in Note 2 to our financial statements included elsewhere in this prospectus for additional information.

Quantitative and Qualitative Disclosures about Market Risk

Interest Rate Sensitivity

The market risk inherent in our financial instruments and in our financial position represents the potential loss arising from adverse changes in interest rates. As of December 31, 2019, we had cash, cash equivalents and short-term marketable debt securities of $5.1 million, consisting of interest-bearing money market funds and fixed income mutual funds for which the fair value would be affected by changes in the general level of U.S. interest rates. However, due to the short-term maturities and the low-risk profile of our cash equivalents and short-term marketable debt securities, an immediate 10% change in interest rates would not have a material effect on the fair value of our cash equivalents and short-term marketable debt securities.

We do not believe that inflation, interest rate changes or exchange rate fluctuations have had a significant impact on our results of operations for any periods presented herein.

BUSINESS

Overview

We are a commercial-stage medical device company focused on transforming the lives of people suffering from epilepsy by reducing or eliminating the occurrence of debilitating seizures. Our novel and differentiated RNS System is the first and only commercially available, brain-responsive neuromodulation system that delivers personalized, real-time treatment at the seizure source. By continuously monitoring the brain's electrical activity, recognizing patient-specific abnormal electrical patterns, and responding in real time with imperceptible electrical pulses to prevent seizures, our RNS System delivers the precise amount of therapy when and where it is needed and provides exceptional clinical outcomes with approximately three minutes of stimulation on average per day. Our RNS System is also the only commercially available device that records continuous brain activity data and allows clinicians to monitor patients not only in person, but also remotely, providing them the data they need to make more informed treatment decisions, thus optimizing patient care. We believe the therapeutic advantages of our RNS System, combined with the insights obtained from our extensive brain data set, offer a significant leap forward in epilepsy treatment. As of December 31, 2020, over 3,000 patients have received our RNS System. We believe our compelling body of long-term clinical data, demonstrating continuous improvement in outcomes over time, will support the continued adoption of our RNS System among the approximately 575,000 adults in the United States with drug-resistant focal epilepsy. Over time, we plan to seek indication expansion more broadly for use across the entire approximately 1.2 million drug-resistant epilepsy patients in the United States and may additionally seek to expand our operations to reach the approximately 16.5 million drug-resistant epilepsy patients globally.

Epilepsy is a devastating chronic disorder characterized by a tendency of the brain to produce sudden abnormal bursts of electrical energy that disrupt brain functions and cause seizures. The goal for treating epilepsy is to reduce the number and intensity of seizures that a patient experiences, without causing treatment-related side effects. While antiepileptic drugs are considered first-line treatment and are effective at controlling seizures in a large portion of the epilepsy population, approximately one-third of epilepsy patients are considered drug-resistant because they do not achieve complete seizure control or cannot tolerate the side effects of these drugs. These drug-resistant epilepsy patients struggle with a variety of life-impacting challenges including psychological dysfunction, social stigmatization, reduced quality of life, and increased risk of mortality, and are disproportionately responsible for the approximately $28 billion spent annually on epilepsy care in the United States.

Epilepsy is further classified into two main categories– focal epilepsy and generalized epilepsy. Approximately 60% of epilepsy patients have focal epilepsy, which is characterized by electrical discharges that originate in a specific part of the brain. The remaining 40% of patients have generalized epilepsy, which is characterized by widespread electrical discharges that involve the entire brain at once. Our paradigm-shifting RNS System is currently indicated in the United States for use in adult epilepsy patients, or patients who are 18 years of age or older, with drug-resistant focal epilepsy, which we believe represents an approximately $26 billion total addressable market. While we are presently focused on this significant market opportunity, in the future we may seek regulatory approval to treat drug-resistant epilepsy in patients under the age of 18 and in generalized epilepsy, as well as in markets outside the United States.

Our commercial efforts are focused on the comprehensive epilepsy centers, or Level 4 CECs, in the United States that facilitate appropriate care for drug-resistant epilepsy patients, including procedures for implantation of epilepsy neuromodulation devices such as our RNS System. While most drug-resistant epilepsy patients begin their care at physician offices or community hospitals, we estimate that approximately 24,000 adult drug-resistant focal epilepsy patients are treated in Level 4 CECs in the United States each year. We estimate that this patient pool represents an annual core market opportunity of approximately $1.1 billion for initial RNS System implants, and we expect that it will continue to grow as the number of Level 4 CECs and epilepsy specialists increases, and as more patients are referred to these CECs. In addition, our RNS System currently has an average battery life of approximately eight years, which, through the sale of replacement neuromodulation devices, provides a recurring revenue stream that is additive to our current $1.1 billion annual market opportunity for initial implants.

Resective or ablative surgery that removes or destroys the brain tissue at the source of the seizure onset has historically been considered the best treatment option for drug-resistant focal epilepsy. However, resective or

ablative surgery carries risk, including neurological risk, and only approximately half of resective or ablative surgery patients are seizure free two years after surgery. We estimate that only approximately 20% of drug-resistant focal epilepsy patients have a focus that is both safe to remove and likely to result in seizure control if removed, and are also willing to undergo the procedure.

There are currently two other neuromodulation devices, Vagus Nerve Stimulation, or VNS, and Deep Brain Stimulation, or DBS, that are also approved to address the approximately 80% of drug-resistant focal epilepsy patients who are not ideal candidates for resective or ablative surgery. However, we believe the technology attributes of these devices limit their utility in practice. Both VNS and DBS devices stimulate an anatomical target that is not specific to where seizures start and use the same treatment paradigm for all patients, regularly stimulating the vagus nerve in the case of VNS or one specific location deep in the brain in the case of DBS, using a non-varying schedule in an attempt to prevent seizures. These devices stimulate for multiple hours per day, increasing the occurrence of stimulation-related side effects such as memory impairment, depression, sleep disruption, and vocal disturbances. Additionally, neither of these devices record the brain electrical data known as intracranial electroencephalograms, or iEEGs, that we believe are important to physicians in helping guide the therapy decisions that improve patient results over time. We believe there is a significant unmet need for a personalized, targeted therapy that collects brain data and improves outcomes over time without causing stimulation-related side effects or presenting the neurocognitive risks that are associated with resective or ablative surgery.

We developed our RNS System to address the individualized nature of drug-resistant epilepsy and deliver a safe and effective therapy for focal onset seizures anywhere in the brain. Unlike other neuromodulation devices, our RNS System continuously monitors the brain's electrical activity, recognizes patient-specific abnormal patterns, and delivers treatment at the seizure source when needed, providing significant, sustained, and improving reductions in seizure frequency, including, in some cases, eliminating seizures, without stimulation-related side effects at therapeutic settings. As such, we believe our RNS System is superior in tolerability and efficacy to other neuromodulation approaches, gathering insights from individual patients' brain activity which help clinicians in making better treatment decisions and optimizing patient care. In addition, the non-destructive, reversible nature of the implant procedure makes it an attractive option for drug-resistant focal epilepsy patients, the majority of whom are not candidates for, or are unwilling to undergo, resective or ablative surgery.

The key efficacy and safety benefits of our RNS System are demonstrated by four multi-center FDA approved prospective clinical studies that collectively include approximately 600 patients with up to nine years of follow-up, as well as multiple retrospective studies reporting real-world outcomes. Evidence generated from patients enrolled in our initial clinical studies demonstrated a 44% median reduction in seizure frequency at one year that improved to a 75% median reduction at nine years, with enduring improvements in quality of life and cognition. Importantly, the more recently published real-world results from a post-approval retrospective study showed a median seizure frequency reduction of 67% at one year, which is consistent with the interim one year results of our ongoing prospective Post-Approval Study, increasing to 82% at three or more years, demonstrating the utility of our unique brain data set in driving improvements in therapy effectiveness across patient cohorts over time. Over the 2,500 patient implant years reported in our prospective studies, our RNS System has been shown to be well tolerated without any adverse stimulation-related side effects at therapeutic settings. We believe our extensive and growing body of clinical data is being used to improve patient outcomes, which we believe will support increased adoption.

We received Pre-Market Approval, or PMA, from the FDA for our RNS System in late 2013 and began the commercial rollout of our RNS System in early 2014. We market our RNS System in the United States through a direct sales organization primarily to the epileptologists and neurosurgeons who respectively prescribe and implant neuromodulation devices in the approximately 200 Level 4 CECs in the United States. As of December 31, 2020, our commercial organization of 21 Therapy Consultants and 21 Field Clinical Engineers have established a significant account base at these Level 4 CECs. Given the concentrated and underpenetrated nature of our target market, we believe there is a significant opportunity to efficiently grow our account base, drive higher utilization within these centers, and increase the number of drug-resistant patients referred to Level 4 CECs without significant salesforce expansion.

The implant procedure for our RNS System and the ongoing patient treatment provided by clinicians, including monitoring and programming, are reimbursed under well-established physician and hospital codes. In addition, we

believe that our RNS System is currently the only neuromodulation system for epilepsy with reimbursement available for periodic in-person or remote review of brain activity data. Given the relatively young average age of our patient population, our payor mix has historically been more heavily weighted towards commercial payors. As of December 31, 2020, commercial payors have written positive coverage policies that address approximately 200 million covered lives in the United States. Medicare and Medicaid also routinely provide coverage for implantation of our RNS System and follow-up care. Based on our experience, less than 1% of potential RNS System patients have been unable to undergo an implant procedure with our RNS System due to lack of payor coverage. We believe the established, differentiated, and favorable reimbursement paradigm for our RNS System will continue to support its broad commercial adoption.

Our near-term research, development, and clinical efforts are focused on continuing to improve therapy effectiveness, enhance the patient and provider experience, and expand the population of patients that can be treated with our RNS System. Our near-term product development pipeline includes enhanced offerings that leverage our extensive brain activity database and our advanced data analysis capabilities. In the near-term, we also intend to pursue studies to support label expansion for our RNS System in additional epilepsy populations.

We have experienced considerable growth since we began commercializing our RNS System. Our revenue increased from $28.5 million for the year ended December 31, 2018 to $37.0 million for the year ended December 31, 2019, representing approximately 30% growth. The COVID-19 pandemic and the measures imposed to contain the pandemic impacted our business during 2020, with the most pronounced negative impact during the second quarter of the year. Revenue increased to $ million for the year ended December 31, 2020, representing year over year growth of %. Our net losses were $30.0 million and $ million for the years ended December 31, 2019 and December 31, 2020, respectively.

Competitive Strengths

We are focused on transforming the lives of people suffering from epilepsy by developing, manufacturing, continuously improving, and commercializing our innovative and clinically-validated RNS System that we believe offers significant advances in the treatment of drug-resistant epilepsy. We believe our continued growth will be driven by the following competitive strengths:

- **Novel and differentiated closed-loop, brain-responsive technology that provides targeted, personalized care.** Our RNS System is the first and only commercially available brain-responsive neuromodulation system that delivers personalized treatment to the seizure source, based on an individual patient's unique brain activity. Our RNS System continuously monitors the brain's electrical activity and recognizes patient-specific abnormal electrical patterns that precede the onset of seizures. Our RNS System then uses that information to "close the loop" by responding in real time with imperceptible electrical pulses to prevent seizures at their source. This enables our RNS System to deliver therapy precisely when and where it is needed, providing exceptional outcomes with approximately three minutes of stimulation on average per day. As such, we believe our RNS System offers material efficacy and tolerability advantages relative to alternative neuromodulation approaches, offering clinicians insights based on their patients' brain activity which help in making better treatment decisions and optimizing patient care. In addition, the non-destructive, reversible nature of the implant procedure makes it an attractive option for drug-resistant focal epilepsy patients, the majority of whom are not candidates for, or are unwilling to undergo, a resective or ablative brain surgery. Through its unique capabilities, we believe our revolutionary RNS System has the potential to transform the treatment paradigm for the approximately 1.2 million individuals in the United States with drug-resistant epilepsy. We plan to continue to leverage our technology to establish our RNS System as the standard of care for these patients.

- **Unique data recording capability that has generated an extensive database of detailed brain activity information.** Our RNS System provides insight into a patient's dynamic brain activity from iEEG data recorded over time by our neurostimulator. It is the only commercially-available device that provides continuous information on brain electrical activity specific to epilepsy and detailed recordings of iEEGs to help clinicians make more informed treatment decisions and optimize their patients' care. These data are recorded by our RNS System and can be viewed by the physician during regular patient visits using the

Physician Tablet or on demand through a secure website. Our RNS System gathers objective and actionable information about an individual patient's condition, seizure patterns, and treatment effectiveness which clinicians can utilize to optimize patient care. We believe our RNS System offers a significant leap forward relative to current practice for epilepsy treatment in which clinicians rely on patient-reported seizure data which are often unreliable and incomplete. As of December 31, 2020, over 3,000 epilepsy patients have received our RNS System, yielding an extensive database of approximately 6.6 million iEEG records. We believe that we are able to continue to learn and innovate by leveraging this database and our data analytics capabilities, thereby improving and enhancing our products and creating actionable insights for clinicians that improve clinical outcomes for patients.

- **Compelling body of long-term clinical data that continues to demonstrate improved outcomes over time.** The efficacy and safety benefits of our RNS System are supported by nearly 2,500 patient-implant years of data from approximately 600 patients enrolled across four multi-center FDA approved prospective studies, in addition to multiple retrospective studies reporting real-world outcomes. Evidence generated in studies provides nine years of follow-up data resulting in the largest and longest published prospective neuromodulation data set in the field of epilepsy. These studies demonstrate that our RNS System provides significant, sustained, and improving reductions in disabling seizures with enduring improvements in quality of life and cognition. In our randomized, controlled Pivotal Study, patients experienced a median reduction in seizure frequency of 44% after the first year. The patients from our Feasibility Study and the Pivotal Study, all of whom received implants prior to 2010, were followed in a Long-Term Treatment Trial, or LTT, in which outcomes improved to a 75% median reduction in seizure frequency at nine years, demonstrating the ability of our closed-loop therapy to improve outcomes in the same set of patients over time. Additionally, we believe the insights obtained from our extensive brain data set are driving improvements in overall therapy effectiveness across patient cohorts over time. For example, the recently published real-world results from a post-approval retrospective study of patients treated across eight epilepsy centers showed a statistically significant median seizure frequency reduction of 67% at one year, which is consistent with the interim one year results of our ongoing prospective Post-Approval Study, increasing to a median reduction in seizure frequency of 82% at three or more years, the highest published seizure frequency reduction for any neuromodulation study. Our studies have also collectively demonstrated that our RNS System is well-tolerated, with a safety profile similar to that of other brain neurostimulator implant procedures, and a lower rate of dying from sudden unexpected death in epilepsy, or SUDEP, relative to other treatment-resistant epilepsy groups. Unlike other neuromodulation devices for epilepsy, which have been shown to negatively impact sleep, mood, memory, and vocal characteristics, our RNS System is not associated with adverse stimulation-related side effects at therapeutic settings. We believe our extensive and growing body of clinical evidence will continue to support increased adoption of our RNS System.

- **Efficient commercial model supported by an established, specialized field team.** Our initial target patient population of U.S. adults with drug-resistant focal epilepsy is treated in Level 4 CECs that provide advanced diagnosis and management of epilepsy. We estimate that there are approximately 200 of these Level 4 CECs in the United States. As of December 31, 2020, our commercial organization of 21 Therapy Consultants and 21 Field Clinical Engineers have established a significant account base, resulting in 132 of these Level 4 CECs implanting our RNS System in 2020. Our commercial organization remains focused on increasing the number of implanting Level 4 CECs and driving utilization within these centers. Given the concentrated nature of our target market, we believe there is a significant opportunity to efficiently drive continued growth without significant salesforce expansion. As the number of Level 4 CECs and epileptologists grows, we continue to leverage the concentrated nature of our patient and provider population with our highly-skilled and technically trained salesforce. We believe that our focused and dedicated approach to these CECs has also enabled us to develop deep-rooted relationships with the clinicians that manage our target patient population, which provides a strong established channel for future potential products and indications.

- **Established, differentiated, and favorable reimbursement supporting commercial growth.** We believe that both the implantation procedure for our RNS System and the ongoing patient care provided by

clinicians, including monitoring and programming, are reimbursed at attractive levels under well-established physician and hospital codes. In addition, our RNS System is currently the only neuromodulation system for epilepsy with reimbursement available for in-person or remote review of iEEG data, which provides a differentiated value proposition for clinicians. Given the relatively young average age of our patient population, our payor mix has historically been more heavily weighted towards commercial payors and, as of December 31, 2020, positive written coverage policies from commercial payors address approximately 200 million covered lives in the United States. Medicare and Medicaid also routinely provide coverage for implantation of our RNS System and follow-up care. Based on our experience, less than 1% of potential RNS System patients have been unable to undergo an implant procedure with our RNS System due to lack of payor coverage. We believe the established, differentiated, and favorable reimbursement paradigm for our RNS System will continue to support its broad commercial adoption.

- **Strategic approach to our intellectual property portfolio.** Our product and technological advantages are supported by a combination of our patent portfolio, trade secrets, and manufacturing know-how. As of December 31, 2020, we owned 132 issued U.S. patents and 14 non-provisional pending U.S. patent applications that included system, device, and method claims covering our differentiated, responsive direct brain stimulation system as well as stimulation and treatment modalities, artificial intelligence, and data analysis methodologies.

- **Experienced senior management team.** Our senior management team consists of seasoned medical device professionals with deep industry and clinical domain experience. Our team has successfully led and managed dynamic growth phases in organizations, commercialized products, and developed markets in neuromodulation and other therapeutic modalities. Members of our team have worked with well-regarded medical technology companies such as Boston Scientific Corporation, Johnson & Johnson, Guidant Corporation, and Covidien plc.

Our Growth Strategies

We expect that the near-term growth of our business will be primarily driven by new patients being treated with our RNS System. We believe the following strategies will contribute to growth in initial patient implants and advance our mission to dramatically improve clinical outcomes and quality of life for patients suffering from epilepsy and other disabling brain disorders:

- ***Drive adoption of our RNS System***. Our commercial efforts are primarily focused on the Level 4 CECs where drug-resistant focal epilepsy patients are actively seeking treatment. The number of Level 4 CECs in the United States has been growing as more epilepsy specialists are trained and in 2020 there were approximately 200 Level 4 CECs in the United States. Our focused commercial organization consists of 21 Therapy Consultants and 21 Field Clinical Engineers who supported 132 Level 4 CECs in performing initial implant cases in 2020. Our experienced sales team also has a near-term opportunity to establish our RNS System as a routine therapy in an additional 44 centers where we have completed the vendor approval and contracting process. Additionally, our sales team has the opportunity to engage with clinicians at programming centers outside of Level 4 CECs to facilitate the continued management of patient care. We believe that with limited additional resources, our current commercial organization has sufficient capacity to establish relationships with the remaining Level 4 CECs and support their ongoing utilization. Our goal is to establish our RNS System as a standard treatment for drug-resistant focal epilepsy patients in all Level 4 CECs by engaging in targeted, efficient sales and education efforts to expand our footprint of CEC accounts.

- ***Increase utilization of our RNS System within CECs***. As we expand our footprint across Level 4 CECs, we plan to continue to drive increased utilization of our RNS System within new and existing accounts. We expect to accomplish this by (i) growing the number of epileptologists recommending our system within

each center, (ii) increasing utilization of our system by existing prescribers, and (iii) increasing the number of patients with drug-resistant epilepsy that are referred to CECs for the care that they need.

- *Growing the number of epileptologists recommending our system*: We estimate that there are approximately 1,200 epileptologists affiliated with the approximately 200 Level 4 CECs in the United States and that this number will continue to grow as more clinicians are trained in the specialty. Epileptologists are the clinicians who prescribe the course of epilepsy treatment, including our RNS System. On average there are approximately five to seven epileptologists affiliated with each Level 4 CEC in the United States. Our commercial efforts resulted in prescriptions from approximately one third of the epileptologists in the Level 4 CECs that implanted our RNS System in 2020. We believe the remaining epileptologists in these accounts represent a significant potential opportunity to drive efficient growth. To facilitate adoption by these clinicians, we plan to continue conducting training and professional education programs, facilitating peer-to-peer dialogue and forums, communicating our exceptional clinical results, and releasing product enhancements that simplify the user experience.

- *Increasing utilization of our RNS System by prescribers*: While we have achieved significant commercial adoption of our RNS System to date, including 612 RNS Systems implanted in new patients in 2020, our target market remains highly underpenetrated and represents a significant opportunity for growth. We estimate that approximately 48% of the 50,000 new drug-resistant epilepsy patients seen at a Level 4 CEC in 2019 are adults with focal epilepsy and that the clinical and technology benefits of our RNS System are such that it is an attractive therapy for many of these patients. We plan to increase penetration of our target market by increasing utilization by the epileptologists that are already actively prescribing our RNS System. We have seen that utilization typically increases once clinicians become familiar with the technology and experience the benefits that our RNS System and long-term iEEG data bring to improving patient care. To drive increased utilization, our Therapy Consultants and Field Clinical Engineers are focused on providing information that epileptologists can reference in developing appropriate patient selection protocols and partnering with epilepsy programs to more fully incorporate our RNS System into their practice. We also engage in collaborative clinical research with epileptologists and neurosurgeons to provide additional data relevant to patient selection, patient care, and RNS treatment approaches.

- *Driving increased referrals of drug-resistant epilepsy patients to Level 4 CECs*: While we estimate that there are approximately 1.2 million patients with drug-resistant epilepsy in the United States, only approximately 50,000 new patients were treated in a Level 4 CEC in 2019. We believe there is a significant opportunity to increase referrals of patients who could benefit from our RNS System to Level 4 CECs where they can receive specialized care. To accomplish this, we will continue to drive awareness by engaging epilepsy patients and caregivers through our advocacy partnerships and marketing initiatives such as digital and social media campaigns, advertising, patient education, and patient ambassador programs. In addition, we plan to increase awareness of our RNS System amongst clinicians who treat epilepsy patients early in their care, including general neurologists, through education and outreach designed to drive patient referrals to Level 4 CECs.

- ***Broaden indications for our RNS System to include patients under age 18 and patients with generalized epilepsy***. Of the 50,000 drug-resistant epilepsy patients that present at Level 4 CECs in the United States annually, we estimate that approximately 48%, or 24,000, are adults with drug-resistant focal epilepsy who are currently candidates for our RNS System. The remaining patients include approximately 12%, or 6,000 patients under the age of 18 with drug-resistant focal epilepsy and approximately 40%, or 20,000 patients with drug-resistant generalized epilepsy. Supported by evidence published in peer-reviewed journals, we believe that our current RNS System may be able to effectively treat these expanded patient populations without significant modifications to our existing product and we intend to pursue clinical studies to support label expansion for these indications. We have FDA approval for an investigational device exemption, or IDE, to treat drug-resistant focal epilepsy in adolescent patients ages 12 through 17 and expect to begin enrollment in 2021. In the second half of 2021, we also plan to seek IDE approvals to initiate studies in drug-resistant generalized epilepsy.

- ***Expand into international markets***. We estimate that the global drug-resistant epilepsy market includes approximately 16.5 million patients, of which the United States represents approximately 1.2 million patients. While we are presently focused on addressing the significant domestic market opportunity, we believe our RNS System offers an attractive value proposition for patients, providers, and payors in the large potential market outside of the United States and may additionally seek to expand our operations to reach the approximately 16.5 million drug-resistant epilepsy patients globally. While our RNS System is not yet approved for sale outside the United States, we plan to pursue regulatory approvals and reimbursement with a priority on markets in which we see significant potential opportunity.

- ***Pursue additional indications, including outside of epilepsy***. We believe our versatile, closed-loop, brain-responsive neuromodulation platform has potential applications in other brain disorders including depression, impulse control disorders, memory disorders, and post-traumatic stress disorder. For each of these four conditions, we are collaborating with academic investigators in early IDE feasibility studies using our RNS System in patients. In the future, depending on the outcome of these studies, we may seek regulatory approval to commercialize our technology for these or other indications.

Our Market and Industry

Overview of Drug-Resistant Epilepsy

Epilepsy is a devastating chronic disorder characterized by a tendency of the brain to produce sudden abnormal bursts of electrical energy that disrupt brain functions and cause seizures. The symptoms of the seizure depend on the region of the brain from which the discharges arise and the extent to which they spread. If the seizure remains restricted to less than half of the brain, then symptoms may include an alteration in speech, memory, motor, sensory, or vision function. Most often, there is confusion. If the seizures involve all of the brain, there is loss of consciousness. In the most severe case, the patient may have a generalized tonic clonic seizure, which is also referred to as a convulsion or Grand Mal seizure, with uncontrolled jerking of the arms and legs. After the seizure, patients may remain confused and disoriented for minutes or even hours. Seizure-related injuries include burns, head and skeletal trauma, abrasions, lacerations, and potentially life-threatening accidents.

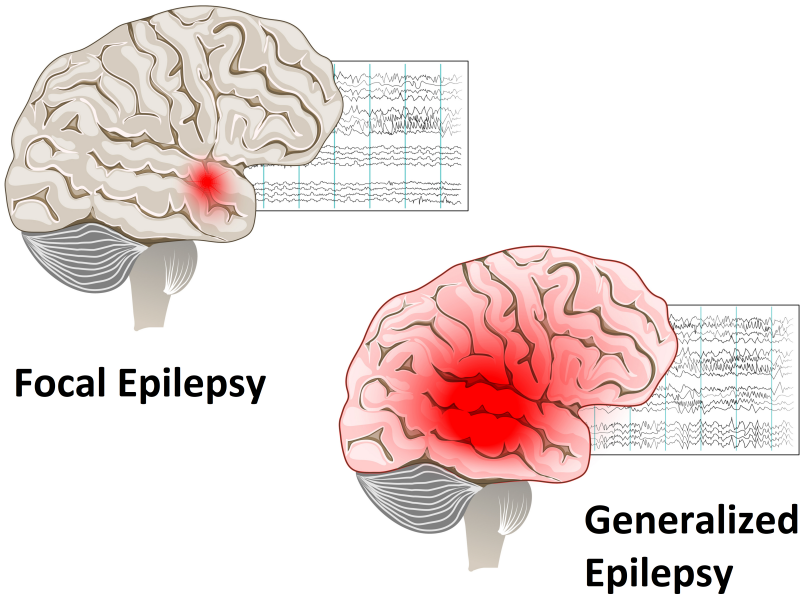
According to the World Health Organization, approximately 50 million people worldwide had epilepsy in 2019 and according to the Centers for Disease Control and Prevention, 3.4 million people in the United States were living with epilepsy in 2015, making it the fourth most common neurological disorder in the United States. First line treatment for epilepsy is antiepileptic drugs, or AEDs. While AEDs can help control seizures for many individuals, approximately one third of patients do not achieve complete seizure control, which is defined as seizure freedom without life-impacting side effects associated with treatment. According to a 2018 article published in JAMA Neurology, the chance of achieving complete seizure control after failing two AED regimens is less than 5%. The study concluded that despite the availability of over 15 new drugs in the past decade, overall complete seizure control in newly diagnosed patients has not fundamentally changed. This population of epilepsy patients is referred to as drug-resistant and we estimate that there are approximately 1.2 million drug-resistant epilepsy patients in the United States.

Drug-resistant epilepsy is a costly disorder in terms of its impact on individuals and their families as well as on society. According to a 2020 article in the American Journal of Managed Care, estimated direct costs of epilepsy in the United States are approximately $28 billion per year, disproportionately accrued by individuals with uncontrolled drug-resistant epilepsy. Importantly, these direct costs do not consider indirect costs from losses in quality of life and productivity, which are estimated to constitute the majority of the cost burden of epilepsy.

Patients with drug-resistant epilepsy struggle with a variety of life-impacting challenges including psychological dysfunction, social stigmatization, reduced quality of life, and increased risk of mortality. The unpredictable nature of seizures limits the ability of patients to live independently, and promotes increased social isolation. Studies have shown that children with epilepsy often receive inadequate schooling, which leads to developmental gaps as these children mature and, for adults, unemployment levels are approximately two to three times higher than the overall population. Based on a social security death index, people with drug-resistant epilepsy have a cumulative probability of death of 8.7% at six years from the time of diagnosis at an epilepsy center, and

patients with uncontrolled epilepsy have a nine to thirteen times higher risk of death than patients with epilepsy who are seizure-free.

Epilepsy can be classified into two categories: focal epilepsy and generalized epilepsy. Approximately 60% of epilepsy patients have focal epilepsy, which is characterized by electrical discharges that originate in a specific part of the brain. Focal epilepsy patients typically have one or two seizure foci, or sites in the brain from which the electrical discharge originates. Generalized epilepsy, which describes approximately 40% of epilepsy patients, is characterized by widespread electrical discharges that involve the entire brain at once.



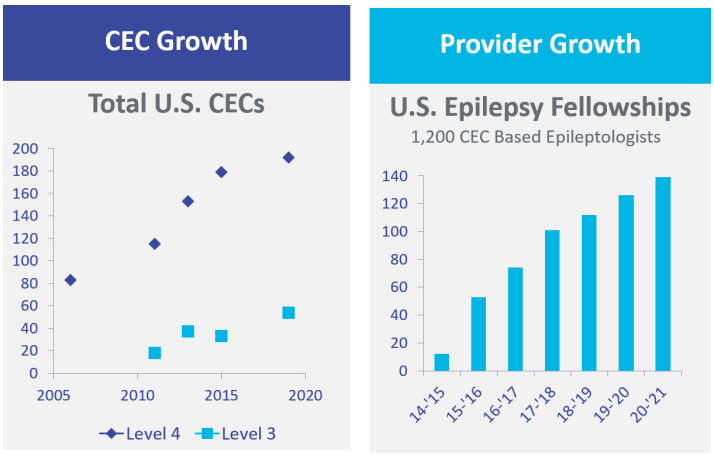
Onset of epilepsy can occur at any age. Of the approximately 1.2 million patients in the United States with drug-resistant epilepsy, we estimate that approximately 80% are adults, or 18 years of age or older, of whom approximately 575,000 have focal epilepsy. The remaining approximately 20% of patients are pediatric, or under the age of 18, and we estimate that approximately 145,000 of these pediatric patients have focal epilepsy.

Overview of Epilepsy Care

The National Association of Epilepsy Centers, or NAEC, which is considered the primary accreditation organization for epilepsy centers in the United States, classifies epilepsy care into four levels. Levels 1 and 2 care include an evaluation in a primary care physician's office or a consultation with a general neurologist while levels 3 and 4 care take place at specialized epilepsy centers called Comprehensive Epilepsy Centers, or CECs.

CECs are typically tertiary care hospitals that provide specialized epilepsy care. Level 3 CECs generally provide basic neurodiagnostic evaluations and may also offer noninvasive surgical evaluations, straightforward resective or ablative surgery, and implant VNS devices, but do not perform intracranial evaluations or complex resective or ablative surgery. In addition to offering the services performed at Level 3 CECs, Level 4 CECs offer the most comprehensive and complex epilepsy care, including a broad range of surgical procedures for epilepsy. The NAEC recommends that patients whose seizures have not been brought under control after three months of care by a primary care physician or after 12 months of seeing a general neurologist be referred to a Level 3 or Level 4 CEC.

The number of CECs in the United States has grown from approximately 80 Level 4 CECs in 2006 to approximately 200 in 2020. The number of neurologists being trained in accredited epilepsy fellowship programs has increased from twelve in the 2014, when the board certification was created, to 140 in 2020. The figure below shows provider and CEC growth in the United States.



Today, most drug-resistant epilepsy patients in the United States begin their care at physician offices or community hospitals, with Level 1 or 2 care by primary care physicians or general neurologists. In 2019, we estimate that approximately 50,000 drug-resistant epilepsy patients were referred to, and treated in, Level 4 CECs, of which approximately 48%, or 24,000, were adults with focal epilepsy.

Our Market Opportunity

Our paradigm-shifting RNS System is currently indicated for use in adults with drug-resistant focal epilepsy and we believe that it is an attractive therapeutic option for these patients. We estimate that there are approximately 575,000 adult drug-resistant focal epilepsy patients in the United States, which reflects a total addressable market opportunity of approximately $26 billion for our RNS System.

Our commercial efforts are focused on the Level 4 CECs in the United States that provide comprehensive epilepsy care. As such, we view our core annual market as the 50,000 drug-resistant epilepsy patients who present at Level 4 CECs each year, of which 48% are adult drug-resistant focal epilepsy patients. We estimate that this addressable patient pool of 24,000 patients represents an annual market opportunity of approximately $1.1 billion for initial RNS System implants, and we expect that it will continue to grow as the number of Level 4 CECs increase, the number of epilepsy specialists grows, and as more patients are referred to Level 4 CECs. Our RNS System currently has a battery life of approximately eight years, which, through the sale of replacement neuromodulation devices, provides a recurring revenue stream that is additive to our current $1.1 billion annual market opportunity. The average age of initial implant patients in our clinical studies was approximately 34 and we expect that many of our patients will return multiple times for replacement procedures over their lifetimes.

Supported by evidence published in peer reviewed journals, we believe that our current RNS System may also be able to effectively treat patients under age 18 with drug-resistant focal epilepsy as well as drug-resistant generalized epilepsy patients and we intend to pursue clinical studies to support label expansion for these indications. We have FDA approval for an IDE study to treat drug-resistant focal epilepsy in patients under age 18 and expect to begin enrollment in 2021. In the second half of 2021, we also plan to seek IDE approvals to initiate clinical studies in generalized epilepsy.

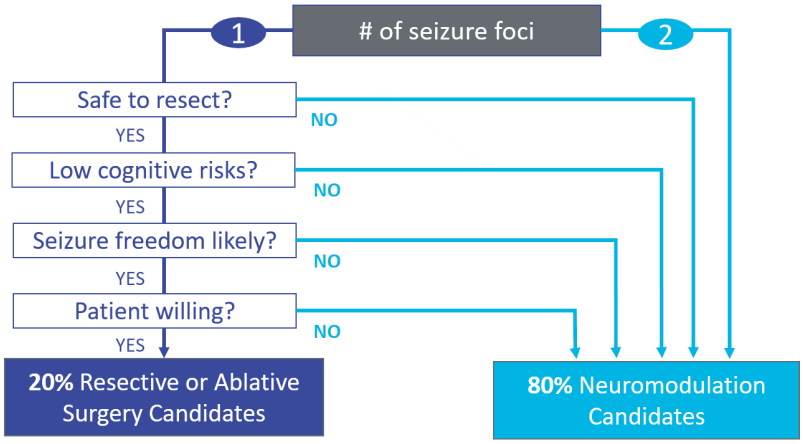
Based on the additional approximately 6,000 drug-resistant focal epilepsy patients under the age of 18 and approximately 20,000 drug-resistant generalized epilepsy patients that were treated at Level 4 CECs in 2019, we estimate that these patient populations represent annual market opportunities of approximately $270 million and $900 million, respectively for initial implants. The adolescent population, for which we expect to seek indication expansion, represents a subset of the overall pediatric market opportunity.

Current Treatment Alternatives and Their Limitations

There are two primary treatment alternatives for drug-resistant focal epilepsy patients: (i) an ablative or resective surgery to remove or destroy the brain tissue associated with the seizure onset, or (ii) implantation of a neuromodulation device to stimulate seizure-causing brain circuits and prevent or abort seizures.

Once patients are in the care of a Level 4 CEC, they undergo a diagnostic process to determine whether they have focal or generalized epilepsy. If they have focal epilepsy, the locations of seizure onset are also determined. For patients with only one discrete seizure focus, resective or ablative surgery may be an effective option to eliminate seizure activity if the focus is clearly identified by electroencephalogram, or EEG, and magnetic resonance imaging, or MRI, and is safe to resect. However, we estimate that only approximately 20% of drug-resistant focal epilepsy patients meet these requirements and are willing to undergo a surgery.

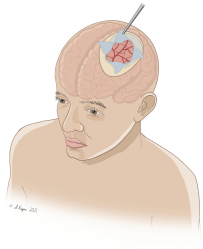
For the approximately 80% of drug-resistant focal epilepsy patients who are not ideal candidates for resective or ablative epilepsy surgery, neuromodulation devices are an attractive treatment alternative. The first neuromodulation device approved for epilepsy, which is a VNS device, has been available for over 20 years and, in controlled trials, has demonstrated success in reducing seizure frequency. Interest in neuromodulation devices is rising as our RNS System and DBS have more recently been approved for the treatment of focal epilepsy, and as physicians have become more comfortable with, and experienced in, incorporating neuromodulation devices into their practice. Growing awareness of the risks and limited success of resective and ablative surgery are also driving adoption. The chart below illustrates how physicians may evaluate treatment options for their patients.



Resective and ablative surgery

Surgery has been used to treat epilepsy for more than 100 years. Resective or ablative surgery is used in current clinical practice as a treatment alternative for the approximately 20% of drug-resistant epilepsy patients who are willing to have the surgery and have a discrete, single seizure focus that is determined to be safe to resect or ablate in a way that is likely to result in complete seizure control. The remaining approximately 80% of patients are unlikely to become seizure-free after a resective or ablative surgery, are at risk for damage to functions such as language, movement, sensation, memory, or vision, or do not want to have resective or ablative surgery. For people with more than one seizure focus or with a large focus, the possibility of meaningful improvement in seizures with resective or ablative surgery is lower and the risks to neurological function are usually higher. If seizures are generalized at onset, then resective or ablative surgery does not offer a benefit.

Surgical treatment options include focal resection and, more recently, laser ablation. Focal resection procedures are invasive surgeries that involve permanently removing the part of the brain that is primarily responsible for the seizure onset. Laser ablation surgeries, which use thermal energy to permanently destroy brain tissue, have emerged as a less invasive alternative to surgical resection. However, multiple publications have concluded that laser ablation is not as effective as larger resective procedures.

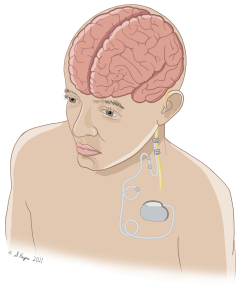


Only approximately 20% of drug-resistant focal epilepsy patients have a focus that is both safe to remove and likely to result in seizure control if removed, and are also willing to undergo resective or ablative surgery. Of those who do, only half are seizure-free two years after surgery and many experience impairment in some aspect of neurological function. The most common and successful type of resective surgery, temporal lobectomy, leaves 30 to 40% of patients with seizures one year after surgery and many patients are left with neurological side effects, including impaired memory, reduced naming ability, and loss of some part of their visual field.

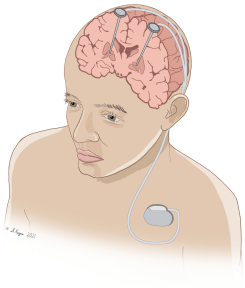
Implantable neuromodulation devices

In addition to our RNS System, there are two neuromodulation devices that are approved by the FDA to treat focal epilepsy: Vagus Nerve Stimulation, or the VNS System, marketed by LivaNova: and Deep Brain Stimulation, or the DBS System, marketed by Medtronic. Neuromodulation devices offer a non-destructive, reversible treatment option that provides substantial seizure reduction and quality of life improvements, without the risk of neurocognitive deficits associated with resective or ablative surgeries. Unlike AEDs and resective or ablative surgery, for which success may decline over time within individual patients, neuromodulation therapies have demonstrated sustained and, in many cases, even improved success over time.

The VNS System was approved by the FDA in 1997 as an adjunctive therapy in reducing the frequency of seizures in patients with drug-resistant focal epilepsy. The VNS System provides scheduled extracranial stimulation delivered from a pectorally implanted pulse generator with the lead tunneled under the skin to the left vagus nerve in the neck next to the carotid artery. Therapy is typically delivered in a repeating pattern of 30 seconds of stimulation followed by five minutes without stimulation. The most recent commercially available version of VNS provides additional stimulation when the heart rate exceeds a preset limit. Although heart rate increases occur during some seizures, this indicator lags behind the brain activity changes that cause seizures.



The DBS System was approved by the FDA in 2018 for the treatment of focal epilepsy. Bilaterally implanted intracranial electrodes are placed in each anterior thalamic nucleus, which have connections to other brain regions. The electrodes are attached to a pectorally implanted pulse generator using connecting wires that are tunneled under the scalp and skin of the neck and chest. DBS delivers non-responsive, sometimes referred to as open-loop, scheduled stimulation and has limited sensing and recording capability. Therapy is typically delivered in a repeating pattern of one minute of stimulation followed by five minutes without stimulation.



Published data from separate prospective FDA approved studies run by LivaNova and Medtronic in adults with focal epilepsy demonstrated that the VNS System and DBS System achieved median reductions in seizure frequency at one year of 35% and 44%, respectively. Both VNS and DBS devices stimulate a fixed anatomical target that is not specific to where seizures start in the brain. They also use the same treatment paradigm for all patients and are

intermittently stimulating the brain using a non-varying schedule in an attempt to prevent seizures rather than responding in real-time to the patient-specific electrical activity that precedes a seizure.

Furthermore, VNS devices do not record brain data for physicians to use to assess seizure burden and treatment effectiveness. While the latest generation of DBS devices do record a limited sample of data, these data are not typically as relevant for epilepsy as they are for movement disorders. Accordingly, physicians generally have to rely primarily on patient self-reported seizure data, which is typically unreliable and incomplete, in order to titrate treatment for individual patients. As such, we believe VNS and DBS devices have limited ability to benefit from the insights afforded by brain data in order to improve patient outcomes.

Additionally, although abnormal electrical activity typically occurs less than 1% of the time in epilepsy patients, VNS and DBS devices stimulate an aggregate of multiple hours per day, regardless of the state of the brain, increasing the likelihood of stimulation side effects. Published data from FDA approved trials for VNS indicate that side effects of stimulation include voice alterations, hoarseness, throat pain, cough, and difficulty swallowing while published data from FDA approved trials for DBS indicate that side effects of stimulation include depression and memory impairment. Other studies of DBS report sleep disruption as a side effect.

We believe our RNS System addresses the significant unmet need for an epilepsy treatment option that can improve outcomes without causing stimulation related side effects for the large portion of drug-resistant focal epilepsy patients who are not ideal candidates for surgery or who do not want to undergo a destructive surgical procedure.

Our Solution

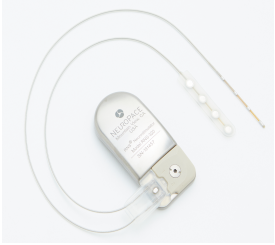
Our RNS System, which is a compilation of several of our products, is a paradigm-shifting approach to treating epilepsy that combines the power of continuous iEEG monitoring with responsive neuromodulation. With our RNS System, we offer a personalized treatment option that delivers a safe and effective therapy for focal onset seizures originating anywhere in the brain. We believe our RNS System is superior in tolerability and efficacy to other neuromodulation approaches and provides clinicians with actionable insights based on their patients' brain activity, facilitating better treatment decisions and optimizing patient care.

RNS System Overview

Our RNS System includes our RNS neurostimulator, our cortical strip leads and depth leads, our Patient Remote Monitor, as well as other implantable and non-implantable accessories. As part of the initial implant procedure, the number and configuration of leads implanted as well as the implantable and non-implantable accessories used in the procedure are determined by the clinicians depending on individual patient need and clinician preference and a Patient Remote Monitor is typically included. During a typical replacement implant procedure performed when the battery in our RNS neurostimulator reaches end of service, the RNS neurostimulator is replaced, while the previously implanted RNS leads remain in place and a new Patient Remote Monitor is typically included. Clinicians continue having access to our Physician Tablet and Patient Data Management System, or PDMS, to provide ongoing patient support.

We developed our RNS System to address the individualized nature of drug-resistant epilepsy with a differentiated technology that provides personalized, data-driven treatment. Our RNS System is the first and only closed-loop, brain-responsive neuromodulation device approved by the FDA for treatment of drug-resistant focal epilepsy. By continuously monitoring the brain's electrical activity, recognizing patient-specific abnormal electrical patterns, and responding in real time with imperceptible electrical pulses to prevent seizures, we believe our RNS System addresses the primary unmet needs in epilepsy care today.

The implantable components of our RNS System include a neurostimulator, which is placed within the patient's skull, and our RNS System leads with both cortical strip electrodes (on the surface of the brain) and depth electrodes (within the brain) that can be positioned in one or two seizure foci, as well as implantable accessories such as our burr hole cover. The neurostimulator is flush with the patient's skull, and under the scalp, so that it is not visible externally. Placing the neurostimulator in the skull minimizes external noise and movement artifact so that it is able to sense even the most subtle brain signals and eliminates the need for long tunneled connectors between the chest and head which reduces the risk for breakage, migration and discomfort that can be associated with some other neuromodulation devices.



The electrodes on the leads sense electrical activity from the brain, provide targeted stimulation only when abnormal activity is detected, and record iEEG data that is stored in the neurostimulator and transmitted wirelessly to a secure portal for remote review by the patients' clinicians. Once fully programmed, patients do not feel the stimulation bursts, which are typically 100 to 200 milliseconds long. Because our RNS System provides targeted, responsive stimulation only when abnormal electrical activity is detected, patients receive approximately three minutes of stimulation on average per day and do not experience stimulation-related side effects at therapeutic settings.

In addition to the implantable components of our RNS System, our RNS System also includes external components such as the Patient Remote Monitor, as well as optional accessories.

Our Patient Remote Monitor is provided to each patient in order to collect and transmit data from the neurostimulator to our Patient Data Management System, a secure online database. It consists of a handheld wand and a specially programmed laptop computer. The patient holds the wand adjacent to the implanted device to wirelessly upload the data from the neurostimulator to the laptop, and then sends that encrypted data to our Patient Data Management System using an internet connection.

Additionally, we provide our Physician Tablet and access to our PDMS for use with our RNS System.

Our Physician Tablet is used by the prescribing or managing clinicians for programming implanted devices and managing patient care. Using the tablet's simple, intuitive interface, the clinician retrieves and reviews iEEG data, detections, and stimulations that were recorded by our RNS System, and can program new detection and stimulation settings that are personalized to each patient's brain activity. While the patient is in clinic, the clinician can look at real time iEEG data or test stimulation settings.

Our Patient Data Management System is a secure online database that collects data that have been recorded in our RNS System. These data, which include all programmed parameters, detections, stimulations, and stored iEEG activity for RNS System patients, can be accessed through our Physician Tablet or from any internet browser. The clinician may choose to view recent data or to look at longer term trends in order to assess the effects of RNS System treatment, antiepileptic drugs or even changes to the patient's routine. This information, combined with the patient's own reports, is used by the clinicians to make treatment decisions.

In addition to the extensive dataset available on our Patient Data Management System, we recently introduced our Insight Report, which is designed to provide clinicians with personalized patient reports. Our Insight Report includes objective iEEG data recorded by our RNS System, patient-reported seizure diary data, and prior programmed settings, which are available in a simple and comprehensive report that provides actionable information about their patient's seizure trends and treatment outcomes. This quick snapshot gives clinicians a more complete picture of their patient's health and enables them to remotely manage certain portions of the patient's care in a telehealth environment.

As we collect iEEG data from our RNS System, our database of iEEG records continues to grow. As of December 31, 2020, over 3,000 epilepsy patients have received our RNS System, yielding an extensive database of approximately 6.6 million iEEG records. We believe that we are able to continue to learn and innovate by leveraging this database and our data analytics capabilities, thereby improving and enhancing our products and creating actionable insights for clinicians that improve clinical outcomes for patients.

RNS System – Patient and Clinician Experience

Once an adult patient has been through the diagnostic process in a Level 4 CEC and has been determined to have drug-resistant focal epilepsy, we believe the patient should be considered for our RNS System if the patient has one to two identified seizure foci and is not among the approximately 20% of drug-resistant focal epilepsy patients who may be ideal candidates for surgery. Our RNS System is initially implanted by a neurosurgeon in an inpatient procedure at a Level 4 CEC. Detection is turned on at the end of the implant procedure when the neurostimulator is placed. The patient typically remains in the hospital overnight, then returns home and resumes normal activities. Prior to the first in-person follow up visit, which typically occurs approximately two weeks to four weeks after the implant procedure, an epileptologist will review the iEEG data recorded by our RNS System and identify patient specific patterns that are associated with the early onset of seizures. During the follow-up visit, the epileptologist will make programming adjustments to the device's detection parameters in order to optimize for early detection. Once the patient-specific detection parameters are established, the epileptologist will turn on the stimulation feature, activating the closed-loop treatment of our RNS System.

Once the device has been programmed, our RNS System integrates seamlessly into the typical cadence of care that clinicians currently utilize to manage epilepsy patients. Patients visit their clinician on average every three months during the first year after the procedure. During these visits, clinicians review the iEEG data and may fine-tune programming of the device to optimize clinical outcomes. Once the device settings have been sufficiently fine-tuned, patients typically visit their clinician every three to six months, or on an as needed basis. At any point, clinicians can remotely review patient data and connect with the patient on next steps.

Additionally, we believe that patients find that seeing and learning about their own brain data is empowering and engaging. We believe that for the first time, clinicians can show patients their own seizure patterns and seizure cycles recorded by our RNS System, so that patients can directly see the effects on brain activity with changes in activity or treatment. Patients also appreciate that the device is not visible to themselves or others.

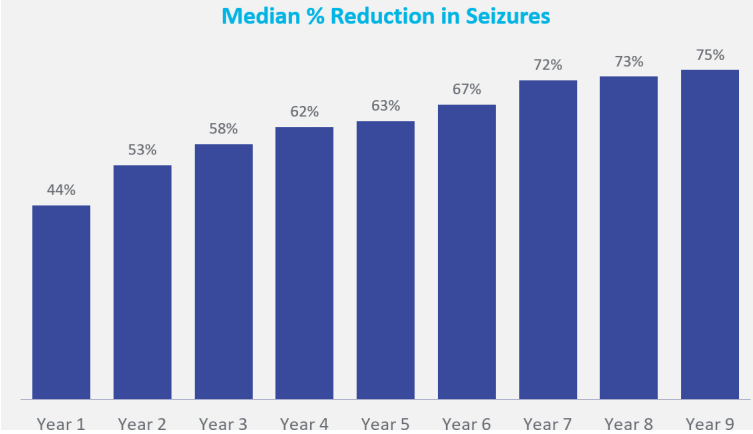
The current commercial model of our RNS System has an average battery life of approximately eight years, and requires replacement once the device approaches the end of its battery life. Prior to 2018, the commercial model of our RNS System had an average battery life of approximately four years. We believe that patients prefer a longer battery life as it reduces the number of procedures they will require over their lifetime. Replacement procedures are typically performed on an outpatient basis and take approximately one hour. Clinicians are able to view the device's battery status through our Patient Data Management System or on our Physician Tablet, and can plan accordingly with the patient for replacement procedures. In 2019, more than 90% of patients whose RNS System reached the end of its battery life chose to have a replacement RNS System implanted.

Key Clinical Advantages of our RNS System

We believe the key advantages of our RNS System relative to both alternative neuromodulation devices and resective or ablative surgery include:

Significant and improving seizure reduction in all areas of the brain. Four multi-center FDA approved prospective clinical trials and multiple retrospective studies have demonstrated that our RNS System provides significant, sustained and improving reductions in disabling seizures. In our Pivotal Study, patients experienced a median reduction in seizure frequency of 44% after the first year. The patients from the Pivotal Study, all of whom received implants prior to 2010, were followed in a LTT in which outcomes reached a 75% median reduction in seizure frequency at nine years. 28% of these patients, who had previously experienced disabling seizures for an average of 20 years, had at least 6 months of seizure freedom and approximately 20% achieved one year or more of seizure freedom. Additionally, we believe the insights obtained from our extensive brain data set are driving improvements in overall therapy effectiveness across patient cohorts over time. The recently published real-world

results from a retrospective study across eight epilepsy centers with patients implanted between 2013 and 2018 showed a statistically significant median seizure frequency reduction of 67% at one year, which is consistent with the interim one year results of our ongoing prospective Post-Approval Study, increasing to 82% by year three, which we believe is the highest published seizure frequency reduction for any neuromodulation study in adults with focal onset seizures. Importantly, peer-reviewed studies have also indicated that our RNS System demonstrates similar efficacy outcomes regardless of the region of the brain being treated, whether there are one or two seizure foci, and whether the patient has been treated with VNS or resective or ablative surgery.



Lack of stimulation-related side effects. Our clinical studies have collectively demonstrated that RNS System therapy is well-tolerated. Patients do not perceive the therapeutic stimulation, which is delivered only to the area of abnormal activity, and only when that abnormal activity occurs. Unlike other neuromodulation devices for epilepsy, which provide hours of stimulation each day to non-specific targets and have been shown to negatively impact sleep, mood, memory, or vocal characteristics, our RNS System stimulates the precise seizure targets and only when needed, resulting in a highly effective therapy with approximately three minutes of stimulation on average per day in total.

Quality of life, cognition, and mood improvement. Reduced quality of life and cognitive function, as well as mental health-related comorbidities, are a significant burden for many patients with drug-resistant focal epilepsy. Improvements in these areas are critically important clinical outcomes for patients. In our Pivotal Study, at one and two years follow-up, patients achieved statistically significant improvements in overall quality of life scores as well as in every subdomain of quality of life, including cognitive function, mental health, and physical health. Additionally, our clinical studies have demonstrated that treatment with our RNS System resulted in lasting improvements in overall quality of life, including cognitive function, sustained through nine years. Based on comprehensive neuropsychological assessments, there were no adverse cognitive effects and, in fact, significant cognitive improvements were in areas such as naming, verbal learning, visual memory, and executive function.

Low risk, reversible procedure. As demonstrated by multiple clinical studies, our RNS System has a favorable safety profile relative to surgical procedures for epilepsy and a comparable risk profile to the implantation of other neuromodulation devices. Resective or ablative surgical procedures carry a risk of permanent damage to neurological and cognitive function, whereas the non-destructive RNS System implant procedure has not demonstrated a negative impact on neurological or cognitive function. Additionally, stimulation treatment with our RNS System is reversible and modifiable, and does not take away the option of a surgery in the future.

Reduction in sudden unexpected death in epilepsy. Epilepsy patients, particularly those with uncontrolled epilepsy, face a risk of sudden and unexpected death as a result of their condition. Each year, about 1 in 150 patients with uncontrolled epilepsy will die from SUDEP. According to clinical studies, the SUDEP rate is approximately 6.1 per 1,000 patient years in patients with drug-resistant epilepsy and 9.3 per 1,000 patient years in patients referred for resective or ablative surgery. By contrast, data from a published series of 707 patients across our clinical studies

and post-market experience indicated that our RNS System was associated with a lower rate of dying from SUDEP of 2.0 per 1,000 patient years relative to other treatment-resistant epilepsy groups.

The results of our prospective clinical studies, which are the largest and longest published studies in the field of neuromodulation for epilepsy, as well as the data that has been published in multiple retrospective studies of our RNS System, provide evidence that our RNS System is a safe and effective treatment for focal onset seizures and offers a lower risk profile than that of resective or ablative surgery. In addition, we believe our RNS System is superior in tolerability and efficacy to other neuromodulation approaches. We anticipate that the accruing evidence base from our ongoing Post-Approval Study and commercial experience with our RNS System will continue to demonstrate strong and improving clinical outcomes over time, which will support continued adoption.

Benefits to Other Stakeholders

In addition to offering important clinical benefits to patients, we believe our RNS System offers important distinctions for providers and payors.

Providers

We believe the unprecedented insights into brain activity that are enabled by our RNS System's differentiated ability to record iEEG data, offer clinicians the opportunity to more thoroughly understand patient specific brain activity in order to optimize treatment for their patients. With the benefit of objective, long-term data on seizure trends and treatment response, clinicians are better able to actively manage patient care and support improved outcomes over time. In a survey of 50 epileptologists and neurosurgeons at Level 3 and Level 4 epilepsy centers, 88% agreed that having 24/7 monitoring with chronic high-resolution intracranial EEG data is an important consideration and advantage in choosing RNS versus VNS or DBS.

Importantly, in addition to the availability of established clinician and facility reimbursement for the initial and replacement implant procedures, the patient's managing clinician can seek reimbursement for in person or remote iEEG data review up to once per month and for device programming. Because our RNS System is the only neuromodulation device that records iEEG data, we believe it is also the only neuromodulation device with established reimbursement for data review by clinicians during and between in-person clinic visits, which we believe is an important element of optimizing patient care.

Payors

Drug-resistant epilepsy is a costly condition that places a significant economic burden on healthcare systems as well as on patients and their families. The estimated direct costs of epilepsy alone are approximately $28 billion annually in the United States and are disproportionately accrued by individuals with uncontrolled drug-resistant epilepsy. By offering drug-resistant focal epilepsy patients a safe, effective treatment alternative that significantly reduces ongoing seizure frequency without stimulation-related side effects at therapeutic settings, we believe our RNS System has the potential to reduce the cost burden associated with drug-resistant epilepsy. We believe the established and favorable reimbursement paradigm for our RNS System, which covers both the implantation procedure and ongoing patient treatment provided by clinicians, endorses the value proposition that it offers payors.

We also believe that the unique ability for clinicians to review their patients' RNS System data online can facilitate telehealth delivery, potentially reducing the overall cost of care, while improving the patient experience. For example, many patients who might otherwise schedule a clinic visit because of a concern about seizures, can now contact their clinician from their home, who can then review their RNS System data online and provide care remotely.

Clinical Data

The safety, effectiveness. and clinical benefits of our RNS System are supported by data from four multi-center, FDA approved prospective clinical studies representing nearly 600 patients and multiple retrospective studies reporting real-world outcomes. Our robust and growing body of clinical evidence, which includes nine-year follow-up with over 2,500 years of patient data, provides the largest and longest published prospective clinical data set in

the field of neuromodulation devices for epilepsy. Data from these studies collectively demonstrate that our RNS System provides significant, sustained, and improving reductions in disabling seizures with enduring improvements in quality of life and cognition for patients with drug-resistant focal epilepsy.

Our first prospective clinical trial, the Feasibility Study, was initiated to assess the safety and performance of our RNS System and to provide preliminary evidence of effectiveness for patients suffering from drug-resistant focal epilepsy. Data from the two-year Feasibility Study supported IDE approval for our two-year Pivotal Study, a double blinded randomized, sham-stimulation controlled multi-center study that was initiated in 2005 and provided Class I evidence of the safety and effectiveness of our RNS System. Data from the Pivotal Study supported FDA PMA approval of our RNS System. Patients from the Feasibility and Pivotal Studies were subsequently enrolled in our LTT study that followed these patients for an additional seven years, culminating in a total of nine years of follow-up data. We are currently conducting a prospective Post-Approval Study evaluating “real world” outcomes across more than 300 additional patients. We also intend to pursue studies to support label expansion for our RNS System in additional epilepsy populations.

Across the 256 patients that were enrolled in the Feasibility and Pivotal studies, the average age was 34 years old and the patients had experienced an average of 10.2 disabling seizures per month for an average of 19.6 years. All patients had previously tried multiple AEDs, 32% of patients had previously been treated with VNS, and 34% had previously undergone resective or ablative surgery.

Feasibility Study

The Feasibility Study was a two-year prospective, primarily open-label study of our RNS System in adult drug-resistant focal epilepsy patients that demonstrated safety and provided sufficient evidence of effectiveness to support the commencement of a pivotal study. Beginning in 2004, 65 patients were treated with our RNS System and 59 patients completed the study.

The primary safety endpoints were the rate of serious adverse events during the first month post-implant and the first three months post-implant. The serious adverse events rates at one month post-implant and three months post-implant of 6.2% and 9.2%, respectively, were not worse than the serious adverse event rates associated with the implantation of intracranial electrodes for localization procedures and epilepsy surgery at one month post-implant of 19%, or the historical adverse event rate for DBS for treatment of movement disorders at three months post-implant of 36%.

This safety experience combined with encouraging data on seizure outcomes supported commencement of the subsequent Pivotal Study.

Pivotal Study

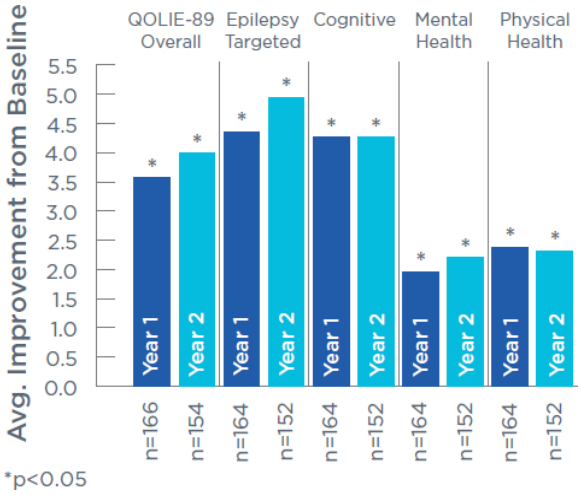
The Pivotal Study was a two-year prospective, double-blinded, randomized, and sham-stimulation controlled study that provided Class I evidence indicating that our RNS System is safe and effective as an adjunctive treatment for adults with drug-resistant focal epilepsy arising from one or two seizure foci. Between December 2005 and November 2008, 191 patients were enrolled in the study and 175 of those patients completed the study.

The primary effectiveness endpoint was assessed by comparing seizure reduction in the group receiving active stimulation (treatment group) relative to the group receiving no stimulation (sham group) during a 12-week blinded evaluation period relative to a 12-week pre-implant baseline. The primary effectiveness endpoint was met with a statistically significant difference between the reduction in seizure frequency for the treatment group relative to the sham group. In the final month of the blinded evaluation period, patients in the treatment group reached a 41.5% reduction in seizures, compared to a 9.4% reduction for patients in the sham stimulation group.

The primary safety endpoint was also met, demonstrating that the serious adverse event rate at one month was not worse than the literature-derived serious adverse event rates for resective or ablative surgery, implantation of intracranial electrodes for seizure localization, and DBS for treatment of movement disorders.

Stimulation was also well-tolerated. There was no difference in stimulation-related side effects between active and sham patients in the blinded period and no adverse effects of responsive stimulation on cognitive function or mood. In fact, there were statistically significant improvements in a number of areas of cognitive function, including executive function, language, and memory. Memory improvements were most evident in patients with seizure onsets in memory regions and verbal fluency improvements were most significant in those with seizure onsets in language areas. There were also modest improvements in mood at two years of treatment.

Patients were also assessed for changes in Quality of Life, or QOL, as measured by a comprehensive industry-recognized questionnaire that is validated and widely used for patients suffering from epilepsy. As shown in the graph below, there were statistically significant sustained improvements in overall QOL as well as in every subdomain of QOL at both one and two years follow-up.

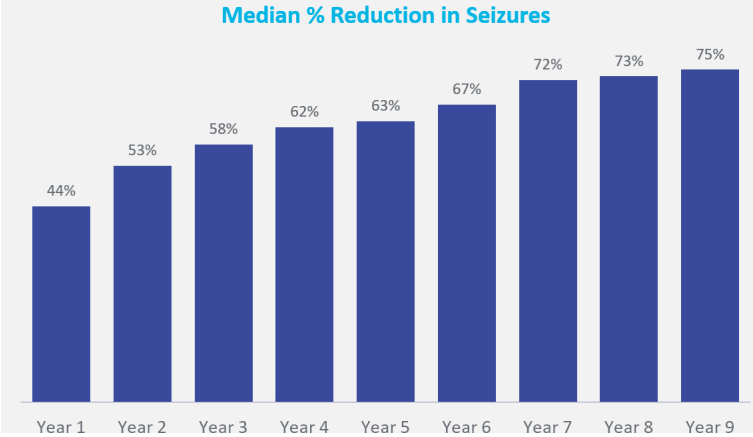


Long-Term Treatment Study

The LTT study was a seven-year prospective, open-label study that followed patients originally treated in either the Feasibility or Pivotal Study. In total, this provided approximately nine years of prospective data on the safety and efficacy of our RNS System. The LTT study, which enrolled 230 patients, is the largest and longest prospective trial published in the field of neuromodulation to date and provided additional evidence that our RNS System is safe, reduces seizure frequency, and improves QOL in adults with drug-resistant focal epilepsy with one or two seizure foci. Enrolled patients were studied over a median follow-up of 8.97 years, representing 1,895 cumulative patient-implant years.

The primary effectiveness objective of the LTT study was to evaluate the long-term efficacy of our RNS System in reducing the frequency of disabling seizures in patients who participated in the Feasibility Study or Pivotal Study. As indicated in the figure below, the median percent reduction in seizure frequency improved from 44% after one year to 75% at nine years. We believe the substantial improvement in seizure reduction that was observed over time

is due, in part, to the brain-responsive nature of our RNS System and the personalized, data-driven, and iterative therapy that it enables.



Additionally, at nine years, 35% of patients had a greater than 90% reduction in seizure frequency and 28% had at least one seizure-free period of six months or longer. These improvements were particularly notable given that at baseline the patients in this trial had on average more than 10 disabling seizures a month, with an average of nearly 20 years of epilepsy, and had failed multiple other epilepsy therapies. Overall QOL as well as the sub-domains of the comprehensive QOL score remained significantly improved relative to baseline at each year of treatment.

Finally, there were no serious adverse events related to stimulation. Over the entire nine-year follow-up period, the only device-related serious adverse events that were reported in 5% or more of patients cumulatively were implant site infections and elective explant of the neurostimulator, leads, or both.

Post-Approval Study

We have completed enrollment for an FDA-mandated prospective open-label “real-world” study of our RNS System in drug-resistant focal epilepsy patients with a planned follow up period of five years. In this clinical study, our RNS System was implanted in 324 patients across 32 centers. The objectives of the clinical study are to collect additional information on the safety and effectiveness of our RNS System and to analyze patient outcomes and responses according to center experience and stimulation parameters. An interim analysis of 160 patients followed for one year that was presented at the American Epilepsy Society Annual Meeting in 2019 showed a 67% median reduction in seizure frequency compared to baseline, demonstrating significantly better outcomes than were seen in our Feasibility Study and Pivotal Study at that same time point. In addition, 38.5% of patients followed for more than one year experienced a greater than 90% reduction in seizure frequency.

Publications and Retrospective Studies

Overall, there are more than 300 publications that provide information related to our RNS System. In addition to reviews and expert opinions on patient selection for RNS System treatment, these publications include studies of treatment outcomes in general and by specific brain regions or causes of epilepsy. Certain of these publications review surgical techniques and safety, as well as strategies for the implant location of the RNS neurostimulator and leads.

Another subset of these publications describes how the long-term iEEG data uniquely provided by our RNS System can offer significant benefits in managing epilepsy patients and driving fundamental research on epilepsy. These publications describe how long-term iEEG data can be used to identify seizure triggers, distinguish epileptic from non-epileptic seizures, inform surgical resection, or provide an early assessment of AED response. Recent analyses of RNS System data describe cycles in seizure activity that were not previously recognized, and propose that these data could assist in forecasting times when patients are at greater risk for seizures.

In addition, a number of these publications are retrospective studies of the "real-world" efficacy and utility of our RNS System, some of which have been supported, in part, by NeuroPace. The largest of these published retrospective studies was a retrospective chart review of 150 patients across eight epilepsy centers who were treated with our RNS System according to the approved indication for use. This study, which was published in July 2020 in *Epilepsia*, documented median reductions in seizure frequency over three years post-treatment that exceeded those from our Pivotal Study. The median reduction in seizure frequency at one year was 67% (149 patient sample size), which is consistent with the one-year interim results of our Post-Approval Study, and increased to 75% at two years (93 patient sample size) and 82% at three years (38 patient sample size). In addition, 35% of patients had a greater than or equal to 90% seizure frequency reduction at their last follow up visit. We believe the improvement in seizure frequency outcomes between our Pivotal Study and both our Post-Approval Study and this retrospective study demonstrates the utility that our growing body of brain data is providing to drive better and faster seizure reduction outcomes.

Future Potential Studies

We also intend to pursue studies to support label expansion for our RNS System in additional epilepsy populations. We have IDE approval to conduct an open label study of our RNS System in adolescent patients ages 12 through 17 who have drug-resistant focal epilepsy from one or two foci. The objective of this study will be to demonstrate safety and effectiveness in this patient population, and to obtain data on quality of life, neuropsychological function, and social function. Importantly, our RNS System does not require any modifications to conduct this study. We expect to begin enrollment in this study in 2021.

Supported by evidence published in peer-reviewed journals, we also believe that our current RNS System may be able to effectively treat patients with drug-resistant generalized epilepsy. In the second half of 2021, we also plan to seek IDE approvals to initiate studies in generalized epilepsy.

Commercial Strategy

We designed our commercial strategy to primarily target epileptologists and neurosurgeons at Level 4 CECs in the United States. Within Level 4 CECs, epileptologists are the primary specialists who prescribe and manage therapy for drug-resistant focal epilepsy patients and neurosurgeons are the specialists who implant our RNS System. As of April 1, 2019, we estimate that there are approximately 1,200 epileptologists and 400 neurosurgeons associated with the approximately 200 Level 4 CECs in the United States. We also improve flow of appropriate patients to Level 4 CECs with sales and marketing initiatives designed to enhance awareness of our RNS System and increase referrals of drug-resistant epilepsy patients to these centers.

We market and sell our RNS System in the United States through a direct sales organization that, as of December 31, 2020, consisted of 21 sales representatives, known as Therapy Consultants, and 21 clinical and programming support specialists, known as Field Clinical Engineers. Our Therapy Consultants are highly skilled and technically trained with substantial experience launching new disruptive therapies, particularly in neuromodulation, and establishing them as a standard of care by increasing clinician adoption and utilization. Our Field Clinical Engineers have substantial experience training clinicians on the use of sophisticated technology and providing ongoing support for medical centers as they increase adoption of new therapies.

Our commercial organization supported 132 of the approximately 200 Level 4 CECs in completing new patient implant procedures in 2020 and also has a near-term opportunity to establish our RNS System as a routine therapy in an additional 44 centers where we have completed the vendor approval and contracting process. We believe that with limited additional resources, our current commercial organization has sufficient capacity to establish relationships with the remaining Level 4 CECs in the United States that are not yet using our RNS System and drive increased penetration in new and existing accounts. We do not currently sell our product in markets outside the United States.

Our Therapy Consultants are responsible for developing territory business plans, targeting and onboarding new accounts, and increasing adoption of our RNS System within accounts. In addition, Therapy Consultants support epileptologists and their staff in incorporating our RNS System into their practice, and provide resources to help with patient education, as well as working to increase referrals into Level 4 CECs. Together with our Field

Clinical Engineers, they provide information that epileptologists can use to inform the development of appropriate patient selection protocols, and partner with the epilepsy care team to help incorporate our RNS System into their workflow. Our Field Clinical Engineers are responsible for ongoing account management including training clinicians on the use of our RNS System, promoting its benefits within existing accounts, and driving increased clinician utilization.

We support our sales organization with marketing and training initiatives designed to educate clinicians about our RNS System and support clinician adoption at Level 4 CECs. We have developed a robust professional education program that includes educational symposia, fellows training, programming workshops, and peer-to-peer forums. Through webinars, clinical briefs, and scientific conferences, we keep our clinician customers informed about the rapidly growing body of peer-reviewed publications and scientific research involving our RNS System.

Our sales and marketing programs are also designed to increase referrals of drug-resistant epilepsy patients to Level 4 CECs. We estimate that only one in five drug-resistant epilepsy patients receive specialized care at a comprehensive epilepsy center. To drive increased patient flow to Level 4 CECs, we are beginning to scale our market development initiatives to engage epilepsy patients and caregivers through our advocacy partnerships and marketing programs. These programs include digital and social media campaigns, advertising, public relations, patient webinars, support groups, and patient ambassador programs. In addition, we plan to increase awareness of our RNS System amongst clinicians who care for epilepsy patients early in their care, including general neurologists, through education and outreach designed to drive patient referrals to Level 4 CECs. As we grow awareness and utilization of our RNS System, we plan to continue to enhance our marketing and analytics capabilities to support our growing customer base.

Research and Development

We focus our research and development efforts on advancing the treatment of patients suffering from disabling neurological disorders. These efforts are enhanced by the strong relationships that we have developed with epileptologists and neurosurgeons, as well as other neuroscientists and experts, through our clinical and commercial activities. We believe our brain-responsive RNS System is a platform that can drive a better standard of care for patients suffering from drug-resistant epilepsy, and can also offer a more personalized solution and improved outcomes to the large population of patients suffering from other brain disorders.

Our research and development activities encompass basic research, clinical research and product development. Our research and development team has mechanical, biomedical and electrical engineering, software development, project management, data science, and machine and deep learning expertise. In addition, our clinical organization has expertise as well as extensive experience in clinical trial design and management, data collection, data management, and clinical data analysis. Our clinical team has conducted three prospective clinical studies on our RNS System and completed enrollment in a fourth, prospective Post-Approval Study. We believe the strength and strategic vision of our research and development team, combined with our clinical and regulatory expertise, will continue to drive our leadership position in the emerging category of brain-responsive neuromodulation.

Our near-term research and development efforts are focused on continuing to improve therapy effectiveness, enhancing the patient and provider experience, and expanding the population of patients that can be treated with our RNS System. Our research and development activities have resulted in significant new releases of components of RNS System that advanced these goals, including a new easy-to-use tablet programmer for clinicians, a new neurostimulator with an eight-year average battery life, and MRI conditional labeling. Our near-term development pipeline includes enhancements that leverage our extensive database of iEEG data and our advanced data analysis and AI capabilities, which provide clinicians with additional information that they can use to enhance their clinical assessment and establish appropriate program settings for each patient. In addition to our near-term efforts, we continue to focus on developing our next-generation neurostimulator.

We also maintain and will continue to build an intellectual property portfolio covering brain responsive neuromodulation and AI assessment of brain data. In the future, we intend to leverage these assets to expand into other brain disorders that we believe could benefit from the physiologic and engineering advantages made possible by our brain-responsive neuromodulation solution.

Coverage and Reimbursement

We derive substantially all of our revenue from sales of our RNS System, including both initial and replacement devices, to the hospital facilities, which are typically Level 4 CECs, that implant our RNS System in the United States. These facilities, in turn, bill third party payors, including private insurers, Medicare or Medicaid on a per procedure basis including for the implant procedure and post-implant programming and iEEG data review.

Given the relatively young average age of our patient population, many of our patients do not qualify for Medicare. As such, the third party payor mix for patients implanted with our RNS System has historically been more heavily weighted toward private insurers. As of December 31, 2020, commercial insurance companies that address approximately 200 million covered lives in the United States have positive written coverage policies for responsive neuromodulation for drug-resistant focal epilepsy, which includes our RNS System. Medicare and Medicaid also routinely provide coverage for implantation of our RNS System and follow-up care. Based on our experience, less than 1% of potential RNS System patients have been unable to undergo an implant procedure with our RNS System due to lack of payor coverage.

Initial implantation of our RNS System takes place in a single hospital inpatient procedure. Hospitals are generally reimbursed for inpatient procedures based on Medicare Severity Diagnosis Related Group, or MS-DRG, classifications derived from ICD-10 codes that describe the patient's diagnoses and procedure(s) performed during the hospital stay. One single MS-DRG payment is intended to cover all hospital costs associated with treating an individual during his or her hospital stay, with the exception of clinician charges associated with performing medical procedures, which are reimbursed through CPT codes and payments. While these MS-DRG and CPT codes are generally employed by both private insurers and government payors, the payment rates typically differ substantially, with private insurers generally providing reimbursement at higher rates than Medicare or Medicaid.

Hospitals code for implantation of our RNS System neurostimulator and implantation of the leads using separate ICD-10 procedure codes. When combined with an ICD-10 diagnosis code for epilepsy, the codes map into MS-DRG 023 for payment to the hospital. In federal fiscal year 2021, which runs from October 2020 through September 2021, we expect the Medicare average payment rate for MS-DRG 023 at our Level 4 CEC accounts to be approximately $50,000. We believe that most DBS procedures for epilepsy map into MS-DRG 024 and we expect the Medicare average payment rate at Level 4 CECs for this code will be approximately $35,000.

The neurosurgeons who implant our RNS System may seek reimbursement for their services using a variety of Category I CPT codes, depending on the type of leads implanted. These codes include CPT 61886 for implantation of a two lead system in addition to CPT codes 61850 or 61860 for cortical leads or CPT codes 61863 and 61864 for depth leads. We believe these codes for depth leads are the same CPT codes used for reimbursement of physician services for epilepsy DBS procedures. Based on 2021 Medicare national average payment rates, we expect that physician reimbursement under appropriate combinations of these codes may be between approximately $2,500 to $2,700 per procedure for our RNS System and approximately $2,700 for epilepsy DBS procedures. We believe physician services for the VNS implantation procedure are reimbursed under CPT code 64568 which is associated with a 2021 Medicare national average payment rate of approximately $600.

When the battery in our RNS neurostimulator reaches end of service the neurostimulator is typically replaced in a hospital outpatient procedure. Reimbursement for the facility in the outpatient setting is determined by CMS' comprehensive Ambulatory Payment Classification, or APC, system which assigns codes specifically related to a single procedure. Hospitals receive outpatient reimbursement based on the APC group assigned to the physician service or procedure performed, which are described by CPT codes. Our RNS System replacement procedure is coded with a Category I CPT code, which maps into APC-5465 for payment to the hospital, and we believe this is the same code used for the initial implant procedure for VNS. In 2021, we expect the Medicare average payment rate for APC-5465 at our Level 4 CEC accounts to be approximately $30,800. The neurosurgeon is also reimbursed for services related to the replacement procedure based on the CPT code reported.

After implantation of our RNS System, the patient's ongoing care, including device programming and data review, is typically managed by an epileptologist or other qualified clinician. The patient's managing physician is able to seek reimbursement for programming on an as needed basis. The physician can also seek reimbursement a

maximum of once every 30 days for in-person or remote review of iEEGs, which are also referred to as electrocorticograms, or ECoGs. The codes utilized for device programming for both RNS and DBS are CPT codes 95983 and 95984 and the code for ECoG review is CPT code 95836. We believe this CPT code for ECoG review is only applicable to our RNS System as it is currently the only commercially available implanted brain neuromodulation system that records, stores, and enables online review of the patient's ECoG data.

Based on 2021 Medicare national average payment rates, reimbursement under CPT codes 95983 and 95984 is expected to range from $52 to $97, depending on length of programming time. Reimbursement under CPT code 95836 is expected to be approximately $107 for ECoG review. Accordingly, physician reimbursement for device programming and ECoG review during a typical RNS System follow-up visit could range from $159 to $204. We believe physicians submit claims for VNS device programming using code 95976 or 95977, depending on the number of device parameters changed. Based on Medicare national average payment rates, payment under these codes is expected to range from $41 to $55.

Competition

Our industry is competitive and has been evolving rapidly with the introduction of new products and technologies as well as the market activities of industry participants. Our RNS System is indicated for adult patients with drug-resistant focal epilepsy and we currently market our device primarily to the clinicians within Level 4 CECs that treat these patients. In this patient population, there are two primary treatment options: (i) an ablative or resective surgery, or (ii) implantation of a neuromodulation device. Patients may also choose not to actively seek additional treatment for epilepsy or may choose to trial new therapeutic drugs that become available from time to time. However, none of the AEDs that have been approved in the last decade have been demonstrated to show additional sustained effectiveness beyond that of the established AEDs.

We estimate that approximately 80% of drug-resistant focal epilepsy patients are either not ideal candidates for ablative or resective surgery or are unwilling to undergo a destructive surgical procedure and we compete with two manufacturers of neuromodulation devices for the treatment of these patients. Our competitors are LivaNova plc, which manufactures the VNS System and Medtronic plc, which manufactures the DBS System. These competitors are larger, well-capitalized companies with significant resources, which may include:

- established sales and marketing programs and networks, including internationally;
- broad product portfolios;
- long operating histories;
- established relationships with healthcare professionals;
- established manufacturing scale and supplier networks;
- financial resources for product development; and
- name recognition.

In addition to competing for market share, we also compete against these companies for qualified personnel.

We believe that our RNS System is a paradigm-shifting approach to treating drug-resistant focal epilepsy. By continuously monitoring the brain's electrical activity, recognizing and responding to patient-specific seizure onset patterns, and recording ongoing iEEG data that clinicians can use to optimize patient care, we believe our RNS System addresses the primary unmet needs in epilepsy care today. We compete primarily on the basis that our system is designed to offer superior tolerability and efficacy to other neuromodulation approaches, as well as access to continuous brain data. Our continued success depends on our ability to:

- continue to demonstrate safety and efficacy in our Post-Approval Study and in ongoing commercial use;

- expand our footprint of Level 4 CECs implanting our RNS System and increase utilization in new and existing CECs;
- increase the number of epileptologists recommending and the number of neurosurgeons implanting our RNS System;
- drive awareness to increase the number of drug-resistant epilepsy patients referred to Level 4 CECs;
- maintain adequate reimbursement for procedures using our product;
- attract and retain skilled research, development, sales and clinical personnel;
- continue to innovate in order to improve therapy effectiveness and enhance the patient and provider experience;
- obtain and maintain regulatory clearances and approvals, including for expanded indications;
- cost-effectively manufacture, market and sell our product; and
- obtain, maintain, enforce and defend our intellectual property rights and operate our business without infringing, misappropriating or otherwise violating the intellectual property rights of others.

Intellectual Property

Our commercial success depends in part on our ability to obtain and maintain intellectual property protection for our RNS System and any future products, to prevent others from infringing, misappropriating, or otherwise violating our intellectual property rights, to defend and enforce our intellectual property rights, and to operate without infringing, misappropriating, or otherwise violating valid and enforceable intellectual property rights of others. We actively seek to protect intellectual property that we believe is important to our business, which includes patents covering the components of our RNS System and the methods used for optimizing the therapy that our RNS System delivers. We also seek patent protection for other processes and inventions that are commercially or strategically important to developing and maximizing the value of our enterprise. We take steps to build and maintain the integrity of our brand, for example, with trademarks and service marks, and we seek to protect the confidentiality of trade secrets that may be important to the development of our business. We rely on a strategy that combines the use of patents, trademarks, trade secrets, know-how, and license agreements, as well as other intellectual property laws, employment, confidentiality and invention assignment agreements, and contractual protections, to establish and protect our intellectual property rights.

Patents

Patent Portfolio

As of December 31, 2020, we owned 132 issued U.S. patents and 14 non-provisional patent applications pending in the U.S. Patent and Trademark Office, or the USPTO, 28 of which covered our RNS System and its components. Additionally, we own six issued foreign patents, including in Canada, Australia, the U.K., and Germany. Our patents are expected to expire between April 2021 and August 2038 without taking into account all possible patent term adjustments, extensions, or abandonments, and assuming payment of all appropriate maintenance, renewal, annuity, and other governmental fees.

Our patents and patent applications assert claims generally related to devices, methods, and systems. These include: detecting anomalous brain activity and the source thereof; modulating brain activity – such as with electrical stimulation – to treat disorders and diseases of the nervous system; efficient communication or data transfer between implantable and external components of our product; the use of data to optimize therapy outcomes, such as by using artificial intelligence and deep learning techniques; and various combinations thereof. We cannot ensure that patents will issue from any of our pending applications or that, if patents are issued, they will be of sufficient scope or strength to provide meaningful protection for our technology.

Patent Strategy

Our patent strategy is to seek patent protection for our inventions and to preserve our options to file additional applications pursuing claims covering specific commercial embodiments of the inventions, assuming these are strategically valuable. We also file patent applications covering innovations and developments to prevent third parties from developing competing products. Additionally, where appropriate, we file patent applications covering inventions related to new technologies or novel applications of our products and processes in areas beyond the scope of where we are focusing our resources in the near term, in order to preserve optionality as our business grows and to prevent third parties from expanding their reach. From time to time, we may also in-license or out-license patents in accordance with our patent strategy. For all patent applications, we determine claiming strategy on a case-by-case basis. Advice of counsel, as well as our business model and needs are also considered.

We recognize that the ability to obtain patent protection and the degree of such protection depends on a number of factors. The patent positions of medical device companies like ours are generally uncertain and involve complex legal, scientific, and factual questions. The protection afforded by a patent varies on a product-by-product basis, from jurisdiction-to-jurisdiction, and depends upon many factors, including the type of patent, the scope of its coverage, the availability of patent term adjustments and extensions, the availability of legal remedies, and the validity and enforceability of the patent.

In addition, the coverage claimed in a patent application can be significantly narrowed before the patent is issued, and patent claims can be reinterpreted or further altered even after patent issuance. We cannot predict whether the patent applications we are currently pursuing will issue as patents or whether the claims of any issued patents will provide sufficient protection from competitors. A competitor could develop systems, devices, or methods of manufacture or treatment that are not covered by our patents. Accordingly, our ability to stop third parties from commercializing any of our patented inventions, either directly or indirectly, will depend in part on our success in obtaining, maintaining, defending, and enforcing patent claims that adequately cover our inventions.

Our commercial success will also depend, in part, on not infringing, misappropriating, or otherwise violating the intellectual property rights of third parties. Third parties own numerous patents in the U.S. and in jurisdictions outside the U.S. with claims directed to inventions in the fields in which we operate or plan to operate. It is uncertain whether the issuance of any third-party patent would require us to alter our development or commercial strategies, seek licenses, cease certain activities, or participate in USPTO proceedings. Moreover, such licenses may not be available on commercially reasonable terms or at all. Our breach of any license agreements or failure to obtain a license necessary to our business may have a material adverse impact on us.

On July 27, 2005, we entered into a cross-license agreement, or the Cross-License, with Medtronic, Inc., or Medtronic, directed to patent families in a field of use that is generally aligned with our business interests, including direct electrical stimulation or monitoring of the brain via electrodes attached to or implanted in the head for the treatment or diagnosis of epilepsy and other disorders, or the Field. Under the terms of the Cross-License, Medtronic granted to us a royalty-bearing, worldwide, non-exclusive, license in the Field to certain patent families owned or controlled by Medtronic or acquired by or licensed to Medtronic. In turn, we granted to Medtronic a royalty-bearing, worldwide, non-exclusive license in the Field to certain patents owned or controlled by us or acquired by or licensed to us. The term of the Cross-License extends through the life of the licensed patents, unless it is extended by the parties or otherwise terminated early pursuant to its terms. The Cross-License provides that each party may terminate the Cross-License if the other party materially breaches the Cross-License and does not cure the breach within a specified period of time.

Trademarks

Our trademark portfolio is designed to protect the brands of our RNS System and any future products. As of December 31, 2020, we own 23 trademark registrations, four of which are U.S. trademark registrations and the rest in various other countries or regions. We own trademark registrations for “NeuroPace,” the “NeuroPace” logo, and “RNS” in the United States and various other countries, and “WINDOW TO THE BRAIN” in the U.S.

Trade Secrets

We also rely on trade secrets relating to our product and technology, and we maintain the confidentiality of such proprietary information to protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection. We seek to protect our trade secrets and know-how by entering into confidentiality and invention assignment agreements with employees, contractors, consultants, suppliers, customers, and other third parties, who have access to such information. These agreements generally provide that all confidential information concerning our business or financial affairs developed or made known to the individual during the course of the individual's relationship with us are to be kept confidential and not disclosed to third parties except in specific circumstances.

For more information regarding the risks related to our intellectual property, please see "Risk Factors—Risks Related to Our Intellectual Property."

Manufacturing and Supply

We currently manufacture our RNS System at and distribute all of the components of our RNS System from our approximately 53,000 square foot facility in Mountain View, California. This facility provides approximately 20,000 square feet of space for our production and distribution operations, including manufacturing, quality control and storage. We believe our existing facility will be sufficient to meet our current and near-term manufacturing needs.

Our manufacturing and distribution operations are subject to regulatory requirements of the FDA's Quality System Regulation, or QSR, for medical devices sold in the United States. The FDA monitors compliance with the QSR through periodic inspections of our facilities and may include our suppliers' facilities as well. We are also subject to applicable state and local regulations relating to the environment, waste management and health and safety matters, including measures relating to the release, use, storage, treatment, transportation, discharge, disposal, sale, labeling, collection, recycling, treatment and remediation of hazardous substances.

Our failure, or the failure of our suppliers, to maintain acceptable quality requirements could result in substantial fines, the shutdown of our manufacturing operations or the recall of our components of our RNS System, which would harm our business. In the event that one of our suppliers fails to maintain acceptable quality requirements, we may have to find and qualify a new supplier and could experience a material adverse effect to our manufacturing operations and result in manufacturing delays.

We believe our quality management system is compliant with FDA Quality Systems Regulations. We have been an FDA registered medical device establishment since 2014 and California licensed medical device manufacturer since 2004. We moved to our current Mountain View, California facility in March 2012.

The FDA conducted a PMA pre-approval inspection of our manufacturing facility in Mountain View, California prior to our PMA approval, as well as an establishment inspection in September 2014 which resulted in no 483 observations. We were accepted into the FDA Voluntary Improvement Program pilot in 2018 and we are in our third year of participation. The FDA Voluntary Improvement Program pilot is part of the FDA's Case for Quality Program. As a participant in this pilot, we have an on-site appraisal once a year during which an appraisal team assesses our processes to determine areas for improvement, and we have subsequent quarterly check-in assessments that are designed to discuss our progress in continuous improvement. For companies that participate in this pilot program, the FDA forgoes conducting routine facility inspections and pre-approval inspections in order to allow participants to shift resources to innovation and improvement efforts. We believe that we are in compliance, in all material respects, with applicable FDA and QSR requirements.

The materials, components, and sub-assemblies of our RNS System, as well as manufacturing services, are provided by qualified and approved suppliers, most of which are single source suppliers. We typically maintain several months' worth of inventory on critical components. From time to time we have experienced issues with our suppliers. To date, these issues have not had a material impact on our operations. We estimate that qualifying a second source supplier would be a lengthy process. Our suppliers are evaluated, qualified and approved through our supplier management program, which includes various evaluations, assessments, qualifications, validations, testing and inspection to ensure the supplier can meet acceptable quality and regulatory requirements.

Order quantities and lead times for materials, components, and sub-assemblies purchased from suppliers are based on our forecasts derived from historical demand and anticipated future demand. We perform assembly, testing, inspection and final release activities for our RNS System at our Mountain View, California facility.

Government Regulation

Regulation of Medical Devices in the United States

Our RNS System and our operations are subject to extensive and ongoing regulation by the FDA under the Federal Food, Drug, and Cosmetic Act of 1938 and its implementing regulations, collectively referred to as the FDCA, as well as other federal and state regulatory bodies in the United States. The laws and regulations govern, among other things, product design and development, preclinical and clinical testing and research, manufacturing, safety, efficacy, packaging, labeling, storage, record keeping and reporting, clearance or approval, adverse event reporting, advertising, marketing, distribution, promotion, import and export and post-marketing surveillance, to ensure that medical devices distributed domestically are safe and effective for their intended uses and otherwise meet the requirements of the FDCA. Failure to comply with applicable requirements may subject a device and/or its manufacturer to a variety of administrative sanctions, such as FDA refusal to approve pending premarket applications, issuance of warning letters, mandatory product recalls, import detentions, civil monetary penalties, and/or judicial sanctions, such as product seizures, injunctions and criminal prosecution.

FDA Premarket Clearance and Approval Requirements

Unless an exemption applies, each medical device commercially distributed in the United States requires either FDA approval of a PMA, clearance of a 510(k) premarket notification, or grant of a de novo request for classification. Under the FDCA, medical devices are classified into one of three classes—Class I, Class II, or Class III—depending on the degree of risk associated with each medical device and the extent of manufacturer and regulatory control needed to provide reasonable assurance of its safety and effectiveness. Classification of a device is important because the class to which a device is assigned determines, among other things, the necessity and type of FDA review required prior to marketing the device, making changes to the device, or otherwise using the device.

Class I devices include those with the lowest risk to the patient and are those for which safety and effectiveness can be reasonably assured by adherence to the FDA's "general controls" for medical devices, which include compliance with the applicable portions of the QSR, facility registration and product listing, reporting of adverse medical events and malfunctions through the submission of Medical Device Reports, or MDRs, and appropriate, truthful and non-misleading labeling, advertising, and promotional materials. Some Class I or low risk devices also require premarket clearance by the FDA through the 510(k) premarket notification process described below.

Class II devices are moderate risk devices subject to the FDA's general controls, and any other "special controls" deemed necessary by the FDA to ensure the safety and effectiveness of the device, such as performance standards, product-specific guidance documents, special labeling requirements, patient registries, or post-market surveillance. Premarket review and clearance by the FDA for Class II devices is accomplished through the 510(k) premarket notification process, though certain Class II devices are exempt from this premarket review process. When required, the manufacturer must submit to the FDA a premarket notification, or 510(k), submission demonstrating that the device is "substantially equivalent" to a legally marketed device, which in some cases may require submission of clinical data. Unless a specific exemption applies, 510(k) premarket notification submissions are subject to user fees. If the FDA determines that the device, or its intended use, is not substantially equivalent to a legally marketed device, the FDA will place the device, or the particular use of the device, into Class III, and the device sponsor must then fulfill more rigorous premarketing requirements.

Class III devices include devices deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices and devices deemed not substantially equivalent to a predicate device following a 510(k) submission. The safety and effectiveness of Class III devices cannot be reasonably assured solely by general or special controls. Submission and FDA approval of a PMA, application is required before marketing of a Class III device can proceed. As with 510(k) submissions, unless an exemption applies, PMA submissions are subject to user fees. The PMA process is much more demanding than the 510(k) premarket notification process. A PMA application

is required, which is intended to demonstrate that the device is reasonably safe and effective for its intended use and must be supported by extensive data, typically including data from preclinical studies and clinical trials.

Some pre-amendment devices (devices that were on the market prior to May 28, 1976) are unclassified, but are subject to the FDA's premarket notification and clearance process in order to be commercially distributed.

PMA Approval Pathway

Our RNS System is a Class III device, which required PMA approval before it could be marketed. Additionally, there are certain pre-amendment Class III devices for which the FDA has not yet required a PMA, which are cleared through the 510(k) process. The PMA process is generally more demanding than the 510(k) premarket notification process. In a PMA, the manufacturer must demonstrate that the device is reasonably safe and effective, and the PMA must be supported by extensive data, including data from preclinical studies and clinical trials. The PMA must also contain a full description of the device and its components, a full description of the methods, facilities and controls used for manufacturing, and proposed labeling. Following receipt of a PMA, the FDA determines whether the application is sufficiently complete to permit a substantive review. If the FDA accepts the application for review, it has 180 days under the FDCA to complete its review of a PMA, although in practice, the FDA's review may take and often takes significantly longer, sometimes taking up to several years. An advisory panel of experts from outside the FDA may be convened to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. The FDA may or may not accept the panel's recommendation. In addition, the FDA will generally conduct a pre-approval inspection of the applicant or its third-party manufacturers' or suppliers' manufacturing facility or facilities to ensure compliance with the QSR.

The FDA will approve the new device for commercial distribution if it determines that the data and information in the PMA constitute valid scientific evidence and that there is reasonable assurance that the device is safe and effective for its intended use(s). The FDA may approve a PMA with post-approval conditions intended to ensure the safety and effectiveness of the device, including, among other things, restrictions on labeling, promotion, sale and distribution, and collection of long-term follow-up data from patients in the clinical trial that supported PMA approval or requirements to conduct additional studies post-approval. The FDA may also condition PMA approval on some form of post-market surveillance when deemed necessary to protect the public health or to provide additional safety and efficacy data for the device in a larger population or for a longer period of use. In such cases, the manufacturer might be required to follow certain patient groups for a number of years and to make periodic reports to the FDA on the clinical status of those patients. Failure to comply with the conditions of approval can result in material adverse enforcement action, including withdrawal of the approval.

Certain changes to an approved device, such as changes in manufacturing facilities, certain suppliers, methods, or quality control procedures, or changes in the design performance specifications, that affect the safety or effectiveness of the device, require submission of a PMA supplement. PMA supplements often require submission of the same type of information as a PMA, except that the supplement is limited to information needed to support any changes from the device covered by the original PMA and may not require as extensive clinical data or the convening of an advisory panel. Certain other changes to an approved device require the submission of a new PMA, such as when the design change causes a different intended use, mode of operation, and technical basis of operation, or when the design change is so significant that a new generation of the device will be developed, and the data that were submitted with the original PMA are not applicable for the change in demonstrating a reasonable assurance of safety and effectiveness. Changes to our existing product or the development of new products may require the approval of a PMA or additional submissions of PMA supplements.

510(k) Marketing Clearance Pathway

One of the components of our RNS System, our Burr Hole Cover, which may be used to cover the incision site for depth leads, is subject to premarket notification and clearance under section 510(k) of the FDCA. To obtain 510(k) clearance for a medical device, an applicant must submit to the FDA a 510(k) submission demonstrating that the proposed device is "substantially equivalent" to a legally marketed device, known as a "predicate device." A legally marketed predicate device may include a pre-amendment device, a device that has been reclassified from Class III to Class II or Class I, or a device that was found substantially equivalent through

the 510(k) process. A device is substantially equivalent if, with respect to the predicate device, it has the same intended use and has either (i) the same technological characteristics, or (ii) different technological characteristics, but the information provided in the 510(k) submission demonstrates that the device does not raise new questions of safety and effectiveness and is at least as safe and effective as the predicate device. A showing of substantial equivalence sometimes, but not always, requires clinical data.

Before the FDA will accept a 510(k) submission for substantive review, the FDA will first assess whether the submission satisfies a minimum threshold of acceptability. If the FDA determines that the 510(k) submission is incomplete, the FDA will issue a "Refuse to Accept" letter which generally outlines the information the FDA believes is necessary to permit a substantive review and to reach a determination regarding substantial equivalence. An applicant must submit the requested information within 180 days before the FDA will proceed with additional review of the submission. Once the 510(k) submission is accepted for review, by regulation, the FDA has 90 calendar days to review and issue a determination. As a practical matter, clearance may take and often does take longer. Upon review, the FDA may require additional information, including clinical data, to make a determination regarding substantial equivalence.

If the FDA agrees that the device is substantially equivalent to a predicate device currently on the market, it will grant 510(k) clearance to commercially market the device. If the FDA determines that the device is "not substantially equivalent" to a previously cleared device, for example, due to a finding of a lack of a predicate device, that the device has a new intended use or different technological characteristics that raise different questions of safety or effectiveness when the device is compared to the cited predicate device, the device is automatically designated as a Class III device. The device sponsor must then fulfill more rigorous PMA requirements, or can request a risk-based classification determination for the device in accordance with the "de novo" process, which is a route to market for novel medical devices that are low to moderate risk and are not substantially equivalent to a predicate device. If the FDA determines that the information provided in a 510(k) submission is insufficient to demonstrate substantial equivalence to the predicate device, the FDA generally identifies the specific information that needs to be provided so that the FDA may complete its evaluation of substantial equivalence, and such information may be provided within the time allotted by the FDA or in a new 510(k) submission should the original 510(k) submission have been withdrawn.

After a device receives 510(k) marketing clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change or modification in its intended use, will require a new 510(k) marketing clearance or, depending on the modification, PMA approval. The determination as to whether or not a modification could significantly affect the device's safety or effectiveness is initially left to the manufacturer using available FDA guidance. Many minor modifications today are accomplished by a "letter to file" in which the manufacturer documents the rationale for the change and why a new 510(k) submission is not required. However, the FDA may review such letters to file to evaluate the regulatory status of the modified product at any time and may require the manufacturer to cease marketing and recall the modified device until 510(k) marketing clearance or PMA approval is obtained. The manufacturer may also be subject to significant regulatory fines or penalties.

De novo Classification

Medical device types that the FDA has not previously classified as Class I, II, or III are automatically classified into Class III regardless of the level of risk they pose. To market low to moderate risk medical devices that are automatically placed into Class III due to the absence of a predicate device, a manufacturer may request a de novo classification. This procedure allows a manufacturer whose novel device is automatically classified into Class III to request classification of its medical device into Class I or Class II on the basis that the device presents low or moderate risk, rather than requiring the submission and approval of a PMA application. A medical device may be eligible for de novo classification if the manufacturer first submitted a 510(k) premarket notification and received a determination from the FDA that the device was not substantially equivalent or a manufacturer may request de novo classification directly without first submitting a 510(k) premarket notification to the FDA and receiving a not substantially equivalent determination. The FDA is required to classify the device within 120 calendar days following receipt of the de novo application, although in practice, the FDA's review may take significantly longer. During the pendency of the FDA's review, the FDA may issue an additional information letter, which places the de novo request on hold and stops the review clock pending receipt of the additional information requested. In the

event the de novo requestor does not provide the requested information within 180 calendar days, the FDA will consider the de novo request to be withdrawn. If the manufacturer seeks reclassification into Class II, the manufacturer must include a draft proposal for special controls that are necessary to provide a reasonable assurance of the safety and effectiveness of the medical device. In addition, the FDA may reject the de novo request for classification if it identifies a legally marketed predicate device that would be appropriate for a 510(k) or determines that the device is not low to moderate risk or that general controls would be inadequate to control the risks and special controls cannot be developed. In the event the FDA determines the data and information submitted demonstrate that general controls or general and special controls are adequate to provide reasonable assurance of safety and effectiveness, the FDA will grant the de novo request for classification. When the FDA grants a de novo request for classification, the device is granted marketing authorization and further can serve as a predicate for future devices of that type, through a 510(k) premarket notification. We currently do not have any products with a de novo classification.

Clinical Trials

Clinical trials are typically required to support a PMA, oftentimes for a de novo request for classification, and are sometimes required to support a 510(k) submission. As has and continues to be required for our RNS System, all clinical investigations of devices to determine safety and effectiveness must be conducted in accordance with the FDA's investigational device exemption, or IDE, regulations which govern investigational device labeling, prohibit promotion of the investigational device, and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. If the device presents a "significant risk," as defined by the FDA, to human health, the FDA requires the device sponsor to submit an IDE application to the FDA, which must be approved prior to commencing clinical trials. A significant risk device is one that presents a potential for serious risk to the health, safety, or welfare of a patient and either is implanted, like our RNS System, purported or represented to be used in supporting or sustaining human life, is for a use that is substantially important in diagnosing, curing, mitigating, or treating disorders or otherwise preventing impairment of human health, or otherwise presents a potential for serious risk to a subject. An IDE application must be supported by appropriate data, such as animal and laboratory test results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. A clinical trial may begin 30 days after receipt of the IDE by the FDA unless the FDA notifies the company that the investigation may not begin. If the FDA determines that there are deficiencies or other concerns with an IDE for which it requires modification, the FDA may permit a clinical trial to proceed under a conditional approval. Acceptance of an IDE application for review does not guarantee that the FDA will approve the IDE and, if it is approved, the FDA may or may not determine that the data derived from the trials support the safety and effectiveness of the device or warrant the continuation of clinical trials. An IDE supplement must be submitted to, and approved by, the FDA before a sponsor or investigator may make a change to the investigational plan that may affect its scientific soundness, study plan or the rights, safety or welfare of human subjects.

In addition, the clinical trials must be approved by, and conducted under the oversight of, an Institutional Review Board, or IRB, for each clinical site. The IRB is responsible for the initial and continuing review of the IDE, and may pose additional requirements for the conduct of the study. If an IDE application is approved by the FDA and one or more IRBs, clinical trials may begin at a specific number of investigational sites with a specific number of patients, as approved by the FDA.

If the device is considered a "non-significant risk," IDE submission to FDA is not required. Instead, only approval from the IRB overseeing the investigation at each clinical trial site is required. Abbreviated IDE requirements, such as monitoring the investigation, ensuring that the investigators obtain informed consent, and labeling and record-keeping requirements also apply to non-significant risk device studies.

During a study, the sponsor is required to comply with the applicable FDA requirements, including, for example, trial monitoring, selecting clinical investigators and providing them with the investigational plan, ensuring IRB review, adverse event reporting, record keeping and prohibitions on the promotion of investigational devices, or on making safety or effectiveness claims for them. The clinical investigators in the clinical trial are also subject to FDA's regulations and must obtain patient informed consent, rigorously follow the investigational plan and study

protocol, control the disposition of the investigational device, and comply with all applicable reporting and record keeping requirements.

Additionally, after a trial begins, the FDA or the IRB could suspend or terminate a clinical trial at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits. Even if a clinical trial is completed, there can be no assurance that the data generated during a clinical trial will meet the safety and effectiveness endpoints or otherwise produce results that will lead the FDA to grant marketing clearance or approval.

Post-market Regulation

After a device is cleared or approved for marketing, numerous and pervasive regulatory requirements continue to apply. These include:

- Annual Reports: As is required for our RNS System, continued FDA approval may be contingent upon the submission of periodic reports, required under 21 CFR 814.84, at intervals of one year (unless otherwise specified) from the date of approval of the original PMA.
- Post-Approval Study Report: As is required for our RNS System, continued FDA approval may also be contingent upon the submission of Post-Approval Study data, as requested by the FDA.
- establishment registration and device listing with the FDA;
- QSR requirements, which require manufacturers and contract manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the design and manufacturing process;
- labeling regulations and FDA prohibitions against the promotion of investigational products, or “off-label” uses of cleared or approved products;
- requirements related to promotional activities;
- clearance or approval of product modifications to 510(k)-cleared devices that could significantly affect safety or effectiveness or that would constitute a major change in intended use of one of our cleared devices;
- medical device reporting regulations, which require that a manufacturer report to the FDA if a device it markets may have caused or contributed to a death or serious injury, or has malfunctioned and the device or a similar device that it markets would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur;
- correction and removal reporting regulations, which require that manufacturers report to the FDA field corrections and product removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health;
- the FDA’s recall authority, whereby the agency can order device manufacturers to recall from the market a product that is in violation of governing laws and regulations; and
- post-market surveillance activities and regulations, which apply when deemed by the FDA to be necessary to protect the public health or to provide additional safety and effectiveness data for the device.

Advertising and promotion of medical devices, in addition to being regulated by the FDA, are also regulated by the Federal Trade Commission and by state regulatory and enforcement authorities. Recently, promotional activities for FDA-regulated products have been the subject of enforcement action brought under healthcare reimbursement laws and consumer protection statutes. In addition, under the federal Lanham Act and similar state laws, competitors and others can initiate litigation relating to advertising claims. In general, if the FDA determines that our promotional materials, technical guidance, or training constitutes promotion of an unapproved or

uncleared use, it could request that we modify our training, technical guidance, or promotional materials or subject us to regulatory or enforcement actions. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our promotional, technical guidance, or training materials to constitute promotion of an unapproved or uncleared use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement.

Manufacturing processes for commercial products are required to comply with the applicable portions of the QSR, which cover the methods and the facilities and controls for the design, manufacture, testing, production, processes, controls, quality assurance, labeling, packaging, distribution, installation and servicing of finished devices intended for human use. The QSR also requires, among other things, maintenance of a device master file, design history file, device history records, and complaint files. As a manufacturer, we are subject to periodic scheduled or unscheduled inspections by the FDA. Failure to maintain compliance with the QSR requirements could result in the shut-down of, or restrictions on, manufacturing operations and the recall or seizure of products, which would harm our business. The discovery of previously unknown problems with our product, including unanticipated adverse events or adverse events of increasing severity or frequency, whether resulting from the use of the device within the scope of its clearance or off-label by a clinician in the practice of medicine, could result in restrictions on the device, including the removal of the product from the market or voluntary or mandatory device recalls.

The FDA has broad regulatory compliance and enforcement powers. If the FDA determines that we failed to comply with applicable regulatory requirements, it can take a variety of compliance or enforcement actions, which may result in any of the following sanctions:

- untitled letters, warning letters, fines, injunctions, consent decrees and civil penalties;
- unanticipated expenditures to address or defend such actions;
- customer notifications for repair, replacement, refunds;
- recall, detention or seizure of our RNS System or any future products;
- operating restrictions or partial suspension or total shutdown of production;
- refusal of or delay in granting our requests for 510(k) clearance or PMA approval of new products or modified products;
- operating restrictions;
- withdrawing 510(k) clearance or PMA approvals that are already granted;
- refusal to grant export approval for our RNS System or any future products; or
- criminal prosecution.

Other Healthcare and Privacy Laws

Our RNS System and our operations are also subject to various federal, state and local laws targeting fraud and abuse in the healthcare industry. For example, in the United States, there are federal and state anti-kickback laws that prohibit the payment or receipt of kickbacks, bribes or other remuneration intended to induce the purchase or recommendation of healthcare products and services or reward past purchases or recommendations.

Violations of these laws can lead to significant civil and criminal penalties, including fines, disgorgement, imprisonment and exclusion from participation in federal healthcare programs, integrity oversight and reporting obligations, contractual damages, reputational harm, diminished profits and future earnings and the forced curtailment or restructuring of our operations. These laws are applicable to us as a medical device company and also apply to hospitals, epileptologists, neurologists, neurosurgeons, and other potential purchasers or users of our RNS System or any future products.

In particular, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)) prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. Remuneration is not defined in the federal Anti-Kickback Statute and has been broadly interpreted to include anything of value, including, for example, gifts, discounts, coupons, the furnishing of supplies or equipment, provision of items or services with independent value such as administrative support, credit arrangements, payments of cash, waivers of payments, ownership interests, relieving a referral source of a financial or administrative burden, and the provision of anything at less than its fair market value. The federal Anti- Kickback Statute and implementing regulations provide for certain narrow exceptions and "safe harbors" for certain defined practices including discounting, rebating or personal services arrangements, among other things. In addition, a person or entity does not need to have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, the government may assert that a claim, including items or services resulting from a violation of federal Anti- Kickback Statute, constitutes a false or fraudulent claim for purposes of the civil False Claims Act or the civil monetary penalties statute, which imposes fines against any person who is determined to have presented or caused to be presented claims to a federal healthcare program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent. Moreover, the lack of uniform court interpretation of the Anti-Kickback Statute makes compliance with the law difficult.

Violations are also subject to civil monetary penalties, which can be further assessed under the federal False Claims Act. Violations of the federal Anti-Kickback Statute may also result in civil and criminal penalties, including criminal fines and imprisonment, or exclusion from Medicare, Medicaid or other governmental programs.

Certain arrangements between medical device companies and referring, or prescribing clinicians have been identified in fraud alerts issued by the OIG as implicating the Anti-Kickback Statute. Moreover, the provision of payments or other items of value by a medical device company to a referral source could be prohibited under the Stark Law (described below) unless the arrangement meets all criteria of an applicable exception. The government has been active in enforcement of these laws as they apply to medical device companies.

Other federal healthcare fraud-related laws also provide criminal liability for violations. The Criminal Healthcare Fraud statute (18 U.S.C. § 1347) prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including payors. Federal criminal law at 18 U.S.C. § 1001, among other sections, prohibits knowingly and willfully falsifying, concealing, or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services.

The civil False Claims Act imposes liability on any person or entity who, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The qui tam provisions of the False Claims Act allow a private individual to bring civil actions on behalf of the federal government alleging that the defendant has submitted or caused the submission of a false claim to the federal government, and to share in any monetary recovery. These laws can apply to entities that provide information on coverage, coding, and reimbursement of their products and assistance with obtaining reimbursement to persons who bill payors. When an entity is determined to have violated the federal civil False Claims Act, the government may impose civil fines and, plus treble damages, and exclude the entity from participation in Medicare, Medicaid and other federal healthcare programs. In addition, various states have enacted false claim laws analogous to the federal False Claims Act.

The Civil Monetary Penalty Act of 1981 imposes penalties against any person or entity that, among other things, is determined to have presented or caused to be presented a claim to a federal healthcare program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent, or offering or transferring remuneration to a federal healthcare beneficiary that a person knows or should know is likely to influence the beneficiary's decision to order or receive items or services reimbursable by the government from a particular provider or supplier.

The Stark Law prohibits payments made by a clinician (as defined under such law) to a medical device company in exchange for the delivery of a product or provision of a services, presenting or causing to be presented claims to Medicare and Medicaid for products or services referred by clinicians who personally, or through a family member, have an investment interest in, or a compensation arrangement with, the medical device company manufacturing the product or delivering the service, unless an exception applies. Similarly, medical device companies may not bill Medicare for services furnished pursuant to a prohibited self- referral. Any person who presents or causes to be presented a claim to the Medicare or Medicaid programs in violation of the Stark Law is subject to civil monetary penalties and possible exclusion from participation in federal governmental payor programs. Sanctions for violating the Stark Law include denial of payment, civil monetary and exclusion from the federal health care programs. Failure to refund amounts received as a result of a prohibited referral on a timely basis may constitute a false or fraudulent claim and may result in civil penalties and additional penalties under the FCA. The statute also provides for additional penalties for a circumvention scheme. In addition, many states, including California, also have state anti-"self-referral" and other laws that are not limited to Medicare and Medicaid referrals, with which we must comply.

HIPAA also created additional federal criminal statutes that prohibit among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense, and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

The Federal Physician Payments Sunshine Act under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, collectively referred to as the Affordable Care Act, which require certain applicable manufacturers of devices, drugs, biologics, kits that required FDA approval or clearance, and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, or CHIP, to report annually to the Centers for Medicare and Medicaid Services, or CMS, information related to payments and other transfers of value to physicians, defined to include doctors, dentists, optometrists, podiatrists and chiropractors, and teaching hospitals, and applicable manufacturers and group purchasing organizations, to report annually ownership and investment interests held by physicians and their immediate family members. Applicable manufacturers are required to submit annual reports to CMS. Failure to submit required information may result in civil monetary penalties, which can be increased for "knowing failures", for all payments, transfers of value or ownership or investment interests that are not timely, accurately, and completely reported in an annual submission, and may result in liability under other federal laws or regulations. Effective January 1, 2022, these reporting obligations will extend to include transfers of value made during the previous year to certain non-physician providers such as physician assistants and nurse practitioners.

Numerous states have enacted laws prohibiting business corporations, such as us, from practicing medicine and other professions and employing or engaging physicians and other professionals to practice medicine, generally referred to as the prohibition against the corporate practice of medicine. These laws are designed to prevent interference in the medical decision-making process by anyone who is not a licensed professional. Violation of these corporate practices of medicine laws may result in civil or criminal fines, as well as sanctions imposed against the business corporation and/or the professional through licensure proceedings and programs and criminal penalties. In addition, various states have enacted false claim laws analogous to the federal False Claims Act, although many of these laws apply where a claim is submitted to any third-party payor and not merely a governmental payor program.

Laws Governing Foreign Business Activities

We are subject to the Foreign Corrupt Practices Act of 1977, as amended, or FCPA, which prohibits companies and their intermediaries from making payments in violation of law to non-U.S. government officials for the purpose of obtaining or retaining business or securing any other improper advantage. Other U.S. companies in the medical device and pharmaceutical field have faced criminal penalties under the FCPA for allowing their agents to deviate from appropriate practices in doing business with foreign government officials. We may also become subject to similar anti-bribery laws in other jurisdictions in which we decide to operate, including the United Kingdom's

Bribery Act of 2010, which also prohibits commercial bribery and makes it a crime for companies to fail to prevent bribery. We may also become subject to a wide variety of other foreign laws, rules, regulations and standards, such as the European Union General Data Protection Regulation (EU) 2016/679, or the GDPR, and other foreign data privacy and security laws, rules, regulations and standards (including as described below). Violations of these laws could result in severe penalties, including criminal and civil penalties, disgorgement, and other remedial measures. Any violations of these laws, or allegations of such violations, could involve significant costs and expenses, including legal fees, and could result in a material adverse effect on our business operations and revenue.

U.S. Centers for Medicare and Medicaid Services

Medicare is a federal program administered by CMS through fiscal intermediaries, Medicare Administrative Contractors and carriers. Available to individuals age 65 or over, and certain other individuals, the Medicare program provides, among other things, healthcare benefits that cover, within prescribed limits, the major costs of most medically necessary care for such individuals, subject to certain deductibles and copayments.

CMS has established guidelines for the coverage and reimbursement of certain products and procedures by Medicare. In general, in order to be reimbursed by Medicare, a healthcare procedure furnished to a Medicare beneficiary must be reasonable and necessary for the diagnosis or treatment of an illness or injury, or to improve the functioning of a malformed body part. The methodology for determining coverage status and the amount of Medicare reimbursement varies based upon, among other factors, the setting in which a Medicare beneficiary received healthcare products and services. Any changes in federal legislation, regulations and policy affecting CMS coverage and reimbursement relative to the procedures of implanting or using our RNS System could have a material effect on our performance.

CMS also administers the Medicaid program, a cooperative federal/state program that provides medical assistance benefits to qualifying low income and medically needy persons. State participation in Medicaid is optional, and each state is given discretion in developing and administering its own Medicaid program, subject to certain federal requirements pertaining to payment levels, eligibility criteria and minimum categories of services. The coverage, method and level of reimbursement vary from state to state and is subject to each state's budget restraints. Changes to the availability of coverage, method or level of reimbursement for our RNS System and supplemental procedures may affect future revenue negatively if reimbursement amounts are decreased or discontinued.

All CMS programs are subject to statutory and regulatory changes, retroactive and prospective rate adjustments, administrative rulings, interpretations of policy, intermediary determinations, and government funding restrictions, all of which may materially increase or decrease the rate of program payments to healthcare facilities and other healthcare providers, including those paid for the implantation of our RNS System and supplemental procedures.

United States Health Reform

Changes in healthcare policy could increase our costs and subject us to additional regulatory requirements that may interrupt commercialization of our RNS System and future products. Changes in healthcare policy could increase our costs, decrease our revenue and impact sales of and reimbursement for our RNS System and future products. The Affordable Care Act substantially changes the way healthcare is financed by both governmental and private insurers, and significantly impacts our industry. The United States and some foreign jurisdictions are considering or have enacted a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our RNS System and any future products profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality or expanding access. Current and future legislative proposals to further reform healthcare or reduce healthcare costs may limit coverage of or lower reimbursement for the procedures associated with the use of our RNS System and any future products. The cost containment measures that payors and providers are instituting and the effect of any healthcare reform initiative implemented in the future could impact our revenue from the sale of our RNS System and any future products.

The implementation of the Affordable Care Act in the United States, for example, has changed healthcare financing and delivery by both governmental and private insurers substantially, and affected medical device

manufacturers significantly. The Affordable Care Act imposed, among other things, a 2.3% federal excise tax, with limited exceptions, on any entity that manufactures or imports Class I, II and III medical devices offered for sale in the United States that began on January 1, 2013. Through a series of legislative amendments, the tax was suspended for 2016 through 2019. The Further Consolidated Appropriations Act, signed into law on December 20, 2019, has repealed the medical device excise tax and as a result of the repeal and the prior moratorium, sales of taxable medical devices after December 31, 2015, are not subject to the tax. The Affordable Care Act also provided incentives to programs that increase the federal government's comparative effectiveness research, and implemented payment system reforms including a national pilot program on payment bundling to encourage hospitals, physicians and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models. Additionally, the Affordable Care Act has expanded eligibility criteria for Medicaid programs and created a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research. We continue to evaluate the full impact that the Affordable Care Act will have on our business. The Biden Administration and the U.S. Congress may take further action regarding the Affordable Care Act, including, but not limited to, amendment and expansion. During its history, there have been judicial, executive and Congressional challenges to certain aspects of the Affordable Care Act, such as enactment of the Tax Cuts and Jobs Acts, which, among other things, removed penalties for not complying with the individual mandate to carry health insurance, known as the individual mandate. On December 14, 2018, a U.S. District Court Judge in the Northern District of Texas ruled that the individual mandate is a critical and inseverable feature of the Affordable Care Act, and therefore, because it was repealed as part of the Tax Cuts and Jobs Act, the remaining provisions of the Affordable Care Act are invalid as well. On December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the Affordable Care Act. The United States Supreme Court is currently reviewing this case, although it is unclear when a decision will be made. It is unclear whether such litigation and other efforts to repeal and replace the Affordable Care Act will be successful.

In addition, other legislative changes have been proposed and adopted since the Affordable Care Act was enacted. For example, the Budget Control Act of 2011, among other things, included reductions to CMS payments to providers of 2% per fiscal year, which went into effect on April 1, 2013 and, due to subsequent legislative amendments to the statute, will remain in effect through 2030 unless additional Congressional action is taken. However, the 2% Medicare sequester has been suspended by the CARES Act (described below) from May 1, 2020 through December 31, 2020. Additionally, the American Taxpayer Relief Act of 2012, among other things, reduced CMS payments to several providers, including hospitals, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act, or CARES Act, was enacted in response to COVID-19 pandemic. The CARES Act made various tax law changes, including among other things (i) increased the limitation under IRC Section 163(j) for 2019 and 2020 to permit additional expensing of interest (ii) enacted technical corrections so that qualified improvement property can be immediately expensed under IRC Section 168(k) and net operating losses arising in tax years beginning in 2017 and ending in 2018 can be carried back two years and carried forward twenty years without a taxable income limitation as opposed to carried forward indefinitely, and (iii) made modifications to the federal net operating loss rules including permitting federal net operating losses incurred in 2018, 2019, and 2020 to be carried back to the five preceding taxable years. The CARES Act may impact the results reported for the year ended December 31, 2020; we are continuing to evaluate the CARES Act's various tax law changes and the impact they may have on our results of operations and income tax provision.

We believe that there will continue to be proposals by legislators at both the federal and state levels, regulators and third-party payors to reduce costs while expanding individual healthcare benefits. We are not sure whether additional legislative changes will be enacted, or whether the current regulations, guidance or interpretations will be changed, particularly in light of the recent presidential election or what the impact of such changes on our business, if any, may be. Further, it is possible that additional governmental action is taken in response to the COVID-19 pandemic. Certain of these changes could impose additional limitations on the rates we will be able to charge for our RNS System and future products or the amounts of reimbursement available for our RNS System and future

products from governmental agencies or third-party payors. Current and future healthcare reform legislation and policies could have a material adverse effect on our business and financial condition.

HIPAA and Other Privacy Laws

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, established uniform standards governing the conduct of certain electronic healthcare transactions and requires certain entities, called covered entities, to comply with standards that include the privacy and security of protected health information, or PHI. HIPAA also requires business associates and their subcontractors, such as independent contractors or agents of covered entities that have access to PHI in connection with providing a service to or on behalf of a covered entity, of covered entities to enter into business associate agreements with the covered entity and to safeguard the covered entity's PHI against improper use and disclosure. In addition, companies, such as many medical device companies, that would not otherwise be subject to HIPAA may become contractually obligated to follow certain HIPAA requirements through agreements with Covered Entities and Business Associates, and some of our customers may require us to comply with certain of these provisions.

The HIPAA privacy regulations cover the use and disclosure of protected health information by covered entities as well as business associates and associated companies, which are defined to include subcontractors that create, receive, maintain, or transmit protected health information on behalf of a business associate. They also set forth certain rights that an individual has with respect to his or her protected health information maintained by a covered entity, including the right to access or amend certain records containing protected health information, or to request restrictions on the use or disclosure of protected health information. The security regulations establish requirements for safeguarding the confidentiality, integrity, and availability of protected health information that is electronically transmitted or electronically stored. HITECH, among other things, established certain health information security breach notification requirements. A covered entity must notify any individual whose protected health information is breached according to the specifications set forth in the breach notification rule. The HIPAA privacy and security regulations establish a uniform federal "floor" and do not supersede state laws that are more stringent or provide individuals with greater rights with respect to the privacy or security of, and access to, their records containing protected health information or insofar as such state laws apply to personal information that is broader in scope than protected health information as defined under HIPAA.

For HIPAA covered entities and business associates, HIPAA requires the notification of patients, and other compliance actions, in the event of a breach of unsecured protected health information, or PHI. If notification to patients of a breach is required, such notification must be provided without unreasonable delay and in no event later than 60 calendar days after discovery of the breach. In addition, under HIPAA, if the PHI of 500 or more individuals is improperly used or disclosed, such improper use or disclosure would have to be reported to the U.S. Department of Health and Human Services, or HHS, which would post the violation on its website, and to the media. Failure to comply with the HIPAA privacy and security standards can result in civil monetary penalties, and, in certain circumstances, criminal penalties and/or imprisonment.

HIPAA authorizes state attorneys general to file suit on behalf of their residents for violations. Courts are able to award damages, costs and attorneys' fees related to violations of HIPAA in such cases. While HIPAA does not create a private right of action allowing individuals to file suit in civil court for violations of HIPAA, its standards have been used as the basis for duty of care cases in state civil suits such as those for negligence or recklessness in the misuse or breach of PHI. In addition, HIPAA mandates that the Secretary of HHS conduct periodic compliance audits of HIPAA covered entities and their business associates for compliance with the HIPAA privacy and security standards. It also tasks HHS with establishing a methodology whereby harmed individuals who were the victims of breaches of unsecured PHI may receive a percentage of the civil monetary penalty paid by the violator.

Further, various states, such as California and Massachusetts, have implemented similar privacy laws and regulations that impose restrictive requirements regulating the use and disclosure of health information and other personally identifiable information. These laws and regulations are not necessarily preempted by HIPAA, particularly if a state affords greater protection to individuals than HIPAA.

As a company that maintains a substantial amount of patient-level data and interacts frequently with both Covered Entities and Business Associates, we may have certain obligations regarding the use and disclosure of any PHI that may be provided to us. If we or our operations are found to be in violation of HIPAA, HITECH or their implementing regulations, and similar state laws, we may be subject to significant penalties, including civil, criminal and administrative penalties, fines, imprisonment and exclusion from participation in federal or state healthcare programs, and the curtailment or restructuring of our operations.

We are also subject to numerous other federal, state and foreign laws, rules, regulations and standards, including consumer protection laws and regulations that govern the collection, dissemination, use, access to, confidentiality and security of patient health and other personal information. For example, the California state legislature passed the California Consumer Privacy Act, or the CCPA, in 2018 which regulates the processing of personal information of California residents and increases the privacy and security obligations of covered companies handling such personal information, including requiring covered companies to provide new disclosures to California residents, and affords such residents new abilities to opt-out of certain sales of personal information. The CCPA went into effect on January 1, 2020, and while aspects its interpretation remain to be determined in practice, we are committed to complying with its obligations. The CCPA provides for civil penalties for violations, as well as a private right of action for certain data breaches that result in the loss of personal information that may increase the likelihood of, and risks associated with, data breach litigation. The CCPA was amended in September 2018 and November 2019, and it is possible that further amendments will be enacted. We cannot yet fully predict the impact of the CCPA on our business or operations, but developments regarding the CCPA and all privacy and data protection laws may require us to modify our data policies and practices and to incur substantial costs and expenses in an effort to maintain compliance on an ongoing basis. Moreover, a new privacy law, the California Privacy Rights Act, or the CPRA, – a consumer privacy ballot initiative that amends and expands the CCPA -- was recently passed. The CPRA affords California residents significantly more control over their personal information, imposes heightened compliance obligations on covered companies, and establishes a new enforcement agency dedicated to consumer privacy. The CPRA's substantive provisions become effective January 1, 2023, and new regulations are expected to be introduced by July 1, 2022. While aspects of the CPRA and its interpretation remain to be determined in practice, they create further uncertainty and may result in additional costs and expenses in an effort to comply.

In addition, Congress and various other states are considering new laws and regulations regarding the privacy and security of heath and other personal information to which we may become subject. Further, all 50 states have passed laws regulating the actions that a business must take if it experiences a data breach, such as prompt disclosure to affected customers. In addition to data breach notification laws, some states have enacted statutes and rules requiring businesses to reasonably protect certain types of personal information they hold or to otherwise comply with certain specified data security requirements for personal information. We are also subject to the supervisory and enforcement authority of the Federal Trade Commission with regard to the collection, use, sharing, and disclosure of certain data collected from or about individuals. We intend to continue to protect all personal information in our control and to comply with all applicable laws regarding the protection of such information.

In addition, as noted above, we are planning for regulatory clearances in non-U.S. jurisdictions, including the EU, Canada, and Japan, and therefore would be subject to non-U.S. data privacy and security laws, rules, regulations and standards as our operations expand. For example, the collection, use, disclosure, transfer, or other processing of personal data regarding individuals in the EU, including personal health data, is subject to the GDPR, which took effect across all member states of the European Economic Area, or EEA, in May 2018. The GDPR is wide-ranging in scope and imposes numerous requirements on companies that process personal data, including requirements relating to processing health and other sensitive data, obtaining consent of the individuals to whom the personal data relates, providing information to individuals regarding data processing activities, implementing safeguards to protect the security and confidentiality of personal data, providing notification of data breaches, and taking certain measures when engaging third-party processors. The GDPR increases obligations with respect to clinical trials conducted in the EEA by expanding the definition of personal data to include coded data and requiring changes to informed consent practices and more detailed notices for clinical trial subjects and investigators. In addition, the GDPR also imposes strict rules on the transfer of personal data to countries outside the EU, including the U.S. and, as a result, increases the scrutiny that such rules should apply to transfers of personal data from clinical trial sites located in the EEA to the U.S. The GDPR also permits data protection authorities to require destruction of improperly gathered or

used personal information and/or impose substantial fines for violations of the GDPR, which can be up to four percent of global revenues or 20 million Euros, whichever is greater, and confers a private right of action on data subjects and consumer associations to lodge complaints with supervisory authorities, seek judicial remedies, and obtain compensation for damages resulting from violations of the GDPR. In addition, the GDPR provides that EU member states may make their own further laws and regulations limiting the processing of personal data, including genetic, biometric, or health data.

For more information regarding the risks related to data privacy and security, please see "Risk Factors—Our collection, use, storage, disclosure, transfer and other processing of sensitive, and personal information, could give rise to significant costs, liabilities and other risks, including as a result of investigations, inquiries, litigation, fines, legislative and regulatory action and negative press about our privacy and data protection practices, which may harm our business, financial conditions, results of operations and prospects."

Human Capital Resources

NeuroPace was founded with a mission to transform the lives of people living with brain neurologic disorders. We are focused on developing high quality products that address critical patient needs and maintaining a work environment where employees are respected and encouraged to excel. As of December 31, 2020, we had 152 employees, two thirds of whom are in our Mountain View, CA headquarters with the rest located throughout the United States. We believe that the success of our business will depend, in part, on our ability to attract and retain qualified personnel. None of our employees are represented by a labor union or are a party to a collective bargaining agreement and we believe that we have strong employee relations.

Culture and Values

We strive to create a respectful work environment characterized by open communication and trust. As employees of NeuroPace, we each uphold the following core values that drive our culture and define the way we do business:

- Innovation: We develop world class technology
- Integrity: We do what's right
- Leadership: We are becoming the standard of care
- Patient Focus: We transform lives
- Science: We enable fundamental discoveries

It is our philosophy to foster open communication. Employee input on ways to improve our business strategy and tactics, work environment and organization is valued and encouraged. We believe that our ability to provide employees with a dynamic and challenging environment where they are empowered to succeed and accountable to lead further drives a culture embedded in our values.

Business Ethics

We are committed to conducting our business activities with employees, consultants, patients, vendors, customers, communities, and shareholders with integrity and fairness and in accordance with the highest ethical standards. We believe that our conduct has a direct impact on our reputation, our brand, and our stakeholders. We are focused on ensuring that our legal, compliance, and risk mitigation protocols further enhance our ability to comport ourselves with the highest levels of ethical standards.

Talent Attraction, Retention and Engagement

We have a strong employee value proposition that leverages our unique patient-driven culture, collaborative working environment, shared sense of purpose, desire to do the right thing and ground-breaking work, to attract talent to our Company. By focusing on individual performance, as well as teamwork and collaboration, we believe

that we foster an environment that helps employees excel as individuals and as team members. Eighty-eight employees, or 58% of our workforce, have been at NeuroPace for at least five years. To further engage and incentivize our workforce, we offer a wide range of programs and avenues for support, motivation, and professional development. For example, we utilize both instructor-led training and online learning to deliver proprietary, targeted training courses designed to position our commercial organization at the cutting edge of neuromodulation. For our talent pipeline development, we work closely with individual business functions to provide training and hands-on support for managers and leaders, who use our Performance/Potential Matrix to assess talent, identify development opportunities, and discuss succession planning.

Communication is also key to our employee development and retention. We hold regular all-hands meetings designed to keep our employees informed and engaged. We also employ employee engagement surveys through which we incorporate critical employee feedback into our culture, operations, and strategic plans.

Compensation Philosophy

We strive to provide comprehensive compensation, including cash, equity, benefits and services that attract, motivate and retain exceptional employees. Compensation is driven by local market conditions, internal equity, and employee performance.

Health and Wellness

We offer a comprehensive package including: 401(k) plan, medical, dental, and vision insurance, life and long-term disability insurance, health care and child care spending accounts, Section 529 college savings plan, three weeks paid vacation for most employees at start, eleven paid holidays, and PTO for sick time and family emergencies. Other benefits include: health club membership, patent awards program, anniversary awards, casual dress – everyday, company picnics, parties and barbecues, fully stocked kitchen, and more.

Facilities

We currently lease approximately 53,000 square feet for our corporate headquarters and manufacturing facility located in Mountain View, California under a lease agreement which terminates in 2024 and we have an option to extend for another five years. We believe that this facility is sufficient to meet our current and anticipated needs in the near term and that additional space can be obtained on commercially reasonable terms as needed.

Legal Proceedings

From time to time, we may become party to legal proceedings in the ordinary course of business. Such legal proceedings may negatively impact our business and financial position, result in brand or reputational harm, and divert the attention of our management from core operations of our business.

We are currently not a party to any material legal proceedings.

MANAGEMENT

Executive Officers and Directors

The following table sets forth certain information for our executive officers, key employees and directors as of December 31, 2020:

Name	Age	Position(s)
Executive officers		
Michael Favet	51	Director, President and Chief Executive Officer
Martha Morrell, M.D.	64	Chief Medical Officer
Rebecca Kuhn	60	Chief Financial Officer and Vice President, Finance and Administration
Irina Ridley	35	General Counsel and Corporate Secretary
Key employees		
Isabella Abati	61	Vice President, Regulatory Affairs
Chi Nguyen	44	Vice President, Marketing
Mark Saxton	55	Vice President, Sales
Cairn Seale	50	Vice President, Clinical and Research
Dylan St. John	43	Vice President, Manufacturing & Commercial Operations
Irene Thomas	52	Vice President, Human Resources
Non-employee directors		
Frank Fischer	79	Director
Greg Garfield	57	Director
Rishi Gupta	43	Director
Nael Karim Kassar	41	Director
Joseph S. Lacob	64	Director
Evan Norton	46	Director
Renee Ryan	52	Director

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(1) Member of the audit committee
(2) Member of the compensation committee
(3) Member of the nominating and corporate governance committee

Executive officers

Michael Favet has served as our President and Chief Executive Officer since July 2019 and has served as a member of our board of directors since September 2016. From June 2016 to July 2019, Mr. Favet served as Managing Director at KCK-US, Inc., an investment fund, where he was responsible for strategic investments and advising portfolio companies, and also acted as our Chief Commercial Officer from October 2018 to July 2019. From 2015 to January 2017, Mr. Favet served as Chief Operating Officer at Advanced Cardiac Therapeutics, Inc., a medical device company, where he was responsible for overseeing operations. From 2012 to 2015, Mr. Favet served as Chief Operating Officer at Sonitus Medical Inc., a medical device company. Mr. Favet earned a B.S. in Mechanical Engineering from the University of Illinois and an M.B.A. from the University of Minnesota. We believe that Mr. Favet's business expertise and his daily insight into corporate matters as our President and Chief Executive Officer qualify him to serve on our board of directors.

Martha Morrell, M.D. has served as our Chief Medical Officer since 2004. Dr. Morrell has also served as a Clinical Professor of Neurology at Stanford University since 2004. Dr. Morrell previously served as the Caitlin Tynan Doyle Professor of Clinical Neurology at Columbia University and Director of the Columbia Comprehensive Epilepsy Center at New York Presbyterian Hospital from 1998 to 2004. Prior to that, Dr. Morrell served on the faculty of the Stanford University School of Medicine and as the Director of the Stanford Comprehensive Epilepsy

Center from 1990 to 1998. Dr. Morrell earned a B.A. from Barnard College and an M.D. from the Stanford University School of Medicine.

Rebecca Kuhn has served as our Chief Financial Officer and Vice President, Finance and Administration since 2000. From 1992 to 2000, Ms. Kuhn served in roles of increasing responsibility, most recently as Treasurer and Director of Finance at Heartport, Inc., a medical device company. Ms. Kuhn earned a B.S. in Business Administration from The Ohio State University and an M.B.A. from the Graduate School of Business at Stanford University.

Irina Ridley has served as our General Counsel and Corporate Secretary since November 2020. Ms. Ridley previously served as Chief Counsel at Myriad Genetics, Inc., a precision medicine company, from August 2018 to November 2020, where she was responsible for corporate legal matters. From August 2016 to August 2018, she served as Associate General Counsel and Privacy Officer at Counsyl Inc., a genetic testing company, where prior to its acquisition by Myriad Genetics, Inc., she was responsible for corporate legal matters. From 2014 to August 2016, she served as Compliance and Privacy Officer at Omada Health, a digital health company, where she was the first attorney and was responsible for building out Omada Health's compliance and privacy programs. Prior to that, from 2011 to 2014, Ms. Ridley worked in management consulting, serving in roles of increasing responsibility at Deloitte Tax, LLP, and PricewaterhouseCoopers. Ms. Ridley has served on the Alumni Board of Directors of Albany Law School since July 2016 and previously served on the Board of Directors of Women in Security and Privacy from May 2016 to October 2017. Ms. Ridley earned a B.S. and an M.B.A. from the Rensselaer Polytechnic Institute and a J.D. from Albany Law School of Union University.

Key employees

Isabella Abati has served as our Vice President, Regulatory Affairs since March 2005. Ms. Abati previously served as Vice President of Clinical Sciences for the Neurovascular Division of Boston Scientific, Inc., a medical device company, from 2001 to 2005, and as Director of Regulatory and Clinical Affairs from 1999 to 2000. From 1984 to 1999, Ms. Abati held positions of increasing responsibility in the pharmaceutical, biotech, and medical device industries in both regulatory and clinical affairs. Ms. Abati earned a B.A., a B.S., and an M.S. in Microbiology from California State University, Long Beach.

Chi Nguyen has served as our Vice President, Marketing since July 2018. Ms. Nguyen previously served as our Senior Director of Marketing from 2015 to June 2018. Prior to that, Ms. Nguyen previously served as Director of Marketing at Spinal Modulation (acquired by St. Jude), a medical device company, from 2013 to 2015. Ms. Nguyen earned a B.A. from Yale University and an M.B.A. from the Graduate School of Business at Stanford University.

Mark Saxton has served as our Vice President, Sales since June 2019. Mr. Saxton previously served as Vice President of Sales and Marketing at Ceterix Orthopaedics, Inc., a medical device company, from July 2017 to June 2019, where he was responsible for sales and marketing of Ceterix's novel meniscus repair device. Prior to that, Mr. Saxton served as Vice President of Product Solutions at Integer Holding Corp., a medical device manufacturing and outsourcing company, from 2015 to June 2017, where he was responsible for sales and marketing for finished devices in the Cardio and Vascular division. Mr. Saxton earned a B.B.A. from Western Michigan University.

Cairn Seale has served as our Vice President, Clinical Research since January 2021. Ms. Seale previously served in various roles of increasing responsibility, from Trial Manager to Senior Director of Clinical and Research since joining NeuroPace in 2002. Prior to that, Ms. Seale served as Manager of Clinical Research at the Stanford Epilepsy Center, from 1994 to 2000 and at Columbia University Department of Neurology from 1998 to 2000. Ms. Seale earned a B.A. from Stanford University and an M.S. from Stanford University School of Medicine.

Dylan St. John has served as our Vice President, Manufacturing and Commercial Operations since January 2021, prior to which, Mr. St. John served in various roles, including Business Process Excellence and Regulatory Labeling since joining NeuroPace in 2013. Mr. St. John previously served as New Product Introduction (NPI) Program Manager at Calibra Medical, a Johnson & Johnson company, a medical device company, from 2012 to 2013. Prior to that, Mr. St. John served as Sr. Manager of Global Packaging and Labeling at LifeScan, Inc., a Johnson & Johnson company, a medical device company, from 2007 to 2012. Mr. St. John earned a B.S. from San Jose State University.

Irene Thomas has served as our Vice President, Human Resources since May 2019, prior to which Ms. Thomas served in various Human Resources roles since joining NeuroPace in 2000. Ms. Thomas also serves on the Board of Directors for the San Carlos Charter Learning Center. Ms. Thomas previously served as a human resources consultant at various pharmaceutical and medical device companies from 1999 to 2000. Prior to that, Ms. Thomas served as Manager of Human Resources at Heartport Inc., a medical device company, in 1999 and as Manager of Human Resources at Aviron, a pharmaceutical company from 1997 to 1999. Ms. Thomas earned a B.A. from Sonoma State University.

Non-employee directors

Frank Fischer has served as the Chairman of our board of directors since November 1997. From 2000 to July 2019, Mr. Fischer served as our President and Chief Executive Officer and as a part-time employee of ours from July 2019 to January 2020. Prior to that, Mr. Fischer was President and Chief Executive Officer of Heartport, Inc., a medical device company, from 1998 to 1999, and served on Heartport's board of directors from 1992 to 1999. Previously, Mr. Fischer was President and Chief Executive Officer of Ventritex, Inc., a company that pioneered implantable cardiac defibrillators, from 1987 until the sale of the company to St. Jude Medical, Inc. in 1997. Mr. Fischer has served as a member of the board of directors of Nevro, Inc., a medical device company, since 2012. Mr. Fischer received a B.S. in Mechanical Engineering and a M.S. in Management from Rensselaer Polytechnic Institute. We believe Mr. Fischer is qualified to serve on our board of directors because of his extensive experience with medical device companies and the historical knowledge and continuity he brings to our board of directors.

Greg Garfield has served as a member of our board of directors since September 2016. Since March 2016, Mr. Garfield has served as Senior Managing Director at KCK-US, Inc., an investment fund. Prior to KCK-US, Inc., Mr. Garfield served as Chief Operating Officer and General Counsel at Acclarent, Inc., a medical device company from 2006 to 2011. Mr. Garfield has served on the board of directors of Mainstay Medical plc, a medical device company, since June 2016, and serves on the boards of directors of several other private companies. Mr. Garfield previously served as a director of Semler Scientific, Inc., a healthcare technology solutions company, from 2013 until October 2016. Mr. Garfield earned a B.S. from California Polytechnic State University and a J.D. from McGeorge School of Law, University of the Pacific. We believe Mr. Garfield is qualified to serve on our board of directors because of his extensive experience working with medical technology companies.

Rishi Gupta has served as a member of our board of directors since May 2019. Since 2002, Mr. Gupta has served in various roles at OrbiMed Advisors LLC, an investment firm, where he is currently a Partner. Mr. Gupta has served on the board of directors of Verona Pharma plc since July 2016, and previously served on the board of directors of Dimension Therapeutics, Inc. from 2015 to May 2017. From 1999 to 2000, Mr. Gupta served as a Healthcare Investment Banker at Raymond James & Associates. From 2000 to 2001, Mr. Gupta served as Manager of Corporate Development at Veritas Medicine. In 2003, Mr. Gupta served as a Summer Associate at Wachtell, Lipton, Rosen & Katz. Mr. Gupta received an A.B. in biochemical sciences from Harvard College and a J.D. from Yale Law School. We believe Mr. Gupta is qualified to serve on our board of directors because of his experience in the medical technology field and his experience serving on the boards of public and private companies.

Nael Karim Kassar has served as a member of our board of directors since September 2016. Since April 2018, Mr. Kassar has served as Chief Executive Officer at KCK Ltd., a private family office investment fund. Mr. Kassar co-founded KCK Ltd. in 2011 and has served as an executive director since that time. Mr. Kassar earned a B.A. in Pure Mathematics from Imperial College London and an M.A. in Advanced Studies in Mathematics from Cambridge University. We believe Mr. Kassar is qualified to serve on our board of directors because of his extensive experience working with medical technology companies.

Joseph S. Lacob has served as a member of our board of directors since 1997. Since 2010, Mr. Lacob has served as Co-Executive Chairman and Chief Executive Officer of the Golden State Warriors. Mr. Lacob has served as a director of Align Technology, Inc. a global medical device company, since 1997. Mr. Lacob earned a B.S. from the University of California, Irvine, an M.P.H. from the University of California, Los Angeles, and an M.B.A from the Stanford Graduate School of Business. We believe Mr. Lacob is qualified to serve on our board of directors because of the historical knowledge and continuity he brings to our board of directors.

Evan Norton has served as a member of our board of directors since August 2020. Since November 2019, Mr. Norton has served as General Partner at Accelmed Partners, a private equity firm focused on medical devices and medical technology. Since September 2016, Mr. Norton has also served as an Adjunct Lecturer at Northwestern University – Kellogg School Management. From 2014 to November 2019, Mr. Norton served as Divisional Vice President, Venture Investments at Abbott Ventures, an investment fund and wholly owned subsidiary of Abbot Labs, and also served as Managing Director, Venture Investments, from 2013 to 2014. Mr. Norton earned a B.B.A. from Texas A&M University and an M.B.A. from Northwestern University, Kellogg School of Management. We believe Mr. Norton is qualified to serve on our board of directors because of his extensive experience working with medical technology companies.

Renee Ryan has served as a member of our board of directors since 2013. Since August 2019, Ms. Ryan has served as Chief Executive Officer at Cala Health, Inc., a medical technology company. From 2011 to August 2019, Ms. Ryan served as Vice President, Investments, at Johnson & Johnson Development Corp., the venture investing arm of Johnson & Johnson. From 2008 to 2011, Ms. Ryan served as Managing Director at Robert W. Baird & Co., a private equity firm and financial services company. We believe Ms. Ryan is qualified to serve on our board of directors because of her leadership experience and extensive experience in the medical device industry.

Family relationships

There are no family relationships among any of the directors or executive officers.

Composition of our board of directors

The members of our board of directors were elected pursuant to the provisions of an amended and restated voting agreement. Under the terms of this voting agreement, the stockholders who are party to the voting agreement have agreed to vote their respective shares so as to elect: (1) four directors designated by KCK Ltd., currently Messrs. Kassar, Garfield, Fischer and one vacancy, (2) two directors designated by OrbiMed Private Investments VI, LP, currently Mr. Gupta and one vacancy, (3) one director designated by Accelmed Partners II, LP, currently Mr. Norton, (4) two directors designated by the holders of a majority of the outstanding common stock (excluding shares issued or issuable upon conversion of our convertible preferred stock), currently Mr. Lacob and Ms. Ryan, and (5) our chief executive officer, currently Mr. Favet. The voting agreement will terminate upon the closing of this offering, following which none of our stockholders will have any special rights regarding the election or designation of members of our board of directors.

The primary responsibilities of our board of directors are to provide oversight, strategic guidance, counseling and direction to our management. Our board of directors meets on a regular basis and additionally as required. Our board of directors currently consists of eight directors. Our amended and restated certificate of incorporation, which will become effective upon the closing of this offering, will provide that the authorized number of directors may be changed only by resolution approved by a majority of our board of directors. In accordance with our amended and restated certificate of incorporation to be effective in connection with this offering, immediately after this offering, our board of directors will be divided into three classes with staggered three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. Our directors will be divided among the three classes as follows:

- the Class I directors will be and , and their terms will expire at the annual meeting of stockholders to be held in 2022;
- the Class II directors will be , and , and their terms will expire at the annual meeting of stockholders to be held in 2023; and
- the Class III directors will be , and , and their terms will expire at the annual meeting of stockholders to be held in 2024.

Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. The division of our

board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change in control.

Director independence

Under the listing requirements and rules of the Nasdaq Global Market, independent directors must compose a majority of our board of directors as a listed company within one year of the closing of this offering.

Our board of directors has undertaken a review of its composition, the composition of its committees and the independence of each director. Based upon information requested from and provided by each director concerning his or her background, employment and affiliations, including family relationships, our board of directors has determined that Ms. Ryan and Messrs. Garfield, Gupta, Kassar, Lacob, and Norton do not have any relationships that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is "independent" as that term is defined under the applicable rules and regulations of the SEC and the listing requirements and rules of the Nasdaq Global Market. In making this determination, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director.

Committees of our board of directors

Our board of directors has established an audit committee, a compensation committee, and a nominating and corporate governance committee. The composition and responsibilities of each of the committees of our board of directors are described below. Members serve on these committees until their resignation or until otherwise determined by our board of directors. Our board of directors may establish other committees as it deems necessary or appropriate from time to time.

Audit committee

Our audit committee consists of , and . Our board of directors has determined that each member of the audit committee satisfies the independence requirements under the Nasdaq Global Market listing standards and Rule 10A-3(b)(1) of the Exchange Act. The chairperson of our audit committee is . Our board of directors has determined that is an "audit committee financial expert" within the meaning of SEC regulations. Each member of our audit committee can read and understand fundamental financial statements in accordance with applicable requirements. In arriving at these determinations, our board of directors has examined each audit committee member's scope of experience and the nature of their employment.

The primary purpose of the audit committee is to discharge the responsibilities of our board of directors with respect to our corporate accounting and financial reporting processes, systems of internal control and financial statement audits, and to oversee our independent registered public accounting firm. Specific responsibilities of our audit committee include:

- helping our board of directors oversee our corporate accounting and financial reporting processes;
- managing the selection, engagement, qualifications, independence and performance of a qualified firm to serve as the independent registered public accounting firm to audit our financial statements;
- discussing the scope and results of the audit with the independent registered public accounting firm, and reviewing, with management and the independent accountants, our interim and year-end operating results;
- developing procedures for employees to submit concerns anonymously about questionable accounting or audit matters;
- reviewing related person transactions;

- obtaining and reviewing a report by the independent registered public accounting firm at least annually that describes their internal quality control procedures, any material issues with such procedures, and any steps taken to deal with such issues when required by applicable law;
- approving or, as permitted, pre-approving, audit and permissible non-audit services to be performed by the independent registered public accounting firm; and
- reviewing our risk assessment and risk management processes, including compliance and cybersecurity matters.

Our audit committee will operate under a written charter, to be effective upon the closing of this offering, that satisfies the applicable listing standards of the Nasdaq Global Market.

Compensation committee

Our compensation committee consists of , and . The chairperson of our compensation committee is . Our board of directors has determined that each member of the compensation committee is independent under the listing standards of the Nasdaq Global Market, and a "non-employee director" as defined in Rule 16b-3 promulgated under the Exchange Act.

The primary purpose of our compensation committee is to discharge the responsibilities of our board of directors in overseeing our compensation policies, plans and programs and to review and determine the compensation to be paid to our executive officers, directors and other senior management, as appropriate. Specific responsibilities of our compensation committee include:

reviewing and recommending to our board of directors the compensation of our chief executive officer and other executive officers;

- reviewing and recommending to our board of directors the compensation of our directors;
- administering our equity incentive plans and other benefit programs;
- reviewing, adopting, amending and terminating incentive compensation and equity plans, severance agreements, profit sharing plans, bonus plans, change-of-control protections and any other compensatory arrangements for our executive officers and other senior management; and
- reviewing and establishing general policies relating to compensation and benefits of our employees, including our overall compensation philosophy.

Our compensation committee will operate under a written charter, to be effective upon the closing of this offering, that satisfies the applicable listing standards of the Nasdaq Global Market.

Nominating and corporate governance committee

Our nominating and corporate governance committee consists of , and . The chairperson of our nominating and corporate governance committee is . Our board of directors has determined that each member of the nominating and corporate governance committee is independent under the listing standards of the Nasdaq Global Market.

Specific responsibilities of our nominating and corporate governance committee include:

- identifying and evaluating candidates, including the nomination of incumbent directors for reelection and nominees recommended by stockholders, to serve on our board of directors;
- considering and making recommendations to our board of directors regarding the composition and chairmanship of the committees of our board of directors;

- developing and making recommendations to our board of directors regarding certain director training considerations as well as corporate governance guidelines and matters; and
- overseeing periodic evaluations of the board of directors' performance, including committees of the board of directors.

Our nominating and corporate governance committee will operate under a written charter, to be effective upon the closing of this offering, that satisfies the applicable listing standards of the Nasdaq Global Market.

Code of business conduct and ethics

We have adopted a code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Upon the closing of this offering, our code of business conduct and ethics will be available under the Corporate Governance section of our website at www.neuropace.com. In addition, we intend to post on our website all disclosures that are required by law or the listing standards of the Nasdaq Global Market concerning any amendments to, or waivers from, any provision of the code. The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be a part of this prospectus.

Compensation committee interlocks and insider participation

None of the members of the compensation committee is currently or has been at any time one of our officers or employees. None of our executive officers currently serves, or has served during the last year, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

Director compensation

The following table sets forth information regarding the compensation earned for service on our board of directors during the year ended December 31, 2020 by our non-employee directors. Our non-employee directors are entitled to reimbursement of direct expenses incurred in connection with attending meetings of the board of directors or committees thereof. In 2020, we reimbursed direct expenses for certain of our non-employee directors. Mr. Fischer, our former President and Chief Executive Officer, received $100,000 in compensation for his part-time employment services from July 2019 through January 2020, $498,000 in employment severance benefits during 2019 and 2020, representing 12 months of his base salary, and did not receive additional compensation for his services as a director in 2020. Michael Favet, our President and Chief Executive Officer, did not receive additional compensation for his services as a director in 2020. Mr. Favet's compensation as an executive officer is set forth in "—Summary compensation table."

The following table presents all of the compensation awarded to, earned by or paid to the members of our Board of Directors during the year ended December 31, 2020:

Name	Fees earned or paid in cash ($)	Option awards ($)[1][2]	All other compensation ($)	Total ($)
Frank Fischer	—	—	408,880[4]	408,880
Greg Garfield				—
Rishi Gupta	—	—	—	—
Nael Karim Kassar	—	—	—	—
Joseph S. Lacob	—	—	—	—
Evan Norton	—	—	—	—
Renee Ryan	—	535[3]	—	535
Vince Burgess[5]	16,500	—	—	16,500

(1) The amounts disclosed represent the aggregate grant date fair value of the stock options granted under our 2020 Plan, computed in accordance with Financial Accounting Standards Board, or FASB, Accounting Standards Codification, or ASC, Topic 718. The assumptions used in calculating the grant date fair value of the stock options are set forth in Note 9 to our audited financial statements included elsewhere in this prospectus. As required by SEC rules, the amount shown excludes the impact of estimated forfeitures related to service-based vesting conditions. The amount reported in this column reflects the accounting cost for these stock options and does not correspond to the actual economic value that may be received by the non-employee director upon the exercise of the stock options or any sale of the underlying shares of common stock.

(2) As of December 31, 2020, Mr. Lacob and Ms. Ryan held options to purchase 500 and 107,044 shares of common stock, respectively.

(3) In October 2020, Ms. Ryan was granted an option to purchase 107,044 shares of common stock, all of which were exercisable as of such date. The shares underlying this option vest in equal monthly installments over 48 months, subject to Ms. Ryan's continued service with us.

(4) Consists of (a) $26,923 in fees for part-time employment, (b) $315,963 in severance in connection with his ceasing to serve as our President and Chief Executive Officer and (c) $65,993 in accrued vacation.

(5) Mr. Burgess resigned from our Board of Directors effective as of September 23, 2020.

Non-employee director compensation policy

We intend to adopt a non-employee director compensation policy, pursuant to which our non-employee directors will be eligible to receive compensation for service on our board of directors and committees of our board of directors.

EXECUTIVE COMPENSATION

Our named executive officers, consisting of our principal executive officer and the next two most highly compensated executive officers, for the year ended December 31, 2020 were:

- Michael Favet, our President and Chief Executive Officer;
- Rebecca Kuhn, our Chief Financial Officer and Vice President, Finance and Administration; and
- Martha Morrell, our Chief Medical Officer.

Summary compensation table

The following table presents all of the compensation awarded to, earned by or paid to our Chief Executive Officer and our two next most highly compensated executive officers during the year ended December 31, 2020:

Name	Year	Salary	Bonus[1]	Option awards[2]	Non-equity incentive plan compensation	Total
Michael Favet *President and Chief Executive Officer*	2020	$ 411,923	$ 25,000	$ 13,363	(3)	
Rebecca Kuhn *Chief Financial Officer and Vice President, Finance and Administration*	2020	350,300	20,000	2,707	(4)	
Martha Morrell *Chief Medical Officer*	2020	397,975	—	3,802	(5)	

(1) Reflects a discretionary bonus paid to the named executive officer in November 2020.
(2) The amounts disclosed represent the aggregate grant date fair value of the stock options granted under our 2020 Stock Plan, or our 2020 Plan, computed in accordance with ASC Topic 718. The assumptions used in calculating the grant date fair value of the stock options are set forth in Note 9 to our audited financial statements included elsewhere in this prospectus. This amount does not reflect the actual economic value that may be realized by the named executive officers.
(3) Consists of (a) $24,231 in cash performance-based bonuses paid by us to Mr. Favet, based upon the expected achievement levels of revenue targets for third quarter 2020, as determined by our board of directors and (b) $. See "—Employment Arrangements."
(4) Consists of (a) $19,617 in cash performance-based bonuses paid by us to Ms. Kuhn, based upon the expected achievement levels of revenue targets for third quarter 2020, as determined by our board of directors and (b) $. See "—Employment Arrangements."
(5) Consists of (a) $22,835 in cash performance-based bonuses paid by us to Dr. Morrell, based upon the expected achievement levels of revenue targets for third quarter 2020, as determined by our board of directors and (b) $. See "—Employment Arrangements."

Narrative to the summary compensation table

Annual base salary

The base salary of our named executive officers is generally determined and approved by our board of directors in connection with the commencement of employment of the named executive officer and may be adjusted from time to time thereafter as the board of directors determines appropriate. The 2020 annual base salaries for our named executive officers are set forth in the table below.

Name	2020 Base Salary[1]
Michael Favet *President and Chief Executive Officer*	$ 450,000
Rebecca Kuhn *Chief Financial Officer and Vice President, Finance and Administration*	365,000
Martha Morrell *Chief Medical Officer*	425,000

(1) Mr. Favet, Ms. Kuhn, and Dr. Morrell's 2020 base salaries were temporarily reduced for a portion of 2020 pursuant to our mutual agreement with our named executive officers in light of the impact of COVID-19 on our business. During the period from April 2020 through October 2020, Mr. Favet, Ms. Kuhn, and Dr. Morrell's base salary was temporarily reduced to 80% of their respective base salary.

Bonus and non-equity incentive compensation opportunity

In addition to base salaries, each of our named executive officers is eligible to receive annual cash bonuses which are designed to provide appropriate incentives to our named executive officers to achieve defined annual corporate goals and to reward our named executive officers for their individual achievements. The annual bonus awarded to each named executive officer may be based in part on the extent to which we achieve corporate goals. At the end of the year, our board of directors reviews our performance against each corporate goal and considers the extent to which we achieved each of our corporate goals.

There is no minimum bonus percentage or amount established for our named executive officer and, as a result, the bonus amounts vary from year to year based on corporate and, when applicable, individual performance. For 2020, each of Mr. Favet, Ms. Kuhn and Dr. Morrell was eligible for a target bonus equal to 50%, % and % of their base salaries, respectively. Annual cash bonuses for 2020 performance were determined as follows based on the following factors: .

For 2020, our board of directors determined that Mr. Favet was entitled to % of his target bonus, Ms. Kuhn was entitled to % of her target bonus, and Dr. Morrell was entitled to % of her target bonus. In addition, our board of directors approved a $25,000 cash bonus to Mr. Favet and a $20,000 cash bonus to Ms. Kuhn in light of their efforts during the COVID-19 pandemic and their prior reduction in base salary.

Equity-based incentive awards

Our equity-based incentive awards are designed to align our named executive officers' interests with those of our stockholders and to retain and incentivize our named executive officers over the long-term. Our board of directors is responsible for approving equity grants. Vesting of equity awards is generally tied to continuous service with us and serves as an additional retention measure. Our named executive officers generally are awarded an initial new hire grant upon commencement of employment. Additional grants may occur periodically in order to specifically incentivize our named executive officers with respect to achieving certain corporate goals or to reward our named executive officers for exceptional performance. Prior to this offering, we have granted all equity awards pursuant to the 2009 Plan and the 2020 Plan, the terms of which are described below under "—Equity benefit plans." All options are granted with a per share exercise price equal to no less than the fair market value of a share of our common stock on the date of the grant of such award. Generally our option awards vest over a four-year period subject to the holder's continuous service to us, as further described under "—Outstanding equity awards as of December 31, 2020" below.

In October 2020, our board of directors granted options to purchase 2,540,000 shares to Mr. Favet, 510,000 shares to Ms. Kuhn, and 725,000 shares to Dr. Morrell, each with an exercise price per share of $0.01 per share. The options vest in equal monthly installments over four years subject to continued services to us. In addition, the options provide for vesting acceleration upon certain qualifying terminations of employment, as described below under "Employment Agreements".

In addition, in November 2020, we amended certain outstanding options held by our non-employee directors and our employees, including options held by our named executive officers, which were "underwater," meaning the exercise price per share of these options was greater than the current fair market value of our common stock. The amendment reduced the exercise price per share of such options to $0.01, the fair market value of our common stock as determined by our board of directors on the date of the repricing. We believe that repricing these underwater options was important for the growth and development of our business in order to provide appropriate retention and motivation incentives for our employees holding these options. Our named executive officers repriced options are reflected below under "—Outstanding equity awards at fiscal year end."

Outstanding equity awards as of December 31, 2020

The following table presents all of the compensation awarded to, earned by or paid to our Chief Executive Officer and our two next most highly compensated executive officers during the year ended December 31, 2020:

			Option awards[1]			
Name	Grant date	Vesting commencement date	Number of securities underlying unexercised options exercisable	Number of securities underlying unexercised options unexercisable[2]	Option exercise price	Option expiration date
Michael Favet	10/30/20 [4]	8/19/2020	2,540,000	—	$ 0.01	10/29/2030
	7/23/19 [5]	8/1/2019	132,519	—	0.01 [3]	7/22/2029
Rebecca Kuhn	10/30/20 [4]	8/19/2020	510,000	—	0.01	10/29/2030
	12/2/17 [5]	5/4/2012	1,800	—	0.01 [3]	11/12/2022
	12/2/17 [4]	8/23/2013	662	—	0.01 [3]	2/10/2024
	12/2/17 [4]	11/11/2014	1,255	—	0.01 [3]	2/9/2025
	12/2/17 [5]	1/1/2017	27,649	—	0.01 [3]	12/1/2027
Martha Morrell	10/30/20 [7]	8/19/2020	725,000	—	0.01	10/29/2030
	12/2/17 [5]	7/1/2011	500	—	0.01 [3]	7/5/2021
	12/2/17 [5]	7/1/2012	500	—	0.01 [3]	11/13/2022
	12/2/17 [6]	2/22/2013	1,000	—	0.01 [3]	3/6/2023
	12/2/17 [5]	7/1/2013	500	—	0.01 [3]	4/21/2024
	12/2/17 [5]	7/1/2014	500	—	0.01 [3]	10/12/2024
	12/2/17 [5]	7/1/2015	500	—	0.01 [3]	7/23/2025
	12/2/17 [4]	1/1/2017	31,810	—	0.01 [3]	12/1/2027

(1) All of the options were granted under the 2009 Stock Plan or the 2020 Plan. The unvested shares underlying these options are subject to accelerated vesting as described in "—Employment arrangements" below.
(2) All of the option awards may be early exercised prior to vesting.
(3) Reflects an option that was amended on November 30, 2020 to reduce the exercise price to $0.01 per share, as described above under "—Equity-based incentive awards."
(4) The shares underlying this option vest in equal monthly installments over 48 months, subject to the named executive officer's continued service with us.
(5) 1/4th of the shares underlying this option vested on the first anniversary of the vesting commencement date, and the remaining shares will vest in equal monthly installments thereafter over 36 months, subject to the named executive officer's continued service with us.
(6) The option was fully vested as of the grant date.
(7) If, at the time of this offering, less than 362,500 of the shares subject to this option remain unvested, an amount of shares subject to this option shall vest and become immediately exercisable immediately prior to the offering such that a total of 362,500 shares subject to this option will be vested and immediately exercisable, subject to the named executive officer's continued service with us. Follow such acceleration, the remaining unvested shares subject to this option will continue to vest in equal monthly installments over 48 months.

Emerging growth company status

We are an emerging growth company, as defined in the JOBS Act. As an emerging growth company, we will be exempt from certain requirements related to executive compensation, including, but not limited to, the requirements to hold a nonbinding advisory vote on executive compensation and to provide information relating to the ratio of total compensation of our Chief Executive Officer to the median of the annual total compensation of all of our employees, each as required by the Investor Protection and Securities Reform Act of 2010, which is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Pension and retirement benefits

Our named executive officers did not participate in, or otherwise receive any benefits under, any pension or defined benefit retirement plan sponsored by us during the year ended December 31, 2020.

Nonqualified deferred compensation

Our named executive officers did not participate in, or earn any benefits under, any nonqualified deferred compensation plan sponsored by us during the year ended December 31, 2020. Our board of directors may elect to provide our officers and other employees with nonqualified deferred compensation benefits in the future if it determines that doing so is in our best interests.

Employment arrangements

The employment agreements and offer letters with our named executive officers generally provide for at-will employment and set forth the executive officer's initial base salary, eligibility for employee benefits and confirmation of the terms of previously issued equity grants. The key terms of these agreements are described below. In addition, each of our named executive officers has executed our standard confidential information and invention assignment agreement.

Michael Favet

In July 2019, we entered into an employment agreement with Michael Favet, our President and Chief Executive Officer and a member of our board of directors. The employment agreement provides for an annual base salary of $450,000, which was reduced to 80% of his base salary pursuant to our mutual agreement with Mr. Favet for a portion of 2020 in light of the impact of COVID-19 on our business. Under the employment agreement, Mr. Favet is eligible to earn an annual discretionary cash bonus with a maximum bonus opportunity of 50% of his base salary, based on Company and individual performance objectives determined by our board of directors.

In July 2019, pursuant to his employment agreement, we granted Mr. Favet options to purchase 132,519 shares of common stock with an exercise price of $14.00 per share, which was repriced in November 2020 to provide for an exercise price of $0.01 per share. In October 2020, we granted Mr. Favet options to purchase 2,540,000 shares of common stock with an exercise price of $0.01 per share. Mr. Favet is also eligible to participate in benefit plans and arrangements made available to all full-time employees.

Pursuant to his employment agreement, if we terminate Mr. Favet's employment without cause or he resigns for good reason apart from a change in control, then, subject to Mr. Favet executing and not revoking a general release of all claims, executing a non-competition agreement, and resigning from all positions with us, including as a member of the board of directors, he will be entitled to (i) a cash amount equal to accrued but unpaid salary and vacation and earned but unpaid bonus, (ii) a cash amount equal to nine months of his annual base salary payable in equal installments in accordance with our regular payroll schedule, (iii) reimbursement of premium cost for continuation of health insurance coverage under COBRA for up to nine months following termination or resignation, (iv) a cash amount equal to 50% of Mr. Favet's current year target bonus, if applicable, payable in a lump sum on the 30th day following termination of employment or resignation and (v) accelerated vesting of outstanding unvested equity awards in an amount equal to the number of shares that would have vested had Mr. Favet remained employed by us for nine months following termination or resignation. If we terminate Mr. Favet's employment without cause or he resigns for good reason in connection with or within 24 months following a change in control, then, subject to Mr. Favet executing and not revoking a general release of all claims, executing a non-competition agreement, and resigning from all positions with us, including as a member of the board of directors, he will be entitled to (i) a cash amount equal to accrued but unpaid salary and vacation and earned but unpaid bonus, (ii) a cash amount equal to twelve months of his annual base salary payable in equal installments in accordance with our regular payroll schedule, (iii) reimbursement of the premium cost for continuation of health insurance coverage under COBRA for up to twelve months following termination of employment or resignation, (4) a cash amount equal to 100% of Mr. Favet's current year target bonus, if applicable, payable in a lump sum on the 30th day following termination or resignation and (iv) accelerated vesting of 100% of the outstanding unvested equity awards. If we terminate Mr. Favet or he resigns for any other reason, then he will be entitled to (i) a cash amount equal to accrued but unpaid salary and vacation and (ii) continuation of health insurance coverage for such time as required under COBRA.

Rebecca Kuhn

Ms. Kuhn's current annual base salary is $365,000, which was reduced to 80% of her base salary pursuant to our mutual agreement with Ms. Kuhn for a portion of 2020 in light of the impact of COVID-19 on our business. In October 2020, we granted Ms. Kuhn options to purchase 510,000 shares of common stock with an exercise price of $0.01 per share. Ms. Kuhn is also eligible to participate in benefit plans and arrangements made available to all full-time employees.

Pursuant to her employment agreement, if we terminate Ms. Kuhn's employment without cause or she resigns for good reason apart from a change in control, then, subject to Ms. Kuhn executing and not revoking a general release of all claims, she will be entitled to (i) a cash amount equal to accrued but unpaid salary and vacation and earned but unpaid bonus, (ii) a cash amount equal to nine months of her annual base salary payable in equal installments in accordance with our regular payroll schedule, (iii) reimbursement of premium cost for continuation of health insurance coverage under COBRA for up to nine months following termination or resignation, (iv) a cash amount equal to 100% of Ms. Kuhn's current year target bonus, if applicable, payable in a lump sum on the 30th day following termination of employment or resignation and (v) accelerated vesting of outstanding unvested equity awards in an amount equal to the number of shares that would have vested had Ms. Kuhn remained employed by us for nine months following termination or resignation. If we terminate Ms. Kuhn's employment without cause or she resigns for good reason within 24 months following a change in control, then, subject to Ms. Kuhn executing and not revoking a general release of all claims, she will be entitled to (i) a cash amount equal to accrued but unpaid salary and vacation and earned but unpaid bonus, (ii) a cash amount equal to eighteen months of her annual base salary payable in equal installments in accordance with our regular payroll schedule, (iii) reimbursement of the premium cost for continuation of health insurance coverage under COBRA for up to twelve months following termination of employment or resignation, (iv) a cash amount equal to 100% of Ms. Kuhn's current year target bonus, if applicable, payable in a lump sum on the 30th day following termination or resignation and (v) accelerated vesting of 100% of the outstanding unvested equity awards. If we terminate Ms. Kuhn or she resigns for any other reason, then she will be entitled to (i) a cash amount equal to accrued but unpaid salary and vacation and (ii) continuation of health insurance coverage for such time as required under COBRA

Martha Morrell

Dr. Morrell's current annual base salary is $425,000, which was reduced to 80% of her base salary pursuant to our mutual agreement with Dr. Morrell for a portion of 2020 in light of the impact of COVID-19 on our business. In October 2020, we granted Dr. Morrell options to purchase 725,000 shares of common stock with an exercise price of $0.01 per share. Dr. Morrell is also eligible to participate in benefit plans and arrangements made available to all full-time employees.

Pursuant to her employment agreement, if we terminate Dr. Morrell's employment without cause or she resigns for good reason apart from a change in control, then, subject to Dr. Morrell executing and not revoking a general release of all claims, she will be entitled to (i) a cash amount equal to accrued but unpaid salary and vacation and earned but unpaid bonus, (ii) a cash amount equal to nine months of her annual base salary payable in equal installments in accordance with our regular payroll schedule, (iii) reimbursement of premium cost for continuation of health insurance coverage under COBRA for up to nine months following termination or resignation, (iv) a cash amount equal to 100% of Dr. Morrell's current year target bonus, if applicable, payable in a lump sum on the 30th day following termination of employment or resignation and (5) accelerated vesting of outstanding unvested equity awards in an amount equal to the number of shares that would have vested had Dr. Morrell remained employed by us for nine months following termination or resignation. If we terminate Dr. Morrell's employment without cause or she resigns for good reason within 24 months following a change in control, then, subject to Dr. Morrell executing and not revoking a general release of all claims, she will be entitled to (ii) a cash amount equal to accrued but unpaid salary and vacation and earned but unpaid bonus, (ii) a cash amount equal to eighteen months of her annual base salary payable in equal installments in accordance with our regular payroll schedule, (iii) reimbursement of the premium cost for continuation of health insurance coverage under COBRA for up to twelve months following termination of employment or resignation, (iv) a cash amount equal to 100% of Dr. Morrell's current year target bonus, if applicable, payable in a lump sum on the 30th day following termination or resignation and (v) accelerated vesting of 100% of the outstanding unvested equity awards. If we terminate Dr. Morrell or she resigns for any other

reason, then she will be entitled to (i) a cash amount equal to accrued but unpaid salary and vacation and (ii) continuation of health insurance coverage for such time as required under COBRA.

Health and welfare benefits

All of our named executive officers are eligible to participate in our employee benefit plans, including our medical, dental, vision, life, disability and accidental death and dismemberment insurance plans, in each case on the same basis as all of our other employees. We pay the premiums for the life, disability and accidental death and dismemberment insurance for all of our employees, including our named executive officers.

401(k) Plan

We currently maintain a 401(k) retirement savings plan for our employees, including our named executive officers, who satisfy certain eligibility requirements. The 401(k) plan is intended to qualify as a tax-qualified plan under the Code. Our named executive officers are eligible to participate in the 401(k) plan on the same basis as our other employees. The Code allows eligible employees to defer a portion of their compensation, within prescribed limits, on a pre-tax basis through contributions to the 401(k) plan.

2021 Corporate Bonus Plan for Non-Field Employees

In December 2020, our compensation committee adopted the 2021 Corporate Bonus Plan for Non-Field Employees, under which all employees that are not part of a field-based variable compensation plan are eligible to receive annual performance-based cash bonuses designed to provide appropriate incentives to our employees to achieve defined financial performance and operational goals and to reward our employees for achievement toward these goals.

Employee benefit and stock plans

2021 Equity Incentive Plan

Our board of directors adopted our 2021 Equity Incentive Plan, or our 2021 Plan, in 2021, which was approved by our stockholders in , 2021. Our 2021 Plan will become effective upon the execution of the underwriting agreement for this offering. The 2021 Plan came into existence upon its adoption by our board of directors, but no grants will be made under the 2021 Plan prior to its effectiveness. Once the 2021 Plan is effective, no further grants will be made under the 2020 Plan.

Awards. Our 2021 Plan provides for the grant of incentive stock options, or ISOs, within the meaning of Section 422 of the Code, to employees, including employees of any parent or subsidiary, and for the grant of nonstatutory stock options, or NSOs, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance awards and other forms of awards to employees, directors and consultants, including employees and consultants of our affiliates.

Authorized shares. Initially, the maximum number of shares of our common stock that may be issued under our 2021 Plan after it becomes effective will not exceed shares of our common stock. In addition, the number of shares of our common stock reserved for issuance under our 2021 Plan will automatically increase on January 1 of each calendar year, starting on January 1, 2022 (provided that the offering occurs prior to such date) through January 1, 2031, in an amount equal to (i) % of the total number of shares of our common stock outstanding on December 31 of the calendar year before the date of each automatic increase, or (ii) a lesser number of shares determined by our board of directors prior to the applicable January 1. The maximum number of shares of our common stock that may be issued on the exercise of ISOs under our 2021 Plan is shares.

Shares subject to stock awards granted under our 2021 Plan that expire or terminate without being exercised in full or that are paid out in cash rather than in shares do not reduce the number of shares available for issuance under our 2021 Plan. Shares withheld under a stock award to satisfy the exercise, strike or purchase price of a stock award or to satisfy a tax withholding obligation do not reduce the number of shares available for issuance under our 2021 Plan. If any shares of our common stock issued pursuant to a stock award are forfeited back to or repurchased or reacquired by us (1) because of a failure to meet a contingency or condition required for the vesting of such shares,

(2) to satisfy the exercise, strike or purchase price of an award or (3) to satisfy a tax withholding obligation in connection with an award, the shares that are forfeited or repurchased or reacquired will revert to and again become available for issuance under the 2021 Plan. Any shares previously issued which are reacquired in satisfaction of tax withholding obligations or as consideration for the exercise or purchase price of a stock award will again become available for issuance under the 2021 Plan.

Plan administration. Our board of directors, or a duly authorized committee of our board of directors, will administer our 2021 Plan and is referred to as the "plan administrator" herein. Our board of directors may also delegate to one or more of our officers the authority to (1) designate employees (other than officers) to receive specified stock awards and (2) determine the number of shares subject to such stock awards. Under our 2021 Plan, our board of directors has the authority to determine award recipients, grant dates, the numbers and types of stock awards to be granted, the applicable fair market value, and the provisions of each stock award, including the period of exercisability and the vesting schedule applicable to a stock award.

Stock options. ISOs and NSOs are granted under stock option agreements adopted by the plan administrator. The plan administrator determines the exercise price for stock options, within the terms and conditions of the 2021 Plan, provided that the exercise price of a stock option generally cannot be less than 100% of the fair market value of our common stock on the date of grant. Options granted under the 2021 Plan vest at the rate specified in the stock option agreement as determined by the plan administrator.

The plan administrator determines the term of stock options granted under the 2021 Plan, up to a maximum of 10 years. Unless the terms of an optionholder's stock option agreement, or other written agreement between us and the recipient approved by the plan administrator, provide otherwise, if an optionholder's service relationship with us or any of our affiliates ceases for any reason other than disability, death, or cause, the optionholder may generally exercise any vested options for a period of three months following the cessation of service. This period may be extended in the event that exercise of the option is prohibited by applicable securities laws. If an optionholder's service relationship with us or any of our affiliates ceases due to death, or an optionholder dies within a certain period following cessation of service, the optionholder or a beneficiary may generally exercise any vested options for a period of 18 months following the date of death. If an optionholder's service relationship with us or any of our affiliates ceases due to disability, the optionholder may generally exercise any vested options for a period of 12 months following the cessation of service. In the event of a termination for cause, options generally terminate upon the termination date. In no event may an option be exercised beyond the expiration of its term.

Acceptable consideration for the purchase of common stock issued upon the exercise of a stock option will be determined by the plan administrator and may include (1) cash, check, bank draft or money order, (2) a broker-assisted cashless exercise, (3) the tender of shares of our common stock previously owned by the optionholder, (4) a net exercise of the option if it is an NSO, or (5) other legal consideration approved by the plan administrator.

Unless the plan administrator provides otherwise, options or stock appreciation rights generally are not transferable except by will or the laws of descent and distribution. Subject to approval of the plan administrator or a duly authorized officer, an option may be transferred pursuant to a domestic relations order, official marital settlement agreement, or other divorce or separation instrument.

Tax limitations on ISOs. The aggregate fair market value, determined at the time of grant, of our common stock with respect to ISOs that are exercisable for the first time by an award holder during any calendar year under all of our stock plans may not exceed $100,000. Options or portions thereof that exceed such limit will generally be treated as NSOs. No ISO may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our total combined voting power or that of any of our parent or subsidiary corporations unless (1) the option exercise price is at least 110% of the fair market value of the stock subject to the option on the date of grant, and (2) the term of the ISO does not exceed five years from the date of grant.

Restricted stock unit awards. Restricted stock unit awards are granted under restricted stock unit award agreements adopted by the plan administrator. Restricted stock unit awards may be granted in consideration for any form of legal consideration that may be acceptable to our board of directors and permissible under applicable law. A restricted stock unit award may be settled by cash, delivery of stock, a combination of cash and stock as deemed

appropriate by the plan administrator, or in any other form of consideration set forth in the restricted stock unit award agreement. Additionally, dividend equivalents may be credited in respect of shares covered by a restricted stock unit award. Except as otherwise provided in the applicable award agreement, or other written agreement between us and the recipient approved by the plan administrator, restricted stock unit awards that have not vested will be forfeited once the participant's continuous service ends for any reason.

Restricted stock awards. Restricted stock awards are granted under restricted stock award agreements adopted by the plan administrator. A restricted stock award may be awarded in consideration for cash, check, bank draft or money order, past or future services to us, or any other form of legal consideration that may be acceptable to our board of directors and permissible under applicable law. The plan administrator determines the terms and conditions of restricted stock awards, including vesting and forfeiture terms. If a participant's service relationship with us ends for any reason, we may receive any or all of the shares of common stock held by the participant that have not vested as of the date the participant terminates service with us through a forfeiture condition or a repurchase right.

Stock appreciation rights. Stock appreciation rights are granted under stock appreciation right agreements adopted by the plan administrator. The plan administrator determines the purchase price or strike price for a stock appreciation right, which generally cannot be less than 100% of the fair market value of our common stock on the date of grant. A stock appreciation right granted under the 2021 Plan vests at the rate specified in the stock appreciation right agreement as determined by the plan administrator. Stock appreciation rights may be settled in cash or shares of common stock or in any other form of payment as determined by the Board and specified in the stock appreciation right agreement.

The plan administrator determines the term of stock appreciation rights granted under the 2021 Plan, up to a maximum of 10 years. If a participant's service relationship with us or any of our affiliates ceases for any reason other than cause, disability, or death, the participant may generally exercise any vested stock appreciation right for a period of three months following the cessation of service. This period may be further extended in the event that exercise of the stock appreciation right following such a termination of service is prohibited by applicable securities laws. If a participant's service relationship with us, or any of our affiliates, ceases due to disability or death, or a participant dies within a certain period following cessation of service, the participant or a beneficiary may generally exercise any vested stock appreciation right for a period of 12 months in the event of disability and 18 months in the event of death. In the event of a termination for cause, stock appreciation rights generally terminate immediately upon the occurrence of the event giving rise to the termination of the individual for cause. In no event may a stock appreciation right be exercised beyond the expiration of its term.

Performance awards. The 2021 Plan permits the grant of performance awards that may be settled in stock, cash or other property. Performance awards may be structured so that the stock or cash will be issued or paid only following the achievement of certain pre-established performance goals during a designated performance period. Performance awards that are settled in cash or other property are not required to be valued in whole or in part by reference to, or otherwise based on, the common stock.

The performance goals may be based on any measure of performance selected by the board of directors. The performance goals may be based on company-wide performance or performance of one or more business units, divisions, affiliates, or business segments, and may be either absolute or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the board of directors at the time the performance award is granted, the board will appropriately make adjustments in the method of calculating the attainment of performance goals as follows: (i) to exclude restructuring and/or other nonrecurring charges; (ii) to exclude exchange rate effects; (iii) to exclude the effects of changes to generally accepted accounting principles; (iv) to exclude the effects of any statutory adjustments to corporate tax rates; (v) to exclude the effects of items that are "unusual" in nature or occur "infrequently" as determined under generally accepted accounting principles; (vi) to exclude the dilutive effects of acquisitions or joint ventures; (vii) to assume that any portion of our business which is divested achieved performance objectives at targeted levels during the balance of a performance period following such divestiture; (viii) to exclude the effect of any change in the outstanding shares of our common stock by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (ix) to exclude the effects of

stock based compensation and the award of bonuses under our bonus plans; (x) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under generally accepted accounting principles; and (xi) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles.

Other stock awards. The plan administrator may grant other awards based in whole or in part by reference to our common stock. The plan administrator will set the number of shares under the stock award (or cash equivalent) and all other terms and conditions of such awards.

Non-employee director compensation limit. The aggregate value of all compensation granted or paid to any non-employee director with respect to any calendar year, including awards granted and cash fees paid by us to such non-employee director, will not exceed $ in total value; provided that such amount will increase to for the first year for newly appointed or elected non-employee directors.

Changes to capital structure. In the event there is a specified type of change in our capital structure, such as a stock split, reverse stock split, or recapitalization, appropriate adjustments will be made to (1) the class and maximum number of shares reserved for issuance under the 2021 Plan, (2) the class and maximum number of shares by which the share reserve may increase automatically each year, (3) the class and maximum number of shares that may be issued on the exercise of ISOs, and (4) the class and number of shares and exercise price, strike price, or purchase price, if applicable, of all outstanding stock awards.

Corporate transactions. The following applies to stock awards under the 2021 Plan in the event of a corporate transaction (as defined in the 2021 Plan), unless otherwise provided in a participant's stock award agreement or other written agreement with us or one of our affiliates or unless otherwise expressly provided by the plan administrator at the time of grant.

In the event of a corporate transaction, any stock awards outstanding under the 2021 Plan may be assumed, continued or substituted for by any surviving or acquiring corporation (or its parent company), and any reacquisition or repurchase rights held by us with respect to the stock award may be assigned to the successor (or its parent company). If the surviving or acquiring corporation (or its parent company) does not assume, continue or substitute for such stock awards, then (i) with respect to any such stock awards that are held by participants whose continuous service has not terminated prior to the effective time of the corporate transaction, or current participants, the vesting (and exercisability, if applicable) of such stock awards will be accelerated in full to a date prior to the effective time of the corporate transaction (contingent upon the effectiveness of the corporate transaction), and such stock awards will terminate if not exercised (if applicable) at or prior to the effective time of the corporate transaction, and any reacquisition or repurchase rights held by us with respect to such stock awards will lapse (contingent upon the effectiveness of the corporate transaction), and (ii) any such stock awards that are held by persons other than current participants will terminate if not exercised (if applicable) prior to the effective time of the corporate transaction, except that any reacquisition or repurchase rights held by us with respect to such stock awards will not terminate and may continue to be exercised notwithstanding the corporate transaction.

In the event a stock award will terminate if not exercised prior to the effective time of a corporate transaction, the plan administrator may provide, in its sole discretion, that the holder of such stock award may not exercise such stock award but instead will receive a payment equal in value to the excess (if any) of (i) the per share amount payable to holders of common stock in connection with the corporate transaction, over (ii) any per share exercise price payable by such holder, if applicable. In addition, any escrow, holdback, earn out or similar provisions in the definitive agreement for the corporate transaction may apply to such payment to the same extent and in the same manner as such provisions apply to the holders of common stock.

Change in control. Awards granted under the 2021 Plan may be subject to acceleration of vesting and exercisability upon or after a change in control (as defined in the 2021 Plan) as may be provided in the applicable stock award agreement or in any other written agreement between us or any affiliate and the participant, but in the absence of such provision, no such acceleration will automatically occur.

Plan amendment or termination. Our board of directors has the authority to amend, suspend, or terminate our 2021 Plan, provided that such action does not materially impair the existing rights of any participant without such

participant's written consent. Certain material amendments also require the approval of our stockholders. No ISOs may be granted after the tenth anniversary of the date our board of directors adopts our 2021 Plan. No stock awards may be granted under our 2021 Plan while it is suspended or after it is terminated.

2020 Stock Plan

Our board of directors adopted, and our stockholders approved, the 2020 Plan in August 2020. As of December 31, 2020, under the 2020 Plan, options to purchase shares of common stock were outstanding, and shares of common stock remained available for future issuance.

Upon the effective date of the 2021 Plan, no additional awards will be granted under the 2020 Plan, which will be terminated on such date. However, any outstanding awards granted under the 2020 Plan will remain outstanding, subject to the terms of the 2020 Plan and award agreements, until such outstanding options are exercised or until any awards terminate or expire by their terms.

Awards. The 2020 Plan provides for the grant of ISOs, NSOs, stock appreciation rights or SARs, restricted stock awards, restricted stock unit awards and other stock-based awards, or collectively, awards. Awards may be granted to directors, employees and consultants; however, ISOs may be granted only to individuals who are employees.

Administration. Our board of directors administers and interprets the provisions of the 2020 Plan. The board of directors may delegate its authority to a committee of the board, referred to as the "administrator." Under our 2020 Plan, the administrator has the authority to, among other things, determine award recipients, grant awards, establish all terms and conditions of awards (including, but not limited to, vesting, exercise and forfeiture provisions), adopt, amend and repeal such administrative rules, guidelines and practices relating to the 2020 Plan and correct any defect or ambiguity, and supply any omission or reconcile any inconsistency in the 2020 Plan.

Stock options and SARs. Stock options are generally granted by our administrator pursuant to option grant notices and stock option agreements. The exercise price of stock options and SARs will not be less than the fair market value of our common shares on the date of grant, in accordance with the terms and conditions of the 2020 Plan. The administrator may attach other terms and conditions to a specific option grant, pursuant to the 2020 Plan. Our administrator determines the term of stock options and SARs granted under the 2020 Plan, up to a maximum of 10 years. If an optionholder's service relationship with us or any of our affiliates ceases for any reason other than disability, death or cause, the optionholder may generally exercise any vested options for a period of up to three months following the cessation of service. This period may be extended in the event that exercise of the option is prohibited by applicable securities laws or our insider trading policy. If an optionholder's service relationship with us or any of our affiliates ceases due to death, or an optionholder dies within a certain period following cessation of service, the optionholder or a beneficiary may generally exercise any vested options for a period of up to 18 months following the date of death. If an optionholder's service relationship with us or any of our affiliates ceases due to disability, the optionholder may generally exercise any vested options for a period of up to 12 months following the cessation of service. In the event of a termination for cause, options generally terminate upon the termination date. However, in no event may an option or SAR be exercised beyond the expiration of its term.

Restricted stock unit awards. The administrator determines the terms and conditions of restricted stock unit awards, including vesting and forfeiture terms. A restricted stock unit award may be settled by cash, delivery of stock, a combination of cash and stock as deemed appropriate by the administrator, or in any other form of consideration set forth in the restricted stock unit award agreement. Additionally, dividend equivalents may be credited in respect of shares covered by a restricted stock unit award. Any dividend equivalents will be subject to the same terms and conditions of the underlying restricted stock unit award to which they relate.

Restricted stock awards. The administrator determines the terms and conditions of restricted stock awards, including vesting and forfeiture terms. Participants holding shares of restricted stock are entitled to all ordinary cash dividends paid with respect to such shares, unless otherwise provided by the administrator in the applicable award agreement. In addition, the receipt of any dividend, paid in shares or other property, may be subject to the same restrictions on transferability and forfeitability as the shares of restricted stock with respect to which the dividend was paid.

Other stock awards. The administrator may grant other awards based in whole or in part by reference to our common stock. The administrator will set the number of shares under the stock award and all other terms and conditions of such awards.

Adjustments. In the event there is a dividend, other property distribution, reorganization, merger, consolidation, combination, repurchase, recapitalization, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of our assets, or sale or exchange of common stock or other securities of the company, issuance of warrants or other rights to purchase common stock or other securities of the company, or other similar corporate transaction or event, collectively referred to as specified corporate transactions, appropriate adjustments will be made to (1) the class and maximum number of shares reserved for issuance under the 2020 Plan, (2) the class, maximum number of shares and price per share of stock subject to outstanding awards under the 2020 Plan and (3) the class and maximum number of shares that may be issued pursuant to the exercise of incentive stock options.

Our 2020 Plan provides that in the event of a specified corporate transaction unless otherwise provided in an award agreement or other written agreement between us and the award holder, the administrator may take one or more of the following actions with respect to such awards:

- arrange for the assumption, continuation, or substitution of a stock award by a surviving or acquiring corporation;
- arrange for the assignment of any reacquisition or repurchase rights held by us to the surviving or acquiring corporation;
- accelerate the vesting, in whole or in part, of the stock award and provide for its termination if not exercised (if applicable) at or before the effective time of the corporate transaction;
- suspend the exercise of stock awards, prior to the effective time of the corporate transaction, for such period as the administrator determine is necessary to facilitate the negotiation and consummation of the corporate transaction;
- if a stock award is eligible for "early exercise," cancel or arrange for the cancellation of any such "early exercise" rights upon the corporate transaction, such that following the corporate transaction, such stock award may only be exercised to the extent vested;
- arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by us;
- cancel or arrange for the cancellation of the stock award, to the extent not vested or not exercised before the effective time of the transaction, in exchange for such cash consideration (including no consideration) as our board of directors, in its sole discretion, may consider appropriate; and
- make a payment equal to the excess, if any, of (A) the value of the property the participant would have received on exercise of the award immediately before the effective time of the transaction, over (B) any exercise price payable by the participant in connection with the exercise.

The plan administrator is not obligated to treat all stock awards or portions of stock awards in the same manner and is not obligated to treat all participants in the same manner.

Under the 2020 Plan, a "corporate transaction" is generally defined as the consummation, in a single transaction or in a series of related transactions, of: (1) a sale of all or substantially all of our assets, (2) the sale or disposition of more than 50% of our outstanding securities, (3) a merger or consolidation where we do not survive the transaction, or (4) a merger or consolidation where we do survive the transaction but the shares of our common stock outstanding immediately before such transaction are converted or exchanged into other property by virtue of the transaction.

Change in control. A stock award may be subject to additional acceleration of vesting and exercisability upon or after a change in control as may be provided in an applicable award agreement or other written agreement,

but in the absence of such provision, no such acceleration will occur. Under the 2020 Plan, a "change in control" is generally defined as (1) certain acquisitions by a person or company of more than 50% of the combined voting power of our then outstanding stock, (2) a merger, consolidation or similar transaction in which our stockholders immediately before the transaction do not own, directly or indirectly, more than 50% of the combined voting power of the surviving entity (or the parent of the surviving entity) in substantially the same proportions as their ownership immediately prior to such transaction, or (3) a sale, lease, exclusive license or other disposition of all or substantially all of our consolidated assets other than to an entity more than 50% of the combined voting power of which is owned by our stockholders in substantially the same proportions as their ownership of our outstanding voting securities immediately prior to such transaction.

Amendment and termination. Our administrator may (i) amend the 2020 Plan and the terms of any award granted under the 2020 Plan from time to time or (ii) terminate the 2020 Plan any time, provided that any amendment will not materially and adversely affect participants without their consent. No awards may be granted after the tenth anniversary of the date our board of directors adopted our 2020 Plan. As described above, our 2020 Plan will be terminated upon the effective date of the 2021 Plan and no future awards will be granted under the 2020 Plan following such date.

2009 Stock Plan

Our board of directors adopted the 2009 Stock Plan, or the 2009 Plan, in September 2009, and our stockholders approved the 2009 Plan in January 2010. The 2009 Plan previously terminated and no new awards may be granted under it. Outstanding awards granted under the 2009 Plan remain outstanding, subject to the terms of our 2009 Plan and award agreements, until such outstanding options are exercised or terminate or expire by their terms. As of December 31, 2020, options to purchase shares of common stock were outstanding under the 2009 Plan.

Plan administration. Our board or a duly authorized committee of our board administers our 2009 Plan and the awards granted under it.

Corporate transaction. Our 2009 Plan provides that in the event of a Corporate Transaction (as defined under our 2009 Plan), that each outstanding option shall be assumed or substituted for an equivalent option by the successor corporation or Parent or Subsidiary (each as defined in our 2009 Plan) of the successor. If, in such event, the options are not assumed or substituted, the option will terminate as of the date of the closing of the merger or Change in Control, as described in our 2009 Plan.

Transferability. Our board may impose limitations on the transferability of ISOs and NSOs as the board will determine. Absent such limitations, a participant may not transfer awards under our 2009 Plan other than by will, the laws of descent and distribution or as otherwise provided under our 2009 Plan.

2021 Employee Stock Purchase Plan

Our board of directors adopted our 2021 Employee Stock Purchase Plan, or our ESPP, in , 2021, which was approved by our stockholders in , 2021. The ESPP will become effective upon the execution of the underwriting agreement for this offering. The purpose of the ESPP is to secure the services of new employees, to retain the services of existing employees, and to provide incentives for such individuals to exert maximum efforts toward our success and that of our affiliates. The ESPP includes two components. One component is designed to allow eligible U.S. employees to purchase our common stock in a manner that may qualify for favorable tax treatment under Section 423 of the Code. In addition, purchase rights may be granted under a component that does not qualify for such favorable tax treatment because of deviations necessary to permit participation by eligible employees who are foreign nationals or employed outside of the United States while complying with applicable foreign laws.

Share reserve. Following this offering, the ESPP authorizes the issuance of shares of our common stock under purchase rights granted to our employees or to employees of any of our designated affiliates. The number of shares of our common stock reserved for issuance will automatically increase on January 1 of each calendar year, beginning on January 1, 2022 through January 1, 2031, by the lesser of (i) % of the total number of shares of our common stock outstanding on the last day of the calendar year before the date of the automatic

increase, and (ii) shares; provided that before the date of any such increase, our board of directors may determine that such increase will be less than the amount set forth in clauses (i) and (ii). As of the date hereof, no shares of our common stock have been purchased under the ESPP.

Administration. Our board of directors administers the ESPP and may delegate its authority to administer the ESPP to our compensation committee. The ESPP is implemented through a series of offerings under which eligible employees are granted purchase rights to purchase shares of our common stock on specified dates during such offerings. Under the ESPP, we may specify offerings with durations of not more than 27 months, and may specify shorter purchase periods within each offering. Each offering will have one or more purchase dates on which shares of our common stock will be purchased for employees participating in the offering. An offering under the ESPP may be terminated under certain circumstances.

Payroll deductions. Generally, all regular employees, including executive officers, employed by us or by any of our designated affiliates, may participate in the ESPP and may contribute, normally through payroll deductions, up to % of their earnings for the purchase of our common stock under the ESPP. Unless otherwise determined by our board of directors, common stock will be purchased for the accounts of employees participating in the ESPP at a price per share that is at least the lesser of (i) 85% of the fair market value of a share of our common stock on the first date of an offering, or (ii) 85% of the fair market value of a share of our common stock on the date of purchase.

Limitations. Employees may have to satisfy one or more of the following service requirements before participating in the ESPP, as determined by our board of directors, including: (i) being customarily employed for more than 20 hours per week, (ii) being customarily employed for more than five months per calendar year, or (iii) continuous employment with us or one of our affiliates for a period of time (not to exceed two years). No employee may purchase shares under the ESPP at a rate in excess of $25,000 worth of our common stock based on the fair market value per share of our common stock at the beginning of an offering for each calendar year such a purchase right is outstanding. Finally, no employee will be eligible for the grant of any purchase rights under the ESPP if immediately after such rights are granted, such employee has voting power over 5% or more of our outstanding capital stock measured by vote or value under Section 424(d) of the Code.

Changes to capital structure. In the event that there occurs a change in our capital structure through such actions as a stock split, merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, liquidating dividend, combination of shares, exchange of shares, change in corporate structure, or similar transaction, the board of directors will make appropriate adjustments to: (i) the class(es) and maximum number of shares reserved under the ESPP, (ii) the class(es) and maximum number of shares by which the share reserve may increase automatically each year, (iii) the class(es) and number of shares subject to and purchase price applicable to outstanding offerings and purchase rights, and (iv) the class(es) and number of shares that are subject to purchase limits under ongoing offerings.

Corporate transactions. In the event of certain significant corporate transactions, any then-outstanding rights to purchase our stock under the ESPP may be assumed, continued, or substituted for by any surviving or acquiring entity (or its parent company). If the surviving or acquiring entity (or its parent company) elects not to assume, continue, or substitute for such purchase rights, then the participants' accumulated payroll contributions will be used to purchase shares of our common stock within 10 business days before such corporate transaction, and such purchase rights will terminate immediately after such purchase.

Under the ESPP, a corporate transaction is generally the consummation of: (i) a sale of all or substantially all of our assets, (ii) the sale or disposition of more than 50% of our outstanding securities, (iii) a merger or consolidation where we do not survive the transaction, and (iv) a merger or consolidation where we do survive the transaction but the shares of our common stock outstanding immediately before such transaction are converted or exchanged into other property by virtue of the transaction.

ESPP Amendment or Termination. Our board of directors has the authority to amend or terminate our ESPP, provided that except in certain circumstances such amendment or termination may not materially impair any outstanding purchase rights without the holder's consent. We will obtain stockholder approval of any amendment to our ESPP as required by applicable law or listing requirements.

Limitations of liability and indemnification matters

Upon the closing of this offering, our amended and restated certificate of incorporation will contain provisions that limit the liability of our current and former directors for monetary damages to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to the corporation or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Such limitation of liability does not apply to liabilities arising under federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated certificate of incorporation that will be in effect on the closing of this offering will authorize us to indemnify our directors, officers, employees and other agents to the fullest extent permitted by Delaware law. Our amended and restated bylaws that will be in effect upon the closing of this offering will provide that we are required to indemnify our directors and officers to the fullest extent permitted by Delaware law and may indemnify our other employees and agents. Our amended and restated bylaws that will be in effect on the closing of this offering will also provide that, on satisfaction of certain conditions, we will advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity regardless of whether we would otherwise be permitted to indemnify him or her under the provisions of Delaware law. We have entered and expect to continue to enter into agreements to indemnify our directors and executive officers. With certain exceptions, these agreements provide for indemnification for related expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in connection with any action, proceeding or investigation. We believe that these amended and restated certificate of incorporation and amended and restated bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain customary directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted for directors, executive officers or persons controlling us, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Rule 10b5-1 sales plans

Our directors and executive officers may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades pursuant to parameters established by the director or executive officer when entering into the plan, without further direction from them. The director or executive officer may amend a Rule 10b5-1 plan in some circumstances and may terminate a plan at any time. Our directors and executive officers also may buy or sell additional shares outside of a Rule 10b5-1 plan when they are not in possession of material nonpublic information, subject to compliance with the terms of our insider trading policy. Prior to the end of the 180th day after the date of execution of the underwriting agreement for this offering (subject to potential early release or termination without

notice), the sale of any shares under such plan would be subject to the lock-up agreement that the director or executive officer has entered into with J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC on behalf of the underwriters.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a summary of transactions since January 1, 2018, to which we have been a participant in which the amount involved exceeded or will exceed $120,000, and in which any of our directors, executive officers or holders of more than five percent of our capital stock, or any member of the immediate family of the foregoing persons, had or will have a direct or indirect material interest, other than compensation arrangements which are described in "Executive compensation" and "Management—Director compensation."

We believe the terms obtained or consideration that we paid or received, as applicable, in connection with the transactions described below were comparable to terms available or the amounts that would be paid or received, as applicable, in arm's-length transactions.

Convertible note financing

From March 2019 to March 2020, we issued and sold convertible notes in the aggregate principal amount of $33.9 million. The convertible notes accrued interest at a rate of 8% per annum. In August 2020, the aggregate principal amount of the convertible notes and accrued interest totaling approximately $36.4 million were converted into 21,786,482 shares of Series B' convertible preferred stock at a conversion price of $1.6701. The following table summarizes the convertible notes issued to holders of more than five percent of our capital stock and certain of our directors and entities affiliated with our officers and directors.

Name of stockholder	Loan amount
KCK Ltd.[1]	$ 19,481,440
OrbiMed Private Investments VI, LP[2]	$ 10,348,740
Entities affiliated with Joseph S. Lacob[3]	$ 934,720
Frank Fischer[4]	$ 1,293,670
Greg and Dori Garfield Living Revocable Trust[5]	$ 51,750
Favet Living Trust[6]	$ 20,730

(1) KCK Ltd. is a greater than five percent stockholder, and Nael Karim Kassar and Greg Garfield, members of our board of directors, serve as Partner and Senior Managing Director, respectively, with KCK-US, Inc., which is an entity affiliated with KCK Ltd.
(2) OrbiMed Private Investments VI, LP is a greater than five percent stockholder, and Rishi Gupta, a member of our board of directors, is a private equity partner at OrbiMed Advisors LLC, which is an entity affiliated with OrbiMed Private Investments VI, LP.
(3) Consists of LCT18 Investments, LLC and Lacob Ventures LLC, each of which are affiliated with Joseph S. Lacob, a member of our board of directors.
(4) Mr. Fischer is a member of our board of directors.
(5) Greg Garfield, a member of our board of directors, is the co-trustee of the Greg and Dori Garfield Living Revocable Trust.
(6) Michael Favet, our President and Chief Executive Officer and a member of our board of directors, is the co-trustee of the Favet Living Trust.

Series B' convertible preferred stock financing

In August 2020, we issued and sold an aggregate of 19,759,290 shares of Series B' convertible preferred stock at a purchase price of $1.6701 per share for aggregate cash proceeds of approximately $33.0 million, plus an aggregate of 21,786,482 shares of Series B' convertible preferred stock issued upon the conversion of outstanding convertible notes. For a description of the material rights and privileges of the Series B' convertible preferred stock, see Note 13 to our financial statements included elsewhere in this prospectus. Additionally, in connection with our Series B' convertible preferred stock financing, we entered into a management rights letter with Covidien Group S.à.r.l., a holder of more than five percent of our capital stock, which provides for certain information rights. The management rights letter will terminate upon the closing of this offering.

The following table summarizes the Series B' convertible preferred stock issued to holders of more than five percent of our capital stock and certain of our directors and entities affiliated with our officers and directors. None of

our other executive officers, other directors or other holders of more than five percent of our capital stock purchased any Series B' convertible preferred stock.

Name of stockholder	Shares of Series B' convertible preferred stock issued for cash	Aggregate cash purchase price	Shares of Series B' convertible preferred stock issued upon conversion of notes
KCK Ltd.[1]	1,197,427	$ 1,999,823	12,509,520
Orbimed Private Investments VI, LP[2]	2,181,662	$ 3,643,594	7,192,343
Accelmed Partners II LP[3]	8,981,498	$ 15,000,000	—
Covidien Group S.a.r.l.[4]	2,771,433	$ 4,628,571	—
Leerink Revelation Healthcare Fund II, L.P.[5]	2,309,528	$ 3,857,143	—
Entities affiliated with Joseph S. Lacob[6]	187,533	$ 313,200	613,905
Frank Fischer[7]	272,707	$ 455,449	899,583
Greg and Dori Garfield Living Revocable Trust[8]	10,907	$ 18,216	35,977
Favet Living Trust[9]	4,360	$ 7,282	14,410

(1) KCK Ltd. is a greater than five percent stockholder, and Nael Karim Kassar and Greg Garfield, members of our board of directors, serve as Partner and Senior Managing Director, respectively, with KCK-US, Inc., which is an entity affiliated with KCK Ltd.
(2) OrbiMed Private Investments VI, LP is a greater than five percent stockholder, and Rishi Gupta, a member of our board of directors, is a private equity partner at OrbiMed Advisors LLC, which is an entity affiliated with OrbiMed Private Investments VI, LP.
(3) Accelmed Partners II LP is a greater than five percent stockholder, and Evan Norton, a member of our board of directors, is a General Partner at Accelmed Partners, which is an entity affiliated with Accelmed Partner II LP.
(4) Covidien Group S.a.r.l.is a greater than five percent stockholder.
(5) Leerink Revelation Healthcare Fund II, L.P. is a greater than five percent stockholder.
(6) Consists of LCT18 Investments, LLC and Lacob Ventures LLC, each of which are affiliated with Joseph S. Lacob, a member of our board of directors.
(7) Mr. Fischer is a member of our board of directors.
(8) Greg Garfield, a member of our board of directors, is the co-trustee of the Greg and Dori Garfield Living Revocable Trust.
(9) Michael Favet, our President and Chief Executive Officer and a member of our board of directors, is the co-trustee of the Favet Living Trust.

Investors' rights agreement

In August 2020, we entered into the amended and restated investors' rights agreement, or IRA, with certain holders of our convertible preferred stock and common stock, including KCK Ltd., OrbiMed Private Investments VI, LP, Accelmed Partners II LP, Covidien Group S.a.r.l. and Leerink Revelation Healthcare Fund II, L.P., and certain directors and entities affiliated with our officers and directors. Messrs. Kassar and Garfield are affiliated with KCK Ltd., Mr. Gupta is affiliated with Orbimed Private Investments VI, LP, Mr. Norton is affiliated with Accelmed Partners II LP and Mr. Lacob is affiliated with LCT18 Investments, LLC and Lacob Ventures LLC. The IRA provides the holders of our convertible preferred stock and warrants to purchase convertible preferred stock with certain registration rights, including the right to demand that we file a registration statement or request that their shares be covered by a registration statement that we are otherwise filing. The IRA also provides these stockholders with information rights, which will terminate upon the closing of this offering, and a right of first refusal with regard to certain issuances of our capital stock, which will not apply to, and will terminate upon the closing of, this offering. After the closing of this offering, the holders of shares of common stock issuable upon conversion of outstanding shares of convertible preferred stock and shares of common stock issuable upon the exercise of outstanding warrants upon the closing of this offering, will be entitled to rights with respect to the registration of their shares of common stock under the Securities Act under the IRA. For a description of these registration rights, see "Description of capital stock—Registration rights."

KCK advance for recruitment services

In July 2018, we entered into a letter agreement for executive recruitment services with RBrooks Group, Inc. pursuant to which we were charged a fee of approximately $0.1 million and such amount was paid to RBrooks

Group, Inc. in advance by KCK Ltd. We also entered into an arrangement with Davenport Executive Search for executive recruitment services, pursuant to which we were charged a fee of approximately $0.2 million and such amount was paid to Davenport Executive Search in advance by KCK Ltd. We reimbursed KCK Ltd. an aggregate of approximately $0.3 million for such advances in August 2020.

Medtronic Cross-License

Covidien Group S.a.r.l., an indirect wholly-owned subsidiary of Medtronic, plc, became a holder of more than five percent of our capital stock in August 2020. Pursuant to the terms of the Cross-License, Medtronic was entitled to approximately $0.3 million, $0.4 million, and $0.4 million of royalty payments during the years ended December 31, 2018, 2019 and 2020, respectively.

Policies and procedures for related person transactions

Our board of directors has adopted a related person transaction policy setting forth the policies and procedures for the identification, review and approval or ratification of related person transactions. This policy covers, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships, in which we and a related person were or will be participants and the amount involved exceeds $120,000, including purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness and guarantees of indebtedness. In reviewing and approving any such transactions, our audit committee will consider all relevant facts and circumstances as appropriate, such as the purpose of the transaction, the availability of other sources of comparable products or services, whether the transaction is on terms comparable to those that could be obtained in an arm’s length transaction, management’s recommendation with respect to the proposed related person transaction, and the extent of the related person’s interest in the transaction.

All of the transactions described in this section were entered into prior to the adoption of this policy.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock as of December 31, 2020, for:

- each person or group of affiliated persons known by us to beneficially own more than 5% of our common stock;
- each of our named executive officers;
- each of our directors; and
- all of our directors and named executive officers as a group.

We have determined beneficial ownership in accordance with the rules and regulations of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Except as indicated by the footnotes below, we believe, based on information furnished to us, that the persons and entities named in the table below have sole voting and sole investment power with respect to all shares that they beneficially own, subject to applicable community property laws.

Applicable percentage ownership before the offering is based on shares of common stock outstanding as of December 31, 2020, assuming the conversion of all outstanding shares of convertible preferred stock into shares of common stock upon the closing of this offering. Applicable percentage ownership after the offering is based on shares of common stock outstanding immediately after the closing of this offering and further reflects the adjustments described in "Summary—The offering." In computing the number of shares beneficially owned by a person and the percentage ownership of such person, we deemed to be outstanding all shares subject to options and warrants held by the person that are currently exercisable, or exercisable within 60 days of December 31, 2020. However, except as described above, we did not deem such shares outstanding for the purpose of computing the percentage ownership of any other person. The information contained in the following table is not necessarily indicative of beneficial ownership for any other purpose, and the inclusion of any shares in the table does not constitute an admission of beneficial ownership of those shares.

Unless otherwise indicated, the address of each beneficial owner listed below is c/o NeuroPace, Inc., 455 N. Bernardo Avenue, Mountain View, California 94043. We believe, based on information provided to us, that each of the stockholders listed below has sole voting and investment power with respect to the shares beneficially owned by the stockholder unless noted otherwise, subject to community property laws where applicable.

Name of beneficial owner	Shares beneficially owned prior to this offering		Shares beneficially owned after this offering	
	Shares	%	Shares	%
Principal stockholders				
KCK Ltd.[(1)]				
Orbimed Private Investments VI, LP[(2)]				
Accelmed Partners II LP[(3)]				
Covidien Group S.a.r.l.[(4)]				
Leerink Revelation Healthcare Fund II, L.P[(5)]				
Directors and named executive officers				
Michael Favet[(6)]				
Rebecca Kuhn[(7)]				
Martha Morrell[(8)]				
Frank Fischer[(9)]				
Greg Garfield[(10)]				
Rishi Gupta[(11)]				
Nael Karim Kassar[(12)]				
Joseph S. Lacob[(13)]				
Evan Norton[(14)]				
Renee Ryan[(15)]				
All directors and named executive officers as a group (11 persons)[(16)]				

* Represents beneficial ownership of less than 1%.

(1) Nael Karim Kassar and Greg Garfield, members of our board of directors, serve as Partner and Managing Director, respectively, with KCK-US, Inc., which is an entity affiliated with KCK Ltd. KCK-US, Inc. and Messrs. Kassar and Garfield have voting and investment power over the shares and may be deemed to have beneficial ownership of the shares. The address of KCK Ltd., KCK-US, Inc., and each of Messrs. Kassar and Garfield is Corner House, 4th Floor, 20 Parliament Street, Hamilton, HM12, Bermuda.

(2) Rishi Gupta, a member of our board of directors, is a private equity partner at OrbiMed Advisors LLC, which is an entity affiliated with OrbiMed Private Investments VI, LP. OrbiMed Advisors LLC and Mr. Gupta have voting and investment power over the shares and may be deemed to have beneficial ownership of the shares. The address of OrbiMed Private Investments VI, LP., OrbiMed Advisors LLC and Mr. Gupta is 601 Lexington Avenue, 54th Floor, New York, New York 10022.

(3) Evan Norton, a member of our board of directors, is a General Partner at Accelmed Partners, which is an entity affiliated with Accelmed Partner II LP. Accelmed Partner II LP., Accelmed Partners and Mr. Norton have voting and investment power over the shares and may be deemed to have beneficial ownership of the shares. The address of Accelmed Partner II LP., Accelmed Partners and Mr. Norton is Ugland House, South Church Street, PO Box 309, Grand Cayman KY1-1104, Cayman Islands.

(4) The address of Covidien Group S.a.r.l.is a 3b, Bd. Prince Henri, 4th Floor L-1724 Luxembourg.

(5) The address of Leerink Revelation Healthcare Fund II, L.P. is 255 California Street, 12th Floor, San Francisco, California 94111.

(6) Includes shares held by the Favet Living Trust, and shares that may be acquired upon exercise of stock options within 60 days of .

(7) Includes shares that may be acquired upon exercise of stock options within 60 days of .

(8) Includes shares that may be acquired upon exercise of stock options within 60 days of .

(9) Includes shares that may be acquired upon exercise of stock options within 60 days of .

(10) Includes shares held by the Greg and Dori Garfield Living Revocable Trust, and shares that may be acquired upon exercise of stock options within 60 days of .

(11) Includes shares that may be acquired upon exercise of stock options within 60 days of .

(12) Includes shares that may be acquired upon exercise of stock options within 60 days of .

(13) Includes shares that may be acquired upon exercise of stock options within 60 days of .

(14) Includes shares that may be acquired upon exercise of stock options within 60 days of .

(15) Includes shares that may be acquired upon exercise of stock options within 60 days of .

(16) Includes the shares held by our officers and directors listed in the table above, and an additional shares that may be acquired upon exercise of stock options within 60 days of , held by our other executive officer.

DESCRIPTION OF CAPITAL STOCK

The description below of our capital stock and provisions of our amended and restated certificate of incorporation and amended and restated bylaws are summaries and are qualified by reference to the amended and restated certificate of incorporation and the amended and restated bylaws to be in effect upon the closing of this offering, which are filed as exhibits to the registration statement of which this prospectus is part, and by the applicable provisions of Delaware law.

General

Upon the closing of this offering, our amended and restated certificate of incorporation will authorize us to issue up to shares of common stock, $0.001 par value per share, and shares of convertible preferred stock, par value $0.001 per share.

As of December 31, 2020, there were shares of common stock issued and outstanding, held by stockholders of record.

As of December 31, 2020, after giving effect to the conversion of outstanding shares of convertible preferred stock into an equal number of shares of common stock, there would have been shares of common stock outstanding, held by stockholders of record.

Common stock

Voting rights

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Under our amended and restated certificate of incorporation, our stockholders will not have cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election.

Dividend rights

Subject to preferences that may apply to any then-outstanding convertible preferred stock, the holders of common stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by the board of directors out of legally available funds. We do not anticipate paying any cash dividends in the foreseeable future.

Liquidation rights

In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding shares of convertible preferred stock.

Preemptive or similar rights

Holders of common stock have no preemptive, conversion or subscription rights and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of convertible preferred stock that we may designate in the future.

Convertible preferred stock

Under our amended and restated certificate of incorporation to be in effect upon the closing of this offering, our board of directors may, without further action by our stockholders, fix the rights, preferences, privileges and restrictions of up to an aggregate of shares of convertible preferred stock in one or more series and authorize their issuance. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences and the number of shares constituting any series or the

designation of such series, any or all of which may be greater than the rights of common stock. Any issuance of convertible preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders would receive dividend payments and payments on liquidation. In addition, the issuance of convertible preferred stock could have the effect of delaying, deterring or preventing a change of control or other corporate action. No shares of convertible preferred stock will be outstanding immediately following the closing of this offering. We have no present plans to issue any shares of convertible preferred stock.

Stock options

As of December 31, 2020, options to purchase an aggregate of shares of common stock were outstanding under our 2020 Plan, and options to purchase an aggregate of shares of common stock were outstanding under out 2009 Plan. As of December 31, 2020, shares of common stock were reserved for future issuance under our 2020 Plan, and no shares of common stock were reserved for future issuance under our 2009 Plan. All reserved shares under the 2020 Plan and the 2009 Plan will cease to be available for issuance at the time our 2021 Plan becomes effective in connection with this offering. For additional information regarding the terms of these plans, see "Executive compensation—Employee benefit and stock plans."

Warrants

As of December 31, 2020, we had warrants to purchase an aggregate of (i) shares of Series B' convertible preferred stock outstanding with an exercise price of $ per share, or the Series B' Warrants, and (ii) shares of common stock with an exercise price of $ per share, or the Common Warrants. Prior to the closing of this offering, we expect that all Series B' Warrants, which would otherwise expire upon the closing of this offering, will be net exercised for shares of Series B' convertible preferred stock, which will convert into an equal number of shares of common stock upon the closing of this offering, and we expect that all Common Warrants, which would otherwise expire upon the closing of this offering, will be net exercised for shares of common stock.

Registration rights

We are party to the IRA which provides various rights to certain holders of shares of common stock, including those shares of common stock that will be issued upon conversion of convertible preferred stock in connection with this offering and shares of common stock issuable upon the exercise of outstanding warrants upon the closing of this offering. These shares to be issued upon conversion are referred to as registrable securities. The holders of these registrable securities possess registration rights pursuant to the terms of the IRA and are described in additional detail below. We, along with KCK Ltd., OrbiMed Private Investments VI, LP, Accelmed Partners II LP, Covidien Group S.a.r.l., Leerink Revelation Healthcare Fund II, L.P., certain directors and entities affiliated with our directors, and other stockholders, are parties to the IRA. We entered into the IRA in connection with the issuance of Series B' convertible preferred stock in August 2020. The following summary discusses certain material provisions of the IRA and is qualified by the full text of the agreement, which is filed as an exhibit to the registration statement of which this prospectus is a part.

Certain stockholders who are party to the IRA have waived their registration rights and the registration rights of the other stockholders who are party to the IRA, in each case, with respect to this offering.

The registration of shares of common stock pursuant to the exercise of registration rights described below would enable the holders to trade these shares without restriction under the Securities Act when the applicable registration statement is declared effective. We will pay the registration expenses (other than underwriting discounts, selling commissions and stock transfer taxes) of the shares registered pursuant to the demand, piggyback and Form S-3 registrations described below.

Generally, in an underwritten offering, we have the right, subject to specified conditions, to limit the number of shares the holders may include to be registered. The demand, piggyback and Form S-3 registration rights described below will terminate on the date five years following the closing of this offering.

Demand registration rights

The holders of an aggregate of shares of common stock issuable upon conversion of outstanding shares of convertible preferred stock and shares of common stock issuable upon the exercise of outstanding warrants upon the closing of this offering will be entitled to certain demand registration rights. Beginning on the date six (6) months following the effective date of the registration statement of which this prospectus is a part, upon the written request of the holders of more than 30% of our registrable securities then outstanding, that we file a registration statement under the Securities Act where the anticipated aggregate offering price would exceed $10,000,000, we are obligated to register the sale of all registrable securities that the holders may request in writing to be registered. We are required to effect no more than two registration statements that are declared or ordered effective at the request of such holders. We may postpone the filing of a registration statement for up to 120 days once in a twelve-month period if in the good faith judgment of our board of directors such registration would be seriously detrimental to us.

Piggyback registration rights

The holders of an aggregate of shares of common stock issuable upon conversion of outstanding shares of convertible preferred stock and shares of common stock issuable upon the exercise of outstanding warrants upon the closing of this offering will be entitled to certain piggyback registration rights. If we register any of our securities for public sale, either for our own account or for the account of other security holders, we will also have to register all registrable securities that the holders of such securities request in writing be registered. This piggyback registration right does not apply to a registration relating to any of our stock plans, stock purchase or similar plan, a transaction under Rule 145 of the Securities Act, or a registration related to the offer and sale of debt securities.

Form S-3 registration rights

The holders of an aggregate of shares of common stock issuable upon conversion of outstanding shares of convertible preferred stock and shares of common stock issuable upon the exercise of outstanding warrants upon the closing of this offering will be entitled to certain registration rights on Form S-3. The holders of these shares can request that we register all or a portion of their shares on Form S-3 if we are eligible to file a registration statement on Form S-3 and the aggregate price to the public of the shares offered is in excess of $1,000,000. We are required to effect no more than one Form S-3 registration statement that is declared or ordered effective in any six-month period. We may postpone the filing of a registration statement for up to 120 days not more than once in a 12-month period if in the good faith judgment of our board of directors such registration would be seriously detrimental to us.

Anti-takeover provisions

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which generally prohibits a publicly held Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 662/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a "business combination" to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an entity or person who, together with the person's affiliates and associates, beneficially owns or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

A Delaware corporation may "opt out" of these provisions with an express provision in its original certificate of incorporation or an express provision in its amended and restated certificate of incorporation or amended and restated bylaws resulting from a stockholders' amendment approved by at least a majority of the outstanding voting shares. We have not opted out of these provisions. As a result, mergers or other takeover or change in control attempts of us may be discouraged or prevented.

Certificate of incorporation and bylaws to be in effect upon the closing of this offering

Among other things, our amended and restated certificate of incorporation and amended and restated bylaws will:

- permit our board of directors to issue up to shares of convertible preferred stock, with any rights, preferences and privileges as they may designate, including the right to approve an acquisition or other change of control;
- provide that the authorized number of directors may be changed only by resolution of our board of directors;
- provide that our board of directors will be classified into three classes of directors;
- provide that, subject to the rights of any series of convertible preferred stock to elect directors, directors may only be removed for cause, which removal may be effected, subject to any limitation imposed by law, by the holders of at least 66 2/3% of the voting power of all of our then-outstanding shares of the capital stock entitled to vote generally at an election of directors;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent or electronic transmission;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide advance notice in writing, and also specify requirements as to the form and content of a stockholder's notice;
- provide that special meetings of our stockholders may be called only by the chairperson of our board of directors, our chief executive officer or by our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors; and

- not provide for cumulative voting rights, therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose.

The amendment of any of these provisions would require approval by the holders of at least 66 2/3% of the voting power of all of our then-outstanding capital stock entitled to vote generally in the election of directors, voting together as a single class.

The combination of these provisions will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated convertible preferred stock makes it possible for our board of directors to issue convertible preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to reduce our vulnerability to hostile takeovers and to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of delaying changes in our control or management. As a consequence, these provisions may, amongst other things, also inhibit fluctuations in the market price of our stock.

Choice of forum

Our amended and restated certificate of incorporation that will be in effect upon the closing of this offering will provide that the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) is the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action arising pursuant to the DGCL, our amended and restated certificate of incorporation or our amended and restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. The provisions would not apply to suits brought to enforce a duty or liability created by the Exchange Act or any claim for which the federal district courts of the United States of America have exclusive jurisdiction. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims.

To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated certificate of incorporation to be in effect upon the closing of this offering will further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. See “Risk factors—including, amongst others, Risks related to this offering and ownership of our common stock—Our amended and restated certificate of incorporation to be in effect upon the closing of this offering will provide that the Court of Chancery of the State of Delaware or, under certain circumstances, the federal district courts of the United States of America will be the exclusive forums for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.”

Limitations of liability and indemnification

See “Executive compensation—Limitations of liability and indemnification matters.”

Exchange listing

Our common stock is currently not listed on any securities exchange. We intend to apply to list our common stock on the Nasdaq Global Market under the symbol “NPCE.”

Transfer agent and registrar

The transfer agent and registrar for our common stock upon the closing of this offering will be . The transfer agent's address is and the telephone number is .

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock. Future sales of substantial amounts of common stock in the public market, or the perception that such sales may occur, could adversely impact the market price of our common stock and impair our ability to raise equity capital in the future. Although we intend to apply to list our common stock on the Nasdaq Global Market, we cannot assure you that there will be an active public market for our common stock.

Following the closing of this offering, based on the number of shares of common stock outstanding as of December 31, 2020 and assuming no exercise of the underwriters' option to purchase additional shares, we will have an aggregate of approximately shares of common stock outstanding. Of these shares, all shares of common stock sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any shares of common stock purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act, or subject to lock-up agreements. Shares purchased by our affiliates would be subject to the Rule 144 resale restrictions described below, other than the holding period requirement.

The remaining shares of common stock outstanding after this offering will be "restricted securities," as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 or Rule 701 under the Securities Act, each of which is summarized below. We expect that substantially all of these shares will be subject to a 180-day lock-up period under the lock-up and market stand-off agreements described below.

We may issue shares of common stock from time to time as consideration for future acquisitions, investments or other corporate purposes. In the event any such acquisition, investment or other transaction is significant, the number of shares of common stock that we may issue may also be significant. We may also grant registration rights covering those shares of common stock issued in connection with any such acquisition, investment or other transaction.

In addition, shares of common stock that are either subject to outstanding options or warrants or reserved for future issuance under our equity incentive plans will become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules, the lock-up agreements described below, and Rules 144 and 701 under the Securities Act.

Rule 144

In general, under Rule 144 as currently in effect, once we have been subject to public company reporting requirements of Section 13 or Section 15(d) of the Exchange Act for at least 90 days, an eligible stockholder is entitled to sell such shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. To be an eligible stockholder under Rule 144, such stockholder must not be deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and must have beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144, subject to the expiration of the lock-up agreements described above.

In general, under Rule 144, as currently in effect, our affiliates or persons selling shares on behalf of our affiliates are entitled to sell shares on expiration of the lock-up agreements described above. Beginning 90 days after the date of this prospectus, within any three-month period, such stockholders may sell a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering based on the number of shares of common stock outstanding as of December 31, 2020; or

- the average weekly trading volume in our common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale. provided in each case that we have been subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 701

Rule 701 generally allows a stockholder who was issued shares under a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days, to sell these shares in reliance on Rule 144, but without being required to comply with the public information, holding period, volume limitation or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required by that rule to wait until 90 days after the date of this prospectus before selling those shares under Rule 701, subject to the expiration of the lock-up agreements described below and in "Underwriting."

Form S-8 registration statement

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of common stock subject to outstanding stock options and common stock issued or issuable under the 2009 Plan, the 2020 Plan, the 2021 Plan and the ESPP. We expect to file the registration statement covering shares offered pursuant to these stock plans shortly after the date of this prospectus, permitting the resale of such shares by non-affiliates in the public market without restriction under the Securities Act and the sale by affiliates in the public market subject to compliance with the resale provisions of Rule 144.

Lock-up agreements

We, our directors, executive officers and the holders of substantially all of our equity securities have agreed with the underwriters that for a period of 180 days after the date of this prospectus, subject to specified exceptions as detailed further in "Underwriting" below, we or they will not, except with the prior written consent of J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC, offer, pledge, 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 sell or otherwise dispose of or transfer any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of common stock, request or demand that we file a registration statement related to our common stock, or enter into any swap or other agreement that transfers to another, in whole or in part, directly or indirectly, the economic consequence of ownership of the common stock. Substantially all of our optionholders are also subject to a market stand-off agreement with us which imposes similar restrictions.

Upon expiration of the lock-up period, certain of our stockholders will have the right to require us to register their shares under the Securities Act. See "—Registration rights" below and "Description of capital stock—Registration rights." Upon the expiration of the lock-up period, substantially all of the shares subject to such lock-up restrictions will become eligible for sale, subject to the limitations discussed above.

Registration rights

Upon the closing of this offering, holders of an aggregate of shares of our common stock, which includes all of the shares of common stock issuable upon the conversion of convertible preferred stock upon the closing of this offering, or their transferees and the shares issuable upon the exercise of warrants to purchase shares of common stock and convertible preferred stock (on an as-converted basis), are entitled to various rights with respect to the registration of these shares under the Securities Act upon the closing of this offering and the expiration of the lock-up agreements. Registration of these shares under the Securities Act would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares subsequently purchased by affiliates. See "Description of capital stock—Registration

rights” for additional information. Shares covered by a registration statement will be eligible for sale in the public market upon the expiration or release from the terms of the lock-up agreements.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following summary describes the material U.S. federal income tax consequences of the acquisition, ownership and disposition of our common stock acquired in this offering by Non-U.S. Holders (as defined below). This discussion is not a complete analysis of all potential U.S. federal income tax consequences relating thereto, and does not deal with foreign, state and local consequences that may be relevant to Non-U.S. Holders in light of their particular circumstances, nor does it address U.S. federal tax consequences (such as gift and estate taxes) other than income taxes. Special rules different from those described below may apply to certain Non-U.S. Holders that are subject to special treatment under the Code, such as financial institutions, insurance companies, tax-exempt organizations, broker-dealers and traders in securities, U.S. expatriates, "controlled foreign corporations," "passive foreign investment companies," corporations that accumulate earnings to avoid U.S. federal income tax, corporations organized outside of the United States, any state thereof and the District of Columbia that are nonetheless treated as U.S. taxpayers for U.S. federal income tax purposes, persons that hold our common stock as part of a "straddle," "hedge," "conversion transaction," "synthetic security" or integrated investment or other risk reduction strategy, persons who acquire our common stock through the exercise of an option or otherwise as compensation, persons subject to the alternative minimum tax or federal Medicare contribution tax on net investment income, persons subject to special tax accounting rules under Section 451(b) of the Code, "qualified foreign pension funds" as defined in Section 897(l)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds, partnerships and other pass-through entities or arrangements, and investors in such pass-through entities or arrangements. Such Non-U.S. Holders are urged to consult their own tax advisors to determine the U.S. federal, state, local and other tax consequences that may be relevant to them. Furthermore, the discussion below is based upon the provisions of the Code, and Treasury Regulations, rulings and judicial decisions thereunder as of the date hereof, and such authorities may be repealed, revoked or modified, perhaps retroactively, so as to result in U.S. federal income tax consequences different from those discussed below. We have not requested a ruling from the U.S. Internal Revenue Service, or the IRS, with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will agree with such statements and conclusions. This discussion assumes that the Non-U.S. Holder holds our common stock as a "capital asset" within the meaning of Section 1221 of the Code (generally, property held for investment).

This discussion is for informational purposes only and is not tax advice. Persons considering the purchase of our common stock pursuant to this offering should consult their own tax advisors concerning the U.S. federal income, estate and other tax consequences of acquiring, owning and disposing of our common stock in light of their particular situations as well as any consequences arising under the laws of any other taxing jurisdiction, including any state, local or foreign tax consequences.

For the purposes of this discussion, a "Non-U.S. Holder" is, for U.S. federal income tax purposes, a beneficial owner of common stock that is neither a U.S. Holder, nor a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) regardless of its place of organization or formation. A "U.S. Holder" means a beneficial owner of common stock that is for U.S. federal income tax purposes any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation or other entity treated as a corporation for U.S. federal income tax purposes created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if it (i) is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all substantial decisions of the trust or (ii) has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person.

Distributions

Distributions, if any, made on our common stock to a Non-U.S. Holder to the extent made out of our current or accumulated earnings and profits (as determined under U.S. federal income tax principles) generally will constitute dividends for U.S. tax purposes and will be subject to withholding tax at a 30% rate or such lower rate as may be

specified by an applicable income tax treaty, subject to the discussions below regarding effectively connected income, backup withholding and foreign accounts. To obtain a reduced rate of withholding under a treaty, a Non-U.S. Holder generally will be required to provide us with a properly executed IRS Form W-8BEN (in the case of individuals) or IRS Form W-8BEN-E (in the case of entities), or other appropriate form, certifying the Non-U.S. Holder's entitlement to benefits under that treaty. This certification must be provided to us or our paying agent prior to the payment of dividends and must be updated periodically. In the case of a Non-U.S. Holder that is an entity, Treasury Regulations and the relevant tax treaty provide rules to determine whether, for purposes of determining the applicability of a tax treaty, dividends will be treated as paid to the entity or to those holding an interest in that entity. If a Non-U.S. Holder holds stock through a financial institution or other agent acting on the Non-U.S. Holder's behalf, the Non-U.S. Holder will be required to provide appropriate documentation to such agent. The Non-U.S. Holder's agent will then be required to provide certification to us or our paying agent, either directly or through other intermediaries. If a Non-U.S. Holder is eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty and does not timely file the required certification, the Non-U.S. Holder may be able to obtain a refund or credit of any excess amounts withheld by timely filing an appropriate claim for a refund with the IRS.

We generally are not required to withhold tax on dividends paid to a Non-U.S. Holder that are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, are attributable to a permanent establishment or fixed base that such Non-U.S. Holder maintains in the United States) if a properly executed IRS Form W-8ECI, stating that the dividends are so connected, is furnished to us (or, if stock is held through a financial institution or other agent, to such agent). In general, such effectively connected dividends will be subject to U.S. federal income tax on a net-income basis at the regular rates applicable to U.S. residents. A corporate Non-U.S. Holder receiving effectively connected dividends may also be subject to an additional "branch profits tax," which is imposed, under certain circumstances, at a rate of 30% (or such lower rate as may be specified by an applicable income tax treaty) on the corporate Non-U.S. Holder's effectively connected earnings and profits, subject to certain adjustments. Non-U.S. Holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

To the extent distributions on our common stock, if any, exceed our current and accumulated earnings and profits, they will first reduce the Non-U.S. Holder's adjusted basis in our common stock, but not below zero, and then will be treated as gain to the extent of any excess amount distributed, and taxed in the same manner as gain realized from a sale or other disposition of common stock as described in the next section.

Gain on disposition of our common stock

Subject to the discussions below regarding backup withholding and foreign accounts, a Non-U.S. Holder generally will not be subject to U.S. federal income tax with respect to gain realized on a sale or other disposition of our common stock unless (a) the gain is effectively connected with a trade or business of such Non-U.S. Holder in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment or fixed base that such holder maintains in the United States), (b) the Non-U.S. Holder is a nonresident alien individual and is present in the United States for 183 or more days in the taxable year of the disposition and certain other conditions are met or (c) we are or have been a "United States real property holding corporation" within the meaning of Code Section 897(c)(2) at any time within the shorter of the five-year period preceding such disposition or such Non-U.S. Holder's holding period. In general, we would be a United States real property holding corporation if our interests in U.S. real estate comprise (by fair market value) at least half of our business assets. We believe that we have not been and we are not, and do not anticipate becoming, a United States real property holding corporation. Even if we are treated as a United States real property holding corporation, gain realized by a Non-U.S. Holder on a disposition of our common stock will not be subject to U.S. federal income tax so long as (1) the Non-U.S. Holder owned, directly, indirectly and constructively, no more than 5% of our common stock at all times within the shorter of (i) the five-year period preceding the disposition or (ii) the Non-U.S. Holder's holding period and (2) our common stock is regularly traded on an established securities market. There can be no assurance that our common stock will qualify or continue to qualify as regularly traded on an established securities market. If any gain on a Non-U.S. Holder's disposition is taxable because we are a United States real property holding corporation and the Non-U.S. Holder's ownership of our common stock exceeds 5%, the Non-U.S. Holder will be taxed on such disposition generally in the same manner as gain that is effectively connected with the conduct of a U.S. trade or

business (subject to the provisions under an applicable income tax treaty), except that the branch profits tax generally will not apply.

A Non-U.S. Holder described in (a) above will be required to pay tax on the net gain derived from the sale at regular U.S. federal income tax rates, and corporate Non-U.S. Holders described in (a) above may be subject to the additional branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. Gain described in (b) above will be subject to U.S. federal income tax at a flat 30% rate or such lower rate as may be specified by an applicable income tax treaty, which gain may be offset by certain U.S.-source capital losses (even though the Non-U.S. Holder is not considered a resident of the United States), provided that the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

Information reporting and backup withholding

Generally, we must report information to the IRS with respect to any distributions we pay on our common stock (even if the payments are exempt from withholding), including the amount of any such distributions, the name and address of the recipient and the amount, if any, of tax withheld. A similar report will be sent to the Non-U.S. Holder to whom any such distributions are paid. Pursuant to tax treaties or certain other agreements, the IRS may make its reports available to tax authorities in the recipient's country of residence.

Dividends paid by us (or our paying agents) to a Non-U.S. Holder may also be subject to U.S. backup withholding (currently at a rate of 24%). U.S. backup withholding generally will not apply to a Non-U.S. Holder who provides a properly executed IRS Form W-8BEN, IRS Form W-8BEN-E or IRS Form W-8ECI (as applicable), or otherwise establishes an exemption. Notwithstanding the foregoing, backup withholding may apply if the payor has actual knowledge, or reason to know, that the holder is a U.S. person who is not an exempt recipient.

U.S. information reporting and backup withholding requirements generally will apply to the proceeds of a disposition of our common stock effected by or through a U.S. office of any broker, U.S. or foreign, unless the Non-U.S. Holder provides a properly executed IRS Form W-8BEN or IRS Form W-8BEN-E or otherwise meets documentary evidence requirements for establishing non-U.S. person status or otherwise establishes an exemption. Generally, U.S. information reporting and backup withholding requirements will not apply to a payment of disposition proceeds to a Non-U.S. Holder where the transaction is effected outside the United States through a non-U.S. office of a non-U.S. broker. Information reporting and backup withholding requirements, however, may apply to a payment of disposition proceeds if the broker has actual knowledge, or reason to know, that the holder is, in fact, a U.S. person. For information reporting purposes, certain brokers with substantial U.S. ownership or operations generally will be treated in a manner similar to U.S. brokers.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be credited against the tax liability of persons subject to backup withholding, provided that the required information is timely furnished to the IRS.

Foreign accounts

Sections 1471 through 1474 of the Code (commonly referred to as FATCA) impose a U.S. federal withholding tax of 30% on certain payments to a foreign financial institution (as specifically defined by applicable rules) unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). FATCA also generally imposes a federal withholding tax of 30% on certain payments, including dividends paid on, and the gross proceeds of a disposition of, our common stock to a non-financial foreign entity unless such entity provides the withholding agent with either a certification that it does not have any substantial direct or indirect U.S. owners or provides information regarding substantial direct and indirect U.S. owners of the entity. An intergovernmental agreement between the United States and an applicable foreign country may modify those requirements. The withholding tax described above will not apply if the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from the rules.

The withholding provisions described above currently apply to payments of dividends.

The U.S. Treasury Department has released proposed regulations which, if finalized in their present form, would eliminate the federal withholding tax of 30% that otherwise would apply to the gross proceeds of a disposition of our common stock. In its preamble to such proposed regulations, the U.S. Treasury Department stated that taxpayers may generally rely on the proposed regulations until final regulations are issued. Non-U.S. Holders are encouraged to consult with their own tax advisors regarding the possible implications of FATCA on their investment in our common stock.

EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY RECENT OR PROPOSED CHANGE IN APPLICABLE LAW.

UNDERWRITING

We are offering the shares of common stock described in this prospectus through a number of underwriters. J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC are acting as joint book-running managers of the offering and as representatives of the underwriters. We have entered into an underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to the underwriters, and each underwriter has severally agreed to purchase, at the initial public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, the number of shares of common stock listed next to its name in the following table:

Name	Number of Shares
J.P. Morgan Securities LLC	
Morgan Stanley & Co. LLC	
Wells Fargo Securities, LLC	
SVB Leerink LLC	
Total	

The underwriters are committed to purchase all the shares of common stock offered by us if they purchase any shares. The underwriting agreement also provides that if an underwriter defaults, the purchase commitments of non-defaulting underwriters may also be increased or the offering may be terminated.

The underwriters propose to offer the common stock directly to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of $ per share. After the initial offering of the shares to the public, if all of the common stock is not sold at the initial public offering price, the underwriters may change the offering price and the other selling terms. Sales of shares made outside of the United States may be made by affiliates of the underwriters.

The underwriters have an option to purchase up to additional shares of common stock from us to cover sales of shares by the underwriters which exceed the number of shares specified in the table above. The underwriters have 30 days from the date of this prospectus to exercise this option to purchase additional shares. If any shares are purchased with this option to purchase additional shares, the underwriters will purchase shares in approximately the same proportion as shown in the table above. If any additional shares of common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered.

The underwriting fee is equal to the public offering price per share of common stock less the amount paid by the underwriters to us per share of common stock. The underwriting fee is $ per share. The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

	Without option to purchase additional shares exercise	With full option to purchase additional shares exercise
Per Share	$	$
Total	$	$

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the underwriting discounts and commissions, will be approximately $. We have agreed to reimburse the underwriters for expenses of up to $ relating to the clearance of this offering with the Financial Industry Regulatory Authority.

A prospectus in electronic format may be made available on the websites maintained by one or more underwriters, or selling group members, if any, participating in the offering. The underwriters may agree to allocate

a number of shares to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters and selling group members that may make Internet distributions on the same basis as other allocations.

We have agreed that we will not (i) offer, pledge, 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, lend, or otherwise transfer or dispose of, directly or indirectly, or submit to, or file with, the Securities and Exchange Commission a registration statement under the Securities Act of 1933, relating to, any shares of our common stock or securities convertible into or exercisable or exchangeable for any shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge, loan, disposition or filing, or (ii) enter into any swap or other arrangement that transfers all or a portion of the economic consequences associated with the ownership of any shares of common stock or any such other securities (regardless of whether any of these transactions are to be settled by the delivery of shares of common stock or such other securities, in cash or otherwise), in each case without the prior written consent of the representatives for a period of 180 days after the date of this prospectus, other than the shares of our common stock to be sold hereunder and any shares of our common stock issued upon the exercise of options granted under our existing stock-based compensation plans.

The restrictions on our actions, as described above, do not apply to the shares of common stock to be sold in this offering and any shares of our common stock issued upon the exercise of options granted under our stock-based compensation plans.

Our directors and executive officers, and substantially all of our shareholders, or the “lock-up parties, have entered into lock-up agreements with the underwriters prior to the commencement of this offering pursuant to which each lock-up party, with limited exceptions, for a period of 180 days after the date of this prospectus, or the restricted period, may not (and may not cause any of their direct or indirect affiliates to), without the prior written consent of the representatives, (i) offer, pledge, 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, lend or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock (including, without limitation, common stock or such other securities which may be deemed to be beneficially owned by such lock-up parties in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant, or collectively with the common stock, the lock-up securities, (ii) enter into any hedging, swap or other agreement or transaction that transfers, in whole or in part, any of the economic consequences of ownership of the lock-up securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of lock-up securities, in cash or otherwise, (iii) make any demand for, or exercise any right with respect to, the registration of any lock-up securities, or (iv) publicly disclose the intention to do any of the foregoing. Such persons or entities have further acknowledged that these undertakings preclude them from engaging in any hedging or other transactions or arrangements (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined) designed or intended, or which could reasonably be expected to lead to or result in, a sale or disposition or transfer (by any person or entity, whether or not a signatory to such agreement) of any economic consequences of ownership, in whole or in part, directly or indirectly, of any lock-up securities, whether any such transaction or arrangement (or instrument provided for thereunder) would be settled by delivery of lock-up securities, in cash or otherwise.

The restrictions described in the immediately preceding paragraph and contained in the lock-up agreements between the underwriters and the lock-up parties do not apply, subject in certain cases to various conditions, to certain transactions, including (a) transfers of lock-up securities: (i) as bona fide gifts, or for bona fide estate planning purposes, (ii) by will or intestacy, (iii) to any trust for the direct or indirect benefit of the lock-up party or any immediate family member, (iv) to a partnership, limited liability company or other entity of which the lock-up party and its immediate family members are the legal and beneficial owner of all of the outstanding equity securities or similar interests, (v) to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under clauses (i) through (iv), (vi) in the case of a corporation, partnership, limited liability company, trust or other business entity, (A) to another corporation, partnership, limited liability company, trust or other business entity that is an affiliate of the lock-up party, or to any investment fund or other entity controlling, controlled by, managing or managed by or under common control with the lock-up party or its affiliates or (B) as

part of a distribution to members or stockholders of the lock-up party; (vii) by operation of law, (viii) to us from an employee upon death, disability or termination of employment of such employee, (ix) as part of a sale of lock-up securities acquired in open market transactions after the completion of this offering, (x) to us in connection with the vesting, settlement or exercise of restricted stock units, options, warrants or other rights to purchase shares of our common stock (including "net" or "cashless" exercise), including for the payment of exercise price and tax and remittance payments, or (xi) pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction approved by our board of directors and made to all shareholders involving a change in control, provided that if such transaction is not completed, all such lock-up securities would remain subject to the restrictions in the immediately preceding paragraph; (b) exercise of the options, settlement of RSUs or other equity awards, or the exercise of warrants granted pursuant to plans described in in this prospectus, provided that any lock-up securities received upon such exercise, vesting or settlement would be subject to restrictions similar to those in the immediately preceding paragraph; (c) the conversion of outstanding convertible preferred stock, warrants to acquire convertible preferred stock, or convertible securities into shares of our common stock or warrants to acquire shares of our common stock, provided that any common stock or warrant received upon such conversion would be subject to restrictions similar to those in the immediately preceding paragraph; and (d) the establishment by lock-up parties of trading plans under Rule 10b5-1 under the Exchange Act, provided that such plan does not provide for the transfer of lock-up securities during the restricted period.

The representatives, in their sole discretion, may release the common stock subject to the lock-up agreements described above in whole or in part at any time with or without notice.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933.

We intend to apply to list our common stock on the Nasdaq Global Market under the symbol "NPCE."

In connection with this offering, the underwriters may engage in stabilizing transactions, which involves making bids for, purchasing and selling shares of common stock in the open market for the purpose of preventing or retarding a decline in the market price of the common stock while this offering is in progress. These stabilizing transactions may include making short sales of the common stock, which involves the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering, and purchasing shares of common stock on the open market to cover positions created by short sales. Short sales may be "covered" shorts, which are short positions in an amount not greater than the underwriters' option to purchase additional shares referred to above, or may be "naked" shorts, which are short positions in excess of that amount. The underwriters may close out any covered short position either by exercising their option to purchase additional shares, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which the underwriters may purchase shares through the option to purchase additional shares. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchase in this offering. To the extent that the underwriters create a naked short position, they will purchase shares in the open market to cover the position.

The underwriters have advised us that, pursuant to Regulation M of the Securities Act of 1933, they may also engage in other activities that stabilize, maintain or otherwise affect the price of the common stock, including the imposition of penalty bids. This means that if the representatives of the underwriters purchase common stock in the open market in stabilizing transactions or to cover short sales, the representatives can require the underwriters that sold those shares as part of this offering to repay the underwriting discount received by them.

These activities may have the effect of raising or maintaining the market price of the common stock or preventing or retarding a decline in the market price of the common stock, and, as a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time. The underwriters may carry out these transactions on The Nasdaq Global Market, in the over-the-counter market or otherwise.

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. In determining the initial public offering price, we and the representatives of the underwriters expect to consider a number of factors including:

- the information set forth in this prospectus and otherwise available to the representatives;
- our prospects and the history and prospects for the industry in which we compete;
- an assessment of our management;
- our prospects for future earnings;
- the general condition of the securities markets at the time of this offering;
- the recent market prices of, and demand for, publicly traded common stock of generally comparable companies; and
- other factors deemed relevant by the underwriters and us.

Neither we nor the underwriters can assure investors that an active trading market will develop for our common stock, or that the shares will trade in the public market at or above the initial public offering price.

Certain of the underwriters and their affiliates may provide from time to time in the future certain commercial banking, financial advisory, investment banking and other services for us and such affiliates in the ordinary course of their business, for which they may receive customary fees and commissions. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future.

Selling restrictions

General

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Notice to prospective investors in the European Economic Area

In relation to each Member State of the European Economic Area, or, each a Member State, no shares have been offered or will be offered pursuant to the offering to the public in that Member State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Member State or, where appropriate, approved in another Member State and notified to the competent authority in that Member State, all in accordance with the Prospectus Regulation, except that offers of shares may be made to the public in that Member State at any time under the following exemptions under the Prospectus Regulation:

(a) to any legal entity which is a qualified investor as defined under the Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under the Prospectus Regulation), subject to obtaining the prior consent of the underwriters; or

(c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of shares shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation and each person who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with each of the underwriters and us that it is a "qualified investor" within the meaning of Article 2(e) of the Prospectus Regulation. In the case of any shares being offered to a financial intermediary as that term is used in the Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Member State to qualified investors as so defined or in circumstances in which the prior consent of the underwriters have been obtained to each such proposed offer or resale.

For the purposes of this provision, the expression an "offer to the public" in relation to shares in any Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129.

Notice to prospective investors in the United Kingdom

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the Prospectus Regulation) (i) who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, or the Order, and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order, or, all such persons together being referred to as relevant persons, or otherwise in circumstances which have not resulted and will not result in an offer to the public of the shares in the United Kingdom within the meaning of the Financial Services and Markets Act 2000.

Any person in the United Kingdom that is not a relevant person should not act or rely on the information included in this document or use it as basis for taking any action. In the United Kingdom, any investment or investment activity that this document relates to may be made or taken exclusively by relevant persons.

Notice to prospective investors in Canada

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Notice to prospective investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange, or SIX, or on any other stock exchange or regulated trading facility in Switzerland. This document does not constitute a prospectus within the meaning of, and has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, us or the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority, or FINMA, and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes, or CISA. The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Notice to prospective investors in the Dubai International Financial Centre, or DIFC

This document relates to an Exempt Offer in accordance with the Markets Rules 2012 of the Dubai Financial Services Authority, or the DFSA. This document is intended for distribution only to persons of a type specified in the Markets Rules 2012 of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for this document. The securities to which this document relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this document you should consult an authorized financial advisor.

In relation to its use in the DIFC, this document is strictly private and confidential and is being distributed to a limited number of investors and must not be provided to any person other than the original recipient, and may not be reproduced or used for any other purpose. The interests in the securities may not be offered or sold directly or indirectly to the public in the DIFC.

Notice to prospective investors in the United Arab Emirates

The shares have not been, and are not being, publicly offered, sold, promoted or advertised in the United Arab Emirates (including the Dubai International Financial Centre) other than in compliance with the laws of the United Arab Emirates (and the Dubai International Financial Centre) governing the issue, offering and sale of securities. Further, this prospectus does not constitute a public offer of securities in the United Arab Emirates (including the Dubai International Financial Centre) and is not intended to be a public offer. This prospectus has not been approved by or filed with the Central Bank of the United Arab Emirates, the Securities and Commodities Authority or the Dubai Financial Services Authority.

Notice to prospective investors in Australia

This prospectus:

- does not constitute a disclosure document or a prospectus under Chapter 6D.2 of the Corporations Act 2001 (Cth), or the Corporations Act;
- has not been, and will not be, lodged with the Australian Securities and Investments Commission, or ASIC, as a disclosure document for the purposes of the Corporations Act and does not purport to include the information required of a disclosure document for the purposes of the Corporations Act; and

- may only be provided in Australia to select investors who are able to demonstrate that they fall within one or more of the categories of investors, available under section 708 of the Corporations Act, Exempt Investors.

The shares may not be directly or indirectly offered for subscription or purchased or sold, and no invitations to subscribe for or buy the shares may be issued, and no draft or definitive offering memorandum, advertisement or other offering material relating to any shares may be distributed in Australia, except where disclosure to investors is not required under Chapter 6D of the Corporations Act or is otherwise in compliance with all applicable Australian laws and regulations. By submitting an application for the shares, you represent and warrant to us that you are an Exempt Investor.

As any offer of shares under this document will be made without disclosure in Australia under Chapter 6D.2 of the Corporations Act, the offer of those securities for resale in Australia within 12 months may, under section 707 of the Corporations Act, require disclosure to investors under Chapter 6D.2 if none of the exemptions in section 708 applies to that resale. By applying for the shares you undertake to us that you will not, for a period of 12 months from the date of issue of the shares, offer, transfer, assign or otherwise alienate those shares to investors in Australia except in circumstances where disclosure to investors is not required under Chapter 6D.2 of the Corporations Act or where a compliant disclosure document is prepared and lodged with ASIC.

Notice to prospective investors in Japan

The shares have not been and will not be registered pursuant to Article 4, Paragraph 1 of the Financial Instruments and Exchange Act. Accordingly, none of the shares nor any interest therein may be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any "resident" of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to or for the benefit of a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Act and any other applicable laws, regulations and ministerial guidelines of Japan in effect at the relevant time.

Notice to prospective investors in Hong Kong

The shares have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong), or the SFO, of Hong Kong and any rules made thereunder; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong), or the CO, or which do not constitute an offer to the public within the meaning of the CO. No advertisement, invitation or document relating to the shares has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the SFO and any rules made thereunder.

Notice to prospective investors in Singapore

Singapore SFA Product Classification — In connection with Section 309B of the SFA and the CMP Regulations 2018, unless otherwise specified before an offer of shares, the we have determined, and hereby notify all relevant persons (as defined in Section 309A(1) of the SFA), that the shares are "prescribed capital markets products" (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

Each underwriter has acknowledged that this prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each underwriter has represented and agreed that it has not offered or sold any shares or caused the shares to be made the subject of an invitation for subscription or purchase and will

not offer or sell any shares or cause the shares to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares, whether directly or indirectly, to any person in Singapore other than:

(a) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289) of Singapore, as modified or amended from time to time, or the SFA) pursuant to Section 274 of the SFA;

(b) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA and in accordance with the conditions specified in Section 275 of the SFA; or

(c) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities or securities-based derivatives contracts (each term as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

(i) to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 276(4)(i)(B) of the SFA;

(ii) where no consideration is or will be given for the transfer;

(iii) where the transfer is by operation of law;

(iv) as specified in Section 276(7) of the SFA; or

(v) as specified in Regulation 37A of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018.

Notice to prospective investors in Bermuda

Shares may be offered or sold in Bermuda only in compliance with the provisions of the Investment Business Act of 2003 of Bermuda which regulates the sale of securities in Bermuda. Additionally, non-Bermudian persons (including companies) may not carry on or engage in any trade or business in Bermuda unless such persons are permitted to do so under applicable Bermuda legislation.

Notice to prospective investors in Saudi Arabia

This document may not be distributed in the Kingdom of Saudi Arabia except to such persons as are permitted under the Offers of Securities Regulations as issued by the board of the Saudi Arabian Capital Market Authority, or the CMA, pursuant to resolution number 2-11-2004 dated 4 October 2004 as amended by resolution number 1-28-2008, as amended, or the CMA Regulations. The CMA does not make any representation as to the accuracy or completeness of this document and expressly disclaims any liability whatsoever for any loss arising from, or incurred in reliance upon, any part of this document. Prospective purchasers of the securities offered hereby should conduct their own due diligence on the accuracy of the information relating to the securities. If you do not understand the contents of this document, you should consult an authorized financial adviser.

Notice to prospective investors in the British Virgin Islands

The shares are not being, and may not be offered to the public or to any person in the British Virgin Islands for purchase or subscription by or on behalf of us. The shares may be offered to companies incorporated under the BVI Business Companies Act, 2004 (British Virgin Islands), or BVI Companies, but only where the offer will be made to, and received by, the relevant BVI Company entirely outside of the British Virgin Islands.

Notice to prospective investors in China

This prospectus will not be circulated or distributed in the PRC and the shares will not be offered or sold, and will not be offered or sold to any person for re-offering or resale directly or indirectly to any residents of the PRC except pursuant to any applicable laws and regulations of the PRC. Neither this prospectus nor any advertisement or other offering material may be distributed or published in the PRC, except under circumstances that will result in compliance with applicable laws and regulations.

Notice to prospective investors in Korea

The shares have not been and will not be registered under the Financial Investments Services and Capital Markets Act of Korea, or the FSCMA, and the decrees and regulations thereunder and the shares have been and will be offered in Korea as a private placement under the FSCMA. None of the shares may be offered, sold or delivered directly or indirectly, or offered or sold to any person for re-offering or resale, directly or indirectly, in Korea or to any resident of Korea except pursuant to the applicable laws and regulations of Korea, including the FSCMA and the Foreign Exchange Transaction Law of Korea, or the FETL, and the decrees and regulations thereunder. The shares have not been listed on any of securities exchanges in the world including, without limitation, the Korea Exchange in Korea. Furthermore, the purchaser of the shares shall comply with all applicable regulatory requirements (including but not limited to requirements under the FETL) in connection with the purchase of the shares. By the purchase of the shares, the relevant holder thereof will be deemed to represent and warrant that if it is in Korea or is a resident of Korea, it purchased the shares pursuant to the applicable laws and regulations of Korea.

Notice to prospective investors in Taiwan

The shares have not been and will not be registered with the Financial Supervisory Commission of Taiwan pursuant to relevant securities laws and regulations and may not be sold, issued or offered within Taiwan through a public offering or in circumstances which constitutes an offer within the meaning of the Securities and Exchange Act of Taiwan that requires a registration or approval of the Financial Supervisory Commission of Taiwan. No person or entity in Taiwan has been authorized to offer, sell, give advice regarding or otherwise intermediate the offering and sale of the shares in Taiwan.

Notice to prospective investors in South Africa

Due to restrictions under the securities laws of South Africa, no “offer to the public” (as such term is defined in the South African Companies Act, No. 71 of 2008 (as amended or re-enacted), or the South African Companies Act, is being made in connection with the issue of the shares in South Africa. Accordingly, this document does not, nor is it intended to, constitute a “registered prospectus” (as that term is defined in the South African Companies Act) prepared and registered under the South African Companies Act and has not been approved by, and/or filed with, the South African Companies and Intellectual Property Commission or any other regulatory authority in South Africa. The shares are not offered, and the offer shall not be transferred, sold, renounced or delivered, in South Africa or to

a person with an address in South Africa, unless one or other of the following exemptions stipulated in section 96 (1) applies:

Section 96 (1) (a)	the offer, transfer, sale, renunciation or delivery is to: (i) persons whose ordinary business, or part of whose ordinary business, is to deal in securities, as principal or agent; (ii) the South African Public Investment Corporation; (iii) persons or entities regulated by the Reserve Bank of South Africa; (iv) authorized financial service providers under South African law; (v) financial institutions recognized as such under South African law; (vi) a wholly-owned subsidiary of any person or entity contemplated in (c), (d) or (e), acting as agent in the capacity of an authorized portfolio manager for a pension fund, or as manager for a collective investment scheme (in each case duly registered as such under South African law); or (vii) any combination of the person in (i) to (vi); or
Section 96 (1) (b)	the total contemplated acquisition cost of the securities, for any single addressee acting as principal is equal to or greate than ZAR1,000,000 or such higher amount as may be promulgated by notice in the Government Gazette of South Africa pursuant to section 96(2)(a) of the South African Companies Act.

Information made available in this prospectus should not be considered as “advice” as defined in the South African Financial Advisory and Intermediary Services Act, 2002.

Notice to prospective investors in Israel

This document does not constitute a prospectus under the Israeli Securities Law, 5728-1968, or the Securities Law, and has not been filed with or approved by the Israel Securities Authority. In Israel, this prospectus is being distributed only to, and is directed only at, and any offer of the shares of common stock is directed only at, (i) a limited number of persons in accordance with the Israeli Securities Law and (ii) investors listed in the first addendum, or the Addendum, to the Israeli Securities Law, consisting primarily of joint investment in trust funds, provident funds, insurance companies, banks, portfolio managers, investment advisors, members of the Tel Aviv Stock Exchange, underwriters, venture capital funds, entities with equity in excess of NIS 50 million and “qualified individuals,” each as defined in the Addendum (as it may be amended from time to time), collectively referred to as qualified investors (in each case, purchasing for their own account or, where permitted under the Addendum, for the accounts of their clients who are investors listed in the Addendum). Qualified investors are required to submit written confirmation that they fall within the scope of the Addendum, are aware of the meaning of same and agree to it.

LEGAL MATTERS

Cooley LLP, Palo Alto, California, will pass upon the validity of the shares of common stock being offered by this prospectus. Davis Polk & Wardwell LLP, Menlo Park, California is representing the underwriters.

EXPERTS

The financial statements as of December 31, 2019 and for the year then ended included in this Prospectus have been so included in reliance on the report (which contains an explanatory paragraph relating to the Company's ability to continue as a going concern as described in Note 1 to the financial statements) of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1, including exhibits and schedules, under the Securities Act, with respect to the shares of common stock being offered by this prospectus. This prospectus, which constitutes part of the registration statement, does not contain all of the information in the registration statement and its exhibits. For further information with respect to us and the common stock offered by this prospectus, we refer you to the registration statement and its exhibits. Statements contained in this prospectus as to the contents of any contract or any other document referred to are not necessarily complete, and in each instance, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference. You can read our SEC filings, including the registration statement, over the Internet at the SEC's website at www.sec.gov.

Upon the closing of this offering, we will be subject to the information reporting requirements of the Exchange Act, and we will file reports, proxy statements and other information with the SEC. These reports, proxy statements and other information will be available for inspection at the web site of the SEC referred to above. We also maintain a website at www.neuropace.com, at which, following the closing of this offering, you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. However, the information contained in or accessible through our website is not part of this prospectus or the registration statement of which this prospectus forms a part, and investors should not rely on such information in making a decision to purchase our common stock in this offering. We have included our website address in this prospectus solely as an inactive textual reference.

INDEX TO FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of NeuroPace, Inc.

Opinion on the Financial Statements

We have audited the accompanying balance sheet of NeuroPace, Inc. (the "Company") as of December 31, 2019, and the related statements of operations and comprehensive loss, of redeemable convertible preferred stock and stockholders' deficit, and of cash flows for the year then ended, including the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Substantial Doubt about the Company's Ability to Continue as a Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has incurred operating losses and negative cash flows from operations since inception that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustment that might result from the outcome of this uncertainty.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of these financial statements in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

San Jose, California

October 12, 2020, except with respect to the matters that raise substantial doubt about the Company's ability to continue as a going concern discussed in Note 1 and effects of the reverse stock split discussed in Note 2 to the financial statements, as to which the date is January 29, 2021

We have served as the Company's auditor since 2003.

NeuroPace, Inc.
Balance Sheet

(in thousands, except share and per share amounts)	December 31, 2019	December 31, 2019 Pro Forma
		(unaudited)
Assets		
Current assets		
Cash and cash equivalents	$ 4,123	
Short-term investments	969	
Accounts receivable	6,017	
Inventory	7,900	
Prepaid expenses and other current assets	1,251	
Total current assets	20,260	
Property and equipment, net	810	
Other assets	25	
Total assets	$ 21,095	
Liabilities and Stockholders' Deficit		
Current liabilities		
Accounts payable	$ 903	
Accrued liabilities	6,727	
Short-term debt	44,162	
Short-term convertible notes (includes $15,686 due to related parties)	18,637	
Derivative instrument	4,719	
Total current liabilities	75,148	
Deferred rent, noncurrent	1,703	
Other liabilities	26	
Total liabilities	76,877	
Commitments and contingencies (Note 5)		
Redeemable convertible preferred stock, $0.001 par value - 180,000,000 shares authorized as of December 31, 2019; 1,651,154 shares issued and outstanding as of December 31, 2019 (Liquidation value $73,890 as of December 31, 2019); authorized, issued and outstanding, pro forma (unaudited)	73,568	
Stockholders' deficit		
Common stock, $0.001 par value - 300,000,000 shares authorized as of December 31, 2019; 525,724 shares issued and outstanding as of December 31, 2019; shares authorized, issued and outstanding, pro forma (unaudited)	1	
Additional paid-in-capital	234,289	
Accumulated other comprehensive income	1	
Accumulated deficit	(363,641)	
Total stockholders' deficit	(129,350)	
Total liabilities, redeemable convertible preferred stock and stockholders' deficit	$ 21,095	

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

NeuroPace, Inc.
Statement of Operations and Comprehensive Loss

(in thousands, except share and per share amounts)	Year Ended December 31, 2019
Revenue	$ 36,972
Cost of goods sold	10,508
Gross profit	26,464
Operating expenses	
Research and development	18,294
Selling, general and administrative	30,201
Total operating expenses	48,495
Loss from operations	(22,031)
Interest income	261
Interest expense (includes $900 from related parties)	(9,485)
Other income (expense), net	1,282
Net loss	(29,973)
Unrealized gain on available-for-sale debt securities	28
Comprehensive loss	$ (29,945)
Net loss per share attributable to common stockholders, basic and diluted	$ (57.07)
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	525,193
Pro forma net loss per share, basic and diluted (unaudited)	
Weighted-average shares outstanding used in computing pro forma net loss per share, basic and diluted (unaudited)	

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

NeuroPace, Inc.
Statement of Redeemable Convertible Preferred Stock and Stockholders' Deficit

(in thousands, except share amounts)	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated (Deficit)	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount				
Balances as of January 1, 2019	1,651,154	$ 73,568	523,831	$ 1	$ 232,786	$ (27)	$ (333,668)	$ (100,908)
Net loss	—	—	—	—	—	—	(29,973)	(29,973)
Unrealized gain on available-for-sale debt securities	—	—	—	—	—	28	—	28
Issuance of common stock pursuant to stock option exercises at $14.0 and $22.0 for cash	—	—	1,893	—	42	—	—	42
Change in early exercise liability	—	—	—	—	19	—	—	19
Stock-based compensation	—	—	—	—	1,442	—	—	1,442
Balances as of December 31, 2019	1,651,154	$ 73,568	525,724	$ 1	$ 234,289	$ 1	$ (363,641)	$ (129,350)

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

NeuroPace, Inc.
Statement of Cash Flows

(in thousands)	Year Ended December 31, 2019
Cash flows from operating activities	
Net loss	$ (29,973)
Adjustments to reconcile net loss to net cash used in operating activities	
Stock-based compensation expense	1,442
Depreciation	421
Amortization of debt discount and issuance costs	2,441
Non-cash interest expense	1,578
Inventory write-downs	355
Realized gain from sale of short-term investments	(21)
Change in fair value of derivative instrument	(1,278)
Changes in operating assets and liabilities	
Accounts receivable	(750)
Inventory	(1,638)
Prepaid expenses and other assets	(497)
Accounts payable	(82)
Accrued liabilities	2,278
Deferred rent	698
Net cash (used in) operating activities	(25,026)
Cash flows from investing activities	
Acquisition of property and equipment	(468)
Proceeds from sale of short-term investments	22,100
Proceeds from sale of property and equipment	4
Purchase of short-term investments	(18,018)
Net cash provided by investing activities	3,618
Cash flows from financing activities	
Issuance of common stock pursuant to stock option exercises	42
Issuance of convertible notes, net of issuance costs (includes $17,963 from related parties)	21,328
Net cash provided by financing activities	21,370
Net decrease in cash and cash equivalents	(38)
Cash and cash equivalents	
Beginning of year	4,161
End of year	$ 4,123
Supplemental disclosure of cash flow information:	
Cash paid for interest	$ 5,416
Supplemental disclosures of non-cash investing and financing information:	
Net change in accrued liabilities from early exercise of options	$ (19)

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

1. The Company

NeuroPace, Inc., or the Company, was incorporated in the state of Delaware on November 19, 1997. The Company is a commercial-stage medical device company that has developed the RNS System, a brain-responsive neuromodulation system designed for treating medically refractory focal epilepsy by delivering personalized, real-time treatment at the seizure source. The Company began commercializing its products in the United States in 2014.

Liquidity and Capital Resources

The Company has incurred operating losses and negative cash flows from operations since its inception. For the year ended December 31, 2019, net loss was $30.0 million and cash used in operations was $25.0 million. As of December 31, 2019, accumulated deficit was $363.6 million and cash, cash equivalents and short-term investments was $5.1 million. To date, the Company has funded its operations principally through the sales of its products, issuance of redeemable convertible preferred stock and debt financing. The Company expects to incur significant operating expenses as it continues to expand product sales and develop and commercialize new products. The Company believes that its operating losses and negative cash flows will continue into the foreseeable future. There can be no assurance that the Company's products will be successfully marketed or generate sufficient revenue for the Company to achieve profitable operations.

Based on its current operating plan, which was updated in January 2021 to reflect the Company's plans to increase the level of operating expenditures to accelerate hiring, clinical studies and research and development projects, the Company's cash, cash equivalents and short-term investments of $5.1 million as of December 31, 2019, together with additional equity and debt financing in 2020 (see Note 13), will not be sufficient for the Company to continue as a going concern for at least one year from January 29, 2021, the date these financial statements were available to be reissued. The Company believes that this raises substantial doubt about its ability to continue as a going concern. As a result, the Company will be required to raise additional capital. The Company is seeking to complete an initial public offering, or the IPO, of its common stock. In the event the Company does not complete an IPO, the Company would expect to obtain additional funding through additional sale and issuance of its Series B' redeemable convertible preferred stock pursuant to commitments made by investors in the initial close of the Series B' financing; however, such funding is not guaranteed. If the amount of revenue from the sale of the Company's products is not sufficient or if sufficient funds on acceptable terms are not available when needed, the Company may be required to curtail planned activities to significantly reduce its operating expenses. Failure to manage discretionary spending or raise additional financing, as needed, may adversely impact the Company's ability to achieve its intended business objectives and have an adverse effect on its results of operations and future prospects.

In connection with the new term loan described in Note 13, the Company will need to be in compliance with a minimum annual net revenue covenant determined in accordance with generally accepted accounting principles beginning in the fiscal year ended December 31, 2021 of $43.0 million. If the Company cannot generate sufficient revenue in the future, the Company may not be in compliance with the annual net revenue covenant and the lender may call the debt resulting in the Company immediately needing additional funds.

As discussed in Note 13, the COVID-19 pandemic negatively impacted sales of the RNS System in the first half of 2020 as hospitals and patients made the decision to delay or cancel elective procedures. There are numerous uncertainties associated with the COVID-19 outbreak which could continue to have an adverse impact on the Company's operations, cash flows and ability to raise capital when needed.

2. Summary of Significant Accounting Policies

Basis of Presentation

The financial statements have been prepared in conformity with generally accepted accounting principles in the United States, or GAAP, as defined by the Financial Accounting Standards Board, or the FASB.

Unaudited Pro Forma Information

The accompanying unaudited pro forma balance sheet has been prepared to give effect to (i) the conversion of shares of redeemable convertible preferred stock outstanding into an aggregate of shares of common stock upon the closing of this offering, (ii) the issuance of shares of Series B' redeemable convertible preferred stock upon the net exercise of outstanding warrants to purchase shares of Series B' redeemable convertible preferred stock, with an exercise price of $ per share, immediately prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price and the conversion of such shares of Series B' redeemable convertible preferred stock into an equal number of shares of common stock upon the closing of this offering, (iii) the reclassification of the Series B' redeemable convertible preferred stock warrant liability to total stockholders' deficit as the warrants will be net exercised, (iv) the issuance of shares of common stock upon the net exercise of outstanding warrants to purchase shares of common stock, with an exercise price of $ per share, immediately prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price and (v) the filing and effectiveness of our amended and restated certificate of incorporation upon the closing of this offering.

In the accompanying statement of operations and comprehensive loss, unaudited pro forma basic and diluted net loss per share has been prepared to give effect to (i) an adjustment to exclude the change in fair value resulting from the remeasurement of the Series B' redeemable convertible preferred stock warrant liability, (ii) the conversion of shares of redeemable convertible preferred stock outstanding into an aggregate of shares of common stock upon the closing of this offering as of the beginning of the period or the date of issuance, if later, (ii) the issuance of shares of Series B' redeemable convertible preferred stock upon the net exercise of outstanding warrants to purchase shares of Series B' redeemable convertible preferred stock, with an exercise price of $ per share, immediately prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price and the conversion of such shares of Series B' redeemable convertible preferred stock into an equal number of shares of common stock upon the closing of this offering, reflected as of the beginning of the period or the date of issuance, if later, (iii) the issuance of shares of common stock upon the net exercise of outstanding warrants to purchase shares of common stock, with an exercise price of $ per share, immediately prior to the closing of this offering, which warrants would otherwise expire upon the closing of this offering, based on the assumed initial public offering price reflected as of the beginning of the period or the date of issuance, if later.

Reverse stock split

On August 18, 2020, the Company effected a 1-for-100 reverse stock split of its common stock and redeemable convertible preferred stock. Upon the effectiveness of the reverse stock split, all issued and outstanding shares of common stock and redeemable convertible preferred stock and related per share amounts contained in the accompanying financial statements have been retroactively revised to reflect this reverse stock split for all periods presented. The par value of the authorized stock was not adjusted as a result of the reverse stock split. Other than the par value, all share and per share data shown in the accompanying financial statements and related notes have been retroactively revised to reflect the reverse stock split.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires the Company to make estimates and assumptions that affect the amounts and disclosures reported in the financial statements. The Company uses significant judgment when making estimates related to the common stock valuation and related stock-based compensation, the valuation of deferred tax assets and related valuation allowances, provision for excess and obsolete inventories, and the valuation of derivative financial instruments. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Although these estimates are based on the Company's knowledge of current events and actions it may undertake in the future, actual results may ultimately materially differ from these estimates and assumptions.

Segment and Geographical Information

The Company operates and manages its business as one reportable and operating segment. The Company's chief executive officer, who is the chief operating decision maker, reviews financial information on an aggregate basis for purposes of allocating resources and evaluating financial performance. All of the Company's long-lived assets, comprised of property and equipment, are based in the United States. All of the Company's revenue was in the United States for the year ended December 31, 2019, based on the shipping location of the external customer.

Revenue Recognition

The Company derives substantially all its revenue from sales of RNS Systems to hospitals facilities (typically comprehensive epilepsy centers, or Level 4 CECs) that implant its products.

On January 1, 2019, the Company adopted Accounting Standards Codification, or ASC, Topic 606, "*Revenue from Contracts with Customers*," using the modified retrospective method. Under ASC 606, revenue is recognized when a customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606, the Company performs the following five steps:

i. identify the contract(s) with a customer;

ii. identify the performance obligations in the contract;

iii. determine the transaction price;

iv. allocate the transaction price to the performance obligations in the contract; and

v. recognize revenue when (or as) the entity satisfies a performance obligation.

A contract with a customer exists when (i) the Company enters into a legally enforceable contract with a customer that defines each party's rights regarding the products or services to be transferred and identifies the payment terms related to these products or services, (ii) the contract has commercial substance and, (iii) the Company determines that collection of substantially all consideration for products or services that are transferred is probable based on the customer's intent and ability to pay the promised consideration.

At contract inception, the Company assesses the products or services promised within each contract and determine those that are performance obligations and assess whether each promised product or service is distinct. The Company's contracts with customers often include a promise to transfer products, as well as an implied promise to provide a service to the customer, which is access to the Company's Patient Data Management System, or PDMS. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. The Company evaluates each product or service promised in a contract to determine whether it represents a distinct performance obligation. A performance obligation is distinct if (i) the customer can benefit from the product or service on its own or with other resources that are readily available to the customer and (ii) the product or service is separately identifiable from other promises in the contract.

Our RNS System is a compilation of the Company's products that includes its RNS neurostimulator, its cortical strip leads and depth leads, and its Patient Remote Monitor, as well as other implantable and non-implantable accessories. In addition, the Company's products also include external components such as its Physician Tablet, which is used by clinicians to retrieve and review information from and program the implanted devices, as well as access to the Company's Patient Data Management System, or PDMS, a secure online database that collects data transmitted from our Patient Remote Monitor and our Physician Tablet. The Company has determined that its RNS System and Physician Tablet are not capable of being distinct as they are not sold separately, the customer cannot benefit from the products individually, and there are no other resources readily available to the customer. The products are highly interdependent and the Company is not able to fulfill each promise in the contract independently of the others. Therefore, the Company has concluded that the RNS System and the Physician Tablet represent a

single performance obligation. The Company has determined that access to the PDMS is capable of being distinct because clinicians can utilize it with other components of the RNS System that are readily available, and it is separately identifiable from other promises in the contract. Therefore, the Company has concluded that access to the PDMS represents a separate performance obligation. In addition, training services generally occur prior to entering into a contract with the customer and therefore the training services are not considered to be a separate performance obligation.

The Company determines the transaction price based on the amount it expects to be entitled to in exchange for transferring the promised product to the customer, which is based on the invoiced price for the products. All prices are at fixed amounts per the sales agreement with the customer and there are no discounts, rebates or other price concessions or a right of return.

When a contract contains multiple performance obligations, the Company allocates the transaction price to each performance obligation based on its relative standalone selling price. Standalone selling prices are based on observable prices at which the Company separately sells its products or services. If a standalone selling price is not directly observable, the Company estimates the standalone selling price considering market data, cost, gross margin, and other available information.

The Company delivers its products to a hospital on the date of the scheduled procedure. There is no commitment or contract until the delivery of the product and the procedure may be canceled at any time. Once the device has been implanted in or otherwise provided to a patient, the customer is considered to have accepted the delivery (i.e., has approved the contract) and both parties are committed to perform their respective obligations. Assuming all other revenue recognition criteria are met, the Company recognizes revenue from the sale of our products at a point in time when the procedure is completed and the device is implanted in a patient. The Company recognizes service revenue related to the PDMS on a ratable basis over the period in which the Company expects to provide access to clinicians. The Company has concluded that the service revenue is immaterial.

The Company recognizes revenue for arrangements where it has satisfied its performance obligations but has not issued invoices. These amounts are recorded as unbilled receivables, which are included in accounts receivable on the balance sheet, as the Company has an unconditional right to payment at the end of the applicable period.

Payment terms are typically 30 days from the fulfillment of the orders and fall within the one-year guidance for the practical expedient which allows the Company to forgo adjustment of the promised amount of consideration for the effects of a significant financing component. Sales taxes that are collected from customers and remitted to governmental authorities are accounted for on a net basis and therefore are excluded from net sales, however, most of its sales are tax exempt. The Company believes that collection is probable as it has no history of uncollectible accounts and the customers are large, creditworthy institutions.

As allowed under the practical expedient, the Company does not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less. Costs associated with product sales include commissions, where the Company applies the practical expedient and recognize commissions as expense when incurred because the expense is incurred over a period of time of less than one year. Commissions are reported in selling, general and administrative expense in the statement of operations and comprehensive loss.

The Company’s only contract balances were accounts receivable of $6.0 million as of December 31, 2019.

Fair Value of Financial Instruments

Carrying amounts of certain of the Company’s financial instruments, including cash equivalents, accounts receivable, accounts payable and accrued liabilities, approximate fair value because of the short-term nature of these instruments. Short-term investments are comprised of available-for-sale debt securities, which are carried at fair value. The Company believes that its borrowings bear interest at the prevailing market rates for instruments with similar characteristics; accordingly, the carrying value of this instrument approximates its fair value. Derivative instruments are carried at fair value based on unobservable market inputs. The Company determines the fair value of financial and non-financial assets and liabilities using the fair value hierarchy which establishes three level of inputs that may be used to measure fair value (see Note 3).

Cash and Cash Equivalents

The Company considers all highly liquid investments with original maturities of three months or less at the time of purchase to be cash equivalents. Cash equivalents that are available-for-sale marketable debt securities are recorded at fair value, based on quoted market prices. As of December 31, 2019, the Company's cash equivalents are entirely comprised of investments in money market funds.

Concentration of Credit Risk, and Other Risks and Uncertainties

Financial instruments that potentially subject the Company to credit risk consist of cash and cash equivalents, short-term investments and accounts receivable to the extent of the amounts recorded on the balance sheet. The Company's cash is invested in one major financial institution in the United States. Deposits in this financial institution may exceed federally insured limits. The Company's cash equivalents are invested in money market funds.

The Company's accounts receivable are due from a variety of health care organizations in the United States. For the year ended December 31, 2019, there were no customers that represented 10% or more of revenue. As of December 31, 2019, no customer represented 10% or more of the Company's accounts receivable.

The Company is subject to certain risks, including that its devices may not be approved or cleared for marketing by governmental authorities or be successfully marketed for expanded indications. There can be no assurance that the Company's products will achieve widespread adoption in the marketplace, nor can there be any assurance that existing devices or any future devices can be developed or manufactured at an acceptable cost and with appropriate performance characteristics. The Company is also subject to risks common to companies in the medical device industry, including, but not limited to, new technological innovations, dependence upon third-party payors to provide adequate coverage and reimbursement, dependence on key personnel, single-source suppliers and vendors in connection with the manufacture of its products, concentration of Level 4 CECs, obtaining, maintaining, protecting, enforcing, and defending intellectual property rights and proprietary technology, product liability claims, and compliance with government regulations.

The Company's medical devices require approvals or clearances from the U.S. Food and Drug Administration, or the FDA, or international regulatory agencies. In addition, in order to continue the Company's operations, compliance with various federal and state laws is required. If approvals or clearances were withdrawn by the FDA for the Company's current products or if such approvals or clearances were denied or delayed for future products or expanded indications for use, it would have a material adverse impact on the Company.

Accounts Receivable

Accounts receivable are recorded at the invoiced amount and do not bear interest. The Company regularly reviews accounts for collectability and establishes an allowance for probable credit losses and writes off uncollectible accounts as necessary. The Company determined that no reserve was required as of December 31, 2019. To date, the Company has not experienced any credit-related losses.

Inventories

Inventories are valued at the lower of cost or net realizable value. Cost is determined using the first-in, first-out method for all inventories. Net realizable value is determined as the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. The Company regularly reviews inventory quantities in consideration of actual loss experiences, projected future demand, and remaining shelf life to record a provision for excess and obsolete inventory when appropriate. The Company's policy is to write down inventory that has become obsolete, inventory that has a cost basis in excess of its expected lower of cost or net realizable value, and inventory in excess of expected requirements. The estimate of excess quantities is judgmental and primarily dependent on the Company's estimates of future demand for the RNS System. If the estimate of future demand is too high, the Company may have to increase the reserve for excess inventory for that product and record a charge to the cost of goods sold.

Property and Equipment, net

Property and equipment, net is stated at cost less accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets, generally three to five years. Leasehold improvements are amortized using the straight-line method over the shorter of the assets' estimated useful lives or the remaining term of the lease. When assets are retired or otherwise disposed of, the cost and accumulated depreciation are removed from the balance sheet, and any resulting gain or loss is reflected in operations in the period realized. Maintenance and repairs are charged to operations as incurred.

Impairment of Long-Lived Assets

The Company reviews long-lived assets, including property and equipment, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If indicators of impairment exist, an impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the assets and their eventual disposition are less than their carrying amount. Impairment, if any, is measured as the amount by which the carrying amount of the long-lived assets exceeds their fair value. The Company did not record any impairment of long-lived assets for the year ended December 31, 2019.

Leases

The Company accounts for leases in accordance with the ASC Topic 840, *Leases*. The Company leases its facilities and meets the requirements to account for these leases as operating leases.

For facility leases that contain rent escalations or rent concession provisions, the Company records its lease expense during the lease term on a straight line basis over the term of the lease. The Company records differences between the rent paid and the straight-line rent as a deferred rent liability. Leasehold improvements funded by landlord incentives or allowances are recorded as leasehold improvement assets and a corresponding deferred rent liability. The leasehold improvement asset is amortized over the lesser of the term of the lease or life of the asset. The deferred rent liability is amortized on a straight-line basis as a reduction to rent expense over the term of the lease agreement.

Deferred Offering Costs

The Company capitalizes, within other assets, certain legal, accounting and other third-party fees that are directly related to the Company's in-process equity financings, including its planned initial public offering, until such financings are consummated. After consummation of the equity financing, these costs are recorded as a reduction of the proceeds received as a result of the offering. Should a planned equity financing be abandoned, terminated or significantly delayed, the deferred offering costs are immediately written off to operating expenses. There were no deferred offering costs as of December 31, 2019.

Derivative Instruments

The Company issued convertible notes in March 2019 and September 2019, or the 2019 Convertible Notes, which contain embedded features that provide the lenders with multiple settlement alternatives. Certain of these settlement features provide the lenders the right to receive cash or a variable number of shares upon the completion of a capital raising transaction, change of control or default by the Company, which are referred to as the "redemption features."

The redemption features of the convertible notes meet the requirements for separate accounting and are accounted for as a single derivative instrument. The derivative instrument was recorded at fair value at inception and is subject to remeasurement to fair value at each balance sheet date, with any changes in fair value recognized in the statements of operations and comprehensive loss (see Note 3 and Note 6).

Warranty

Warranty costs are accrued based on the Company's best estimates when management determines that it is probable a charge or liability has been incurred and the amount of loss can be reasonably estimated. While the

Company believes that historical experience provides a reliable basis for estimating such warranty cost, unforeseen quality issues or component failure rates could result in future costs in excess of such estimates. The warranty liability as of December 31, 2019 was immaterial.

Redeemable Convertible Preferred Stock

The Company records all shares of redeemable convertible preferred stock at their respective fair values on the dates of issuance, net of issuance costs. Redeemable convertible preferred stock is recorded outside of permanent equity because while it is not mandatorily redeemable, in certain events considered not solely within the Company's control, such as a merger, acquisition, or sale of all or substantially all of the Company's assets, each referred to as a "deemed liquidation event," the redeemable convertible preferred stock will become redeemable at the option of the holders of at least a majority of the then outstanding preferred shares. The Company has not adjusted the carrying value of the redeemable convertible preferred stock to its liquidation preference because a deemed liquidation event obligating the Company to pay the liquidation preference to holders of shares of redeemable convertible preferred stock is not probable of occurring. Subsequent adjustments to the carrying values to the liquidation preference will be made only if it becomes probable that such a deemed liquidation event will occur.

Cost of Goods Sold

The Company manufactures its products at its facility. Cost of goods sold consists primarily of costs related to materials, components and subassemblies, manufacturing overhead, direct labor, and reserves for excess and obsolete inventories. A significant portion of the Company's cost of goods sold currently consists of manufacturing overhead costs. These overhead costs include the cost of facilities, material procurement, inventory control, quality assurance, equipment and operating supervision and management. Cost of goods sold also includes depreciation expense for production equipment and certain direct costs such as shipping costs and royalties. Shipping and handling costs are considered a fulfillment activity and are included in cost of goods sold as incurred.

The Company is obligated to pay a royalty of 1% of net sales for specified products under the terms of a cross-license agreement, subject to an aggregate cap of $100 million. The Company recorded royalty expenses of $0.4 million for the year ended December 31, 2019.

Research and Development Expenditures

The Company expenses research and development costs as incurred. Research and development expenses consist primarily of engineering, product development, clinical studies to develop and support the Company's products, regulatory expenses, medical affairs and other costs associated with products and technologies that are in development, including quality assurance. Research and development expenses include employee compensation, including stock-based compensation, supplies, consulting, prototyping, testing, materials, travel expenses, depreciation and an allocation of facility overhead expenses. Additionally, research and development expenses include costs associated with our clinical studies including clinical trial design, clinical site reimbursement, data management, travel expenses, the cost of products used for clinical trials and costs associated with regulatory compliance and submitting and maintaining regulatory filings.

Advertising Costs

The Company expenses advertising costs as incurred. Advertising costs include design and production costs, including website development, physician and patient testimonial videos, written media campaigns, and other items. Advertising costs of $0.1 million were expensed during the year ended December 31, 2019.

Stock-Based Compensation

The Company accounts for stock-based employee compensation in accordance with ASC 718, *Stock Compensation*. ASC 718 requires the measurement of compensation on the date of grant based on the fair value of the stock option (see Note 9). The Company amortizes the fair value of each option on a straight-line basis over the requisite service period of each award.

Income Taxes

The Company accounts for income taxes under the liability method. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

The Company assesses all material positions taken in any income tax return, including all significant uncertain positions, in all tax years that are still subject to assessment or challenge by relevant taxing authorities. Assessing an uncertain tax position begins with the initial determination of the position's sustainability and is measured at the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. As of each balance sheet date, unresolved uncertain tax positions must be reassessed, and the Company will determine whether (i) the factors underlying the sustainability assertion have changed and (ii) the amount of the recognized tax benefit is still appropriate. The recognition and measurement of tax benefits requires significant judgment. Judgments concerning the recognition and measurement of a tax benefit might change as new information becomes available.

Net Loss per Share Attributable to Common Stockholders

Basic net loss per common share is calculated by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period, without consideration of potentially dilutive securities. Diluted net loss per share is computed by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock and potentially dilutive securities outstanding for the period. For purposes of the diluted net loss per share calculation, redeemable convertible preferred stock, stock options, common stock subject to repurchase related to early exercise of stock options, and convertible notes are considered to be potentially dilutive securities. Basic and diluted net loss attributable to common stockholders per share is presented in conformity with the two-class method required for participating securities, as the redeemable convertible preferred stock is considered a participating security because it participates in dividends with common stock. The Company also considers the shares issued upon the early exercise of stock options subject to repurchase to be participating securities, because holders of such shares have non-forfeitable dividend rights in the event a dividend is paid on common stock. The holders of redeemable convertible preferred stock and the holders of the shares issued upon early exercise of stock options subject to repurchase do not have a contractual obligation to share in the Company's losses. As such, the net loss was attributed entirely to common stockholders. Because the Company has reported a net loss for all periods presented, diluted net loss per common share is the same as basic net loss per common share for those periods.

Comprehensive Loss

Comprehensive loss combines net loss and other comprehensive loss. Other comprehensive loss represents unrealized gains or losses on short-term investments that are reported as a component of stockholders' deficit in the balance sheet.

JOBS Act Accounting Election

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date the Company (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

Recent Accounting Pronouncements

Recently Adopted Accounting Pronouncements

In May 2014, the FASB issued Accounting Standards Update, or ASU, No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, or ASU 2014-09. Subsequently, the FASB also issued ASU No. 2015-14, *Deferral of the Effective Date*, which adjusted the effective date of ASU 2014-09 by one year; ASU No. 2016-08, *Principal versus Agent Considerations (Reporting Revenue Gross versus Net)*, which amends the principal-versus-agent implementation guidance and illustrations in ASU 2014-09; ASU No. 2016-10, *Identifying Performance Obligations and Licensing*, which clarifies identifying performance obligation and licensing implementation guidance and illustrations in ASU 2014-09; ASU No. 2016-12, *Narrow-Scope Improvements and Practical Expedients*, which addresses implementation issues and is intended to reduce the cost and complexity of applying the new revenue standard in ASU 2014-09; and ASU No. 2016-20, *Technical Corrections and Improvements to Topic 606*, or, collectively, the Revenue ASUs. The Company adopted the Revenue ASUs as of January 1, 2019, using the modified retrospective method. The accompanying financial statements present revenue and related disclosures in accordance with the new standard. The adoption did not have an impact on the revenue amounts reported.

In July 2017, the FASB issued ASU No. 2017-11, *Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815):* (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception. This ASU simplifies the accounting for certain financial instruments with down round features, a provision in an equity-linked financial instrument (or embedded feature) that provides a downward adjustment of the current exercise price based on the price of future equity offerings. Down round features are common in warrants, preferred shares and convertible debt instruments issued by private companies and early-stage public companies. This ASU requires companies to disregard the down round feature when assessing whether the instrument is indexed to its own stock, for purposes of determining liability or equity classification. This ASU is effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. Early adoption is permitted, including adoption in any interim period. The amendments in Part I should be applied (1) retrospectively to outstanding financial instruments with a down round feature by means of a cumulative-effect adjustment to the balance sheet as of the beginning of the first fiscal year and interim periods; (2) retrospectively to outstanding financial instruments with a down round feature for each prior reporting period presented. The Company adopted this ASU effective January 1, 2019. The adoption of this ASU did not have a material effect on the Company's financial statements and related disclosures.

In February 2018, the FASB issued ASU No. 2018-02, *Income Statement—Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*. The ASU permits companies to reclassify disproportionate tax effects in accumulated other comprehensive income, caused by the Tax Act to retained earnings. This ASU is effective for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. Early adoption is permitted. The Company adopted this ASU effective January 1, 2019. The adoption of this ASU did not have a material effect on the Company's financial statements and related disclosures.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation—Stock Compensation (Topic 718): Improvements to Non-employee Share-Based Payment Accounting*, which expands the scope of Topic 718 to include all share-based payment transactions for acquiring goods and services from nonemployees and simplifies the accounting for nonemployee share-based payment transactions. The accounting for share-based payments to nonemployees and employees will be substantially aligned because of this update. This ASU specifies that Topic 718 applies to all share-based payment transactions in which the grantor acquires goods and services to be used or consumed in its own operations by issuing share-based payment awards. This ASU also clarifies that Topic 718 does not apply to share-based payments used to effectively provide (1) financing to the issuer or (2) awards granted in conjunction with selling goods or services to customers as part of a contract accounted for under Topic 606. The transition method provided by ASU No. 2018-07 is a modified retrospective basis, which recognizes a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. This ASU is effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years.

Early adoption is permitted, but may take place no earlier than a company's adoption date of Topic 606, Revenue from Contracts with Customers. The Company adopted this ASU effective January 1, 2019. The adoption of this ASU did not have a material effect on the Company's financial statements and related disclosures.

Recent Accounting Pronouncements Not Yet Adopted

In February 2016, the FASB issued ASU No. 2016-02 (Topic 842), *Leases*. ASU 2016-02 requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease, respectively. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. This ASU provides a lessee with an option to not account for leases with a term of 12 month or less as leases in the scope of this ASU. This ASU will also require new qualitative and quantitative disclosures to help investors and other financial statement users better understand the amount, timing, and uncertainty of cash flows arising from leases. This ASU should be applied through a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. In July 2018, the FASB issued ASU No. 2018-11, *Leases (Topic 842): Targeted Improvements*, which allows entities to elect an optional transition method where entities may continue to apply the existing lease guidance during the comparative periods and apply the new lease requirements through a cumulative effect adjustment in the period of adoption rather than in the earliest period presented. In June 2020, the FASB issued ASU 2020-05, which delays the adoption dates for ASU 2016-02 for non-public entities to fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022. Early adoption is allowed. The Company expects to recognize a right-of-use asset and corresponding lease liability for its real estate operating leases upon adoption, expecting to use the modified retrospective approach for the adoption of this ASU.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments- Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which amends existing guidance on the impairment of financial assets and adds an impairment model that is based on expected losses rather than incurred losses and requires an entity to recognize as an allowance its estimate of expected credit losses for its financial assets. An entity will apply this guidance through a cumulative-effect adjustment to retained earnings upon adoption (a modified-retrospective approach) while a prospective transition approach is required for debt securities for which an other-than-temporary impairment had been recognized before the effective date. For public business entities that meet the definition of a Securities and Exchange Commission, or the SEC, filer, excluding entities eligible to be smaller reporting companies as defined by the SEC, adoption is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. For SEC filers that are eligible to be smaller reporting companies and for all other entities, this ASU is effective for fiscal years beginning after December 15, 2022, and interim periods within those fiscal years. Early adoption is permitted. The Company is in the process of evaluating the impact of the adoption on its financial statements and related disclosure.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820), Disclosure Framework- Changes to the Disclosure Requirements for Fair Value Measurement*. This ASU amends the disclosure requirement in ASC 820, Fair Value Measurement, by adding, changing, or removing certain disclosures. It applies to all entities that are required under this guidance to provide disclosure about recurring or nonrecurring fair value measurements. This ASU is effective for all entities for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact the adoption of this ASU will have on its financial statements and related disclosures.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740)—Simplifying the Accounting for Income Taxes*, which simplifies various aspects related to the accounting for income taxes. This ASU removes exceptions to the general principles in Topic 740 related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. For public companies, this ASU is effective for interim and annual reporting periods beginning after December 15, 2020. For all other entities, the amendments are effective for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022. Early adoption

is permitted. The Company is currently evaluating the impact the adoption of this ASU will have on its financial statements and related disclosures.

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848)*, or ASU 2020-04. The amendments in ASU 2020-04 provide optional expedients and exceptions for applying generally accepted accounting principles to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. The amendments in this ASU are effective for all entities as of March 12, 2020 through December 31, 2022. An entity may elect to apply the amendments for contract modifications by Topic or Industry Subtopic as of any date from the beginning an interim period that includes or is subsequent to March 12, 2020, or prospectively from the date that the financial statements are available to be issued. Once elected for a Topic or an Industry Subtopic, the amendments must be applied prospectively for all eligible contract modifications for that Topic or Industry Subtopic. The Company is currently evaluating the impact of the adoption of this ASU on the Company's financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40)*. This ASU simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. Specifically the ASU removes: i) major separation models required under GAAP and ii) certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, which will permit more equity contract to qualify for the exception. For public companies, this ASU is effective for interim and annual reporting periods beginning after December 15, 2021. For all other entities, the amendments are effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2022. Early adoption is permitted. The Company is currently evaluating the impact of the adoption of this ASU on the Company's financial statements.

3. Fair Value Measurements

The Company measures certain financial assets and liabilities at fair value on a recurring basis. Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. A three-tier fair value hierarchy is established as a basis for considering such assumptions and for inputs used in the valuation methodologies in measuring fair value:

Level 1 Quoted prices in active markets for identical assets or liabilities.

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

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

The Company utilizes the market approach to measure fair value for its financial assets and liabilities. The market approach uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities.

The following table summarizes the Company's financial assets (cash equivalents, marketable securities and liabilities) at fair value as of December 31, 2019 (in thousands):

	Fair Value as of December 31, 2019	Basis for Fair Value Measurements		
		(Level 1)	(Level 2)	(Level 3)
Assets:				
Money market funds, included in cash and cash equivalents	$ 2,482	$ 2,482	$ —	$ —
Fixed income mutual funds, included in short-term investments	969	969	—	—
Total	$ 3,451	$ 3,451	$ —	$ —
Liabilities:				
Derivative instrument	4,719	—	—	4,719
Total	$ 4,719	$ —	$ —	$ 4,719

The money market funds are highly liquid and primarily invest in short-term fixed income securities issued by the U.S. government and U.S. government agencies. The Company's available-for-sale investments are comprised of short-term investments in fixed income mutual funds, which primarily consist of debt securities issued by the U.S. government and U.S. government agencies and corporate bonds and notes.

The following is a summary of the Company's available-for-sale debt securities (in thousands):

	December 31, 2019
Cost basis	$ 968
Unrealized gain	1
Fair value	$ 969

The following table sets forth a summary of the changes in the fair value of the Company's Level 3 financial instruments (in thousands):

	Derivative Instrument
Fair value as of January 1, 2019	$ —
Initial fair value of derivative instrument	5,997
Change in fair value included in other income (expense), net	(1,278)
Fair value as of December 31, 2019	$ 4,719

The fair value of the derivative instrument has been estimated at the date of inception and at the subsequent balance sheet date using a two-step approach to valuation, employing a probability-weighted scenario valuation method and then comparing the instrument's value with-and-without the derivative features in order to estimate their combined fair value, using unobservable inputs, which are classified as Level 3 within the fair value hierarchy. In order to estimate the fair value of the 2019 Convertible Notes, the Company estimated the future payoff in each scenario, discounted them to a present value and then probability weighted them based upon the Company's best estimate of the likelihood of each event occurring.

The primary inputs for the valuation approach included the probability of achieving various settlement scenarios that provide the lenders the rights or the obligations to receive cash or a variable number of shares upon the completion of a capital transaction. The probability assumptions as of inception dates included a 99% probability of

conversion into equity in a capital transaction, discount rates of 1.7% - 11.5% were applied, and the expected time to the occurrence of the respective scenarios ranged between 0.5 years and 1.8 years.

4. Balance Sheet Components

Inventory

Inventories consist of the following (in thousands):

	December 31, 2019
Raw materials	$ 2,734
Work-in-process	135
Finished goods	5,031
Total	$ 7,900

Property and Equipment, net

Property and equipment, net consists of the following (in thousands):

	December 31, 2019
Machinery, equipment, furniture and fixtures	$ 3,527
Computer equipment and software	2,730
Leasehold improvements	2,402
	8,659
Less: Accumulated depreciation	(7,849)
Property and equipment, net	$ 810

Depreciation expense for the year ended December 31, 2019 was $0.4 million.

Accrued Liabilities

Accrued liabilities consist of the following (in thousands):

	December 31, 2019
Payroll and related expenses	$ 3,706
Inventory-raw materials	1,484
Professional fees	764
Deferred rent, current	276
Clinical trials	129
Other	368
	$ 6,727

5. Commitments and Contingencies

Facility Lease

In August 2011, the Company entered into a non-cancelable operating lease for combined office and manufacturing facilities in Mountain View, California. The lease was scheduled to expire in April 2019 and was amended in May 2018 to extend it through June 2024. The terms of the facility lease provide for rental payments on a graduated scale; however, rent expense is recognized on a straight-line basis over the lease term. The Company has an option to extend the lease for a period of 5 years, commencing on July 1, 2024 and expiring on June 30, 2029. In

conjunction with the original lease agreement, the Company obtained a letter of credit for $0.9 million in lieu of a security deposit. In May 2019, the letter of credit was amended and reduced to $0.7 million.

Rental payments were $1.2 million per year for the period from May 2018 through April 2019, and range from $2.9 million to $3.3 million per year over the extended term of the lease. Rent expense for the year ended December 31, 2019 was approximately $2.8 million. As of December 31, 2019, $2.0 million was recorded as deferred rent expense.

The Company's future payments under the non-cancellable operating lease (in thousands) are as follows:

	December 31, 2019
2020	$ 2,990
2021	3,079
2022	3,172
2023	3,267
2024	1,666
Remaining	—
Total	$ 14,174

Indemnifications

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and may provide for indemnification of the counterparty. The Company's exposure under these agreements is unknown because it involves claims that may be made against it in the future but have not yet been made. To date, the Company has not been subject to any claims or been required to defend any action related to its indemnification obligations.

The Company indemnifies each of its directors and officers for certain events or occurrences, subject to certain limits, while the director is or was serving at the Company's request in such capacity, as permitted under Delaware law and in accordance with its certificate of incorporation and bylaws. The term of the indemnification period lasts as long as the director or officer may be subject to any proceeding arising out of acts or omissions of such individual in such capacity. The maximum amount of potential future indemnification is unlimited. The Company believes that the fair value of these indemnification obligations is minimal. Accordingly, the Company has not recognized any liabilities relating to these obligations as of December 31, 2019.

Contingencies

From time to time, the Company may have certain contingent liabilities that arise in the ordinary course of business activities. The Company accrues a liability for such matters when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. The Company determined that no accrual was required as of December 31, 2019.

Legal Proceedings

From time to time, the Company may become involved in legal proceedings arising from the ordinary course of its business. The Company may also pursue litigation to assert its legal rights and such litigation may be costly and divert the efforts and attention of its management and technical personnel which could adversely affect its business. The Company is currently not aware of any matters that could have a material adverse effect on the financial position, results of operations or cash flows.

6. Debt

2014 Term Loan

In November 2014, the Company entered into a Term Loan Agreement, as amended, for total borrowings of up to $40.0 million with Capital Royalty Partners II L.P. and its affiliates Capital Royalty Partners II – Parallel Fund "A" L.P. and Parallel Investment Opportunities Partners II L.P., or collectively, CRG. As of December 31, 2019, $40.0 million has been funded under this Term Loan Agreement, or the Term Loan. The Term Loan bears interest at a rate of 12.5% per annum based on a 360-day year and actual days elapsed. Payments under the Term Loan are made quarterly with payment dates fixed at the end of each calendar quarter, or the Payment Dates. Through September 30, 2017, the Company had the option to pay interest as follows: 8.0% per annum paid in cash and 4.5% per annum paid-in-kind, or PIK, by increasing the principal of the Term Loan. On each Payment Date through September 30, 2016, the Company elected the PIK option, issuing PIK notes totaling $2.7 million. On each Payment Date from December 31, 2016 through December 31, 2019, the Company paid all interest due in cash.

The Term Loan is interest-only through September 30, 2019. Following the interest-only period, principal payments are made in equal installments at the end of the next four calendar quarters, with the final payment due on September 30, 2020. The Term Loan includes a fee upon repayment of the loan equal to 5% of the aggregate principal amount being prepaid or repaid. The Company is ratably accreting the fee over the life of the loan.

In connection with the Term Loan, the Company paid total closing fees of $0.8 million and issued warrants to purchase 576 shares of its Series I redeemable convertible preferred stock at $718.00 per share. The initial fair value of the warrants was $0.3 million and resulted in a discount to the Term Loan, which is being amortized to interest expense over the life of the loan using the effective interest method. Prior to 2019, these warrants were modified to be exercisable for 576 shares of common stock at $1.00 per share, all of which remain outstanding as of December 31, 2019.

In October 2019, the Term Loan Agreement was amended to extend the interest-only period through December 31, 2019. This amendment was accounted as a debt modification and the impact on the Term Loan's effective interest rate was a decrease from 15.0% to 14.7%.

The Term Loan is collateralized by substantially all of the Company's assets. The Term Loan Agreement contains customary representations and warranties, covenants, events of default and termination provisions. The affirmative covenants include, among other things, that the Company achieve minimum annual revenue thresholds and maintain a minimum balance of cash and cash equivalents.

If the Company does not achieve the annual minimum revenue requirement, the Company has the right to cure the event of default six months prior to or within 90 days after the end of the respective calendar year through additional issuance of equity securities or subordinate borrowings in an amount equal to two times the shortfall between the revenue covenant and the actual revenue generated during the year. The minimum cash balance for the year ended December 31, 2019 was $2.0 million. The minimum annual revenue threshold was $40.0 million for the year ended December 31, 2019. The Company was in compliance with the Term Loan covenant for the year ended December 31, 2019 as it raised subordinate borrowings in an amount equal to two times the shortfall between the revenue covenant and the actual revenue of $37.0 million for the year ended December 31, 2019 prior to the close of the year. Subordinated borrowings may contain representations, warranties, covenants and events of default no more burdensome or restrictive than those contained in the Term Loan Agreement unless such terms are also offered to CRG, must have a maturity date later than the maturity date of the Term Loan, and no cash payments of principal or interest may be required prior to the maturity date of the Term Loan. As of December 31, 2019, the Company was in compliance with all applicable covenants of the Term Loan.

2019 Convertible Notes

In March and September 2019, Company issued the 2019 Convertible Notes to certain investors for aggregate proceeds of $21.3 million. The 2019 Convertible Notes are subordinated to the Term Loan. The 2019 Convertible Notes bear interest on the outstanding principal amount at the rate of 8.0% per annum and have a maturity date of December 31, 2020.

Upon the consummation of an equity financing with aggregate proceeds to the Company of not less than $18.0 million, or the Qualified Financing, the outstanding principal balance of the 2019 Convertible Notes and accrued but unpaid interest will convert into shares of capital stock issued in such Qualified Financing at a conversion price equal to 85% of the issuance price per share of such capital stock in such Qualified Financing. In the event the Company consummates, while the 2019 Convertible Notes remain outstanding, an equity financing that does not constitute a Qualified Financing, then the majority holders have the option to treat such equity financing as a Qualified Financing. If the Company does not complete a Qualified Financing prior to the maturity date while the 2019 Convertible Notes remain outstanding, the holders of the notes may elect to convert the outstanding principal and unpaid accrued interest into the Company's Series A' redeemable convertible preferred stock at a conversion price of $44.75 per share.

Upon the occurrence of a change of control, the 2019 Convertible Notes shall upon the election of the majority holders either (i) become due and payable upon the closing of such change of control in cash in an amount equal to (a) the outstanding principal amount plus any unpaid accrued interest, plus (b) a repayment premium equal to 100% of the outstanding principal amount, or (ii) be converted such that the outstanding principal balance of the notes and any unpaid accrued interest shall convert into shares of the Company's Series A' redeemable convertible preferred stock at a conversion price equal to $44.75 per share.

The 2019 Convertible Notes contain embedded derivative instruments, including automatic conversion into equity securities upon completion of a Qualified Financing, that are required to be bifurcated and accounted for separately as a single derivative instrument initially and subsequently measured at fair value with the change in fair value recorded in other income (expense), net in the statement of operations and comprehensive loss. The issuance date estimated fair values of the derivative instruments issued with the March and September 2019 notes were $4.1 million and $1.9 million, respectively, which were recorded as a debt discounts. As of December 31, 2019, the estimated fair value of the aggregate outstanding derivative instrument was $4.7 million.

The discount on the 2019 Convertible Notes is amortized over the contractual term ending on December 31, 2020, using the effective interest method. The annual effective interest rate is estimated at 11.1% per year. The interest expense for the year ended December 31, 2019 was $3.3 million, consisting of $1.1 million of contractual interest expense and $2.2 million amortization of debt discount arising from separation of the embedded derivative instrument. For the year ended December 31, 2019, $15.7 million of convertible notes were issued to related parties resulting in interest expense of $0.9 million.

As of December 31, 2019, future minimum payments for the Term Loan and 2019 Convertible Notes are as follows (in thousands):

	Term Loan	Convertible Notes
2020 minimum payments	$ 44,812	$ 21,343
Less: Unamortized debt discount	(205)	(2,692)
Less: Unaccreted backend fee	(421)	—
Less: Debt issuance cost	(24)	(14)
Total future minimum payments	$ 44,162	$ 18,637

As of December 31, 2019, the Company was in compliance with all applicable covenants of the 2019 Convertible Notes.

7. Redeemable Convertible Preferred Stock

In September 2016, the Company completed a recapitalization in which all then outstanding shares of redeemable convertible preferred stock were converted to common stock on a one-for-one basis pursuant to the original conversion terms specified in the Company's Certificate of Incorporation.

Under the Company's amended Certificate of Incorporation, the Company has one series of redeemable convertible preferred stock, designated as Series A'. As of December 31, 2019, the redeemable convertible preferred stock comprises (in thousands, except per share and share amounts):

	Number of Shares Authorized	Number of Shares Issued and Outstanding	Carrying Amount	Liquidation Value	Original Issue Price
Series A'	180,000,000	1,651,154	$ 73,568	$ 73,890	$ 44.75

The rights, preferences, privileges and restrictions granted to or imposed on the Company's redeemable convertible preferred stock or the holders thereof are as follows:

Dividends

The holders of redeemable convertible preferred stock shall be entitled to receive dividends, out of any assets legally available therefore, prior and in preference to any declaration or payment of any dividend to the common stockholders, at the rate of $3.5792 per share per annum on each outstanding share of redeemable convertible preferred stock, payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative and if less than the full amount of dividends payable on the redeemable convertible preferred stock is declared and paid, any such payments shall be made ratably among the holders of the redeemable convertible preferred stock in proportion to the total amount each holder would be entitled to receive if the full amount of dividends payable on the redeemable convertible preferred stock had been declared. As of December 31, 2019, no dividends had been declared.

Liquidation

In the event of any liquidation, dissolution or winding up of the Company, the holders of the Company's redeemable convertible preferred stock shall be entitled to receive, prior to any distribution of the Company's assets to the holders of common stock, an amount per share equal to $44.75 per share for each share of redeemable convertible preferred stock plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of redeemable convertible preferred stock shall be insufficient to permit the payment to such holders of the full amounts, then the entire assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of redeemable convertible preferred stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

Upon completion of the distributions to the holders of redeemable convertible preferred stock, the common stockholders shall receive all of the Company's remaining assets on a pro rata basis.

Conversion

The Company's redeemable convertible preferred stock is convertible into shares of common stock at the option of a holder on a one-for-one basis with the conversion ratio subject to adjustment in the event of certain dilutive stock issuances or other future events. The initial conversion price shall be $44.75 per share of redeemable convertible preferred stock. Conversion is automatic upon the closing of a firm commitment underwritten public offering in which the public offering price equals or exceeds $134.00 per share (adjusted to reflect stock dividends, stock splits or recapitalizations) and the aggregate proceeds raised equals or exceeds $50.0 million, or the date specified by written agreement of a majority of the preferred holders.

Voting Rights

The holders of redeemable convertible preferred stock shall have the right to one vote for each share of common stock into which such redeemable convertible preferred stock could then be converted. With respect to such vote, the holder shall have full voting rights and powers equal to the voting rights and powers of the holders of common stock, shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote, together with holders of common stock, with respect to any question upon which holders of common stock have the right to vote.

Redemption and Balance Sheet Classification

The redeemable convertible preferred stock is recorded within mezzanine equity because, while it is not mandatorily redeemable, it will become redeemable at the option of the holders upon the occurrence of certain deemed liquidation events that are considered not solely within the Company's control.

8. Common Stock

The Company's Certificate of Incorporation, as amended, authorizes the Company to issue 300,000,000 shares of $0.001 par value common stock.

The holders of common stock are entitled to receive dividends whenever funds and assets are legally available and when declared by the Board of Directors, subject to the prior rights of holders of redeemable convertible preferred stock outstanding. As of December 31, 2019, no dividends had been declared.

As of December 31, 2019, the Company had reserved common stock for future issuance as follows:

	Year Ended December 31, 2019
Conversion of Series A' redeemable convertible preferred stock	1,651,154
Outstanding options under the 2009 Plan	466,056
Total	2,117,210

9. Stock Option Plans

2009 Stock Plan

In September 2009, the Company adopted the 2009 Stock Plan, or the 2009 Plan, which provides for the granting of stock options to employees, directors and consultants of the Company. Stock options granted under the 2009 Plan may be either incentive stock options, or ISOs, or nonqualified stock options, or NSOs. ISOs may only be granted to Company employees (including officers and directors who are also employees). NSOs may be granted to company employees, directors and consultants.

The per share exercise price of ISOs shall be no less than 100% of the fair market value per share of the Company's common stock on the date of grant as determined by the Company's Board of Directors. The per share exercise price of NSOs shall be no less than 85% of the fair market value per share of the common stock on the date of grant as determined by the Company's Board of Directors. The exercise price of ISOs and NSOs granted to a 10% stockholder shall not be less than 110% of the estimated fair value of the shares on the date of grant as determined by the Company's Board of Directors.

The maximum term of each stock option grant is ten years. Time-based stock options granted under the 2009 Plan generally vest either ratably on a monthly basis over four years or 25% one year after the commencement of vesting (service inception date) and vest ratably thereafter on a monthly basis over the next three years.

The 2009 Plan expired in September 2019; as a result, 5,303 shares that were available for issuance were retired.

2020 Stock Plan

In August 2020, the Company adopted the 2020 Stock Plan, or the 2020 Plan, which provides for the granting of stock options to employees, directors and consultants of the Company. Stock options granted under the 2020 Plan may be either ISOs, NSOs, stock appreciation rights, restricted stock awards, restricted stock unit awards or other stock awards. ISOs may only be granted to Company employees (including officers and directors who are also employees). Stock awards other than ISOs may be granted to company employees, directors and consultants.

The maximum term of each stock option grant is ten years. The exercise price of ISOs and NSOs granted to a 10% stockholder shall not be less than 110% of the estimated fair value of the shares on the date of grant as determined by the Company's Board of Directors.

The 2009 Plan will continue to govern the terms and conditions of the outstanding awards granted under it. Shares of common stock subject to awards granted under the 2009 Plan that are forfeited or lapse unexercised will become available for issuance subsequently under the 2020 Plan.

Activity under the 2009 Plan is set forth below:

		Options Outstanding		
	Shares Available for Grant	Number of Shares	Weighted-Average Exercise Price	Weighted Average Remaining Contractual Term (in Years)
Balances as of January 1, 2019	214,358	258,894	$ 22.00	7.39
Authorized/(Retired)	(5,303)	—		
Options granted	(216,517)	216,517	$ 14.36	
Options exercised		(1,893)	$ 16.95	
Options cancelled	7,462	(7,462)	$ 21.84	
Balances as of December 31, 2019	—	466,056	$ 18.45	7.89
Vested and exercisable as of December 31, 2019		239,451	$ 20.51	6.91
Vested and expected to vest as of December 31, 2019		466,056	$ 18.45	7.89

The following table summarizes information about stock options outstanding as of December 31, 2019:

	Options Outstanding			Options Vested	
Exercise Price	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (years)	Number of Shares	Weighted Average Exercise Price
$ 14.00	206,591	$ 14.00	9.55	44,579	$ 14.00
$ 22.00	259,465	$ 22.00	6.57	194,872	$ 22.00
	466,056	$ 18.45	7.89	239,451	$ 20.51

As of December 31, 2019, the total unrecognized stock-based compensation expense related to unvested stock options was $2.0 million, which will be amortized on a straight-line basis over a weighted average remaining period of 2.89 years.

The aggregate intrinsic value is calculated as the difference between the exercise price of the underlying stock options and the fair value of the Company's common stock for stock options that were in-the-money at period end. The total intrinsic value of stock options exercised was $0 during the year ended December 31, 2019, determined at the date of each stock option exercise.

Early Exercise of Stock Options

The terms of the 2009 Plan permit the exercise of options granted under the 2009 Plan prior to vesting, subject to required approvals. The shares of common stock issued from the early exercise of unvested stock options are restricted and continue to vest over the original implied service period. The Company has the option to repurchase any unvested shares at the original purchase price upon any voluntary or involuntary termination. The shares purchased by the employees and non-employees pursuant to the early exercise of stock options are not deemed, for accounting purposes, to be outstanding until those shares vest. The cash received in exchange for exercised and unvested shares related to stock options granted is recorded as a liability for the early exercise of stock options in accrued liabilities on the accompanying balance sheet and will be transferred into common stock and additional

paid-in capital as the shares vest. As of December 31, 2019 there were 110 early exercised options subject to repurchase.

The Company recognized stock-based compensation as follows:

	Year Ended December 31, 2019
Cost of goods sold	$ 29
Research and development	444
Selling, general and administrative	969
Total stock-based compensation	$ 1,442

Stock-Based Compensation Associated with Awards to Employees

The total fair value of options that vested during the year ended December 31, 2019 was $1.0 million. During the year ended December 31, 2019, the Company granted stock options to employees to purchase 216,517 shares of common stock, with a weighted average grant date fair value of $6.32 per share.

The Company estimated the fair value of stock options using the Black-Scholes option pricing model. The fair value of employee stock options is being amortized on a straight-line basis over the requisite service period of the awards. The fair value of employee stock options was estimated using the following assumptions for the year ended December 31, 2019:

	Year Ended December 31, 2019
Expected term (in years)	6.3
Expected volatility	44% - 65%
Weighted average risk-free interest rate	2.0% - 2.3%
Fair value of common stock	$14.00 - $22.00
Dividend yield	—%

The fair value of the shares of common stock underlying the stock options has historically been determined by the Company's Board of Directors. Because there has been no public market for the common stock, the Company's Board of Directors has determined the fair value of the common stock at the time of grant of the option by considering a valuation performed by an unrelated third-party valuation firm as well as a number of objective and subjective factors including valuation of comparable companies, sales of redeemable convertible preferred stock to unrelated third parties, operating and financial performance, the lack of liquidity of capital stock and general and industry specific economic outlook, among other factors. The fair value of common stock was determined in accordance with applicable elements of the American Institute of Certified Public Accountants Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, or the Practice Aid.

For stock options granted from January 2019 until July 2019, the Company utilized the Option Pricing Method, or the OPM, as the primary method to determine the indication of common stock value by "backsolving" the value implied by the Series A' redeemable convertible preferred stock pricing. For stock options granted from July 2019 through December 2019, the Company utilized the market approach and the transaction approach outlined in the Practice Aid for the valuation of its equity. The market approach was used to represent the fair market value and fair value of the Company's equity based upon continuing operations as a private entity in the remain private scenario. The transaction approach was used to determine an indication of fair market value and fair value for the Company under an initial public offering and a merger and acquisition scenario. Once the Company determined its equity values for each exit event, the Company applied the Probability-Weighted Expected Return Method, or the PWERM, to determine the fair market value and fair value of its common stock. All probabilities and future exit events were based on the Company's expectations regarding the timing and method of liquidity.

The Company uses the Black-Scholes option-pricing model to estimate the fair value of options granted. Option valuation models, including the Black-Scholes option-pricing model, require the input of several assumptions. These assumptions include the risk-free rate of interest, expected dividend yield, expected volatility and the expected life of the award. The expected term of stock options represents the weighted-average period the stock options are expected to remain outstanding. The Company does not have sufficient historical exercise and post-vesting termination activity to provide accurate data for estimating the expected term of options and has opted to use the "simplified method," whereby the expected term equals the arithmetic average of the vesting term and the original contractual term of the option. The expected stock price volatility assumption was determined by examining the historical volatilities for industry peers, as the Company did not have any trading history for its common stock. The Company will continue to analyze the historical stock price volatility and expected term assumption as more historical data for the Company's common stock becomes available. The risk-free interest rate assumption is based on the U.S. Treasury instruments whose term was consistent with the expected term of the Company's stock options. The expected dividend assumption is based on the Company's history and expectation of dividend payouts.

The fair value of the underlying common stock will be determined by the Company's Board of Directors until such time as the common stock is listed on an established stock exchange or national market system.

Effective January 1, 2018, the Company made an accounting policy election to account for forfeitures as they occur.

10. Income Taxes

The components of income before taxes are as follows (in thousands):

	December 31, 2019
United States	$ (29,973)
International	—
	$ (29,973)

A reconciliation of the statutory U.S. federal rate to the Company's effective tax rate is as follows:

	December 31, 2019
Tax at federal statutory rate	21.0 %
State taxes, net of federal benefit	1.0 %
Research and development tax credit	2.0 %
Permanent differences	(1.7)%
FIN 48 Reserve	(0.4)%
Change in valuation allowance	(22.3)%
Other	0.4 %
Total	— %

The tax effects of temporary differences that give rise to significant components of the deferred tax asset are as follows (in thousands):

	December 31, 2019
Net operating loss carryforwards	$ 26,647
Research and development credits	9,516
Fixed assets, inventory and intangible assets	963
Accruals and reserves	1,034
Other	768
	38,928
Valuation allowance	(38,928)
Net deferred tax assets	$ —

The Company has established a full valuation allowance against its deferred tax assets due to the uncertainties surrounding the realization of such assets. The valuation allowance increased by $6.7 million during the year ended December 31, 2019.

As of December 31, 2019, the Company had net operating loss, or NOL, carryforwards of approximately $103.5 million and $75.8 million available to reduce future taxable income, if any, for federal and state income tax purposes, respectively. The net operating loss carryforwards begin expiring in 2020 and 2028, for federal and state purposes, respectively.

As of December 31, 2019, the Company had research and development credit carryforwards of approximately $1.7 million and $11.1 million available to reduce future taxable income, if any, for federal and state income tax purposes, respectively. The federal credit carryforwards begin expiring in 2036 and the state credits carryforward indefinitely.

Utilization of the Company's NOL and tax credit carryforwards may be subject to a substantial annual limitation due to the ownership change provisions included in the Internal Revenue Code, or Section 382, and similar state provisions. An annual limitation may result in the expiration of NOL and credit carryforwards before utilization. The Company has determined that it experienced a Section 382 ownership change in 2016, resulting in permanent limitations of its NOL and credit carryforwards. It has been determined that $233.6 million and $150.7 million of federal and state NOL carryforwards have been permanently limited, respectively. It has also been determined that $10.5 million of federal research and development credits have been permanently limited. The Company does not expect any additional NOL or credit carryforwards as of December 31, 2019 to expire as a result of Section 382.

Effective January 1, 2009, the Company adopted the provisions of ASC 740-10, *Accounting for Uncertainty in Income Taxes*. ASC 740-10 prescribes a comprehensive model for the recognition, measurement, presentation and disclosure in financial statements of any uncertain tax positions that have been taken or are expected to be taken on a tax return. As of December 31, 2019, the Company had unrecognized tax benefits of $1.3 million related to $0.2 million and $1.1 million of federal and state research and development tax credit carryforwards, respectively. It is unlikely that the amount of unrecognized tax benefits will significantly change over the next twelve months. No liability related to uncertain tax positions is recorded in the financial statements.

A reconciliation of the beginning and ending unrecognized tax benefit amount is as follows (in thousands):

	Year Ended December 31, 2019
Beginning balance	$ 1,159
Increase in balance related to tax positions taken during the current year	120
Increase in balance related to tax positions taken during prior years	1
Ending balance	$ 1,280

It is the Company's policy to include penalties and interest expense related to income taxes as a component of other expense and interest expense, respectively, as necessary. The Company determined that no accrual for interest and penalties was required as of December 31, 2019.

All of the Company's tax years will remain open for examination by the federal and state authorities for 3 and 4 years, respectively, from the date of utilization of the net operating loss carryforwards.

11. Net Loss per Share Attributable to Common Stockholders

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

	Year Ended December 31, 2019
Numerator:	
Net loss attributable to common stockholders	$ (29,973)
Denominator:	
Weighted-average common stock outstanding used to compute basic and diluted net loss per share	525,193
Net loss per share attributable to common stockholders, basic and diluted	$ (57.07)

The following potentially dilutive securities outstanding have been excluded from the computation of diluted weighted average shares outstanding because such securities have an antidilutive impact due to the Company's net loss, in common stock equivalent shares:

	Year Ended December 31, 2019
Redeemable convertible preferred shares	1,651,154
Options to purchase common stock	466,056
Unvested early exercised common stock options	110
Total Shares	2,117,320

Unaudited Pro Forma Net Loss per Share Attributable to Common Stockholders

Unaudited pro forma basic and diluted net loss per share attributable to common stockholders are computed as follows (in thousands, except share and per share data):

	Year Ended December 31, 2019 (unaudited)
Numerator:	
Net loss attributable to common stockholders	
Adjust:	
Pro forma net loss attributable to common stockholders	
Denominator:	
Weighted-average common stock outstanding used to compute basic and diluted net loss per share	
Adjust:	
Weighted-average common stock outstanding used to compute pro forma basic and diluted net loss per share	
Pro forma net loss per share attributable to common stockholders, basic and diluted	

12. 401(k) Savings Plan

On January 1, 2000, the Company established a defined contribution savings plan under Section 401(k) of the Internal Revenue Code. This plan covers substantially all employees who meet minimum age and service requirements and allows participants to defer a portion of their annual compensation on a pre-tax basis. To date, the Company has made no contributions to the 401(k) plan.

13. Subsequent Events

In connection with the preparation of the financial statements, the Company evaluated events subsequent to the balance sheet date of December 31, 2019 through October 12, 2020, the date the financial statements were available for issuance.

In January and March 2020, the Company raised $7.1 million and $5.4 million, respectively, through the sale and issuance of additional convertible notes, or the 2020 Convertible Notes. The proceeds received from the issuance of the 2020 Convertible Notes were used to fund operating expenses. The notes bear interest at 8.0% per year and have a maturity date of December 31, 2020. In the event that the Company completes a qualified equity financing while the notes remain outstanding, the outstanding principal and unpaid accrued interest shall automatically convert into the equity securities sold in such financing at 85% of the cash price paid per share for the equity securities. If the Company does not complete a qualified financing prior to the maturity date while the notes remain outstanding, the holders of the notes may elect to convert the outstanding principal and unpaid accrued interest into the Company's Series A' redeemable convertible preferred stock at a conversion price of $44.75 per share in lieu of repayment.

The COVID-19 pandemic and the resulting economic downturn are affecting business conditions in the industry in which the Company operates. Beginning in March 2020, the Company's net sales were negatively impacted by the COVID-19 pandemic as hospitals delayed or canceled elective procedures. In response to the pandemic, many state and local governments in the U.S. issued orders that temporarily precluded elective procedures in order to conserve scarce health system resources. The decrease in hospital admission rates and elective surgeries reduced demand for elective procedures using the Company's RNS System. The Company has taken necessary precautions to safeguard its employees, patients, customers, and other stakeholders from the COVID-19 pandemic, while maintaining business continuity to support its patients, customers and employees. The timing, extent and continuation of any increase in procedures, and any corresponding increase in sales of the Company's products, and whether there could be a future decrease in the current level of procedures as a result of the COVID-19 pandemic or otherwise, remain uncertain and are subject to a variety of factors.

In April 2020, the Company received $4.0 million from a federal Small Business Administration loan under the Paycheck Protection Program, or the PPP Loan. The note bears interest at 1.0% per year on the outstanding principal amount and matures 24 months from the date of the note. No payments are due for the six month period beginning on the date of the note. Payments of principal and interest are due over the following 18 months.

Through June 2020, the Term Loan Agreement was amended to extend the interest-only period through June 30, 2020 and to allow the Company to pay such interest entirely in kind by adding it to the aggregate principal of the loan. The Company paid $1.4 million in interest due on March 31, 2020 in kind and paid $1.4 million interest due on June 30, 2020 in cash.

In August 2020, the Company's Certificate of Incorporation was amended to create a new series of redeemable convertible preferred stock designated as Series B' and effect a 100:1 reverse stock split, among other changes including the automatic conversion of the Company's redeemable convertible preferred stock upon the closing of a firm commitment underwritten public offering in which the public offering price equals or exceeds $4.18 per share. The Company raised $33.0 million by issuing and selling 19,759,290 shares of its Series B' redeemable convertible preferred stock at a price of $1.6701 per share. All outstanding convertible notes and accrued unpaid interest were converted into shares of Series B' redeemable convertible preferred stock at such price. The Company is currently evaluating the impact of the conversion of convertible notes into Series B' redeemable convertible preferred stock.

In September 2020, the Company entered into a new Term Loan Agreement with CRG Partners IV L.P. and its affiliates for total borrowings of up to $60 million and borrowed $50 million, or the New Term Loan. Proceeds were used to repay principal of $44.1 million, interest of $1.3 million and fees of $2.2 million due under the outstanding Term Loan. In connection with the New Term Loan, the Company issued warrants to the lender for a total of 901,742 shares of Series B' redeemable convertible preferred stock. The Company is currently evaluating the impact of borrowings under the New Term Loan and repayment of the Term Loan.

The New Term Loan bears interest at a rate of 12.5% per year. Payments under the New Term Loan are made quarterly with payment dates fixed at the end of each calendar quarter. The New Term Loan is interest-only through September 30, 2023. Following the interest-only period, principal payments are made in equal installments at the end of the next eight calendar quarters, with the final payment due on September 30, 2025. The New Term Loan includes a fee upon repayment of the loan equal to 10% of the aggregate principal amount being prepaid or repaid.

Events Subsequent to Original Issuance of Financial Statements (Unaudited)

In connection with the reissuance of the financial statements, the Company has evaluated subsequent events through January 29, 2021, the date the financial statements were available to be reissued.

The Small Business Administration modified the terms of loans outstanding under the Paycheck Protection Program. Pursuant to this modification, no payments are due under the PPP Loan for the ten month period beginning on the date of the note. Payments of principal and interest are due over the following 14 months.

The conversion of convertible notes into shares of Series B' redeemable convertible preferred stock will be accounted for as a debt extinguishment with $4.1 million recognized as extinguishment gain in additional paid-in capital in the quarter ended September 30, 2020.

The repayment of the Term Loan will be accounted for as a debt extinguishment, which will result in an immaterial extinguishment loss. The remaining $10.0 million of the New Term Loan will be available to the Company for borrowing until March 31, 2022 if the Company achieves a revenue-based milestone in 2021.

The New Term Loan is collateralized by substantially all of the Company's assets. The New Term Loan Agreement contains customary representations and warranties, covenants, events of default and termination provisions. The financial covenants require that the Company achieve minimum annual revenue thresholds commencing in 2021 and maintain a minimum balance of cash and cash equivalents (see Note 1).

In November 2020, the Company's Board of Directors approved the re-pricing of all outstanding stock options for employees, officers and consultants to a market price of $0.01 per share. The Company is currently evaluating the impact of the repricing.

shares

Common stock

Prospectus

J.P. Morgan **Morgan Stanley**

Wells Fargo Securities **SVB Leerink**

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

The following table indicates the expenses to be incurred in connection with the offering described in this registration statement, other than underwriting discounts and commissions, all of which will be paid by us. All amounts are estimated except the SEC registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and the exchange listing fee.

	Amount
SEC registration fee	$ *
FINRA filing fee	*
Exchange listing fee	*
Accountants' fees and expenses	*
Legal fees and expenses	*
Transfer Agent's fees and expenses	*
Printing and engraving expenses	*
Miscellaneous	*
Total expenses	$ *

* To be provided by amendment.

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act. Our amended and restated certificate of incorporation that will be in effect on the closing of this offering permits indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, and our amended and restated bylaws that will be in effect on the closing of this offering provide that we will indemnify our directors and officers and permit us to indemnify our employees and other agents, in each case to the maximum extent permitted by the Delaware General Corporation Law.

We have entered into indemnification agreements with our directors and executive officers, whereby we have agreed to indemnify our directors and executive officers to the fullest extent permitted by law, including indemnification against expenses and liabilities incurred in legal proceedings to which the director or executive officer was, or is threatened to be made, a party by reason of the fact that such director or executive officer is or was a director, executive officer, employee or agent of NeuroPace, Inc., provided that such director or executive officer acted in good faith and in a manner that the director or executive officer reasonably believed to be in, or not opposed to, our best interests. At present, there is no pending litigation or proceeding involving any of our directors or executive officers regarding which indemnification is sought, nor are we aware of any threatened litigation that may result in claims for indemnification.

We maintain insurance policies that indemnify our directors and officers against various liabilities arising under the Securities Act and the Exchange Act that might be incurred by any director or officer in his or her capacity as such.

The underwriters are obligated, under certain circumstances, pursuant to the underwriting agreement to be filed as Exhibit 1.1 hereto, to indemnify us, our officers and our directors against liabilities under the Securities Act.

Item 15. Recent Sales of Unregistered Securities.

The following sets forth information regarding all unregistered securities sold since January 1, 2018.

1. From 2018 through 2019, we granted to certain of our executive officers and employees options to purchase shares of common stock with per share exercise prices ranging from $ to $ under our 2009 Stock Plan, or the 2009 Plan.

2. From 2018 through 2021, we issued and sold an aggregate of shares of common stock upon the exercise of options under our 2009 Plan at per share exercise prices ranging from $ to $, for an aggregate exercise price of $.

3. From 2020 through 2021, we granted to certain of our executive officers and employees options to purchase shares of common stock with per share exercise prices ranging from $ to $ under our 2020 Stock Plan, or the 2020 Plan.

4. From 2020 through 2021, we issued and sold an aggregate of shares of common stock upon the exercise of options under our 2020 Plan at per share exercise prices ranging from $ to $, for an aggregate exercise price of $.

5. In August 2020, we issued an aggregate of shares of Series B' convertible preferred stock to accredited investors at a purchase price of per share for aggregate cash proceeds of approximately $ million.

6. In September 2020, we issued warrants to purchase an aggregate of shares of Series B' convertible preferred stock to accredited investors at a per share exercise price of $.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering. Unless otherwise specified above, we believe these transactions were exempt from registration under the Securities Act in reliance on Section 4(a)(2) of the Securities Act (and Regulation D promulgated thereunder), or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or under benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed on the share certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about us. The sales of these securities were made without any general solicitation or advertising.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

Exhibit Number	Description of Exhibit
1.1*	Form of Underwriting Agreement.
3.1	Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect.
3.2*	Form of Amended and Restated Certificate of Incorporation of the Registrant, to be in effect upon the closing of this offering.
3.3	Amended and Restated Bylaws of the Registrant, as currently in effect.
3.4*	Form of Amended and Restated Bylaws of the Registrant, to be in effect upon the closing of this offering.
4.1*	Form of common stock certificate of the Registrant.
5.1*	Opinion of Cooley LLP.
10.1	Amended and Restated Investors' Rights Agreement, dated August 19, 2020, by and among the Registrant and the investors listed on Exhibit A thereto.
10.2	2009 Stock Plan.
10.3	Forms of Option Agreement, Stock Option Grant Notice and Notice of Exercise under the 2009 Stock Plan.
10.4	2020 Stock Plan.
10.5	Forms of Option Agreement, Stock Option Grant Notice and Notice of Exercise under the 2020 Stock Plan.
10.6*	2021 Equity Incentive Plan.
10.7*	Forms of Option Agreement, Stock Option Grant Notice and Notice of Exercise under 2021 Equity Incentive Plan.
10.8*	Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Award Agreement under the 2021 Equity Incentive Plan.
10.9*	2021 Employee Stock Purchase Plan.
10.10*	Form of Indemnification Agreement, by and between the Registrant and each of its directors and executive officers.
10.11	Offer Letter, dated July 23, 2019, by and between the Company and Michael Favet.
10.12	Offer Letter, dated November 4, 2020, by and between the Company and Irina Ridley.
10.13	Form of Warrant to purchase shares of common stock.
10.14	Form of Warrant to purchase shares of Series B' convertible preferred stock.
10.15	Term Loan Agreement, dated September 24, 2020, by among the Company, the Subsidiary Guarantors from time to time party thereto, the Lenders from time to time party thereto and CRG Servicing LLC.
23.1*	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.
23.2*	Consent of Cooley LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on signature page to this registration statement).

* To be submitted or filed by amendment.

(b) Financial statement schedules.

All financial statement schedules are omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or the notes thereto.

Item 17. Undertakings.

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Mountain View, State of California, on , 2021.

NEUROPACE, INC.

By: _____

Michael Favet
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Michael Favet, Rebecca Kuhn and Irina Ridley, and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in their name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by this registration statement that is to be effective on filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
Michael Favet	Director, President and Chief Executive Officer (Principal Executive Officer)	, 2021
Rebecca Kuhn	Chief Financial Officer and Vice President, Finance and Administration (Principal Financial and Accounting Officer)	, 2021
Frank Fischer	Director	, 2021
Greg Garfield	Director	, 2021
Rishi Gupta	Director	, 2021
Nael Karim Kassar	Director	, 2021
Joseph S. Lacob	Director	, 2021
Evan Norton	Director	, 2021
Renee Ryan	Director	, 2021

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

NEUROPACE, INC.

The undersigned, Michael L. Favet and Rebecca Kuhn, hereby certify that:

1. They are the duly elected and acting Chief Executive Officer and President and Chief Financial Officer, Vice President, Finance and Administration, and Assistant Secretary, respectively, of NeuroPace, Inc., a Delaware corporation.

2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on November 19, 1997.

3. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

4. The Amended and Restated Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

"ARTICLE I

The name of this corporation is NeuroPace, Inc. (the "Corporation").

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

(A) Effective immediately upon the filing of this Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation") with the Secretary of State of the State of Delaware (the "Effective Time"): (i) each 100 outstanding shares of Common Stock (as defined below) shall be combined and reconstituted into one (1) fully paid and non-assessable share of outstanding Common Stock; and (ii) each 100 outstanding shares of Series A' Preferred Stock (as defined below) shall be combined and reconstituted into one (1) fully paid and non-assessable share of outstanding Series A' Preferred Stock; ((i)-(ii), collectively, the "Reverse Stock Split").

(B) The Reverse Stock Split shall be effected for each class or series of Common Stock and Series A' Preferred Stock on a stock certificate by stock certificate basis, such that any fractional shares of Common Stock or Series A' Preferred Stock, as applicable, resulting from the Reverse Stock Split and held by a single record holder shall be aggregated. No fractional shares of Common Stock or Series A' Preferred Stock shall be issued upon the combination of any such shares in the Reverse Stock Split. If the Reverse Stock Split would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value (as determined by the Corporation's Board of Directors (as defined below)) of one share of Common Stock or Series A' Preferred Stock, as applicable, as of the Effective Time (after giving effect to the foregoing Reverse Stock Split), rounded up to the nearest whole cent.

(C) The Reverse Stock Split shall occur whether or not the certificates representing such shares of Common Stock or Series A' Preferred Stock are surrendered to the Corporation or its transfer agent.

(D) The par value of each share of capital stock following the Reverse Stock Split shall be as stated in Article V(A) below. All of the share amounts, amounts per share and per share numbers for the Common Stock and the Series A' Preferred Stock, as applicable, set forth herein have been adjusted to give effect to the Reverse Stock Split.

ARTICLE V

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 135,393,734 shares, each with a par value of $0.001 per share, of which (a) 74,636,348 shares shall be Common Stock and (b) 60,757,386 shares shall be Preferred Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding plus the number of shares thereof issuable upon conversion of Preferred Stock then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Certificate of Incorporation may be issued from time to time in one or more series. 1,651,154 shares of the Preferred Stock shall be designated as "Series A' Preferred Stock" and 59,106,232 shares of the Preferred Stock shall be designated as "Series B' Preferred Stock". The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article V(B).

1. **Dividend Provisions.**

(a) **Preferred Stock.** The holders of Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of $1.79 per share of Series A' Preferred Stock (as adjusted for stock splits, stock dividends, reclassification and the like) per annum and $0.1336 per share of Series B' Preferred Stock (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Preferred Stock, payable only when, as and if declared by the Corporation's board of directors ("Board of Directors"). Such dividends shall not be cumulative and if less than the full amount of dividends payable on the Preferred Stock is declared and paid, any such payments shall be made ratably among the holders of the Preferred Stock in proportion to the total amount each such holder would be entitled to receive if the full amount of dividends payable on the Preferred Stock had been declared.

(b) **Common Stock.** After declaration and payment of the full amount of the dividends pursuant to Section 1(a) above, any additional dividends declared shall be distributed among holders of Preferred Stock and Common Stock based on the number of shares of Common Stock held by each (assuming conversion of all Preferred Stock). No dividend shall be paid to the holders of Common Stock unless an equal or greater dividend is first paid to the holders of Preferred Stock.

2. **Liquidation Preference.**

(a) **Series B' Preferred Stock Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (including any Liquidation Event (as defined below)), the holders of the Series B' Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series A' Preferred Stock and Common Stock by reason of their ownership thereof, and subject to the terms of the Corporation's Management Incentive Plan (the "MIP"), an amount equal to the Series B' Liquidation Preference. The term "Series B' Liquidation Preference" shall mean (i) as of and following the date of the Initial Closing (as defined in the Corporation's Series B' Preferred Stock Purchase Agreement, of or near even date herewith, by and among the Corporation and the Purchasers listed therein (the "Stock Purchase Agreement")) and prior to the date of the Deferred Closing (as defined in the Stock Purchase Agreement), 2.75 times the Original Issue Price of Series B' Preferred Stock (as defined below) and (ii) as of and following the date of the Deferred Closing, either (x) 2.75 times the Original Issue Price of Series B' Preferred Stock if the Corporation's actual cash-burn between the Initial Closing and December 31, 2021 is determined by the Board of Directors to be 110% or less of the Corporation's business plan cash-burn for such time period as approved by the Board of Directors, or (y) otherwise 3 times the Original Issue Price of Series B' Preferred Stock, for each share of Series B' Preferred Stock then held by them, plus all declared but unpaid dividends thereon. "Original Issue Price of Series B' Preferred Stock" means $1.6701 per share of Series

B' Preferred Stock (as adjusted for stock splits, stock dividends, reclassification and the like). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of Series B' Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B' Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Series A' Preferred Stock Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (including any Liquidation Event), after full payment of the Series B' Liquidation Preference, the holders of the Series A' Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, and subject to the terms of the MIP, an amount equal to the Original Issue Price of Series A' Preferred Stock (as defined below) for each share of Series A' Preferred Stock then held by them, plus all declared but unpaid dividends thereon (the "Series A' Liquidation Preference"). "Original Issue Price of Series A' Preferred Stock" means $22.375 per share of Series A' Preferred Stock (as adjusted for stock splits, stock dividends, reclassification and the like). The Original Issue Price of Series B' Preferred Stock and Original Issue Price of Series A' Preferred Stock are herein referred to, each, as an "Original Issue Price". If, upon the occurrence of such event, the assets and funds thus distributed among the holders of Series A' Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A' Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) **Remaining Assets.** Upon the completion of the distributions required by Sections 2(a) and 2(b) above and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, and subject to the terms of the MIP, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of the Series B' Preferred Stock, Series A' Preferred Stock and the Common Stock pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of this Certificate of Incorporation immediately prior to such liquidation, dissolution or winding up of the Corporation (including any Liquidation Event).

(d) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, shall be deemed to occur if the Corporation shall sell, convey, lease, license or otherwise dispose of or encumber all or substantially all of its property or business or merge into or consolidate with any other corporation or entity (other than for purposes of changing domicile without effecting a substantive change in ownership) or effect any other transaction or series of related transactions

in which more than fifty (50%) of the voting power of the Corporation is disposed of (other than for purposes of a bona fide equity financing in which the Corporation is the surviving corporation) (a "Liquidation Event").

(ii) **Escrow/Earnout Priority.** In the event of a Liquidation Event, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the applicable agreement shall provide that (x) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2(a), 2(b) and 2(c) as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event and (y) any additional consideration that becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2(a), 2(b) and 2(c) after taking into account the previous payment of the Initial Consideration as part of the same transaction.

(iii) **Valuation of Consideration.** In the event of a Liquidation Event as described in Section 2(d)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors, which majority shall include two of three of one of the Series Preferred Directors (as defined below) designated to the Board of Directors by OrbiMed Private Investments VI, LP (so long as OrbiMed Private Investments VI, LP holds such right to designate any Series Preferred Directors), the Series Preferred Director designated to the Board of Directors by Accelmed Partners II L.P. (so long as Accelmed Partners II L.P. holds such right to designate any Series Preferred Directors) and one of the Series Preferred Directors designated to the Board of Directors by KCK Ltd. (so long as KCK Ltd. holds such right to designate any Series Preferred Directors) ("Series Preferred Director Majority").

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(d)(iii)(A) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors, including the Series Preferred Director Majority).

(iv) **Notice of Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; *provided*, *however*, that such periods may be shortened upon the written consent of the Requisite Preferred Holders (as defined below); and, provided, further, that the Corporation promptly gives written notice to all holders of Preferred Stock that did not consent to the shortening of such periods. For purposes of this Certificate of Incorporation, "Requisite Preferred Holders" shall mean holders of a majority of the outstanding shares of Preferred Stock.

(v) **Effect of Noncompliance.** In the event the requirements of this Section 2(d) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(d)(iv) hereof.

3. **Redemption**. The Preferred Stock is not redeemable.

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.**

(A) Subject to Section 4(c), each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share (*provided* that, shares of Series B' Preferred Stock shall not be convertible solely at the option of the holder thereof until a date that is the earlier of the date of the (x) consummation of the Deferred Closing and the (y) occurrence of the Deferred Closing Termination Event (the "Series B' Deferred Closing Conversion Restriction"), *provided*, *further*, for the avoidance of doubt, that the Series B' Deferred Closing Conversion Restriction shall be disregarded for purposes of determining an "as-converted basis" for such Series B' Preferred Stock with respect to voting rights and liquidation rights, both herein and in any other agreement by and among the

Company and the holders of Series B' Preferred Stock), at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable "Conversion Price", determined as hereafter provided, in effect on the date the certificate is surrendered for conversion (such result, the "Conversion Rate"). The applicable initial Conversion Price per share shall be the applicable Original Issue Price of each such series of Preferred Stock as set forth in this Certificate of Incorporation. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d) below.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate applicable to such Preferred Stock at the time in effect for such shares immediately upon the Corporation's sale of its Common Stock in a firm commitment underwritten initial public offering (a "Public Offering") pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), the public offering price of which is not less than 2.5 times the Original Issue Price of Series B' Preferred Stock (adjusted to reflect subsequent stock dividends, stock splits or recapitalizations) (a "Qualified Public Offering"). Each share of Series A' Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate applicable to the Series A' Preferred Stock at the time in effect for such shares immediately upon the date specified by written consent or written agreement of the holders of a majority of the outstanding shares of Series A' Preferred Stock (which majority shall include KCK Ltd. and OrbiMed Private Investments VI, LP (so long as each such entity holds shares of the Corporation's capital stock). Each share of Series B' Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate applicable to the Series B' Preferred Stock at the time in effect for such shares immediately upon (A) the date specified by written consent or written agreement of the holders of a majority of the outstanding shares of Series B' Preferred Stock and the Requisite Significant New Holders (as defined below) and (B) any Public Offering approved by two New Investors that have committed to the investment of an aggregate dollar amount of $7,499,900 or more (each, a "Significant Investor") in the Initial Closing and the Deferred Closing combined as set forth in Exhibit A and Exhibit I of the Stock Purchase Agreement, respectively (such two Significant Investors, together, the "Requisite Significant New Holders"); *provided* that, (x) the number of Significant Investors constituting the Requisite Significant New Holders shall be reduced from two Significant Investors to one Significant Investor that is not a Defaulting Purchaser (as defined in the Stock Purchase Agreement) if one Significant Investor does not or two Significant Investors do not invest the dollar amount such New Investor committed to investing in the Deferred Closing, and (y) the Requisite Significant New Holders shall be deemed to be the Requisite Preferred Holders if three Significant Investors do not invest the dollar amount such Significant Investors committed to investing in the Deferred Closing. Any shares of Preferred Stock so converted may not be reissued. As used in this Section 4(b), "New Investor" shall mean a stockholder of the Corporation who is not a holder of Common Stock or Preferred Stock on the Effective Date (as defined below) or an affiliate of a holder of Common Stock or Preferred Stock on the Effective Date.

(c) **Mechanics of Conversion.** Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the Corporation or of any transfer agent for such Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The applicable Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, at any time after the date upon which the first share of Series B' Preferred Stock was first issued (the "Effective Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the applicable Conversion Price of the applicable Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the applicable Conversion Price of the applicable Preferred Stock in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price of the applicable Preferred Stock by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise, conversion or exchange, as applicable, of all outstanding options, rights or convertible or exchangeable securities of the Corporation immediately prior to such issuance) (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of Outstanding Common plus the number of shares of such Additional Stock.

(B) No adjustment of the applicable Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that

any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of such Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the applicable Conversion Price above the applicable Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors, including the Series Preferred Director Majority, irrespective of any accounting treatment.

(E) In the case of the issuance (whether before, on or after the Effective Date) of options to purchase or rights to subscribe for Additional Stock, securities by their terms convertible into or exchangeable for Additional Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i) and Section 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 4(d)(i)(C) and 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution

adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 4(d)(i)(C) and 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the applicable Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the applicable Conversion Price of the applicable Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Additional Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of equity securities or securities convertible into or redeemable for equity securities issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Effective Date, other than:

(A) Common Stock issued pursuant to a transaction described in Section 4(d)(iii) hereof,

(B) Shares of Common Stock issuable or issued to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors (including the Series Preferred Director Majority) with respect to plans (and amendments to plans) adopted after the date of this Certificate of Incorporation,

(C) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit

arrangements, equipment financings or similar transactions approved by the Board of Directors, including the Series Preferred Director Majority,

(D) Shares of Common Stock or Preferred Stock issuable upon exercise of option or warrants outstanding as of the date of this Certificate of Incorporation,

(E) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors, including the Series Preferred Director Majority,

(F) Shares of Common Stock issued or issuable upon conversion of the Preferred Stock,

(G) Shares of Common Stock issued or issuable in a Public Offering in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock,

(H) Capital stock, or options or warrants to purchase capital stock, issued in connection with strategic partnering, licensing or similar transactions, or to research funds or institutions, approved by the Board of Directors, including the Series Preferred Director Majority, and

(I) Capital stock, or options or warrants to purchase capital stock, issued in connection with real property leases approved by the Board of Directors, including the Series Preferred Director Majority.

(iii) In the event the Corporation should at any time or from time to time after the Effective Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the applicable Conversion Price of the Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Effective Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the applicable Conversion Price of the Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(iii), then, in each such case for the purpose of this Section 4(e), the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the applicable Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** Without the written consent of the Requisite Preferred Holders, or if applicable and as the case may require for such applicable terms, the Requisite Significant New Holders, the holders of at least a majority of the outstanding shares of the Series B' Preferred Stock or the holders of at least a majority of the outstanding shares of the Series A' Preferred Stock (which majority shall include KCK Ltd. and OrbiMed Private Investments VI, LP (so long as each such entity holds shares of the Corporation's capital stock)), the Corporation will not, by amendment of this Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the applicable terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with one-half being rounded upward). Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the applicable Conversion Price of the Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the applicable Conversion Price for such share of Preferred Stock at the time in effect and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(k) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation, or given by electronic communication in compliance with the provisions of the Delaware General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

(l) **Waiver**. Any of the rights, powers or preferences or other terms of the Preferred Stock set forth herein may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the Requisite Preferred Holders; *provided*, that, notwithstanding anything else set forth to the contrary herein, any provision of Section 4(d) and any adjustments made or required to be made to the Conversion Price applicable to Series A' Preferred Stock pursuant hereto may only be waived by the holders of at least a majority of the outstanding shares of the Series A' Preferred Stock (which majority shall include KCK Ltd. and OrbiMed Private Investments VI, LP (so long as each such entity holds shares of the Corporation's capital stock)); *provided further*, that, notwithstanding anything else set forth to the contrary herein, any waiver of any provision of Section 4(d) and any adjustments made or required to be made to the Conversion Price applicable to the Series B' Preferred Stock shall require the consent of the holders of at least a majority of the outstanding shares of the Series B' Preferred Stock (which majority shall include the Requisite Significant New Holders).

(m) **Special Mandatory Conversion**.

(i) Trigger Event. In the event that any Deferred Closing Purchaser (as defined in the Stock Purchase Agreement) (or one or more affiliated entities or successors or assigns of such Deferred Closing Purchaser) fails to purchase all shares of Series B' Preferred Stock set forth opposite each such Deferred Closing Purchaser's name on Exhibit I of the Stock Purchase Agreement (other than because of (i) the occurrence of a Deferred Closing Termination Event (as defined in the Stock Purchase Agreement), (ii) the nonoccurrence of the Deferred Closing Trigger Date (as defined in the Stock Purchase Agreement) or (iii) the Corporation's election at its sole discretion to not conduct a Deferred Closing (as defined in the Stock Purchase Agreement)) in a Deferred Closing pursuant to Section 1.2(b) of the Stock Purchase Agreement, such Deferred Closing Purchaser shall immediately upon the consummation of the Deferred Closing be subject to the special mandatory conversion provisions (the "Special Mandatory Conversion Provisions") set forth pursuant to this Section 4(m), pursuant to which all shares of Series B' Preferred Stock then held by such Deferred Closing Purchaser (and any shares of Series B' Preferred Stock transferred or assigned by such Deferred Closing Purchaser) shall automatically, and without any further action on the part of such Deferred Closing Purchaser or the Corporation, be converted into Common Stock such that each ten (10) (as appropriately adjusted for stock splits, stock dividends, recapitalizations, reclassifications, reorganizations, combinations and the like) shares of Series B' Preferred Stock then held by such Deferred Closing Purchaser (and any shares of Series B' Preferred Stock transferred or assigned by such Deferred Closing Purchaser) shall be automatically converted into one (1) share of Common Stock effective immediately upon the consummation of the Deferred Closing. Such conversion is referred to as a "Special Mandatory Conversion." All rights with respect to the Series B' Preferred Stock converted pursuant to the Special Mandatory Conversion Provisions, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate upon such conversion (notwithstanding the failure of such Deferred Closing Purchaser to surrender any certificates for such shares), except only the rights of the

holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement), to receive the stock certificates representing the number of shares of Common Stock as set forth in this Section 4(m).

(ii) Procedural Requirements. Upon a Special Mandatory Conversion, such Series B' Preferred Stock shall be automatically converted without any further actions by the applicable Deferred Closing Purchaser (or any further actions by any transferee or assignee of shares of Series B' Preferred Stock of such Deferred Closing Purchaser, as applicable), whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and shall be deemed to be no longer outstanding, and all rights with respect thereto shall forthwith cease and terminate, except only the rights of the holder, upon surrender of his, her or its certificate or certificates therefor (or lost certificate affidavit and agreement), to receive the Common Stock shares to which such holder shall be entitled upon conversion thereof. Such conversion shall be deemed to have been made immediately upon the consummation of the Deferred Closing, and the person(s) entitled to receive the shares of Common Stock issuable under such conversion shall be treated for all purposes as the record holder(s) of such shares of Common Stock on such date.

5. **Voting Rights.**

(a) The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation (the "Bylaws"), and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) The holders of Preferred Stock, voting as a separate class, shall be entitled to elect seven (7) members of the Board of Directors (the "Series Preferred Directors") at each meeting or pursuant to each consent of the Corporation's stockholders for election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. The holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. The holders of the Common Stock and Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect all remaining members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the Delaware General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Certificate of Incorporation, and

vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office (including the Series Preferred Director Majority), though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; *provided*, *however*, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board of Directors' action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders in which all members of such class or series are present and voted. Any director may be removed during his or her term of office without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director.

6. **Protective Provisions.** Subject to the rights of Preferred Stock which may from time to time come into existence, so long as any shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends or recapitalizations), the Corporation shall not (whether by amendment of this Certificate of Incorporation, merger, reorganization, or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the Requisite Preferred Holders (and where specifically stated, the approval of the Requisite Significant New Holders, the holders of a majority of the outstanding shares of the Series B' Preferred Stock and/or the holders of a majority of the outstanding shares of the Series A' Preferred Stock (which majority shall include KCK Ltd. and OrbiMed Private Investments VI, LP (so long as each such entity holds shares of the Corporation's capital stock)), as applicable) and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(a) amend, alter or repeal any provision of this Certificate of Incorporation or the Bylaws, *provided*, that, the Corporation shall also obtain the approval of (x) the Requisite Significant New Holders and (y) the holders of a majority of the outstanding shares of the Series B' Preferred Stock for any such amendment, alteration or repeal of any provision of this Certificate of Incorporation or the Bylaws that adversely affects the powers, preferences or rights of the Series B' Preferred Stock, *provided*, *further*, that, the Corporation shall also obtain the approval of the holders of a majority of the outstanding shares of the Series A' Preferred Stock (which majority shall include KCK Ltd. and OrbiMed Private Investments VI, LP (so long as each such entity holds shares of the Corporation's capital stock)) for any such amendment, alteration or repeal of any provision of this Certificate of Incorporation or the Bylaws that adversely affects the powers, preferences or rights of the Series A' Preferred Stock;

(b) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the existing Preferred Stock with respect to voting, dividends, upon liquidation or redemption;

(c) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the Series B' Preferred Stock with respect to voting, dividends, upon liquidation or redemption, *provided*, that until the earlier of (i) September 30, 2022 or (ii) the consummation of the Deferred Closing, the Corporation shall also obtain the approval of (x) the Requisite Significant New Holders and (y) the holders of a majority of the outstanding shares of the Series B' Preferred Stock for such authorization, issuance or obligation to issue such equity security, *provided*, *further*, that, the Corporation shall not authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the Series A' Preferred Stock with respect to voting, dividends, upon liquidation or redemption until the earlier of (i) September 30, 2022 or (ii) the consummation of the Deferred Closing, the Corporation shall also obtain the approval of the holders of a majority of the outstanding shares of the Series A' Preferred Stock (which majority shall include KCK Ltd. and OrbiMed Private Investments VI, LP (so long as each such entity holds shares of the Corporation's capital stock)) for such authorization, issuance or obligation to issue such equity security;

(d) increase or decrease the size of the Board of Directors, *provided* that, any decrease to the size of the Board of Directors that adversely affects the rights of any Requisite Significant New Holder to designate a member of the Board of Directors shall first require the approval of such Requisite Significant New Holder, *provided*, *further*, that, any decrease to the size of the Board of Directors that adversely affects the rights of OrbiMed Private Investments VI, LP to designate a member of the Board of Directors shall first require the approval of OrbiMed Private Investments VI, LP, *provided*, *further*, that, any decrease to the size of the Board of Directors that adversely affects the rights of KCK Ltd. to designate a member of the Board of Directors shall first require the approval of KCK Ltd.;

(e) increase or decrease (other than by conversion contemplated by Section 4 hereof) the total number of authorized shares of Preferred Stock, or any series thereof, or Common Stock, *provided*, that, the Corporation shall also obtain the approval of any other party as required by this Section 6, and, until the earlier of September 30, 2022 or the consummation of the Deferred Closing, approval of the Requisite Significant New Holders for any increase or decrease of the total number of authorized shares of the Series B' Preferred Stock;

(f) make or obligate itself to make any transfer of cash or other property without consideration whether by way of dividend or otherwise, other than (A) dividends on Common Stock payable in Common Stock, (B) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation upon

termination of their employment or services pursuant to agreements providing for the right of said repurchase at the original cost thereof or the fair market value of such Common Stock as of the date of the repurchase, as determined in good faith by the Board of Directors, or (C) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to the bone fide exercise of rights of first refusal contained in agreements providing for such right, *provided*, that other than as listed in clauses (A), (B) and (C) of this subsection (f), approval of the Requisite Significant New Holders shall also be required for any redemption or repurchase of the Corporation's capital stock;

(g) conduct any liquidation, acquisition, reorganization, merger or consolidation by the Corporation of a business for consideration with a value of $1,000,000 or more in the aggregate (for avoidance of doubt, the foregoing shall not be deemed to modify the provisions of subsection (k) below);

(h) cause the Corporation to incur or assume or guarantee any indebtedness, obligation or encumbrance (or series of related indebtedness, obligations or encumbrances) on the assets of the Corporation in excess of $1,000,000, other than pursuant to agreements outstanding on the date of the filing of this Certificate of Incorporation;

(i) cause the acquisition of any stock, material assets or business of any entity, other than a wholly owned subsidiary, outside the ordinary course of business in any form of transaction or the formation of any entity for the purpose of establishing a material joint venture, partnership, manufacturing or other business relationship with another party, in each case to the extent such acquisition or formation would result in payments by the Corporation in excess of $1,000,000;

(j) enter into or obligate itself to enter into any exclusive license of assets (including intellectual property) that are material to the Corporation;

(k) conduct any liquidation, acquisition, reorganization, merger or consolidation of the Corporation or enter into any or obligate itself to enter into any change of control transaction or any other transaction or series of related transactions deemed to be a Liquidation Event, *provided*, that, the Corporation shall also obtain the approval of the Requisite Significant New Holders for any such Liquidation Event or other event if the price per share to be paid (and to be actually received upon the closing of such Liquidation Event, which, for the avoidance of doubt, shall include any portion of the consideration payable held back or held in escrow at the initial closing of such Liquidation Event) for each share of Series B' Preferred Stock in such Liquidation Event is less than 2.5 times the Original Issue Price of Series B' Preferred Stock (the "RSNH Liquidation Approval Condition");

(l) increase the number of shares of Common Stock reserved for issuance under the Corporation's 2020 Stock Plan or create any new stock option plan;

(m) indirectly take any of the actions in this Section 6 through a subsidiary of the Corporation;

(n) take any other action that has the effect of amending or eliminating the Series B' Preferred Stock or the rights thereof, without the approval of the holders of a majority of the outstanding shares of the Series B' Preferred Stock (which majority shall include the Requisite Significant New Holders if such action would otherwise require the approval of the Requisite Significant New Holders as set forth in this Certificate of Incorporation), or take any other action that has the effect of amending or eliminating the Series A' Preferred Stock or the rights thereof, without the approval of the holders of a majority of the outstanding shares of the Series A' Preferred Stock (which majority shall include KCK Ltd. and OrbiMed Private Investments VI, LP (so long as each such entity holds shares of the Corporation's capital stock)); and

(o) amend this Section 6, *provided*, that, (i) the Corporation shall also obtain the approval of (x) the Requisite Significant New Holders and (y) the holders of a majority of the outstanding shares of the Series B' Preferred Stock if such amendment would alter in any way the approval rights thereof in this Section 6 then in effect, and (ii) the Corporation shall also obtain the approval of the holders of a majority of the outstanding shares of the Series A' Preferred Stock (which majority shall include KCK Ltd. and OrbiMed Private Investments VI, LP (so long as each such entity holds shares of the Corporation's capital stock)) if such amendment would alter in any way the approval rights thereof in this Section 6 then in effect.

7. **Public Offering**. The Corporation shall not effect a Public Offering, other than a Qualified Public Offering, without first obtaining the approval the Requisite Significant New Holders, and any Public Offering effected without such approval shall be null and void *ab initio*, and of no force or effect.

8. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. This Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) of this Article V.

3. **Redemption.** The Common Stock is not redeemable.

4. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE VI

Subject to any additional vote required by this Certificate of Incorporation or the Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal the Bylaws.

ARTICLE VII

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws.

ARTICLE VIII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation. Such right shall include the right, to the fullest extent permitted by law, to be paid advancements for fees and expenses incurred to defend any such action or proceeding.

(C) Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VIII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE IX

To the maximum extent permitted from time to time under the law of the State of Delaware, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time being presented to its officers, directors or stockholders, other than (i) those officers, directors or stockholders who are employees of the Corporation and (ii) those opportunities demonstrated by the Corporation to have been presented to such officers, directors or stockholders expressly as a result of their activities as a director, officer or stockholder of the Corporation. No amendment or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities which such officer, director or stockholder becomes aware prior to such amendment or repeal.

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by the Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

* * *

IN WITNESS WHEREOF, the undersigned have executed this certificate on August 18, 2020.

/s/ Michael L. Favet

Michael L. Favet

Chief Executive Officer and President

/s/ Rebecca Kuhn

Rebecca Kuhn

Chief Financial Officer, Vice President, Finance and Administration, and Assistant Secretary

SIGNATURE PAGE TO AMENDED AND RESTATED CERTIFICATE OF INCORPORATION NEUROPACE, INC.

AMENDED AND RESTATED

BYLAWS

OF

NEUROPACE, INC.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

AMENDED AND RESTATED BYLAWS

OF

NEUROPACE, INC.

ARTICLE I

CORPORATE OFFICES

1.1 **Registered Office.**

The registered office of the corporation shall be in the City of Wilmington, County of New Castle, State of Delaware. The name of the registered agent of the corporation at such location is Corporation Service Company.

1.2 **Other Offices.**

The Board of Directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 **Place Of Meetings.**

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the corporation.

2.2 **Annual Meeting.**

The annual meeting of stockholders shall be held on such date, time and place, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors each year. At the meeting, directors shall be elected and any other proper business may be transacted.

2.3 **Special Meeting.**

A special meeting of the stockholders may be called at any time by the Board of Directors, the chairman of the board, the president or by one or more stockholders holding shares in the aggregate entitled to cast not less than twenty percent (20%) of the votes at that meeting.

If a special meeting is called by any person or persons other than the Board of Directors, the president or the chairman of the board, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile

transmission to the chairman of the board, the president, any vice president, or the secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Sections 2.4 and 2.5 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, not less than thirty-five (35) nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty (20) days after the receipt of the request, the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing, or affecting the manner or time when a meeting of stockholders called by action of the Board of Directors may be held.

2.4 **Notice Of Stockholders' Meetings.**

All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these Bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5 **Manner Of Giving Notice; Affidavit Of Notice.**

Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 **Quorum.**

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairman of the meeting or (b) the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented by proxy, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 **Adjourned Meeting; Notice.**

When a meeting is adjourned to another time or place, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. If

the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for any such adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at such meeting.

2.8 **Conduct Of Business.**

The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including the manner of voting and the conduct of business.

2.9 **Voting.**

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.12 of these Bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Except as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

2.10 **Waiver Of Notice.**

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the certificate of incorporation or these Bylaws.

2.11 **Stockholder Action By Written Consent Without A Meeting.**

Unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of the stockholders of the corporation at which all shares entitled to vote thereon were present and voted.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. If the action which is consented to is such as would have required the filing of a

certificate under any section of the General Corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

2.12 **Record Date For Stockholder Notice; Voting; Giving Consents.**

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

If the Board of Directors does not so fix a record date:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is delivered to the corporation.

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

2.13 **Proxies.**

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by a written proxy, signed by the stockholder and filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder’s name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder’s

attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

ARTICLE III

DIRECTORS

3.1 **Powers.**

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the certificate of incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

3.2 **Number Of Directors.**

The number of directors which shall constitute the whole board shall be determined by resolution of the Board of Directors or by the stockholders at the annual meeting of the stockholders, except as provided in Section 3.4 of this Article, and each director elected shall hold office until his successor is elected and qualified.

3.3 **Election, Qualification And Term Of Office Of Directors.**

Except as provided in Section 3.4 of these Bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the certificate of incorporation or these Bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Elections of directors need not be by written ballot.

3.4 **Resignation And Vacancies.**

Any director may resign at any time upon written notice to the attention of the Secretary of the corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these Bylaws:

(a) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a

single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(b) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than the number of directors required by these Bylaws or by resolution of the Board of Directors, then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

3.5 **Place Of Meetings; Meetings By Telephone.**

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

Unless otherwise restricted by the certificate of incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 **Regular Meetings.**

Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

3.7 **Special Meetings; Notice.**

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by telegram, it shall be delivered personally or by telephone or to the telegraph company at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the corporation.

3.8 **Quorum.**

At all meetings of the Board of Directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation or these Bylaws. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.9 **Waiver Of Notice.**

Whenever notice of a meeting of the Board of Directors is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these Bylaws.

3.10 **Board Action By Written Consent Without A Meeting.**

Unless otherwise restricted by the certificate of incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the board or committee. Written consents representing actions taken by the board or committee may be executed by telex, telecopy or other facsimile transmission, and such facsimile shall be valid and binding to the same extent as if it were an original.

3.11 **Fees And Compensation Of Directors.**

Unless otherwise restricted by the certificate of incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. No such compensation shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

3.12 **Approval Of Loans To Officers.**

The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

3.13 **Removal Of Directors.**

Unless otherwise restricted by statute, by the certificate of incorporation or by these Bylaws, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that if the stockholders of the corporation are entitled to cumulative voting, if less than the entire Board of Directors is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire Board of Directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director’s term of office.

3.14 **Chairman Of The Board Of Directors.**

The corporation may also have, at the discretion of the Board of Directors, a chairman of the Board of Directors who shall not be considered an officer of the corporation.

ARTICLE IV

COMMITTEES

4.1 **Committees Of Directors.**

The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, or in these Bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by this chapter to be submitted to stockholders for approval or (ii) adopting, amending or repealing any Bylaw of the corporation.

4.2 **Committee Minutes.**

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

4.3 **Meetings And Action Of Committees.**

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), and Section 3.10 (action without a meeting) of these Bylaws, with such changes in the context of such provisions as are necessary to substitute the committee and its members for the Board of Directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the Board of Directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

ARTICLE V

OFFICERS

5.1 **Officers.**

The officers of the corporation shall be a chief executive officer, a president, a secretary, and a chief financial officer. The corporation may also have, at the discretion of the Board of Directors, one or more vice presidents, one or more assistant secretaries, a treasurer or one or more assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these Bylaws. Any number of offices may be held by the same person.

5.2 **Appointment Of Officers.**

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these Bylaws, shall be appointed by the Board of Directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 **Subordinate Officers.**

The Board of Directors may appoint, or empower the chief executive officer or the president to appoint, such other officers and agents as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

5.4 **Removal And Resignation Of Officers.**

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board of Directors at any regular or special meeting of the board or, except in the case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

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

5.5 **Vacancies In Offices.**

Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

5.6 **Chief Executive Officer.**

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if any, the chief executive officer of the corporation shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the corporation. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the Board of Directors and shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.7 **President.**

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board (if any) or the chief executive officer, the president shall have general supervision, direction, and control of the business and other officers of the corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.8 **Vice Presidents.**

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors, these Bylaws, the president or the chairman of the board.

5.9 **Secretary.**

The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the Board of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required to be given by law or by these Bylaws. He or she shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

5.10 **Chief Financial Officer.**

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the president, the chief executive officer, or the directors, upon request, an account of all his or her transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the bylaws.

5.11 **Representation Of Shares Of Other Corporations.**

The chairman of the board, the chief executive officer, the president, any vice president, the chief financial officer, the secretary or assistant secretary of this corporation, or any other person authorized by the Board of Directors or the chief executive officer or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

5.12 **Authority And Duties Of Officers.**

In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the Board of Directors or the stockholders.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

6.1 **Indemnification Of Directors And Officers.**

The corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.1, a "director" or "officer" of the corporation includes any person (a) who is or was a director or officer of the corporation, (b) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.2 **Indemnification Of Others.**

The corporation shall have the power, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.2, an "employee" or "agent" of the corporation (other than a director or officer) includes any person (a) who is or was an employee or agent of the corporation, (b) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.3 **Payment Of Expenses In Advance.**

Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 or for which indemnification is permitted pursuant to Section 6.2 following authorization thereof by the Board of Directors shall be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Article VI.

6.4 **Indemnity Not Exclusive.**

The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw,

agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the certificate of incorporation

6.5 **Insurance.**

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

6.6 **Conflicts.**

No indemnification or advance shall be made under this Article VI, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the certificate of incorporation, these Bylaws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

ARTICLE VII

RECORDS AND REPORTS

7.1 **Maintenance And Inspection Of Records.**

The corporation shall, either at its principal executive offices or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating a proper purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation’s stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person’s interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that

authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

7.2 **Inspection By Directors.**

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

7.3 **Annual Statement To Stockholders.**

The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the corporation.

ARTICLE VIII

GENERAL MATTERS

8.1 **Checks.**

From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 **Execution Of Corporate Contracts And Instruments.**

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 **Stock Certificates; Partly Paid Shares.**

The shares of a corporation shall be represented by certificates, provided that the Board of Directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall

not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the Board of Directors, or the chief executive officer or the president or vice-president, and by the chief financial officer, or the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

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

8.4 **Special Designation On Certificates.**

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

8.5 **Lost Certificates.**

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or the owner’s legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft

or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

8.6 **Construction; Definitions.**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

8.7 **Dividends.**

The directors of the corporation, subject to any restrictions contained in (a) the General Corporation Law of Delaware or (b) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

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

8.8 **Fiscal Year.**

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

8.9 **Seal.**

The corporation may adopt a corporate seal, which may be altered at pleasure, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.10 **Transfer Of Stock.**

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

8.11 **Stock Transfer Agreements.**

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the

transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

8.12 **Registered Stockholders.**

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE IX

AMENDMENTS

The Bylaws of the corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal Bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal Bylaws.

ARTICLE X

CONFLICTS

To the extent of any conflict between these Bylaws and any of the Company's Amended and Restated Voting Agreement, Amended and Restated Right of First Refusal and Co-Sale Agreement or Amended and Restated Investors' Rights Agreement, the Amended and Restated Voting Agreement, the Amended and Restated Right of First Refusal and Co-Sale Agreement or Amended and Restated Investors' Rights Agreement, as applicable, shall govern.

NEUROPACE, INC.

AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

This Amended and Restated Investors' Rights Agreement (this "Agreement") is made as of August 19, 2020, by and among NeuroPace, Inc., a Delaware corporation (the "Company"), the holders of the Company's Common Stock ("Common Stock") and the holders of the Company's Preferred Stock listed on Exhibit A hereto (the "Non-Founder Investors"), and Robert Fischell, David Fischell, 1455903 Ontario Limited, Tim Fischell, Scott Fischell, Rebecca L. Kuhn, Frank M. Fischer and Martha Morrell (the "Founders," and together with the Non-Founder Investors, the "Investors"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Purchase Agreement (defined below).

RECITALS

A. The Company, the Existing Investors (as defined in the Prior Agreement (as defined below)), the Founders and certain of the New Investors (as defined in the Prior Agreement) have entered into an Amended and Restated Investors' Rights Agreement dated as of July 25, 2017 (the "Prior Agreement"), pursuant to which the Company granted them certain rights.

B. The Company and certain of the Non-Founder Investors are parties to that certain Series B' Preferred Stock Purchase Agreement (the "Purchase Agreement") of even date herewith pursuant to which the Company desires to sell to certain of the Non-Founder Investors and certain of the Non-Founder Investors desire to purchase from the Company, shares of the Company's Series B' Preferred Stock (the "Series B' Preferred Stock" and together with the Company's Series A' Preferred Stock, the "Preferred Stock").

C. A condition to certain of the Non-Founder Investors' obligations under the Purchase Agreement is that the Company and the Investors enter into this Agreement in order to provide the Non-Founder Investors with, among other things, (i) certain rights to register shares of the Common Stock issuable upon conversion of the Preferred Stock held by the Investors, (ii) certain rights to receive or inspect information pertaining to the Company, and (iii) a right of first offer with respect to certain issuances by the Company of its securities. As an inducement to those Non-Founder Investors purchasing the Series B' Preferred Stock pursuant to the Purchase Agreement on the date hereof, the Company, the Existing Investors and the Founders desire and agree to amend and restate the Prior Agreement in its entirety.

D. Pursuant to Section 3.7 of the Prior Agreement, the Prior Agreement may be amended under certain circumstances with the written consent of (1) the Company and (2) the Requisite Investors (for this purpose as defined in the Prior Agreement) (collectively, such parties, the "Required Parties").

E. The undersigned parties constitute the Required Parties necessary to amend and restate the Prior Agreement.

F. On September 20, 2016, the requisite holders of the Company's then outstanding preferred stock elected to convert all then-outstanding shares of the Company's preferred stock (the "Prior Preferred Stock") into shares of Common Stock (the "Recapitalization").

AGREEMENT

The parties hereby agree as follows:

1. **Registration Rights.** The Company and the Investors covenant and agree as follows:

1.1 **Definitions.**

(a) The terms "register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act of 1933, as amended (the "Securities Act"), and the declaration or ordering of effectiveness of such registration statement or document;

(b) The term "Registrable Securities" means:

(i) the shares of Common Stock issued or issuable upon conversion of the Company's Series B' Preferred Stock, the Company's Series A' Preferred Stock and the shares of Common Stock issued upon the conversion of Prior Preferred Stock pursuant to the Recapitalization, and any assignees thereof in accordance with Section 1.11 of this Agreement, including shares of Common Stock issuable or issued upon exercise of the warrants to purchase shares of Common Stock, which, prior to the Recapitalization, represented warrants to purchase Prior Preferred Stock;

(ii) the shares of Common Stock issued to or held by the Founders (the "Founders' Stock"), provided, however, that for the purposes of Sections 1.2, 1.4, 1.12, 2 and 3.7 the Founders' Stock shall not be deemed Registrable Securities and the Founders shall not be deemed Holders; and

(iii) any other shares of Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares listed in (i) and (ii); provided, however, that the foregoing definition shall exclude in all cases any Registrable Securities sold by a person in a transaction in which his or her rights under this Agreement are not assigned. Notwithstanding the foregoing, Common Stock or other securities shall only be treated as Registrable Securities if and so long as they have not been (A) sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction, or (B) sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act under Section 4(a)(1) thereof so that all transfer restrictions, and restrictive legends with respect thereto, if any, are removed upon the consummation of such sale.

(c) The number of shares of "Registrable Securities then outstanding" shall be determined by the number of shares of Common Stock outstanding which are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities which are, Registrable Securities issued or issuable upon conversion of Preferred Stock;

(d) The term "Holder" means any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 1.11 hereof;

(e) The term "Form S-3" means such form under the Securities Act as in effect on the date hereof or any successor form under the Securities Act;

(f) The term "SEC" means the Securities and Exchange Commission;

(g) The term "Requisite Investors" means Holders of a majority of the Registrable Securities issued or issuable upon conversion of Preferred Stock;

(h) The term "Restated Charter" shall mean the Company's Amended and Restated Certificate of Incorporation, as amended and/or restated and in effect from time to time;

(i) The term "Series Preferred Director" shall have the meaning ascribed to such term in the Restated Charter;

(j) The term "Series Preferred Director Majority" shall have the meaning ascribed to such term in the Restated Charter; and

(k) The term "Affiliates" when referring to any Investor shall mean any entity controlling, controlled by, or under common control with such Investor (if the Investor is a business entity) or its general or limited partners.

1.2 **Request for Registration.**

(a) If the Company shall receive at any time after the earlier of (i) five (5) years after the date of this Agreement or (ii) six (6) months after the effective date of the first registration statement for a public offering of securities of the Company (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to a stock option, stock purchase or similar plan or an SEC Rule 145 transaction), a written request from the Holders of at least thirty percent (30%) of the Registrable Securities then outstanding that the Company file a registration statement under the Securities Act covering the registration of Registrable Securities having an anticipated aggregate offering price, net of underwriting discounts and commissions, of at least $10,000,000, then the Company shall, within ten (10) days of the receipt thereof, give written notice of such request to all Holders and shall, subject to the limitations of Subsection 1.2(b), use its best efforts to effect as soon as practicable, the registration under the Securities Act of all Registrable Securities which the Holders request to be

registered within fifteen (15) days of the mailing of such notice by the Company in accordance with Section 3.5.

(b) If the Holders initiating the registration request hereunder ("Initiating Holders") intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 1.2 and the Company shall include such information in the written notice referred to in Subsection 1.2(a). The underwriter will be selected by the Company and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include his Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Subsection 1.5(e)) enter into an underwriting agreement with customary terms and conditions. Notwithstanding any other provision of this Section 1.2, if the underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated among all Holders thereof, including the Initiating Holders, in proportion (as nearly as practicable) to the amount of Registrable Securities of the Company owned by each Holder; provided, however, that the number of shares of Registrable Securities to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting and, provided, further, however, that the number of shares of Registrable Securities issued or issuable upon conversion of the Preferred Stock shall not be reduced unless all other Registrable Securities are first entirely excluded from the underwriting.

(c) Notwithstanding the foregoing, if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 1.2, a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company (the "Board of Directors"), it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is therefore essential to defer the filing of such registration statement, the Company shall have the right to defer such filing for a period of not more than 120 days after receipt of the request of the Initiating Holders; provided, however, that the Company may not utilize this right more than once in any twelve-month period.

(d) In addition, the Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 1.2:

(i) After the Company has effected two (2) registrations pursuant to this Section 1.2 and such registrations have been declared or ordered effective;

(ii) Within one hundred eighty (180) days after the effective date of a registration subject to Section 1.3 hereof; or

(iii) If the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 1.4 below.

1.3 **Company Registration.** If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company for stockholders other than the Holders) any of its stock under the Securities Act in connection with the public offering of such securities solely for cash (other than a registration relating solely to the sale of securities to participants in a Company stock plan or a transaction covered by Rule 145 under the Securities Act, or any registration on any form other than SEC Forms S-1, S-2 or S-3 or their successor forms or any successor to such forms which do not permit secondary sales), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within fifteen (15) days after mailing of such notice by the Company in accordance with Section 3.5, the Company shall, subject to the provisions of Section 1.8, cause to be registered under the Securities Act all of the Registrable Securities that each such Holder has requested to be registered. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 1.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The expenses of such registration shall be borne by the Company in accordance with Section 1.7 hereof.

1.4 **Form S-3 Registration.** In case the Company shall receive from any Holder or Holders of not less than thirty percent (30%) of the Registrable Securities then outstanding a written request or requests that the Company effect a registration on Form S-3 and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within 15 days after receipt of such written notice from the Company; provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance pursuant to this Section 1.4: (i) if Form S-3 is not available for such offering by the Holders; (ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public (net of any underwriters' discounts or commissions) of less than $1,000,000; (iii) if the Company shall furnish to the Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors, it would be seriously detrimental to the Company and its stockholders for such Form S-3 Registration to be effected at such time, in which event the Company shall have the right to defer

the filing of the Form S-3 registration statement for a period of not more than 120 days after receipt of the request of the Holder or Holders under this Section 1.4; provided, however, that the Company shall not utilize this right more than once in any twelve month period; (iv) if the Company has, within the twelve (12) month period preceding the date of such request, already effected two registrations on Form S-3 for the Holders pursuant to this Section 1.4; or (v) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

(c) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. Registrations effected pursuant to this Section 1.4 shall not be counted as demands for registration or registrations effected pursuant to Sections 1.2 or 1.3, respectively.

1.5 **Obligations of the Company.** Whenever required under this Section 1 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for up to one hundred twenty (120) days or until the distribution contemplated in the Registration Statement is completed; provided, however, that (i) such 120-day period shall be extended for a period of time equal to the period the Holder refrains from selling any securities included in such registration at the request of an underwriter of Common Stock (or other securities) of the Company; and (ii) in the case of any registration of Registrable Securities on Form S-3 which are intended to be offered on a continuous or delayed basis, such 120-day period shall be extended, if necessary, to keep the registration statement effective until all such Registrable Securities are sold, provided that Rule 415, or any successor rule under the Securities Act, permits an offering on a continuous or delayed basis.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for up to one hundred twenty (120) days or such extended period in accordance with Subsection 1.5(a).

(c) Furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use its best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as

shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, such obligation to continue for one hundred eighty (180) days.

(g) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed.

(h) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(i) Use its best efforts to furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Section 1, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 1, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities.

1.6 **Furnish Information.** It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder’s Registrable Securities.

1.7 **Expenses of Registration.** All expenses (other than underwriting discounts and commissions) incurred in connection with registrations, filings or qualifications pursuant to Sections 1.2, 1.3 and 1.4, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company, and the reasonable fees and disbursements of one counsel for the selling Holders selected by them with the approval of the Company, which approval shall not be unreasonably withheld, shall be borne by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 1.2 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all participating Holders shall bear such expenses), unless the Requisite Investors agree to forfeit their right to one demand registration pursuant to Section 1.2; provided further, however, that if at the time of such withdrawal, the Holders have learned of a material adverse change in the condition, business or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness following disclosure by the Company of such material adverse change, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 1.2

1.8 **Underwriting Requirements.** In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required under Section 1.3 to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it, and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds, in the underwriters sole discretion, the amount of securities that can be sold, other than by the Company, successfully in the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling stockholders according to the total amount of securities entitled to be included therein owned by each selling stockholder or in such other proportions as shall mutually be agreed to by such selling stockholders) but in no event shall (i) the amount of securities of the selling Holders included in the offering be reduced below twenty percent (20%) of the total amount of securities included in such offering, unless such offering is the initial public offering of the Company's securities in which case the selling stockholders may be excluded if the underwriters make the determination described above and no other stockholder's securities are included or (ii) notwithstanding (i) above, any shares being sold by a stockholder exercising a demand registration right similar to that granted in Section 1.2 be excluded from such offering or (iii) any securities held by a Founder be included if any securities held by any selling Holder other than the Founders are excluded. For purposes of the preceding sentence concerning apportionment, for any selling stockholder which is a holder of Registrable Securities and which is a partnership or corporation, the partners, retired partners and stockholders of such holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling stockholder," and any pro-rata reduction with

respect to such "selling stockholder" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "selling stockholder," as defined in this sentence. In addition, the number of shares of Registrable Securities issued or issuable upon conversion of the Preferred Stock shall not be reduced from such underwriting unless all other Registrable Securities are first entirely excluded from the underwriting. Any Registrable Securities excluded or withdrawn from any underwriting shall be withdrawn from the registration. To facilitate the allocation of shares in accordance with the above provisions, the Company or managing underwriter may round the number of shares allocated to the nearest one hundred (100) shares. If any Holder of Registrable Securities disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice to the Company, the managing underwriter and the Initiating Holders delivered at least twenty (20) days prior to the anticipated date of the registration statement. The Registrable Securities so withdrawn shall not be transferred in a public distribution prior to ninety (90) days after the effective date of such registration or such longer period (not to exceed one hundred eighty (180) days) of time the managing underwriter may require.

1.9 **Indemnification.** In the event any Registrable Securities are included in a registration statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus, final prospectus contained therein or any amendments or supplements thereto, (ii) 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, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law; and the Company will pay to each such Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this Subsection 1.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter or controlling person.

(b) To the extent permitted by law, each selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this Subsection 1.9(b), in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this Subsection 1.9(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; provided, that in no event shall any indemnity under this Subsection 1.9(b) exceed the net proceeds from the offering received by such Holder, except in the case of willful fraud by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 1.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.9, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the reasonable fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 1.9, but the omission to so deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 1.9.

(d) If the indemnification provided for in this Section 1.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand

and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations; provided, that in no event shall any contribution by a Holder under this Subsection 1.9(d) exceed the net proceeds from the offering received by such Holder, except in the case of willful fraud by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and Holders under this Section 1.9 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 1, and otherwise.

1.10 **Reports Under Securities Exchange Act of 1934.** With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public so long as the Company remains subject to the periodic reporting requirements under Sections 13 or 15(d) of the Exchange Act;

(b) take such action, including the voluntary registration of its Common Stock under Section 12 of the Exchange Act, as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities;

(c) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after the effective date of the first registration statement filed by the Company), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and

documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form.

1.11 **Assignment of Registration Rights.** The rights to cause the Company to register Registrable Securities pursuant to this Section 1 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities that after such assignment or transfer holds at least 200,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations and other recapitalizations); provided the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; and provided, further, that such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Securities Act; and provided, further, that the restrictions set forth in this Section 1.11 shall not apply to the transfer of registration rights by a Holder that is a partnership or a limited liability company to a partner or member of such a partnership or company or a former partner or former member of such partnership or company who leaves such partnership or company after the Initial Closing Date (as defined in the Purchase Agreement), or to the estate of any such partner or former partner or the transfer by gift, will or intestate succession of any partner to his spouse or lineal descendants or ancestors so long as the Company is given written notice by such Holder at the time of or within a reasonable time after said transfer, stating the name and address of said transferee or assignee and identifying the securities with respect to which such registration rights are being assigned, and such transferee has agreed to comply with the obligations of this Section 1.11.

1.12 **Limitations on Subsequent Registration Rights**. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Requisite Investors, enter into any agreement with any holder or prospective holder of any securities of the Company that (1) would allow such holder or prospective holder to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included or (2) allow such holder or prospective holder to initiate a demand for registration of any securities held by such holder or prospective holder.

1.13 **"Market Stand-Off" Agreement.** In connection with the initial public offering of the Company's securities ("IPO"), each Holder hereby agrees that, during the period of duration (up to, but not exceeding, 180 days, but subject to such extension or extensions as may be required by the underwriters in order to publish research reports while complying with Rule 2241 of the Financial Industry Regulatory Authority, or any successor provisions or amendments thereto) specified by the Company or the underwriters managing such offering of Common Stock or other securities of the Company, following the effective date of such registration statement, it shall not, to the extent requested by the Company and such underwriter, directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short

sale), grant any option to purchase or otherwise transfer or dispose of (other than to donees who agree to be similarly bound) any securities of the Company held by it at any time during such period except Common Stock included in such registration. The foregoing provisions of this Section 1.13 shall apply only to the IPO and shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, the sale of any shares acquired in the open market after the IPO, or the transfer of any shares to any trust for the direct or indirect benefit of the Holder or the immediate family of the Holder, *provided* that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and *provided further* that any such transfer shall not involve a disposition for value. The restrictions in this Section 1.13 shall be applicable to the Holders only if all officers, directors and stockholders individually (and with their Affiliates) owning more than one percent (1%) of the Company's outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock) are subject to the same restrictions. The underwriters in connection with such registration are intended third-party beneficiaries of this Section 1.13 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply to all Investors subject to such agreements pro rata based on the number of shares subject to such agreements.

In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities of each Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period, and each Holder agrees that, if so requested, such Holder will execute an agreement in the form provided by the underwriter containing terms which are essentially consistent with the provisions of this Section 1.13.

Notwithstanding the foregoing, the obligations described in this Section 1.13 shall not apply to a registration relating solely to employee benefit plans on Form S-8 or successors thereto which may be promulgated in the future, or a registration relating solely to an SEC Rule 145 transaction on Form S-4 or similar forms which may be promulgated in the future.

1.14 **Termination of Registration Rights.** No Holder shall be entitled to exercise any right provided for in this Section 1 after the earlier of (i) five (5) years following the consummation of the sale of securities pursuant to a registration statement filed by the Company under the Securities Act in connection with the initial firm commitment underwritten offering of its securities to the general public, or (ii) such time as Rule 144 or another similar exemption under the Securities Act is available for the sale of all of such Holder's shares during any three (3)-month period without registration.

2. **Covenants of the Company.**

2.1 **Delivery of Financial Statements.** The Company shall deliver to each Investor who (together with its general partners and Affiliates) holds not less than 1,100,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock

dividends, combinations and other recapitalizations) issued or issuable upon conversion of Preferred Stock (a "Major Investor"):

(a) as soon as practicable, but in any event within two hundred seventy days (270) days after the end of each fiscal year of the Company, an income statement for such fiscal year, a balance sheet of the Company and statement of stockholder's equity as of the end of such year, and a statement of cash flows for such year, such year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles ("GAAP"), and audited and certified by an independent public accounting firm of nationally recognized standing selected by the Company;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, an unaudited profit or loss statement, a statement of cash flows for such fiscal quarter and an unaudited balance sheet as of the end of such fiscal quarter, such quarter-end financial reports to be in reasonable detail and prepared in accordance with generally accepted accounting principles (except that such financial statements may (i) be subject to normal year-end audit adjustments; and (ii) not contain all notes thereto that may be required in accordance with generally accepted accounting principles);

(c) within thirty (30) days of the end of each month, an unaudited income statement and balance sheet for and as of the end of such month, such month-end financial reports to be in reasonable detail;

(d) as soon as practicable, but in any event thirty (30) days prior to the end of each fiscal year, an annual budget and business plan for the next fiscal year, including balance sheets and sources and applications of funds statements;

(e) promptly after the commencement thereof, notice of (i) all actions, suits and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting the Company (or any subsidiary) which, if successful, would have a Material Adverse Effect (as defined in the Purchase Agreement) on the Company; and (ii) all material defaults by the Company or any subsidiary (whether or not declared) under any agreement for money borrowed (unless waived or cured within applicable grace periods); and

(f) such other information relating to the financial condition, business, prospects, or corporate affairs of the Company as any Major Investor may from time to time reasonably request; provided, however, that the Company shall not be obligated under this Subsection 2.1(f) to provide information (i) that the Company reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in a form acceptable to the Company); or (ii) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

2.2 **Inspection.** The Company shall permit each Major Investor, at such Major Investor's expense, to visit and inspect the Company's properties, to examine its books of

account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Section 2.2 to provide access to any information which it reasonably considers to be a trade secret or similar confidential information.

2.3 **Right of First Offer.** Subject to the terms and conditions specified in this Section 2.3, the Company hereby grants to each Major Investor, a right of first offer with respect to future sales by the Company of its Shares (as hereinafter defined). A Major Investor who chooses to exercise the right of first offer may designate as purchasers under such right itself or its partners or affiliates in such proportions as it deems appropriate.

Each time the Company proposes to offer any shares of, or securities convertible into or exercisable for any shares of, any class of its capital stock ("Shares"), the Company shall first make an offering of such Shares to each Major Investor in accordance with the following provisions:

(a) The Company shall deliver a notice by certified mail ("Notice") to the Major Investors stating (i) its bona fide intention to offer such Shares, (ii) the number of such Shares to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such Shares.

(b) Within 20 calendar days after delivery of the Notice, any Major Investor may elect to purchase or obtain, at the price and on the terms specified in the Notice, up to that portion of such Shares which equals the proportion that the number of shares of Common Stock issued and held, or issuable upon conversion and exercise of all convertible or exercisable securities then held, by such Major Investor, other than, if applicable, Founders' Stock and options to purchase Common Stock, bears to the total number of shares of Common Stock then outstanding (assuming full conversion and exercise of all convertible or exercisable securities) ("Ratable Portion"). At the expiration of such 20-day period, the Company shall promptly notify each Major Investor that elects to purchase or acquire all the shares available to it (each, a "Fully Exercising Investor") of any other Major Investor's failure to do likewise. During the ten (10)-day period commencing after receipt of such information, each Fully Exercising Investor shall be entitled to obtain, by giving notice to the Company, in addition to the Ratable Portion specified above, up to that portion of Shares for which Major Investors were entitled to subscribe but that were not subscribed for by the Major Investors which equals the proportion that the number of shares of Common Stock issued and held, or issuable upon conversion and exercise of all convertible or exercisable securities then held, by such Fully Exercising Investor, other than, if applicable, Founders' Stock and options to purchase Common Stock, bears to the total number of shares of Common Stock issued and held, or issuable upon conversion and exercise of all convertible or exercisable securities then held, by all Fully Exercising Investors who wish to purchase such unsubscribed shares, other than, if applicable, Founders' Stock and options to purchase Common Stock.

(c) The Company may, during the 45-day period following the expiration of the period provided in Subsection 2.3(b) hereof, offer the remaining unsubscribed

portion of the Shares to any person or persons at a price not less than, and upon terms no more favorable to the offeree than those specified in the Notice. If the Company does not enter into an agreement for the sale of the Shares within such period, or if such agreement is not consummated within 60 days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Shares shall not be offered unless first reoffered to the Major Investors in accordance herewith.

(d) The right of first offer in this Section 2.3 shall not be applicable to securities excluded from the definition of "Additional Stock" pursuant to Article V(B)(4)(d)(ii) of the Company's Restated Charter.

2.4 **Employee Matters.** The Company shall have each officer and employee of the Company execute the Company's standard form of invention assignment and confidentiality information agreements, which form shall be reasonably acceptable to the Major Investors, prior to disclosing any proprietary information to any such officer or employee. The Company will use commercially reasonable efforts to prevent any employee from violating the confidentiality and proprietary information agreement entered into between the Company and such employee. The Company shall use reasonable efforts to ensure that the Company's employees, during the term of their employment with the Company, do not engage in activities which would result in a conflict of interest with the Company.

2.5 **Stock Options.** Unless otherwise approved by the Board of Directors (including the Series Preferred Director Majority), all stock options and other stock equivalents which are issued after the date of this Agreement to new employees, consultants and other service providers to the Company shall be subject to vesting as follows: (a) twenty-five percent (25%) of such stock shall vest at the end of the first year following the earlier of the date of issuance or such person's services commencement date with the Company, and (b) seventy-five percent (75%) of such stock shall vest over the remaining three (3) years in equal monthly installments, with no acceleration of vesting upon any event. Unless otherwise approved by the Board of Directors (including the Series Preferred Director Majority), all stock options and other stock equivalents which are issued after the date of this Agreement to employees, consultants and other service providers to the Company shall be subject to vesting as follows: one hundred percent (100%) of such stock shall vest over four (4) years in equal monthly installments, with no acceleration of vesting upon any event. With respect to any shares of stock purchased by any such person, the Company will maintain a right of first refusal over such shares, whether vested or unvested and a repurchase option at cost upon such person's termination of employment or service with the Company, with or without cause, over any unvested shares held by such person.

2.6 **Board of Directors Matters.**

(a) Unless otherwise decided by the Board of Directors, including the Series Preferred Director Majority, the Board of Directors shall hold at least five (5) meetings during each fiscal year with a minimum of one (1) meeting to be held during each fiscal quarter.

(b) The Company shall reimburse all non-employee directors for all direct out-of-pocket expenses reasonably and customarily incurred by directors in attending such meetings and attending events on behalf of and at the request of the Company.

(c) So long as the holders of Preferred Stock are entitled to elect a Series Preferred Director, the Company hereby covenants and agrees with each of the Investors that it shall not, without approval of the Board of Directors, which approval must include the affirmative vote of the Series Preferred Director Majority:

(i) make, or permit any subsidiary to make, any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company;

(ii) make, or permit any subsidiary to make, any loan or advance to any person or entity, including, without limitation, any employee or director of the Company or any subsidiary, except advances and similar expenditures in the ordinary course of business or under the terms of an employee stock or option plan approved by the Board of Directors (including the Series Preferred Director Majority);

(iii) guarantee, directly or indirectly, or permit any subsidiary to guarantee, directly or indirectly, any indebtedness except for trade accounts of the Company or any subsidiary arising in the ordinary course of business;

(iv) make any investment inconsistent with any investment policy approved by the Board of Directors;

(v) incur any aggregate indebtedness in excess of $100,000 that is not already included in a budget approved by the Board of Directors, other than trade credit incurred in the ordinary course of business;

(vi) otherwise enter into or be a party to any transaction with any director, officer, or employee of the Company (or any immediate family member), any stockholder of the Company, or any company or entity directly or indirectly controlled by an officer, director or stockholder of the Company, including without limitation any “management bonus” or similar plan providing payments to employees in connection with a Liquidation Event, as such term is defined in the Restated Charter, except for (1) transactions contemplated by this Agreement or the Purchase Agreement, (2) advances in reasonable amounts made to employees of the Company or any subsidiary for valid business purposes, provided that such advances are repaid to the Company within ninety (90) days, (3) salaries, bonuses and other compensation earned by non-executive level employees or consultants of the Company in the ordinary course of business, (4) consulting agreements and employment offer letters with non-executive level employees made in the ordinary course of business and (5) reimbursements of business-related expenses upon receipt by the Company of appropriate supporting documentation;

(vii) hire, terminate, or change the compensation of the executive officers, including approving any option grants or stock awards to executive officers;

(viii) change the principal business of the Company, enter new lines of business, or exit the current line of business;

(xi) sell, assign, license, pledge, or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business;

(xii) create a direct or indirect subsidiary;

(xiii) enter into any corporate strategic relationship involving the payment, contribution, or assignment by the Company or to the Company of money or assets greater than $100,000; or

(xiv) amend that certain Change of Control Policy dated February 23, 2010, as amended on or around the date hereof.

(d) So long as Johnson and Johnson Development Corporation ("JJDC") owns at least 100,000 shares of capital stock of the Company, JJDC shall have the right to designate one nonvoting observer ("JJDC Observer") to the Board of Directors; provided that any such JJDC Observer shall execute the Company's form of board observation letter. This covenant shall terminate upon the date of consummation of a firm commitment underwritten public offering of the Common Stock registered under the Securities Act if this occurs earlier than the events described in Section 2.11 below.

(e) So long as Accelmed Partners II LP ("Accelmed") owns Preferred Stock, Accelmed shall have the right to designate one nonvoting observer ("Accelmed Observer") to the Board of Directors; provided that any such Accelmed Observer shall execute the Company's form of board observation letter. This covenant shall terminate upon the date of consummation of a firm commitment underwritten public offering of the Common Stock registered under the Securities Act if this occurs earlier than the events described in Section 2.11 below.

(f) Unless otherwise consented to by the Holders of a majority of the outstanding Preferred Stock, Series Preferred Directors shall comprise a majority of any committee of the Board of Directors.

2.7 **Director and Officer Insurance.** The Company will use its best efforts to maintain in full force and effect, unless approved by the Board of Directors, including the Series Preferred Director Majority, director and officer liability insurance from financially sound and reputable insurers in an amount deemed appropriate by the Board of Directors, which amount may not be less than two million dollars ($2,000,000**).** The Company shall annually, within one hundred twenty (120) days after the end of each fiscal year of the Company, deliver to each Series Preferred Director a certification that such a Directors and Officers liability insurance policy remains in effect.

2.8 **Successor Indemnification**. If the Company or any of its successors or assignees consolidates with or merges into any other entity and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Company's Bylaws, its Restated Charter, or elsewhere, as the case may be.

2.9 **Right to Conduct Activities**. The Company hereby agrees and acknowledges that each of KCK Ltd. ("KCK"), OrbiMed Private Investments VI, LP ("OrbiMed"), Accelmed, and Leerink Revelation Partners, LLC (together with their respective Affiliates, the "Investor Parties" and each an "Investor Party") is a professional investment fund, and as such invests in numerous portfolio companies, some of which may be deemed competitive with the Company's business (as currently conducted or as currently proposed to be conducted). The Company hereby agrees that, to the extent permitted under applicable law, no Investor Party shall be liable to the Company for any claim arising out of, or based upon, (i) the investment by such Investor Party or its Affiliates in any entity competitive with the Company, or (ii) actions taken by any Affiliate, partner, officer or other representative of such Investor Party to assist any such competitive company, whether or not such action was taken as a member of the board of directors of such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company; provided, however, that the foregoing shall not relieve (x) any of the Investor Parties from liability associated with the unauthorized disclosure of the Company's confidential information obtained pursuant to this Agreement, or (y) any director or officer of the Company from any liability associated with his or her fiduciary duties to the Company.

2.10 **Confidentiality**. Each Holder agrees that such Holder will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company or to provide services to the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company's intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 2.10 by such Holder), (b) is or has been independently developed or conceived by an Investor without use of the Company's confidential information, or (c) is or has been made known or disclosed to the Holder by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that (i) a Holder may disclose confidential information to its attorneys, accountants, consultants, auditors and other professionals to the extent necessary or reasonably appropriate to obtain their services in connection with monitoring its investment in the Company; (ii) an Investor may disclose confidential information to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser agrees to be bound by the provisions of this Section 2.10; (iii) an Investor may disclose confidential information to any existing, former or prospective Affiliate, partner, limited partner, general partner, member, stockholder or wholly owned subsidiary of such Investor in the ordinary course of business, provided that such Investor informs such person or entity that such information is confidential and directs such person or

entity to maintain the confidentiality of such information; (iv) any Holder may disclose confidential information as may otherwise be required by law, provided that the Holder promptly notifies the Company of such disclosure (if legally permitted) and takes reasonable steps (at the expense of the Company) to minimize the extent of any such required disclosure; (v) any Holder may disclose confidential information as required by any court or other governmental body, provided that the Holder promptly notifies the Company (if legally permitted) of such disclosure and takes reasonable steps (at the expense of the Company) to minimize the extent of any such required disclosure; (vi) any Holder may disclose confidential information in connection with the interpretation or enforcement of this Agreement or any Related Agreement (as defined in the Purchase Agreement), any management rights letter or indemnification agreement; (vii) any Holder may disclose confidential information to comply with applicable law, statutes, rules or regulations or pursuant to any direction, request or requirement (whether or not having the force of law but if not having the force of law being of a type with which institutional investors in the relevant jurisdiction are accustomed to comply) of any self-regulating organization or any governmental, fiscal, monetary or other authority; (viii) any Investor may disclose confidential information for internal market, industry and investment analyses; or (ix) any Investor may disclose confidential information to Affiliates, officers, employees, agents, directors, partners, parent or subsidiaries to the extent necessary to obtain their services in connection with monitoring its investment in the Company. This Section 2.10 shall supersede any confidentiality agreement executed by OrbiMed Private Investments VI, LP or any of its Affiliates and the Company prior to the date hereof. The Company acknowledges that each of the Investor Parties are or may be in the business of venture capital investing and, therefore, review business plans and other materials containing proprietary information of many enterprises, including enterprises which may have products or services which compete directly or indirectly with those of the Company and that have and may provide to the Investor Parties, ideas, plans or other information which is similar to that embodied in the confidential information of the Company and nothing in this Agreement shall preclude or in any way restrict the Investor Parties from investing in any particular enterprise (including but not limited to participating fully as a member of the board of directors in such enterprise) whether or not such enterprise has products or services which compete with those of the Company. The Company acknowledges that some knowledge may be gained by the Investor Parties from reviewing the confidential information of the Company that cannot be separated from any of the Investors Parties' overall knowledge and, provided that the Investor Parties do not disclose any confidential information of the Company to a third party in violation of this Agreement, including any companies in which any of the Investor Parties invests, such general industry knowledge shall be permitted to be used in the ordinary course of business of each of the Investor Parties.

For the avoidance of doubt, this Section 2.10 shall not supersede any confidentiality provisions in any agreement between the Company and any employee or consultant, including without limitation, in any employment agreement, consulting agreement or invention assignment and confidentiality information agreement.

2.11 **Termination of Covenants.** The covenants set forth in Sections 2.1 through Section 2.7 shall terminate upon the earliest to occur of any one of the following events:

(a) Upon closing of a firm commitment underwritten public offering by the Company of shares of its Common Stock pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended where all outstanding Preferred Stock converts to Common Stock; or

(b) The sale, conveyance, disposal, or encumbrance of all or substantially all of the Company's property or business or the Company's merger into or consolidation with any other corporation (other than a wholly-owned subsidiary corporation) or if the Company effects any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, provided that this Subsection 2.11(b) shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Company.

The covenants set forth in Sections 2.1 and 2.2 shall terminate as to each Investor and be of no further force or effect when the Company first becomes subject to the periodic reporting requirements of Sections 13 or 15(d) of the Exchange Act, if this occurs earlier than the events described in (a) or (b) above.

3. **Miscellaneous.**

3.1 **Successors and Assigns.** Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any Preferred Stock or any Common Stock issued upon conversion thereof). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

3.2 **Governing Law; Exclusive Forum.** This Agreement and all acts and transactions pursuant hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of laws. The state courts of the State of Delaware shall be the sole and exclusive forum for any party to this Agreement to bring any action, claim or dispute arising pursuant or related to or in connection with this Agreement or the transactions contemplated hereby, and the rights and obligations of the parties hereto.

3.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3.4 **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

3.5 **Notices.** Unless otherwise provided, any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by overnight courier or sent by telegram, fax or electronic-mail, or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address or fax number as set forth below or on Exhibit A hereto or as subsequently modified by written notice.

3.6 **Expenses.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

3.7 **Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of (1) the Company and (2) the Holders of a majority of the outstanding Preferred Stock (*provided* that, following a public offering of the Company's securities in which all such outstanding Preferred Stock have been converted into the Company's Common Stock, this subclause (2) shall constitute instead the Holders of a majority of the shares of Registrable Securities then outstanding); *provided* that if such amendment has the effect of affecting the Founders' Stock both (i) in a manner different than Registrable Securities held by the Investors and (ii) in a manner adverse to the interests of the holders of the Founders' Stock, then such amendment shall require the consent of the holder or holders of a majority of the Founders' Stock who are then providing services to the Company as officers, directors, employees or consultants; *provided* further, that any amendment or waiver (i) that eliminates, reduces or adversely affects any rights of, or that imposes any additional obligations on any New Holder (as defined in the Purchase Agreement), KCK or OrbiMed in a manner different from other New Holders or other Investors under this Agreement shall require the written consent of such affected New Holder, KCK or OrbiMed, respectively, unless such New Holder, KCK or OrbiMed, respectively, is a Defaulting Purchaser (as defined in the Purchase Agreement), (ii) of Section 2.6(e) shall require the written consent of Accelmed so long as Accelmed owns Preferred Stock, and (iii) of this Section 3.7 that eliminates, reduces or adversely affects the consent rights of any New Holder, KCK or OrbiMed contained in this Section 3.7 in a manner different from other New Holders, KCK or OrbiMed under this Agreement shall require the written consent of such affected New Holder, KCK or OrbiMed, respectively, unless such New Holder, KCK or OrbiMed, respectively, is a Defaulting Purchaser. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities then outstanding, each future holder of all such Registrable Securities and the Company. Notwithstanding the foregoing, this Agreement may be amended with only the written consent of the Company and the Holders of a majority of the outstanding Preferred Stock to add any new parties to this Agreement as Founders, Investors and/or Holders.

3.8 **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of this Agreement shall be enforceable in accordance with its terms.

3.9 **Aggregation of Stock.** All shares of Preferred Stock held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

3.10 **Amendment and Restatement of Prior Agreement.** Effective and contingent upon execution of this Agreement by the Required Parties, the Prior Agreement is hereby declared null and void and is amended and restated in its entirety to read as set forth in this Agreement, and the Company and the Investors hereby agree to be bound by the provisions hereof as the sole agreement of the Company and the Investors with respect to registration rights of the Company's securities and certain other rights as set forth herein.

3.11 **Entire Agreement.** This instrument contains the entire understanding of the parties with respect to the subject matter hereof and cannot be altered or otherwise amended except pursuant to the provisions of Section 3.7. This Agreement shall be interpreted under the laws of the State of California as such laws are applied to agreements between California residents entered into and to be performed entirely with California, without reference to its principles of conflicts of law.

3.12 **Effect of Change in Company's Capital Structure.** Appropriate adjustments shall be made in the number, exercise price and class of shares set forth in this Agreement in the event of a stock dividend, stock split, reverse stock split, combination, reclassification or like change in the capital structure of the Company. If, from time to time, there is any stock dividend, stock split or other change in the character or amount of any of the outstanding stock of the Company, then in such event any and all new, substituted or additional securities to which the Founders and/or the Investors are entitled by reason of their ownership of the stock shall be immediately subject to the rights set forth in this Agreement with the same force and effect as the stock subject to such rights immediately before such event.

3.13 **Deferred Closing Non-Participation.** Notwithstanding anything else set forth in this Agreement, in the event that any Deferred Closing Purchaser (as defined in the Purchase Agreement) (or one or more affiliated entities or successors or assigns of such Deferred Closing Purchaser) fails to purchase all shares of Series B' Preferred Stock set forth opposite each such Deferred Closing Purchaser's name on Exhibit I of the Purchase Agreement (other than because of (i) the occurrence of a Deferred Closing Termination Event (as defined in the Purchase Agreement), (ii) the nonoccurrence of the Deferred Closing Trigger Date (as defined in the Purchase Agreement) or (iii) the Company's election at its sole discretion to not conduct a Deferred Closing (as defined in the Purchase Agreement)) in a Deferred Closing pursuant to Section 1.2(b) of the Purchase Agreement, such Deferred Closing Purchaser shall lose all rights granted to such Deferred Closing Purchaser under this Agreement, and all such rights shall then immediately be terminated, null and void with respect to such Deferred Closing Purchaser; *provided* that, for the avoidance of doubt, such Deferred Closing Purchaser shall continue to be obligated by the obligations of this Agreement, notwithstanding the termination of his, her or its rights under this Agreement pursuant to this Section 3.13.

[Signature Page Follows]

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

COMPANY:

NEUROPACE, INC.

By: /s/ Michael L. Favet
Michael L. Favet, Chief Executive Officer and President

Address: 455 North Bernardo Avenue
Mountain View, CA 94043

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

FOUNDERS:

/s/ Frank M. Fischer	/s/ Rebecca L. Kuhn
Frank M. Fischer	**Rebecca L. Kuhn**

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Soleus Private Equity Fund I, L.P.

By: Soleus Private Equity GP I, LLC,
its General Partner

By: /s/ Steven Musumeci

Name: Steven Musumeci

Title: Chief Operating Officer

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Orbimed Private Investments VI, L.P.

By: OrbiMed Capital GP VI LLC
Its General Partner

By: OrbiMed Advisors LLC
Its Managing Member

By: /s/ Carl Gordon

Name: Carl Gordon

Title: Member

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Leerink Revelation Healthcare Fund II, L.P.

By: Leerink Revelation Healthcare Fund II GP, LLC

Its: General Partner

By: /s/ Zack Scott

Name: Zack Scott

Title: Managing Member

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Covidien Group S.à.r.l

By: /s/ Salvador Sens

Name: Salvador Sens

Title: General Manager

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

/s/ Andrew Chase

Andrew Chase

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Granite Point Capital Master Fund, L.P.

By: /s/ R. Scott Bushley

Name: R. Scott Bushley

Title: Chief Operating Officer

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Trellis Health Ventures II L.P.

By: /s/ Paul J. Felton

Name: Paul J. Felton

Title: Manager, THV Management II LLC

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

The Susan W. and James C. Blair Family L.P.

By: /s/ James C. Blair

Name: James C. Blair

Title: General Partner

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

KCK Ltd.

By: /s/ Nael Kassar

Name: Nael Kassar

Title: Director

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Greg and Dori Garfield Living Revocable Trust

By: /s/ Greg Garfield

Name: Greg Garfield

Title: Trustee

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Lacob Ventures LLC

By: /s/ Joseph S. Lacob

Name: Joseph S. Lacob

Title: Manager

INVESTORS:

LCT18 Investments, LLC

By: /s/ Joseph S. Lacob

Name: Joseph S. Lacob

Title: Manager

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Brockton LLC

By: /s/ Mark A. Doyle

Name: Mark A. Doyle

Title: Manager

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Hallador Alternative Assets Fund, LLC

By: /s/ Kevin Leary

Name: Kevin Leary

Title: Managing Director of Hallador Management LLC

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Accelmed Partners II LP

By: Accelmed Partners II GP, L.P.,
Its General Partner

By: Accelmed Partners II, LLC,
Its General Partner

By: /s/ Uri Geiger

Name: Uri Geiger

Title: Managing Partner

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

H. Barton Co-Invest Fund III, LLC

By: /s/ Harris Barton

Name: Harris Barton

Title: Managing Member

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Amberbrook VII LP

By: Willowridge VII, LLC, its General Partner

By: /s/ Jerrold Newman

Name: Jerrold Newman

Title: Manager

Amberbrook VI LLC

By: Willowridge VI, LLC, its Managing Member

By: /s/ Jerrold Newman

Name: Jerrold Newman

Title: Manager

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Favet Living Trust

By: /s/ Michael Favet

Name: Michael Favet

Title: Co-Trustee

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

/s/ Frank M. Fischer

Frank M. Fischer

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Bradley H. Vale and Gabrielle T. Vale Revocable Trust

By: /s/ Bradley H. Vale

Name: Brad Vale

Title: Trustee

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Glynn Investment Co. L.L.C.

By: /s/ John Glynn

Name: John Glynn

Title: Manager

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

Steven R. and Sandra E. Young

/s/ Steven R. Young

Steven R. Young

/s/ Sandra E. Young

Sandra E. Young

EXHIBIT A

NON-FOUNDER INVESTORS

Name/Address
Accelmed Partners II LP 400 Madison Avenue New York, NY 10017
Soleus Private Equity Fund I, L.P. 104 Field Point Road, Second Floor Greenwich, CT 06830
Leerink Revelation Healthcare Fund II, L.P. 255 California Street, 12th Floor San Francisco, CA 94111
Covidien Group S.à.r.l. 3b, bd Prince Henri Luxembourg, L-1724 (Luxembourg) Atten: David Neustaedter
The Susan W. and James C. Blair Family L.P. One Palmer Square, Suite 515 Princeton, NJ 08542
Amberbrook VI LLC c/o Willowridge Partners Attn: Luise Hunnewell 25 East 86th Street New York, NY 10028
Andrew Chase 281 Georgia Lane Portola Valley, CA 94028
GC&H Investments Attn: Jim Kindler 101 California Street, 5th Floor San Francisco, CA 94111
Amberbrook VII LP c/o Willowridge Partners Attn: Luisa Hunnewell 122 East 42nd Street, 37th Floor New York, NY 10017

Name/Address
Lacob Ventures LLC Attn: Joseph Lacob 234 Atherton Avenue Atherton, CA 94027
KCK Ltd. Corner House 4th Floor 20 Parliament Street Hamilton, HM12, Bermuda Attention: Greg Garfield and Stephen Hoyle
OrbiMed Private Investments VI, L.P. c/o OrbiMed Advisors LLC 601 Lexington Avenue, 54th Floor New York, NY 10022 Attention: General Counsel
LCT18 Investments, LLC Attn: Joseph Lacob 234 Atherton Avenue Atherton, CA 94027
David R. Fischell 71 Riverlawn Drive Fair Haven, NJ 07704
Brightside Fund LLC 2803 Caves Road Owings Mills, MD 21117
Hallador Alternative Assets Fund, LLC Attn: Ryan Ritchie 940 Southwood Blvd, Suite 201 Incline Village, NV 89451
Trellis Health Ventures II L.P. Attn: Paul Fenton P.O. Box 2198 Orinda, CA 94563
Brockton LLC Attn: Mark Doyle 100 Summerhill Road Spotswood, NJ 08884

Name/Address
NextG Partners, LLC Attn: Jason Green P.O. Box 6629 Incline Village, NV 89450
Steven R. and Sandra E. Young 1974 Berkshire Road Columbus, OH 43221
Capital Royalty Partners II L.P. Attn: General Counsel 1000 Main Street, Suite 2500 Houston, TX 77002
Capital Royalty Partners II – Parallel Fund "A" L.P. Attn: General Counsel 1000 Main Street, Suite 2500 Houston, TX 77002
Capital Royalty Partners II – Parallel Fund "B" (Cayman) L.P. Attn: General Counsel 1000 Main Street, Suite 2500 Houston, TX 77002
Parallel Investment Opportunities Partners II LP Attn: General Counsel 1000 Main Street, Suite 2500 Houston, TX 77002
Frank M. Fischer 86 Faxon Road Atherton, CA 94027
Granite Point Capital Master Fund, L.P. **Attn: C. David Bushley, COO** 109 State Street, 5th Floor Boston, MA 02109
Bradley H. Vale and Gabrielle T. Vale Revocable Trust 142 North Milpitas Blvd, #303 Milpitas, CA 95035

Name/Address
Glynn Investment Co. L.L.C. Attn: John Glynn 3000 Sand Hill Road Building 3, Suite 230 Menlo Park, CA 94025
Greg and Dori Garfield Living Revocable Trust 104 Harwood Court Los Gatos, CA 95032
Michael L. Favet and Patricia L. Favet, as Co-Trustees of the Favet Living Trust 5824 Vitero Way San Jose, CA 95138
H. Barton Co-Invest Fund III, LLC 135 Main Street, Suite 850 San Francisco, CA 94105
KCK Ltd. Corner House 4th Floor 20 Parliament Street, Hamilton HM12, Bermuda Attn: Greg Garfield and Stephen Hoyle, greg.garfield@kckgroup.net and Stephen.hoyle@kckgroup.net
OrbiMed Private Investments VI, L.P. c/o OrbiMed Advisors LLC 601 Lexington Avenue, 54th Floor New York, NY 10022 Attention: General Counsel
LCT18 Investments, LLC Attn: Joseph Lacob 234 Atherton Avenue Atherton, CA 94027
GC&H Investments Attn: Jim Kindler 101 California Street, 5th Floor San Francisco, CA 94111

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Steven R. and Sandra E. Young 1974 Berkshire Road Columbus, OH 43221
Andy Chase 281 Georgia Lane Portola Valley, CA 94028

Name/Address
Capital Royalty Partners II L.P. Attn: General Counsel 1000 Main Street, Suite 2500 Houston, TX 77002
Capital Royalty Partners II – Parallel Fund "A" L.P. Attn: General Counsel 1000 Main Street, Suite 2500 Houston, TX 77002
Capital Royalty Partners II – Parallel Fund "B" (Cayman) L.P. Attn: General Counsel 1000 Main Street, Suite 2500 Houston, TX 77002
Parallel Investment Opportunities Partners II LP Attn: General Counsel 1000 Main Street, Suite 2500 Houston, TX 77002
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Amberbrook VII LP c/o Willowridge Partners Attn: Luisa Hunnewell 122 East 42nd Street, 37th Floor New York, NY 10017

Name/Address
Amberbrook VI LLC c/o Willowridge Partners Attn: Luisa Hunnewell 122 East 42nd Street, 37th Floor New York, NY 10017
Bradley H. Vale and Gabrielle T. Vale Revocable Trust 142 North Milpitas Blvd, #303 Milpitas, CA 95035
Glynn Investment Co. L.L.C. Attn: John Glynn 3000 Sand Hill Road Building 3, Suite 230 Menlo Park, CA 94025
Greg and Dori Garfield Living Revocable Trust 104 Harwood Court Los Gatos, CA 95032
Michael L. Favet and Patricia L. Favet, as Co-Trustees of the Favet Living Trust 5824 Vitero Way San Jose, CA 95138
H. Barton Co-Invest Fund III, LLC 135 Main Street, Suite 850 San Francisco, CA 94105

NEUROPACE, INC.

2009 STOCK PLAN
(as amended through September 20, 2016)

1. **Purposes of the Plan.** The purposes of this 2009 Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees and Consultants of the Company and its Subsidiaries and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options (as defined under Section 422 of the Code) or Nonstatutory Stock Options, as determined by the Administrator at the time of grant of an Option and subject to the applicable provisions of Section 422 of the Code, as amended, and the regulations promulgated thereunder. Stock Purchase Rights may also be granted under the Plan.

2. **Definitions.** As used herein, the following definitions shall apply:

(a) "**Administrator**" means the Board or its Committee appointed pursuant to Section 4 of the Plan.

(b) "**Affiliate**" means an entity other than a Subsidiary in which the Company owns an equity interest or which, together with the Company, is under common control of a third person or entity.

(c) "**Applicable Laws**" means the legal requirements relating to the administration of stock option and restricted stock purchase plans under applicable U.S. state corporate laws, U.S. federal and applicable state securities laws, the Code, any Stock Exchange rules or regulations and the applicable laws of any other country or jurisdiction where Options or Stock Purchase Rights are granted under the Plan, as such laws, rules, regulations and requirements shall be in place from time to time.

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

(e) "**Code**" means the Internal Revenue Code of 1986, as amended.

(f) "**Committee**" means one or more committees or subcommittees of the Board appointed by the Board to administer the Plan in accordance with Section 4 below.

(g) "**Common Stock**" means the Class A Common Stock of the Company.

(h) "**Company**" means NeuroPace, Inc., a Delaware corporation.

(i) "**Consultant**" means any person, including an advisor, who is engaged by the Company, or any Parent, Subsidiary or Affiliate to render services, and is compensated for such services, and any director of the Company whether compensated for such services or not.

(j) **"Continuous Service Status"** means the absence of any interruption or termination of service as an Employee or Consultant to the Company or a Parent, Subsidiary or Affiliate. Continuous Service Status shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided that such leave is for a period of not more than 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (iv) in the case of transfers between locations of the Company or between the Company, its Parents, Subsidiaries or Affiliates or their respective successors. Unless otherwise determined by the Administrator, a change in status from an Employee to a Consultant or from a Consultant to an Employee will not constitute an interruption of Continuous Service Status. However, for Incentive Stock Option purposes, termination of Continuous Service Status will occur when the Employee ceases to be an employee (as determined in accordance with Section 3401(c) of the Code and the regulations promulgated thereunder) of the Company or one of its Subsidiaries. The Administrator shall determine whether any corporate transaction, such as a sale or spin-off of a division or business unit, or a joint venture, shall be deemed to result in a termination of Continuous Service Status.

(k) **"Corporate Transaction"** means a sale of all or substantially all of the Company's assets, or a merger, consolidation or other capital reorganization of the Company with or into another corporation.

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

(m) **"Employee"** means any person, including officers and Directors, employed by the Company or any Parent, Subsidiary or Affiliate of the Company. The payment by the Company of a director's fee to a Director shall not be sufficient to constitute "employment" of such Director by the Company.

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

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

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq Global Market or the Nasdaq Global Select Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported), as quoted on such system or exchange on the date of determination, or if no trading occurred on the date of determination, on the last market trading day prior to the time of the determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is quoted on an established stock exchange or a national market system or regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock for the last market trading day prior to the time of

determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined by the Administrator in compliance with Section 409A of the Code, or in the case of an Incentive Stock Option, in compliance with Section 422 of the Code.

(p) **"Incentive Stock Option"** means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable Option Agreement.

(q) "**Listed Security**" means any security of the Company that is listed or approved for listing on a national securities exchange or designated or approved for designation as a national market system security on an interdealer quotation system by the Financial Industry Regulating Authority.

(r) **"Named Executive"** means any individual who is a covered employee pursuant to Section 162(m) of the Code.

(s) **"Nonstatutory Stock Option"** means an Option not intended to qualify as an Incentive Stock Option, as designated in the applicable Option Agreement.

(t) **"Option"** means a stock option granted pursuant to the Plan.

(u) **"Option Agreement"** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of an Option granted under the Plan and includes any documents attached to or incorporated into such Option Agreement, including, but not limited to, a notice of stock option grant and a form of exercise notice.

(v) **"Option Exchange Program"** means a program approved by the Administrator whereby outstanding Options are exchanged for (A) Options covering the same or a different number of Shares and with a lower exercise price, (B) Stock Purchase Rights, (C) cash and/or (D) other valuable consideration (as determined by the Board, in its sole discretion); or any other action that is treated as a repricing under generally accepted accounting principles.

(w) **"Optioned Stock"** means the Common Stock subject to an Option.

(x) **"Optionee"** means an Employee or Consultant who receives an Option.

(y) **"Parent"** means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code, or any successor provision.

(z) **"Participant"** means any holder of one or more Options or Stock Purchase Rights, or the Shares issuable or issued upon exercise of such awards, under the Plan.

(aa) **"Plan"** means this 2009 Stock Plan.

(bb) **"Reporting Person"** means an officer, Director, or greater than 10% stockholder of the Company within the meaning of Rule 16a-2 under the Exchange Act, who is required to file reports pursuant to Rule 16a-3 under the Exchange Act.

(cc) **"Restricted Stock"** means Shares of Common Stock acquired pursuant to a grant of a Stock Purchase Right under Section 10 below.

(dd) **"Restricted Stock Purchase Agreement"** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of a Stock Purchase Right granted under the Plan and includes any documents attached to such agreement.

(ee) **"Rule 16b-3"** means Rule 16b-3 promulgated under the Exchange Act, as the same may be amended from time to time, or any successor provision.

(ff) **"Share"** means a share of the Common Stock, as adjusted in accordance with Section 13 of the Plan.

(gg) **"Stock Exchange"** means any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time.

(hh) **"Stock Purchase Right"** means the right to purchase Common Stock pursuant to Section 10 below.

(ii) **"Subsidiary"** means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code, or any successor provision.

(jj) **"Ten Percent Holder"** means a person who owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Parent or Subsidiary.

3. **Stock Subject to the Plan.** Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares that may be sold under the Plan shall not exceed 48,142,818 Shares, which number is equal to the sum of (i) the number of Shares remaining available for issuance pursuant to the grant and exercise of options or issuance of stock purchase rights under the Company's 1999 Stock Plan (the "**Prior Plan**") as of the Effective Date, plus (ii) an additional number of Shares in an amount not to exceed 1,000,000 Shares, consisting of Shares subject to outstanding options granted under the Prior Plan as of the Effective Date that become available from time to time for issuance under the Plan as such options expire or become unexercisable for any reason without having been exercised in full, are surrendered pursuant to an option exchange program or are retained by the Company upon exercise of an option in order to satisfy the exercise price for such option or any withholding taxes due with respect to such exercise, plus (iii) 45,590,999 additional Shares. Notwithstanding anything to the contrary in this Section 3, and subject to the provisions of Section 13, the maximum aggregate number of

Shares that may be issued pursuant to the exercise of Incentive Stock Options shall be 168,000,000 Shares. The Shares may be authorized, but unissued, or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise. If an Option or Stock Purchase Right expires or becomes unexercisable for any reason without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock that are retained by the Company upon exercise of an Option or Stock Purchase Right in order to satisfy the exercise or purchase price for such Option or Stock Purchase Right or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by, or forfeited to, the Company pursuant to any repurchase or forfeiture right which the Company may have shall be available for future grant under the Plan; provided that any Shares issued and repurchased under an Incentive Stock Option may not be issued again pursuant to the exercise of an Incentive Stock Option.

4. **Administration of the Plan**.

(a) **General.** The Plan shall be administered by the Board or a Committee, or a combination thereof, as determined by the Board. The Plan may be administered by different administrative bodies with respect to different classes of Participants and, if permitted by the Applicable Laws, the Board may authorize one or more officers to grant Options or Stock Purchase Rights under the Plan.

(b) **Administration with Respect to Reporting Persons.** With respect to Options granted to Reporting Persons and Named Executives, the Plan may (but need not) be administered so as to permit such Options to qualify for the exemption set forth in Rule 16b-3 and to qualify as performance-based compensation under Section 162(m) of the Code.

(c) **Committee Composition.** If a Committee has been appointed pursuant to this Section 4, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of any Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of a Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws and, in the case of a Committee administering the Plan pursuant to Section 4(b) above, to the extent permitted or required by Rule 16b-3 and Section 162(m) of the Code.

(d) **Powers of the Administrator.** Subject to the provisions of the Plan and in the case of a Committee, the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, including the approval, if required, of any Stock Exchange, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(o) of the Plan;

(ii) to select the Consultants and Employees to whom Options and Stock Purchase Rights or any combination thereof may from time to time be granted;

(iii) to determine whether and to what extent Options and Stock Purchase Rights or any combination thereof are granted;

(iv) to determine the number of Shares of Common Stock to be covered by each award granted hereunder;

(v) to approve the forms of agreement for use under the Plan;

(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder, which terms and conditions include but are not limited to the exercise or purchase price, the time or times when Options or Stock Purchase Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option, Optioned Stock, Stock Purchase Right or Restricted Stock, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option shall have declined since the date the Option was granted and to make any other amendments or adjustments to any Option that the Administrator determines, in its discretion and under the authority granted to it under the Plan, to be necessary or advisable, provided however that no amendment or adjustment to an Option that would materially and adversely affect the rights of any Optionee shall be made without the prior written consent of the Optionee;

(viii) to determine whether and under what circumstances an Option may be settled in cash under Section 9(f) instead of Common Stock (including pursuant to an Option Exchange Program);

(ix) to implement an Option Exchange Program on such terms and conditions as the Administrator in its discretion deems appropriate;

(x) to determine the terms and restrictions applicable to Stock Purchase Rights and the Restricted Stock purchased by exercising such Stock Purchase Rights;

(xi) to adjust the vesting of an Option held by an Employee or Consultant as a result of a change in the terms or conditions under which such person is providing services to the Company;

(xii) to construe and interpret the terms of the Plan and awards granted under the Plan; and

(xiii) in order to fulfill the purposes of the Plan and without amending the Plan, to modify grants of Options or Stock Purchase Rights to Participants who are foreign

nationals or employed outside of the United States in order to recognize differences in local law, tax policies or customs.

(e) **Effect of Administrator's Decision.** All decisions, determinations and interpretations of the Administrator shall be final and binding on all Participants.

5. **Eligibility**.

(a) **Recipients of Grants.** Nonstatutory Stock Options and Stock Purchase Rights may be granted to Employees and Consultants; *provided, however*, that Nonstatutory Stock Options may not be granted to Employees or Consultants who are providing services only to a Parent of the Company, unless the stock underlying such Options is treated as "service recipient stock" under Section 409A of the Code or unless such Options comply with the distribution requirements of Section 409A of the Code. Incentive Stock Options may be granted only to Employees; provided however that Employees of Affiliates shall not be eligible to receive Incentive Stock Options. An Employee or Consultant who has been granted an Option or Stock Purchase Right may, if he or she is otherwise eligible, be granted additional Options or Stock Purchase Rights.

(b) **Type of Option.** Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designations, to the extent that the aggregate Fair Market Value of Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 5(b), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares subject to an Incentive Stock Option shall be determined as of the date of grant of such Option.

(c) **At-Will Relationship.** The Plan shall not confer upon any Participant any right with respect to continuation of an employment or consulting relationship with the Company, nor shall it interfere in any way with such holder's right or the Company's right to terminate his or her employment or consulting relationship at any time, with or without case.

6. **Term of Plan.** The Plan shall become effective upon its adoption by the Board (the "***Effective Date***"). It shall continue in effect for a term of ten years following the earlier of (a) the date the Plan is adopted by the Board or (b) the date the Plan is approved by the stockholders of the Company, unless sooner terminated under Section 15 of the Plan.

7. **Term of Option.** The term of each Option shall be the term stated in the Option Agreement; provided, however, that the term shall be no more than ten years from the date of grant thereof or such shorter term as may be provided in the Option Agreement. However, in the case of an Incentive Stock Option granted to an Optionee who, at the time the Option is granted, is a Ten Percent Holder, the term of such Option shall be five years from the date of grant thereof or such shorter term as may be provided in the Option Agreement.

8. **Option Exercise Price and Consideration**.

(a) **Exercise Price**. The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be such price as is determined by the Administrator and set forth in the Option Agreement, but shall be subject to the following:

(i) In the case of an Incentive Stock Option that is:

(A) granted to an Employee who at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant; or

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

(ii) In the case of a Nonstatutory Stock Option granted to any Employee or Consultant, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant; provided that notwithstanding the foregoing, a Nonstatutory Stock Option may be granted with an exercise price lower than 100% of the Fair Market Value per Share if such Option complies with the distribution requirements of Section 409A of the Code.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other Corporate Transaction and in a manner consistent with the provisions of Sections 409A and 424(a) of the Code.

(b) **Permissible Consideration**. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant) and may consist entirely of (1) cash; (2) check; (3) subject to any requirements of Applicable Laws, delivery of Optionee's promissory note with such recourse, interest, security and redemption provisions as the Administrator determines to be appropriate; (4) cancellation of indebtedness; (5) other Shares that (x) in the case of Shares acquired upon exercise of an option, either have been owned by the optionee for more than six months on the date of surrender or such other period as may be required to avoid a charge to the Company's earnings or were not acquired, directly or indirectly, from the Company, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised; (6) if the Option is a Nonstatutory Stock Option, authorization for the Company to retain from the total number of Shares as to which the Option is exercised that number of Shares having a Fair Market Value on the date of exercise equal to the exercise price for the total number of Shares as to which the Option is exercised; provided that the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the exercise price not satisfied by such retention in the number of whole Shares to be issued; (7) if, as of the date of exercise of an Option the Company then is permitting employees to engage in a "same-day sale" cashless brokered exercise program involving one or more brokers, through such a

program that complies with the Applicable Laws (including without limitation the requirements of Regulation T and other applicable regulations promulgated by the Federal Reserve Board) and that ensures prompt delivery to the Company of the amount required to pay the exercise price and any applicable withholding taxes; (8) any combination of the foregoing methods of payment; or (9) such other consideration and method of payment for the issuance of Shares as determined by the Administrator and to the extent permitted under the Applicable Laws. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company, and the Administrator may refuse to accept a particular form of consideration at the time of any Option exercise if, in its sole discretion, acceptance of such form of consideration is not in the best interests of the Company at such time.

9. **Exercise of Option**.

(a) **Procedure for Exercise; Rights as a Stockholder.** Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the term of the Plan and reflected in the Option Agreement, including vesting requirements and/or performance criteria with respect to the Company and/or the Optionee. The Administrator shall have the discretion to determine whether and to what extent the vesting of Options shall be tolled during any unpaid leave of absence; provided, however, that in the absence of such determination, vesting of Options shall be tolled during any such leave (unless otherwise required by Applicable Laws). In the event of military leave, vesting shall toll during any unpaid portion of such leave, provided that, upon a Participant's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Options to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and the Company has received full payment for the Shares with respect to which the Option is exercised. Full payment may, as authorized by the Administrator, consist of any consideration and method of payment allowable under Section 8(b) of the Plan. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued (as evidenced as set forth above), except as provided in Section 12 of the Plan.

Exercise of an Option in any manner shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) **Termination of Employment or Consulting Relationship.** In the event of termination of an Optionee's Continuous Service Status with the Company, such Optionee may, but only within three months (or such other period of time, not less than 30 days, as is determined by the Administrator, with such determination in the case of an Incentive Stock Option being made at the time of grant of the Option) after the date of such termination (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement) exercise his or her Option to the extent that the Optionee was entitled to exercise the Option and was vested in the Optioned Stock at the date of such termination. To the extent that the Optionee was not entitled to exercise the Option or was not vested in the Optioned Stock at the date of such termination, or if the Optionee does not exercise the Option to the extent so entitled within the time specified above, the Option shall terminate and the Optioned Stock underlying the unexercised portion of the Option shall revert to the Plan. Unless otherwise determined by the Administrator, no termination shall be deemed to occur and this Section 9(b) shall not apply if (i) the Optionee is a Consultant who becomes an Employee, or (ii) the Optionee is an Employee who becomes a Consultant.

(c) **Disability of Optionee.**

(i) Notwithstanding Section 9(b) above, in the event of termination of an Optionee's Continuous Service Status as a result of his or her total and permanent disability (within the meaning of Section 22(e)(3) of the Code), such Optionee may, but only within twelve months (or such other period of time as is determined by the Administrator, with such determination in the case of an Incentive Stock Option made at the time of grant of the Option) from the date of such termination (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement), exercise the Option to the extent entitled to exercise the Option and to the extent the Optionee was vested in the Optioned Stock at the date of such termination. To the extent that the Optionee was not entitled to exercise the Option or was not vested in the Optioned Stock at the date of termination, or if Optionee does not exercise such Option to the extent so entitled within the time specified above, the Option shall terminate and the Optioned Stock underlying the unexercised portion of the option shall revert to the Plan.

(ii) In the event of termination of an Optionee's Continuous Service Status as a result of a disability which does not fall within the meaning of total and permanent disability (as set forth in Section 22(e)(3) of the Code), such Optionee may, but only within twelve months (or such other period of time as is determined by the Administrator, with such determination in the case of an Incentive Stock Option made at the time of grant of the Option) from the date of such termination (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement), exercise the Option to the extent entitled to exercise the Option and to the extent the Optionee was vested in the Optioned Stock at the date of such termination. However, to the extent that such Optionee fails to exercise an Option that is an Incentive Stock Option (within the meaning of Section 422 of the Code) within three months of the date of such termination, the Option will not qualify for Incentive Stock Option treatment under the Code. To the extent that the Optionee was not entitled to exercise the Option or was not vested in the Optioned Stock at the date of termination, or if the Optionee does not exercise such Option to the extent so entitled within the time period specified above, the Option shall

terminate and the Optioned Stock underlying the unexercised portion of the Option shall revert to the Plan.

(d) **Death of Optionee.** In the event of the death of an Optionee during the period of Continuous Service Status since the date of grant of the Option, or within 30 days following termination of Optionee's Continuous Service Status, the Option may be exercised at any time within twelve months following the date of death (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement), by such Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent the Optionee was vested in the Optioned Stock as of the date of death or, if earlier, the date of termination of the Optionee's Continuous Service Status. To the extent that the Optionee was not vested in the Optioned Stock at the date of death or termination, as the case may be, or if the Optionee does not exercise such Option to the extent so entitled within the time specified above, the Option shall terminate and the Optioned Stock underlying the unexercised portion of the Option shall revert to the Plan.

(e) **Extension of Exercise Period.** The Administrator shall have full power and authority to extend the period of time for which an Option is to remain exercisable following termination of an Optionee's Continuous Status as an Employee or Consultant from the periods set forth in Section 9(b), 9(c) and 9(d) above or in the Option Agreement to such greater time as the Board shall deem appropriate, provided, that in no event shall such Option be exercisable later than the date of expiration of the term of such Option as set forth in the Option Agreement.

(f) **Buyout Provisions.** The Administrator may at any time offer to buy out for a payment in cash or Shares an Option previously granted under the Plan based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

(g) **Non-Exempt Employees**. No Option granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option. Notwithstanding the foregoing, consistent with the provisions of the Worker Economic Opportunity Act, in the event of the Participant's death or disability, upon a Corporate Transaction in which the vesting of such Options accelerates, or upon the Participant's retirement (as such term may be defined in the Participant's Option Agreement or in another applicable agreement or in accordance with the Company's then current employment policies and guidelines) any such vested Options may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option will be exempt from his or her regular rate of pay.

10. **Stock Purchase Rights**.

(a) **Rights to Purchase.** Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights

under the Plan, it shall advise the offeree in writing of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid (if any), and the time within which such person must accept such offer, which shall in no event exceed 30 days from the date upon which the Administrator made the determination to grant the Stock Purchase Right. The purchase price of Shares subject to Stock Purchase Rights shall be as determined by the Administrator. The offer to purchase Shares subject to Stock Purchase Rights shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) **Repurchase Option**.

(i) **General.** Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's Continuous Service Status with the Company for any reason (including death or disability). The purchase price for Shares repurchased pursuant to the Restricted Stock Purchase Agreement shall be the lower of (A) the Fair Market Value of the Shares on the date of repurchase and (B) the original purchase price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine.

(c) **Other Provisions.** The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock Purchase Agreements need not be the same with respect to each purchaser.

(d) **Rights as a Stockholder.** Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a stockholder, and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 13 of the Plan.

11. **Taxes**.

(a) As a condition of the grant, vesting or exercise of an Option or Stock Purchase Right granted under the Plan, the Participant (or in the case of the Participant's death, the person exercising the Option or Stock Purchase Right) shall make such arrangements as the Administrator may require for the satisfaction of any applicable federal, state, local or foreign withholding tax obligations that may arise in connection with the grant, vesting or exercise of the Option or Stock Purchase Right and the issuance of Shares. The Company shall not be required to issue any Shares under the Plan until such obligations are satisfied. If the Administrator allows the withholding or surrender of Shares to satisfy a Participant’s tax withholding obligations under this Section 11, the Administrator shall not allow Shares to be withheld in an amount that exceeds the minimum statutory withholding rates for federal and state tax purposes, including payroll taxes.

(b) In the case of an Employee and in the absence of any other arrangement, the Employee shall be deemed to have directed the Company to withhold or collect from his or her compensation an amount sufficient to satisfy such tax obligations from the next payroll payment otherwise payable after the date of an exercise of the Option or Stock Purchase Right.

(c) This Section 11(c) shall apply only after the date, if any, upon which the Common Stock becomes a Listed Security. In the case of Participant other than an Employee (or in the case of an Employee where the next payroll payment is not sufficient to satisfy such tax obligations, with respect to any remaining tax obligations), in the absence of any other arrangement and to the extent permitted under the Applicable Laws, the Participant shall be deemed to have elected to have the Company withhold from the Shares to be issued upon exercise of the Option or Stock Purchase Right that number of Shares having a Fair Market Value determined as of the applicable Tax Date (as defined below) equal to the amount required to be withheld. For purposes of this Section 11, the Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined under the Applicable Laws (the "Tax Date").

(d) If permitted by the Administrator, in its discretion, a Participant may satisfy his or her tax withholding obligations upon exercise of an Option or Stock Purchase Right by surrendering to the Company Shares that (i) in the case of Shares previously acquired from the Company, have been owned by the Participant for more than six months on the date of surrender (or such other period of time as is required for the Company to avoid adverse accounting consequences), and (ii) have a Fair Market Value determined as of the applicable Tax Date equal to the amount required to be withheld.

(e) Any election or deemed election by a Participant to have Shares withheld to satisfy tax withholding obligations under Section 11(c) or (d) above shall be irrevocable as to the particular Shares as to which the election is made and shall be subject to the consent or disapproval of the Administrator. Any election by a Participant under Section 11(d) above must be made on or prior to the applicable Tax Date.

(f) In the event an election to have Shares withheld is made by a Participant and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, the Participant shall receive the full number of Shares with respect to which the Option or Stock Purchase Right is exercised but such Participant shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

(g) Notwithstanding anything to the contrary contained in this Plan, to the extent that the Administrator determines that any Option or Stock Purchase Right granted under the Plan is subject to Code Section 409A and unless otherwise specified in the applicable Option or Restricted Stock Purchase Agreement, the Option or Restricted Stock Purchase Agreement evidencing such Option or Stock Purchase Right shall incorporate the terms and conditions necessary for such Option or Stock Purchase Right to avoid the consequences described in Code Section 409A(a)(1), and to the maximum extent permitted under Applicable Law (and unless otherwise stated in the applicable the Option or Restricted Stock Purchase Agreement), the Plan

and the Option or Restricted Stock Purchase Agreements shall be interpreted in a manner that results in their conforming to the requirements of Code Section 409A(a)(2), (3) and (4) and any Department of Treasury or Internal Revenue Service regulations or other interpretive guidance issued under Section 409A.

(h) To the extent permitted by Applicable Law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Option or Stock Purchase Right may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Options and Stock Purchase Rights and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service Status, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with Applicable Law.

12. **Non-Transferability of Options and Stock Purchase Rights.** The Administrator may, in its sole discretion, impose such limitations on the transferability of Options and Stock Purchase Rights as the Administrator shall determine. In the absence of such a determination by the Administrator to the contrary, the following restrictions on the transferability of Options and Stock Purchase Rights shall apply:

(a) **Restrictions on Transfer.** An Option or Stock Purchase Right shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant; *provided, however*, that the Administrator may, in its sole discretion, permit transfer of the Option or Stock Purchase Right to such extent as permitted by Rule 701 and in a manner consistent with Applicable Laws upon the Participant's request and may require the Participant to pay, or reimburse, the Company for the Company's expenses in effecting such transfer.

(b) **Domestic Relations Orders.** Notwithstanding the foregoing, an Option or Stock Purchase Right may be transferred pursuant to a domestic relations order, and the Administrator may require the Participant to pay, or reimburse, the Company for the Company's expenses in effecting such transfer; *provided, however,* that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(c) **Beneficiary Designation.** Notwithstanding the foregoing, the Participant may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company and any broker designated by the Company to effect Option exercises, designate a third party who, in the event of the death of the Participant, shall thereafter be entitled to exercise the Option or Stock Purchase Right and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, the executor or administrator of the Participant's estate shall be entitled to exercise the Option or

Stock Purchase Right and receive the Common Stock or other consideration resulting from such exercise.

13. **Adjustments Upon Changes in Capitalization, Corporate Transactions and Certain Other Transactions**.

(a) **Changes in Capitalization.** Subject to any action required under Applicable Law by the stockholders of the Company, the number of Shares of Common Stock covered by each outstanding Option or Stock Purchase Right, and the number of Shares of Common Stock that have been authorized for issuance under the Plan but as to which no Options or Stock Purchase Rights have yet been granted or that have been returned to the Plan upon cancellation or expiration of an Option or Stock Purchase Right, as well as the price per Share of Common Stock covered by each such outstanding Option or Stock Purchase Right, shall be proportionately adjusted for any increase or decrease in the number of issued Shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification of the Common Stock or any change in the number of issued Shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares of Common Stock subject to an Option or Stock Purchase Right.

(b) **Dissolution or Liquidation.** In the event of the dissolution or liquidation of the Company, each Option and Stock Purchase Right will terminate immediately prior to the consummation of such action, unless otherwise determined by the Administrator.

(c) **Corporate Transaction.** In the event of a Corporate Transaction, each outstanding Option or Stock Purchase Right shall be assumed or an equivalent option or right shall be substituted by such successor corporation or a Parent or Subsidiary of such successor corporation, unless such successor corporation does not agree to assume the outstanding Options or Stock Purchase Rights or to substitute an equivalent options or rights, in which case such Options or Stock Purchase Rights shall terminate upon the consummation of the transaction.

For purposes of this Section 13(c), an Option or a Stock Purchase Right shall be considered assumed, without limitation, if, at the time of issuance of the stock or other consideration upon a Corporate Transaction, each holder of an Option or Stock Purchase Right would be entitled to receive upon exercise of the award the same number and kind of shares of stock or the same amount of property, cash or securities as such holder would have been entitled to receive upon the occurrence of the transaction if the holder had been, immediately prior to such transaction, the holder of the number of Shares of Common Stock covered by the Option or the Stock Purchase Right at such time (after giving effect to any adjustments in the number of Shares covered by the Option or Stock Purchase Right as provided for in this Section 13); provided however that if such consideration received in the transaction is not solely common

stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon exercise of the Option or Stock Purchase Right to be solely common stock of the successor corporation or its Parent equal to the Fair Market Value of the per Share consideration received by holders of Common Stock in the transaction.

(d) **Certain Distributions.** In the event of any distribution to the Company's stockholders of securities of any other entity or other assets (other than dividends payable in cash or stock of the Company) without receipt of consideration by the Company, the Administrator may, in its discretion, appropriately adjust the price per Share of Common Stock covered by each outstanding Option or Stock Purchase Right to reflect the effect of such distribution.

14. **Time of Granting Options and Stock Purchase Rights.** The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such other date as is determined by the Administrator, provided that in the case of any Incentive Stock Option, the grant date shall be the later of the date on which the Administrator makes the determination granting such Incentive Stock Option or the date of commencement of the Optionee's employment relationship with the Company. Notice of the determination shall be given to each Employee or Consultant to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

15. **Amendment and Termination of the Plan**.

(a) **Authority to Amend or Terminate.** The Board may at any time amend, alter, suspend or discontinue the Plan, but no amendment, alteration, suspension or discontinuation (other than an adjustment pursuant to Section 13 above) shall be made that would materially and adversely affect the rights of any Optionee or holder of Stock Purchase Rights under any outstanding grant, without his or her consent. In addition, to the extent necessary and desirable to comply with the Applicable Laws, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required.

(b) **Effect of Amendment or Termination.** No amendment or termination of the Plan shall materially and adversely affect Options or Stock Purchase Rights already granted, unless mutually agreed otherwise between the Optionee or holder of the Stock Purchase Rights and the Administrator, which agreement must be in writing and signed by the Optionee or holder and the Company.

16. **Conditions Upon Issuance of Shares.** Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel.

As a condition to the exercise of an Option or Stock Purchase Right, the Company may require the person exercising such Option or Stock Purchase Right to represent and warrant at the

time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by law. Shares issued upon exercise of Options and Stock Purchase Rights granted prior to the date on which the Common Stock becomes a Listed Security shall be subject to a right of first refusal in favor of the Company pursuant to which the Participant will be required to offer Shares to the Company before selling or transferring them to any third party on such terms and subject to such conditions as are reflected in the applicable Option Agreement or Restricted Stock Purchase Agreement. In addition, Options and Stock Purchase Rights issued prior to the date on which the Common Stock becomes a Listed Security shall require the Participant to agree to a lock-up agreement in connection with public offerings of the Company's stock that applies to all capital stock and rights to purchase capital stock of the Company held by the Participant on such terms and subject to such conditions as are reflected in the applicable Option Agreement or Restricted Stock Purchase Agreement.

17. **Reservation of Shares.** The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. **Agreements.** Options and Stock Purchase Rights shall be evidenced by Option Agreements and Restricted Stock Purchase Agreements, respectively, in such form(s) as the Administrator shall from time to time approve.

19. **Stockholder Approval.** If required by the Applicable Laws, continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under the Applicable Laws.

20. **Information and Documents to Optionees and Purchasers.** Prior to the date, if any, upon which the Common Stock becomes a Listed Security and if required by the Applicable Laws, the Company shall provide financial statements at least annually to each Optionee and to each individual who acquired Shares pursuant to the Plan, during the period such Optionee or purchaser has one or more Options or Stock Purchase Rights outstanding, and in the case of an individual who acquired Shares pursuant to the Plan, during the period such individual owns such Shares. Except as required by Applicable Law, the Company shall not be required to provide such information if the issuance of Options or Stock Purchase Rights under the Plan is limited to key employees whose duties in connection with the Company assure their access to equivalent information. In addition, at the time of issuance of any securities under the Plan, the Company shall provide to the Optionee or the purchaser a copy of the Plan and any agreement(s) pursuant to which securities granted under the Plan are issued.

21. **Electronic Delivery.** Any reference herein to a “written” agreement or document shall include any agreement or document delivered electronically or posted on the Company’s intranet.

22. **Choice of Law.** The law of the State of Delaware shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

23. **Compliance with Exemption Provided by Rule 12h-1(f)**. If: (i) the aggregate of the number of Optionees and the number of holders of all other outstanding compensatory employee stock options to purchase shares of Common Stock equals or exceeds 500, and (ii) the assets of the Company at the end of the Company's most recently completed fiscal year exceed $10 million, then the following restrictions shall apply during any period during which the Company does not have a class of its securities registered under Section 12 of the Exchange Act and is not required to file reports under Section 15(d) of the Exchange Act: (A) the Options and the shares of Common Stock acquired upon exercise of the Options may not be transferred until the Company is no longer relying on the exemption provided by Rule 12h-1(f) promulgated under the Exchange Act ("**Rule 12h-1(f)**"), except: (1) as permitted by Rule 701(c) promulgated under the Securities Act, (2) to a guardian upon the disability of the Optionee, or (3) to an executor upon the death of the Optionee (collectively, the "**Permitted Transferees**"); *provided*, *however*, the following transfers are permitted: (i) transfers by the Optionee to the Company, and (ii) transfers in connection with a change of control or other acquisition involving the Company, if following such transaction, the Options no longer remain outstanding and the Company is no longer relying on the exemption provided by Rule 12h-1(f); *provided further*, that any Permitted Transferees may not further transfer the Options; (B) except as otherwise provided in (A) above, the Options and shares of Common Stock acquired upon exercise of the Options are restricted as to any pledge, hypothecation, or other transfer, including any short position, any "put equivalent position" as defined by Rule 16a-1(h) promulgated under the Exchange Act, or any "call equivalent position" as defined by Rule 16a-1(b) promulgated under the Exchange Act by the Optionee prior to exercise of an Option until the Company is no longer relying on the exemption provided by Rule 12h-1(f); and (C) at any time that the Company is relying on the exemption provided by Rule 12h-1(f), the Company shall deliver to Optionees (whether by physical or electronic delivery or written notice of the availability of the information on an internet site) the information required by Rule 701(e)(3), (4), and (5) promulgated under the Securities Act every six months, including financial statements that are not more than 180 days old; *provided*, *however*, that the Company may condition the delivery of such information upon the Optionee's agreement to maintain its confidentiality.

2009 STOCK PLAN

NOTICE OF STOCK OPTION GRANT

You have been granted an option to purchase Common Stock ("Common Stock") of NeuroPace, Inc. (the "Company") as follows:

Board Approval Date:	
Date of Grant (Later of Board Approval Date or Commencement of Employment/Consulting):	
Vesting Commencement Date:	
Exercise Price Per Share:	
Total Number of Shares Granted:	
Total Exercise Price:	$
Type of Option:	[ISO/NSO]
Term/Expiration Date:	
Vesting Schedule:	[This Option shall be immediately exercisable and shall vest in accordance with the following schedule: twenty-five percent (25%) of the Shares subject to the Option shall vest on the twelfth month anniversary of the Vesting Commencement Date and one forty-eighth (1/48th) of the total number of Shares subject to the Option shall vest on the monthly anniversary date of the Vesting Commencement Date thereafter.]
Termination Period:	This Option may be exercised for three (3) months after termination of your employment or consulting relationship except as set out in Sections 7 and 8 of the Stock Option Agreement (but in no event later than the Expiration Date). You are responsible for keeping track of these exercise periods following termination of your service relationship with the Company regardless of the reason for termination. The Company will not provide further notice of such periods.

By your signature and the signature of the Company's representative below, you and the Company agree that this Option is granted under and governed by the terms and conditions of the

2009 Stock Plan and the Stock Option Agreement, both of which are attached and made a part of this document.

In addition, you agree and acknowledge that your rights to any Shares underlying the Option will be earned only as you provide services to the Company over time, that the grant of the Option is not as consideration for services you rendered to the Company prior to your Vesting Commencement Date, and that nothing in this Notice or the attached documents confers upon you any right to continue your employment or consulting relationship with the Company for any period of time, nor does it interfere in any way with your right or the Company's right to terminate that relationship at any time, for any reason, with or without cause.

The per share "Exercise Price" is intended to be at least equal to the fair market value of the Company's Common Stock at the date of grant. The Company has attempted in good faith to make the fair market value determination in compliance with applicable tax law although there can be no certainty that the IRS will agree. If the IRS does not agree and asserts the fair market value at the time of grant is higher than the Exercise Price, the IRS could seek to impose greater taxes on you, including interest and penalties under Internal Revenue Code Section 409A. While the Company believes this is an unlikely event, the Company cannot provide absolute assurance and you may want to consult your own tax adviser with any questions.

OPTIONEE:	NEUROPACE, INC.
_____	By: _____
Signature)	
_____	_____
(Printed Name)	
	_____

NEUROPACE, INC.

2009 STOCK PLAN

STOCK OPTION AGREEMENT

1. **Grant of Option.** NeuroPace, Inc., a Delaware corporation (the "Company"), hereby grants to ("Optionee") an option (the "Option") to purchase a total number of shares of Common Stock (the "Shares") set forth in the Notice of Stock Option Grant, at the exercise price per Share set forth in the Notice of Stock Option Grant (the "Exercise Price") subject to the terms, definitions and provisions of the Company's 2009 Stock Plan (the "Plan") adopted by the Company, which is incorporated herein by reference. Unless otherwise defined herein, the terms used in this Agreement shall have the meanings defined in the Plan.

2. **Designation of Option.** This Option is intended to be an Incentive Stock Option as defined in Section 422 of the Code only to the extent so designated in the Notice of Stock Option Grant, and to the extent it is not so designated or to the extent the Option does not qualify as an Incentive Stock Option under Applicable Law, then it is intended to be and will be treated as a Nonstatutory Stock Option.

Notwithstanding the above, if designated as an Incentive Stock Option, in the event that the Shares subject to this Option (and all other Incentive Stock Options granted to Optionee by the Company or any Parent or Subsidiary, including under other plans of the Company) that first become exercisable in any calendar year have an aggregate fair market value (determined for each Share as of the date of grant of the option covering such Share) in excess of $100,000, the Shares in excess of $100,000 shall be treated as subject to a Nonstatutory Stock Option, in accordance with Section 5(b) of the Plan.

3. **Exercise of Option.** This Option shall be exercisable during its term in accordance with the Vesting/Exercise Schedule set out in the Notice of Stock Option Grant and with the provisions of Section 9 of the Plan as follows:

(a) **Right to Exercise.**

(i) This Option may be exercised in whole or in part at any time after the Date of Grant, including Shares which have not yet vested under the vesting schedule indicated on the Notice of Stock Option Grant; provided, however, that Optionee shall execute as a condition to such exercise of this Option, the Early Exercise Notice and Restricted Stock Purchase Agreement attached hereto as Exhibit A (the "Early Exercise Agreement"). If Optionee chooses to exercise this Option solely as to Shares which have vested under the vesting schedule indicated on the Notice of Stock Option Grant, Optionee shall complete and execute the form of Exercise Notice and Restricted Stock Purchase Agreement attached hereto as Exhibit B (the "Exercise Agreement"). Notwithstanding the foregoing, the Company may in its discretion prescribe or accept a different form of notice of exercise and/or stock purchase agreement if such forms are otherwise consistent with this Agreement, the Plan and then-applicable law.

(ii) This Option may not be exercised for a fraction of a share.

(iii) In the event of Optionee's death, disability or other termination of employment or consulting relationship, the exercisability of the Option is governed by Sections 6, 7 and 8 below, subject to the limitation contained in Section 3(a)(iv) below.

(iv) In no event may this Option be exercised after the Expiration Date of this Option as set forth in the Notice of Stock Option Grant.

(b) **Exercise Restriction for Non-Exempt Employees.** Notwithstanding anything to the contrary in this Agreement or the Notice of Stock Option Grant, in the event that Optionee is an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (*i.e.*, a "Non-Exempt Employee"), Optionee may not exercise this Option until Optionee has completed at least six (6) months of Continuous Service Status measured from the Date of Grant specified in the Notice of Stock Option Grant.

(c) **Method of Exercise.**

(i) This Option shall be exercisable by execution and delivery of the Early Exercise Agreement or the Exercise Agreement, whichever is applicable, or of any other written notice approved for such purpose by the Company which shall state Optionee's election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such shares of Common Stock as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered to the Company by such means as are determined by the Plan Administrator in its discretion to constitute adequate delivery. The written notice shall be accompanied by payment of the Exercise Price. This Option shall be deemed to be exercised upon receipt by the Company of such written notice accompanied by the Exercise Price.

(ii) As a condition to the exercise of this Option and as further set forth in Section 12 of this Agreement and Section 11 of the Plan, Optionee agrees to make adequate provision for federal, state or other tax withholding obligations, if any, which arise upon the vesting or exercise of the Option, or disposition of Shares, whether by withholding, direct payment to the Company, or otherwise.

(iii) The Company is not obligated, and will have no liability for failure, to issue or deliver any Shares upon exercise of the Option unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to Optionee on the date on which the Option is exercised with respect to such Shares.

4. **Method of Payment.** Payment of the Exercise Price shall be by cash, check or any other method permitted under the Plan; provided however that the Administrator may refuse to allow Optionee to tender a particular form of payment (other than cash or check) if, in the

Administrator's sole discretion, acceptance of such form of consideration would not be in the best interests of the Company at such time.

5. **Restrictions on Exercise.** In the event the Plan is not approved by the stockholders of the Company within twelve (12) months after its adoption by the Board of Directors of the Company and if this Option is exercised within such twelve (12) month period, then this Option and the exercise thereof shall be immediately rescinded. This Option may not be exercised if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any applicable federal or state securities or other law or regulation, including any rule under Part 221 of Title 12 of the Code of Federal Regulations as promulgated by the Federal Reserve Board. As a condition to the exercise of this Option, the Company may require Optionee to make any representation and warranty to the Company as may be required by Applicable Law.

6. **Termination of Relationship.** Following the date of termination of Optionee's Continuous Service Status as an Employee or Consultant (the "Termination Date"), Optionee may exercise this Option during the Termination Period set forth in the Notice of Stock Option Grant. To the extent that Optionee was not entitled to exercise this Option at such Termination Date, or if Optionee does not exercise this Option within the Termination Period, the Option shall terminate. In no event, may this Option be exercised after the Expiration Date of the Option set forth in the Notice of Stock Option Grant.

7. **Disability of Optionee.**

(a) Notwithstanding the provisions of Section 6 above, in the event of termination of Optionee's Continuous Service Status as an Employee or Consultant as a result of his or her total and permanent disability (as defined in Section 22(e)(3) of the Code), Optionee may, but only within twelve months from the Termination Date (but in no event later than the Expiration Date set forth in the Notice of Stock Option Grant and in Section 10 below), exercise this Option to the extent Optionee was vested in the Option Shares as of such Termination Date. To the extent that Optionee was not entitled to exercise the Option on the Termination Date, or if Optionee does not exercise such Option to the extent so entitled within the time specified in this Section 7(a), the Option shall terminate.

(b) Notwithstanding the provisions of Section 6 above, in the event of termination of Optionee's consulting relationship or Continuous Service Status as an Employee as a result of a disability not constituting a total and permanent disability (as set forth in Section 22(e)(3) of the Code), Optionee may, but only within twelve months from the Termination Date (but in no event later than the Expiration Date set forth in the Notice of Stock Option Grant and in Section 10 below), exercise the Option to the extent Optionee was vested in the Option Shares as of such Termination Date; provided, however, that if this is an Incentive Stock Option and Optionee fails to exercise this Incentive Stock Option within three months from the Termination Date, this Option will cease to qualify as an Incentive Stock Option (as defined in Section 422 of the Code) and Optionee will be treated for federal income tax purposes as having received ordinary income at the time of such exercise in an amount generally measured by the difference between the Exercise Price for the Shares and the Fair Market Value of the Shares on the date of

exercise. To the extent that Optionee was not entitled to exercise the Option at the Termination Date, or if Optionee does not exercise such Option to the extent so entitled within the time specified in this Section 7(b), the Option shall terminate.

8. **Death of Optionee.** In the event of the death of Optionee (a) during the Term of this Option and while an Employee or Consultant of the Company and having been in Continuous Service Status as an Employee or Consultant since the date of grant of the Option, or (b) within 30 days after Optionee's Termination Date, the Option may be exercised at any time within twelve months following the date of death (but in no event later than the Expiration Date set forth in the Notice of Stock Option Grant and in Section 10 below), by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent Optionee was vested in the Option as of the Termination Date.

9. **Non-Transferability of Option.** This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by him or her. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Company, you may designate a third party who, in the event of your death, shall thereafter be entitled to exercise your option. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

10. **Term of Option.** This Option may be exercised only within the Term set forth in the Notice of Stock Option Grant, subject to the limitations set forth in Section 7 of the Plan.

11. **Tax Consequences.** The Company has not provided any tax advice with respect to this Option or the disposition of the Shares. Optionee should obtain advice from an appropriate independent professional adviser with respect to the taxation implications of the grant, exercise, assignment, release, cancellation or any other disposal of this Option and on any subsequent sale or disposition of the Shares. Optionee hereby agrees that the Company does not have a duty to design or administer the Option or its other compensation programs in a manner that minimizes Optionee's tax liabilities. Optionee shall not make any claim against the Company, or any of its Directors, Employees or Affiliates related to tax liabilities arising from the Option or other compensation of Optionee. In particular, Optionee acknowledges that this Option is exempt from Section 409A of the Code only if the exercise price per share specified in the Notice of Stock Option Grant is at least equal to the "fair market value" per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the Option. Because the Common Stock is not traded on an established securities market, the Fair Market Value is determined by the Board, perhaps in consultation with an independent valuation firm retained by the Company. Optionee acknowledges that there is no guarantee that the Internal Revenue Service will agree with the valuation as determined by the Board, and Optionee shall not make any claim against the Company, or any of its Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that the valuation determined by the Board is less than the "fair market value" as subsequently determined by the Internal Revenue Service.

12. **Withholding Tax Obligations.**

(a) **General Withholding Obligations.** As a condition to the exercise of this Option, Optionee shall make such arrangements as the Administrator may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the exercise, receipt or vesting of the Option. The Company shall not be required to issue any Shares under the Plan until such obligations are satisfied. Optionee understands that, upon exercising a Nonstatutory Stock Option, he or she will recognize income for tax purposes in an amount equal to the excess of the then Fair Market Value of the Shares over the Exercise Price. If Optionee is an employee, the Company will be required to withhold from Optionee's compensation, or collect from Optionee and pay to the applicable taxing authorities an amount equal to a percentage of this compensation income. Additionally, Optionee may at some point be required to satisfy tax withholding obligations with respect to the disqualifying disposition of an Incentive Stock Option. Optionee shall satisfy his or her tax withholding obligation arising upon the exercise of this Option by one or some combination of the following methods: (i) by cash or check payment, (ii) out of Optionee's current compensation, (iii) if permitted by the Administrator, in its discretion, by surrendering to the Company Shares which (A) in the case of Shares previously acquired from the Company, have been owned by Optionee for more than six months on the date of surrender (or such other period of time as is required for the Company to avoid adverse accounting consequences), and (B) have a Fair Market Value determined as of the applicable Tax Date (as defined in Section 12(c) below) on the date of surrender equal to the amount required to be withheld, or (iv) by electing to have the Company withhold from the Shares to be issued upon exercise of the Option that number of Shares having a Fair Market Value determined as of the applicable Tax Date equal to the amount required to be withheld.

(b) **Stock Withholding to Satisfy Withholding Tax Obligations.** In the event the Administrator allows Optionee to satisfy his or her tax withholding obligations as provided in Section 12(a)(iii) or (iv) above, such satisfaction must comply with the requirements of this Section 12(b) and all applicable laws. All elections by Optionee to have Shares withheld to satisfy tax withholding obligations shall be made in writing in a form acceptable to the Administrator and shall be subject to the following restrictions:

(i) the election must be made on or prior to the applicable Tax Date (as defined in Section 12(c) below);

(ii) once made, the election shall be irrevocable as to the particular Shares of the Option as to which the election is made;

(iii) all elections shall be subject to the consent or disapproval of the Administrator; and

(iv) the Administrator shall not allow Shares to be withheld in an amount that exceeds the minimum statutory withholding rates for federal and state tax purposes, including payroll taxes.

In the event the election to have Shares withheld is made by Optionee and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, Optionee shall receive the full number of Shares with respect to which the Option is exercised but Optionee shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

(c) **Definitions.** For purposes of this Section 12, the Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined under the applicable laws (the "Tax Date").

13. **Market Standoff Agreement.** In connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing such underwritten offering of the Company's securities, Optionee agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days but subject to such extension or extensions as may be required by the underwriters in order to publish research reports while complying with Rule 2711 of the Financial Industry Regulatory Authority, Inc.) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's initial public offering.

[*Signature Page Follows*]

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

NEUROPACE, INC.

By: _____

Name: _____

Title: _____

OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE OPTION HEREOF IS EARNED ONLY BY CONTINUING CONSULTANCY OR EMPLOYMENT AT THE WILL OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER). OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT NOTHING IN THIS AGREEMENT, NOR IN THE COMPANY'S STOCK PLAN WHICH IS INCORPORATED HEREIN BY REFERENCE, SHALL CONFER UPON OPTIONEE ANY RIGHT WITH RESPECT TO CONTINUATION OF EMPLOYMENT OR CONSULTANCY BY THE COMPANY, NOR SHALL IT INTERFERE IN ANY WAY WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S EMPLOYMENT OR CONSULTANCY AT ANY TIME, WITH OR WITHOUT CAUSE.

Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts this Option subject to all of the terms and provisions thereof. Optionee has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan or this Option. In the event of a conflict between the terms and provisions of the Plan and the terms and provisions of the Notice of Stock Option Grant and this Agreement, the terms and provisions of the Plan shall prevail. The Option, including the Plan, constitutes the entire agreement between Optionee and the Company on the subject matter hereof and supersedes all proposals, written or oral, and all other communications between the parties relating to such subject matter.

Dated: _____ _____

(Signature)

EXHIBIT A

NEUROPACE, INC.

2009 STOCK PLAN

EARLY EXERCISE NOTICE AND RESTRICTED STOCK PURCHASE AGREEMENT

This Agreement ("Agreement") is made as of _____, by and between NeuroPace, Inc., a Delaware corporation (the "Company"), and _____ ("Purchaser"). To the extent any capitalized terms used in this Agreement are not defined, they shall have the meaning ascribed to them in the Company's 2009 Stock Plan (the "Plan").

1. **Exercise of Option.** Subject to the terms and conditions hereof, Purchaser hereby elects to exercise his or her option to purchase _____ shares of the Common Stock (the "Shares") of the Company under and pursuant to the Plan and the Stock Option Agreement dated _____ (the "Option Agreement"). Of these Shares, Purchaser has elected to purchase _____ of those Shares which have become vested as of the date hereof under the Vesting Schedule set forth in the Notice of Stock Option Grant (the "Vested Shares") and _____ Shares which have not yet vested under such Vesting Schedule (the "Unvested Shares"). The purchase price for the Shares shall be $_____ per Share for a total purchase price of $_____. The term "Shares" refers to the purchased Shares and all securities received in replacement of the Shares or as stock dividends or splits, all securities received in replacement of the Shares in a recapitalization, merger, reorganization, exchange or the like, and all new, substituted or additional securities or other properties to which Purchaser is entitled by reason of Purchaser's ownership of the Shares.

2. **Time and Place of Exercise.** The purchase and sale of the Shares under this Agreement shall occur at the principal office of the Company simultaneously with the execution and delivery of this Agreement in accordance with the provisions of Section 3(c) of the Option Agreement. As soon as practicable, the Company will (a) in the case of certificated shares, deliver to Purchaser a certificate representing the Shares to be purchased by Purchaser (which shall be issued in Purchaser's name) or (b) in the case of uncertificated shares, make an appropriate entry on the books of the Company or a duly authorized transfer agent of the Company, in either case against payment of the purchase price therefor by Purchaser by any method listed in Section 4 of the Option Agreement.

3. **Limitations on Transfer.** In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, encumber or dispose of any interest in the Shares while the Shares are subject to the Company's Repurchase Option (as defined below). After any Shares have been released from such Repurchase Option, Purchaser shall not assign,

encumber or dispose of any interest in such Shares except in compliance with the provisions below and applicable securities laws.

(a) **Repurchase Option.**

(i) In the event of the voluntary or involuntary termination of Purchaser's employment or consulting relationship with the Company for any reason (including death or disability), with or without cause, the Company shall upon the date of such termination (the "Termination Date") have an irrevocable, exclusive option (the "Repurchase Option") for a period of 90 days from such date to repurchase all or any portion of the Shares held by Purchaser as of the Termination Date which have not yet been released from the Company's Repurchase Option at the lower of (i) the Fair Market Value of the Shares on the date of repurchase, or (ii) the original purchase price per Share specified in Section 1 (adjusted for any stock splits, stock dividends and the like).

(ii) Unless the Company notifies Purchaser within 90 days from the date of termination of Purchaser's employment or consulting relationship that it does not intend to exercise its Repurchase Option with respect to some or all of the Shares, the Repurchase Option shall be deemed automatically exercised by the Company as of the 90th day following such termination, provided that the Company may notify Purchaser that it is exercising its Repurchase Option as of a date prior to such 90th day. Unless Purchaser is otherwise notified by the Company pursuant to the preceding sentence that the Company does not intend to exercise its Repurchase Option as to some or all of the Shares to which it applies at the time of termination, execution of this Agreement by Purchaser constitutes written notice to Purchaser of the Company's intention to exercise its Repurchase Option with respect to all Shares to which such Repurchase Option applies. The Company, at its choice, may satisfy its payment obligation to Purchaser with respect to exercise of the Repurchase Option by either (A) delivering a check to Purchaser in the amount of the purchase price for the Shares being repurchased, or (B) in the event Purchaser is indebted to the Company, canceling an amount of such indebtedness equal to the purchase price for the Shares being repurchased, or (C) by a combination of (A) and (B) so that the combined payment and cancellation of indebtedness equals such purchase price. In the event of any deemed automatic exercise of the Repurchase Option pursuant to this Section 3(a)(ii) in which Purchaser is indebted to the Company, such indebtedness equal to the purchase price of the Shares being repurchased shall be deemed automatically canceled as of the 90th day following termination of Purchaser's employment or consulting relationship unless the Company otherwise satisfies its payment obligations. As a result of any repurchase of Shares pursuant to this Section 3(a), the Company shall become the legal and beneficial owner of the Shares being repurchased and shall have all rights and interest therein or related thereto, and the Company shall have the right to transfer to its own name the number of Shares being repurchased by the Company, without further action by Purchaser.

(iii) One hundred percent (100%) of the Shares shall initially be subject to the Repurchase Option. The Unvested Shares shall be released from the Repurchase Option in accordance with the Vesting Schedule set forth in the Notice of Stock Option Grant until all

Shares are released from the Repurchase Option. Fractional shares shall be rounded to the nearest whole share.

(b) **Right of First Refusal.** Before any Shares held by Purchaser or any transferee of Purchaser (either being sometimes referred to herein as the "Holder") may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section 3(b) (the "Right of First Refusal").

(i) **Notice of Proposed Transfer.** The Holder of the Shares shall deliver to the Company a written notice (the "Notice") stating: (i) the Holder's bona fide intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or other transferee ("Proposed Transferee"); (iii) the number of Shares to be transferred to each Proposed Transferee; and (iv) the terms and conditions of each proposed sale or transfer. The Holder shall offer the Shares at the same price (the "Offered Price") and upon the same terms (or terms as similar as reasonably possible) to the Company or its assignee(s).

(ii) **Exercise of Right of First Refusal.** At any time within 30 days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Shares proposed to be transferred to any one or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (iii) below.

(iii) **Purchase Price.** The purchase price ("Purchase Price") for the Shares purchased by the Company or its assignee(s) under this Section 3(b) shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the noncash consideration shall be determined by the Board of Directors of the Company in good faith.

(iv) **Payment.** Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within 30 days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(v) **Holder's Right to Transfer.** If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 3(b), then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other transfer is consummated within 60 days after the date of the Notice and provided further that any such sale or other transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section 3 shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, or if the Holder proposes to change the price or other terms to make them more favorable to the Proposed Transferee, a new Notice shall be given to the Company, and the Company and/or its

assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

(vi) **Exception for Certain Family Transfers.** Anything to the contrary contained in this Section 3(b) notwithstanding, the transfer of any or all of the Shares during Purchaser's lifetime or on Purchaser's death by will or intestacy to Purchaser's Immediate Family (as defined below) or a trust for the benefit of Purchaser's Immediate Family shall be exempt from the provisions of this Section 3(b). "Immediate Family" as used herein shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister, or registered domestic partner sharing the Purchaser's household. In such case, the transferee or other recipient shall receive and hold the Shares so transferred subject to the provisions of this Section, and there shall be no further transfer of such Shares except in accordance with the terms of this Section 3.

(c) **Involuntary Transfer.**

(i) **Company's Right to Purchase upon Involuntary Transfer.** In the event, at any time after the date of this Agreement, of any transfer by operation of law or other involuntary transfer (including divorce or death, but excluding, in the event of death, a transfer to Immediate Family as set forth in Section 3(b)(vi) above) of all or a portion of the Shares by the record holder thereof, the Company shall have the right to purchase all of the Shares transferred at the greater of the purchase price paid by Purchaser for the Shares pursuant to this Agreement (as adjusted for any stock splits, stock dividends and the like) or the Fair Market Value of the Shares on the date of transfer. Upon such a transfer, the person acquiring the Shares shall promptly notify the Secretary of the Company of such transfer. The right to purchase such Shares shall be provided to the Company for a period of 30 days following receipt by the Company of written notice by the person acquiring the Shares.

(ii) **Price for Involuntary Transfer.** With respect to any stock to be transferred pursuant to Section 3(c)(i), the Fair Market Value per Share shall be a price set by the Board of Directors of the Company in good faith using a reasonable valuation method in a reasonable manner in accordance with Section 409A of the Code. The Company shall notify Purchaser or his or her executor of the price so determined within thirty (30) days after receipt by it of written notice of the transfer or proposed transfer of Shares. However, if the Purchaser does not agree with the valuation as determined by the Board of Directors of the Company, the Purchaser shall be entitled to have the valuation determined by an independent appraiser to be mutually agreed upon by the Company and the Purchaser and whose fees shall be borne equally by the Company and the Purchaser.

(d) **Assignment.** The right of the Company to purchase any part of the Shares may be assigned in whole or in part to any stockholder or stockholders of the Company or other persons or organizations.

(e) **Restrictions Binding on Transferees.** All transferees of Shares or any interest therein will receive and hold such Shares or interest subject to the provisions of this Agreement, including, insofar as applicable, the Repurchase Option. Any sale or transfer of the Shares shall be void unless the provisions of this Agreement are satisfied.

(f) **Termination of Rights.** The Right of First Refusal and the Company's right to repurchase the Shares in the event of an involuntary transfer pursuant to Section 3(c) above shall terminate upon the first sale of Common Stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act").

(g) **Market Standoff Agreement.** In connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing such underwritten offering of the Company's securities, Purchaser agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days but subject to such extension or extensions as may be required by the underwriters in order to publish research reports while complying with Rule 2711 of the Financial Industry Regulatory Authority, Inc.) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's initial public offering.

4. **Escrow of Unvested Shares.** For purposes of facilitating the enforcement of the provisions of Section 3 above, Purchaser agrees, immediately upon receipt of the certificate(s) for the Shares subject to the Repurchase Option, to deliver such certificate(s), together with an Assignment Separate from Certificate in the form attached to this Agreement as Attachment A executed by Purchaser and by Purchaser's spouse (if required for transfer), in blank, to the Secretary of the Company, or the Secretary's designee, to hold such certificate(s) and Assignment Separate from Certificate in escrow and to take all such actions and to effectuate all such transfers and/or releases as are in accordance with the terms of this Agreement. Purchaser hereby acknowledges that the Secretary of the Company, or the Secretary's designee, is so appointed as the escrow holder with the foregoing authorities as a material inducement to make this Agreement and that said appointment is coupled with an interest and is accordingly irrevocable. Purchaser agrees that said escrow holder shall not be liable to any party hereof (or to any other party). The escrow holder may rely upon any letter, notice or other document executed by any signature purported to be genuine and may resign at any time. Purchaser agrees that if the Secretary of the Company, or the Secretary's designee, resigns as escrow holder for any or no reason, the Board of Directors of the Company shall have the power to appoint a successor to serve as escrow holder pursuant to the terms of this Agreement.

5. **Investment and Taxation Representations.** In connection with the purchase of the Shares, Purchaser represents to the Company the following:

(a) Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Purchaser is purchasing the Shares for investment for his or her own account only and not with a view to, or for resale in connection with, any

"distribution" thereof within the meaning of the Securities Act. Purchaser does not have any present intention to transfer the Shares to any other person or entity.

(b) Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

(c) Purchaser understands that the Shares are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, Purchaser must hold the Shares indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Purchaser acknowledges that the Company has no obligation to register or qualify the Shares for resale. Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Shares, and requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

(d) Purchaser is familiar with the provisions of Rules 144 and 701, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer of the securities (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Purchaser understands that the Company provides no assurances as to whether he or she will be able to resell any or all of the Shares pursuant to Rule 144 or Rule 701, which rules require, among other things, that the Company be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, that resales of securities take place only after the holder of the Shares has held the Shares for certain specified time periods, and under certain circumstances, that resales of securities be limited in volume and take place only pursuant to brokered transactions. Notwithstanding this paragraph (d), Purchaser acknowledges and agrees to the restrictions set forth in paragraph (e) below.

(e) Purchaser further understands that in the event all of the applicable requirements of Rule 144 or 701 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

(f) Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

(g) Purchaser understands that the per share "Exercise Price" for the Shares is intended to be at least equal to the fair market value of the Company's Common Stock at the date of grant and that the Company has attempted in good faith to make the fair market value determination in compliance with applicable tax law although there can be no certainty that the IRS will agree. Purchaser understands that if the IRS does not agree and asserts that the fair market value at the time of grant is higher than the Exercise Price, the IRS could seek to impose greater taxes on Purchaser, including interest and penalties under Internal Revenue Code Section 409A.

6. **Restrictive Legends and Stop-Transfer Orders.**

(a) **Legends.** The certificate or certificates representing the Shares shall bear the following legends (as well as any legends required by applicable state and federal corporate and securities laws):

(i) THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED UNLESS EFFECTED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR UNDER ANOTHER EXEMPTION AVAILABLE UNDER THE SECURITIES ACT OF 1933 (AS TO WHICH AVAILABILITY THE COMPANY MAY REQUIRE THE SELLER/TRANSFEROR TO PROVIDE AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY).

(ii) THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

(b) **Stop-Transfer Notices.** Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) **Refusal to Transfer.** The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote

or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

(d) **Removal of Legend.** When all of the following events have occurred, the Shares then held by Purchaser will no longer be subject to the legend referred to in Section 6(a)(ii): (i) the termination of the Right of First Refusal; (ii) the expiration or termination of the market standoff provisions of Section 3(g) (and of any agreement entered pursuant to Section 3(g)); and (iii) the expiration or exercise in full of the Repurchase Option. After such time, and upon Purchaser's request, a new certificate or certificates representing the Shares not repurchased shall be issued without the legend referred to in Section 6(a)(ii), and delivered to Purchaser.

7. **No Employment Rights.** Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent or Subsidiary of the Company, to terminate Purchaser's employment or consulting relationship, for any reason, with or without cause.

8. **Section 83(b) Election.** Purchaser understands that Section 83(a) of the Internal Revenue Code of 1986, as amended (the "Code"), taxes as ordinary income for a Nonstatutory Stock Option and as alternative minimum taxable income for an Incentive Stock Option the difference between the amount paid for the Shares and the Fair Market Value of the Shares as of the date any restrictions on the Shares lapse. In this context, "restriction" means the right of the Company to buy back the Shares pursuant to the Repurchase Option set forth in Section 3(a) of this Agreement. Purchaser understands that Purchaser may elect to be taxed at the time the Shares are purchased, rather than when and as the Repurchase Option expires, by filing an election under Section 83(b) (an "83(b) Election") of the Code with the Internal Revenue Service within 30 days from the date of purchase. Even if the Fair Market Value of the Shares at the time of the execution of this Agreement equals the amount paid for the Shares, the election must be made to avoid income and alternative minimum tax treatment under Section 83(a) in the future. Purchaser understands that failure to file such an election in a timely manner may result in adverse tax consequences for Purchaser. Purchaser further understands that an additional copy of such election form should be filed with his or her federal income tax return for the calendar year in which the date of this Agreement falls. Purchaser acknowledges that the foregoing is only a summary of the effect of United States federal income taxation with respect to purchase of the Shares hereunder, and does not purport to be complete. Purchaser further acknowledges that the Company has directed Purchaser to seek independent advice regarding the applicable provisions of the Code, the income tax laws of any municipality, state or foreign country in which Purchaser may reside, and the tax consequences of Purchaser's death.

Purchaser agrees that he or she will execute and deliver to the Company with this executed Agreement a copy of the Acknowledgment and Statement of Decision Regarding Section 83(b) Election (the "Acknowledgment") attached hereto as Attachment B. Purchaser further agrees that he or she will execute and submit with the Acknowledgment a copy of the 83(b) Election attached hereto as Attachment C (for tax purposes in connection with the early

exercise of an option) if Purchaser has indicated in the Acknowledgment his or her decision to make such an election.

9. **Miscellaneous.**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

(b) **Entire Agreement; Enforcement of Rights.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(c) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(d) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(e) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by telegram or fax or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

(f) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(g) **Successors and Assigns.** The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The rights and obligations of Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

(h) **California Corporate Securities Law.** THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN

QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF THE SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO THE QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON THE QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

[*Signature Page Follows*]

The parties have executed this Agreement as of the date first set forth above.

COMPANY:

NEUROPACE, INC.

By:

Name:

Title:

Address: 455 N. Bernardo Avenue
Mountain View, CA 94043

PURCHASER:

(Signature)

(Printed Name)

Address:

I, _____, spouse of _____, have read and hereby approve the foregoing Agreement. In consideration of the Company's granting my spouse the right to purchase the Shares as set forth in the Agreement, I hereby agree to be bound irrevocably by the Agreement and further agree that any community property or similar interest that I may have in the Shares shall hereby be similarly bound by the Agreement. I hereby appoint my spouse as my attorney-in-fact with respect to any amendment or exercise of any rights under the Agreement.

Spouse of (Signature)

ATTACHMENT A

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Early Exercise Notice and Restricted Stock Purchase Agreement between the undersigned ("Purchaser") and NeuroPace, Inc. (the "Company") dated _____ (the "Agreement"), Purchaser hereby sells, assigns and transfers unto the Company _____ (_____) shares of the Common Stock of the Company, standing in Purchaser's name on the books of the Company and represented by Certificate No. _____, and hereby irrevocably appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT AND THE ATTACHMENTS THERETO.

Dated: _____

Signature:

_____

_____

Spouse of _____

Instruction: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its Repurchase Option set forth in the Agreement without requiring additional signatures on the part of Purchaser.

ATTACHMENT B

ACKNOWLEDGMENT AND STATEMENT OF DECISION
REGARDING SECTION 83(b) ELECTION

The undersigned (which term includes the undersigned's spouse), who is a purchaser of _____ shares of Common Stock of NeuroPace, Inc., a Delaware corporation (the "Company") by exercise of an option (the "Option") granted pursuant to the Company's 2009 Stock Plan (the "Plan"), hereby states as follows:

1. The undersigned acknowledges receipt of a copy of the Plan relating to the offering of such shares. The undersigned has carefully reviewed the Plan and the option agreement pursuant to which the Option was granted.

2. The undersigned either [check and complete as applicable]:

(a) _____ has consulted, and has been fully advised by, the undersigned's own tax advisor, _____, whose business address is _____, _____, regarding the federal, state and local tax consequences of purchasing shares under the Plan, and particularly regarding the advisability of making elections pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code") and pursuant to the corresponding provisions, if any, of applicable state law; or

(b) _____ has knowingly chosen not to consult such a tax advisor.

3. The undersigned hereby states that the undersigned has decided [check as applicable]:

(a) _____ to make an election pursuant to Section 83(b) of the Code, and is submitting to the Company, together with the undersigned's executed Early Exercise Notice and Restricted Stock Purchase Agreement, an executed form entitled "Election Under Section 83(b) of the Internal Revenue Code of 1986;" or

(b) _____ not to make an election pursuant to Section 83(b) of the Code.

4. Neither the Company nor any subsidiary or representative of the Company has made any warranty or representation to the undersigned with respect to the tax consequences of the undersigned's purchase of shares under the Plan or of the making or failure to make an election pursuant to Section 83(b) of the Code or the corresponding provisions, if any, of applicable state law.

Date: _____ _____
(Signature)

Date: _____ _____
Spouse (Signature)

ATTACHMENT C

ELECTION UNDER SECTION 83(b) OF THE INTERNAL REVENUE CODE OF 1986

The undersigned taxpayer hereby elects, pursuant to Section 83(b) of the Internal Revenue Code, to include in taxpayer's gross income or alternative minimum taxable income, as applicable, for the current taxable year, the amount of any income that may be taxable to taxpayer in connection with taxpayer's receipt of the property described below:

1. The name, address, taxpayer identification number and taxable year of the undersigned are as follows:

   NAME OF TAXPAYER: _____

   NAME OF SPOUSE: _____

   ADDRESS: _____

   _____

   IDENTIFICATION NO. OF TAXPAYER: _____

   IDENTIFICATION NO. OF SPOUSE: _____

   TAXABLE YEAR: _____

2. The property with respect to which the election is made is described as follows: _____ shares of the Common Stock of NeuroPace, Inc., a Delaware corporation (the "Company").

3. The date on which the property was transferred is: _____

4. The property is subject to the following restrictions:

   Repurchase option at lower of cost or fair market value in favor of the Company upon termination of taxpayer's employment or consulting relationship.

5. The Fair Market Value at the time of transfer, determined without regard to any restriction other than a restriction which by its terms will never lapse, of such property is: $_____ (per share).

6. The amount (if any) paid for such property: $_____ (per share).

The undersigned has submitted a copy of this statement to the person for whom the services were performed in connection with the undersigned's receipt of the above-described property. The transferee of such property is the person performing the services in connection with the transfer of said property.

The undersigned understands that the foregoing election may not be revoked except with the consent of the Commissioner.

Date: _____ _____

(Signature)

Date: _____ _____

Spouse (Signature)

EXHIBIT B

NEUROPACE, INC.

2009 STOCK PLAN

EXERCISE NOTICE AND RESTRICTED STOCK PURCHASE AGREEMENT

This Agreement ("Agreement") is made as of _____, by and between NeuroPace, Inc., a Delaware corporation (the "Company"), and _____ ("Purchaser"). To the extent any capitalized terms used in this Agreement are not defined, they shall have the meaning ascribed to them in the 2009 Stock Plan (the "Plan").

1. **Exercise of Option.** Subject to the terms and conditions hereof, Purchaser hereby elects to exercise his or her option to purchase _____ shares of the Common Stock (the "Shares") of the Company under and pursuant to the Plan and the Stock Option Agreement dated _____, (the "Option Agreement"). The purchase price for the Shares shall be $_____ per Share for a total purchase price of $_____. The term "Shares" refers to the purchased Shares and all securities received in replacement of the Shares or as stock dividends or splits, all securities received in replacement of the Shares in a recapitalization, merger, reorganization, exchange or the like, and all new, substituted or additional securities or other properties to which Purchaser is entitled by reason of Purchaser's ownership of the Shares.

2. **Time and Place of Exercise.** The purchase and sale of the Shares under this Agreement shall occur at the principal office of the Company simultaneously with the execution and delivery of this Agreement in accordance with the provisions of Section 3(c) of the Option Agreement. As soon as practicable, the Company will (a) in the case of certificated shares, deliver to Purchaser a certificate representing the Shares to be purchased by Purchaser (which shall be issued in Purchaser's name) or (b) in the case of uncertificated shares, make an appropriate entry on the books of the Company or a duly authorized transfer agent of the Company, in either case against payment of the purchase price therefor by Purchaser by any method listed in Section 4 of the Option Agreement.

3. **Limitations on Transfer.** In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, encumber or dispose of any interest in the Shares except in compliance with the provisions below and applicable securities laws.

(a) **Right of First Refusal.** Before any Shares held by Purchaser or any transferee of Purchaser (either being sometimes referred to herein as the "Holder") may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section 3(a) (the "Right of First Refusal").

(i) **Notice of Proposed Transfer.** The Holder of the Shares shall deliver to the Company a written notice (the "Notice") stating: (i) the Holder's bona fide

intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or other transferee ("Proposed Transferee"); (iii) the number of Shares to be transferred to each Proposed Transferee; and (iv) the terms and conditions of each proposed sale or transfer. The Holder shall offer the Shares at the same price (the "Offered Price") and upon the same terms (or terms as similar as reasonably possible) to the Company or its assignee(s).

(ii) **Exercise of Right of First Refusal.** At any time within 30 days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Shares proposed to be transferred to any one or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (iii) below.

(iii) **Purchase Price.** The purchase price ("Purchase Price") for the Shares purchased by the Company or its assignee(s) under this Section 3(a) shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board of Directors of the Company in good faith.

(iv) **Payment.** Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within 30 days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(v) **Holder's Right to Transfer.** If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 3(a), then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other transfer is consummated within 60 days after the date of the Notice and provided further that any such sale or other transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section 3 shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, or if the Holder proposes to change the price or other terms to make them more favorable to the Proposed Transferee, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

(vi) **Exception for Certain Family Transfers.** Anything to the contrary contained in this Section 3(a) notwithstanding, the transfer of any or all of the Shares during Purchaser's lifetime or on Purchaser's death by will or intestacy to Purchaser's Immediate Family (as defined below) or a trust for the benefit of Purchaser's Immediate Family shall be exempt from the provisions of this Section 3(a). "Immediate Family" as used herein shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister, or registered domestic partner sharing the Purchaser's household. In such case, the transferee or other recipient shall

receive and hold the Shares so transferred subject to the provisions of this Section, and there shall be no further transfer of such Shares except in accordance with the terms of this Section 3.

(b) **Involuntary Transfer.**

(i) **Company's Right to Purchase upon Involuntary Transfer.** In the event, at any time after the date of this Agreement, of any transfer by operation of law or other involuntary transfer (including divorce or death, but excluding, in the event of death, a transfer to Immediate Family as set forth in Section 3(a)(vi) above) of all or a portion of the Shares by the record holder thereof, the Company shall have the right to purchase all of the Shares transferred at the greater of the purchase price paid by Purchaser for the Shares pursuant to this Agreement (as adjusted for any stock splits, stock dividends and the like) or the Fair Market Value of the Shares on the date of transfer. Upon such a transfer, the person acquiring the Shares shall promptly notify the Secretary of the Company of such transfer. The right to purchase such Shares shall be provided to the Company for a period of 30 days following receipt by the Company of written notice by the person acquiring the Shares.

(ii) **Price for Involuntary Transfer.** With respect to any stock to be transferred pursuant to Section 3(b)(i), the Fair Market Value per Share shall be a price set by the Board of Directors of the Company in good faith using a reasonable valuation method in a reasonable manner in accordance with Section 409A of the Code. The Company shall notify Purchaser or his or her executor of the price so determined within 30 days after receipt by it of written notice of the transfer or proposed transfer of Shares. However, if the Purchaser does not agree with the valuation as determined by the Board of Directors of the Company, the Purchaser shall be entitled to have the valuation determined by an independent appraiser to be mutually agreed upon by the Company and the Purchaser and whose fees shall be borne equally by the Company and the Purchaser.

(c) **Assignment.** The right of the Company to purchase any part of the Shares may be assigned in whole or in part to any stockholder or stockholders of the Company or other persons or organizations.

(d) **Restrictions Binding on Transferees.** All transferees of Shares or any interest therein will receive and hold such Shares or interest subject to the provisions of this Agreement. Any sale or transfer of the Shares shall be void unless the provisions of this Agreement are satisfied.

(e) **Termination of Rights.** The Right of First Refusal and the Company's right to repurchase the Shares in the event of an involuntary transfer pursuant to Section 3(b) above shall terminate upon the first sale of Common Stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act").

(f) **Market Standoff Agreement.** In connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing such underwritten offering of the Company's securities, Purchaser agrees not to sell,

make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days but subject to such extension or extensions as may be required by the underwriters in order to publish research reports while complying with Rule 2711 of the Financial Industry Regulatory Authority, Inc.) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's initial public offering.

4. **Investment and Taxation Representations.** In connection with the purchase of the Shares, Purchaser represents to the Company the following:

(a) Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Purchaser is purchasing the Shares for investment for his or her own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act.

(b) Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

(c) Purchaser understands that the Shares are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, Purchaser must hold the Shares indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Purchaser acknowledges that the Company has no obligation to register or qualify the Shares for resale. Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Shares, and requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

(d) Purchaser is familiar with the provisions of Rules 144 and 701, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer of the securities (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Purchaser understands that the Company provides no assurances as to whether he or she will be able to resell any or all of the Shares pursuant to Rule 144 or Rule 701, which rules require, among other things, that the Company be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, that resales of securities take place only after the holder of the Shares has held the Shares for certain specified time periods, and under certain circumstances, that resales of securities be limited in volume and take place only pursuant to brokered transactions. Notwithstanding this paragraph (d), Purchaser acknowledges and agrees to the restrictions set forth in paragraph (e) below.

(e) Purchaser further understands that in the event all of the applicable requirements of Rule 144 or 701 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

(f) Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

(g) Purchaser understands that the per share "Exercise Price" for the Shares is intended to be at least equal to the fair market value of the Company's Common Stock at the date of grant and that the Company has attempted in good faith to make the fair market value determination in compliance with applicable tax law although there can be no certainty that the IRS will agree. Purchaser understands that if the IRS does not agree and asserts that the fair market value at the time of grant is higher than the Exercise Price, the IRS could seek to impose greater taxes on Purchaser, including interest and penalties under Internal Revenue Code Section 409A.

5. **Restrictive Legends and Stop-Transfer Orders.**

(a) **Legends.** The certificate or certificates representing the Shares shall bear the following legends (as well as any legends required by applicable state and federal corporate and securities laws):

(i) THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED UNLESS EFFECTED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR UNDER ANOTHER EXEMPTION AVAILABLE UNDER THE SECURITIES ACT OF 1933 (AS TO WHICH AVAILABILITY THE COMPANY MAY REQUIRE THE SELLER/TRANSFEROR TO PROVIDE AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY).

(ii) THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

(b) **Stop-Transfer Notices.** Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) **Refusal to Transfer.** The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

(d) **Removal of Legend.** When all of the following events have occurred, the Shares then held by Purchaser will no longer be subject to the legend referred to in Section 5(a)(ii): (i) the termination of the Right of First Refusal; and (ii) the expiration or termination of the market standoff provisions of Section 3(f) (and of any agreement entered pursuant to Section 3(f)). After such time, and upon Purchaser's request, a new certificate or certificates representing the Shares not repurchased shall be issued without the legend referred to in Section 5(a)(ii), and delivered to Purchaser.

6. **No Employment Rights.** Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent or Subsidiary of the Company, to terminate Purchaser's employment or consulting relationship, for any reason, with or without cause.

7. **Miscellaneous.**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

(b) **Entire Agreement; Enforcement of Rights.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(c) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(d) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(e) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by telegram or fax or 48 hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

(f) **Counterparts.** This Agreement may be executed in two or more counter-parts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(g) **Successors and Assigns.** The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The rights and obligations of Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

(h) **California Corporate Securities Law.** THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF THE SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO THE QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON THE QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

[*Signature Page Follows*]

The parties have executed this Agreement as of the date first set forth above.

COMPANY:

NEUROPACE, INC.

By:

Name:

(print)

Title:

Address: 455 N. Bernardo Avenue

Mountain View, CA 94043

PURCHASER:

(Signature)

(Printed Name)

Address:

I, _____, spouse of _____ have read and hereby approve the foregoing Agreement. In consideration of the Company's granting my spouse the right to purchase the Shares as set forth in the Agreement, I hereby agree to be bound irrevocably by the Agreement and further agree that any community property or similar interest that I may have in the Shares shall hereby be similarly bound by the Agreement. I hereby appoint my spouse as my attorney-in-fact with respect to any amendment or exercise of any rights under the Agreement.

Spouse (Signature)

NEUROPACE, INC.

2020 STOCK PLAN

ADOPTED BY THE BOARD OF DIRECTORS: August 17, 2020
APPROVED BY THE STOCKHOLDERS: August 17, 2020
TERMINATION DATE: August 16, 2030

1. General.

(a) Successor to and Continuation of Prior Plan. The Plan is the successor to and continuation of the Prior Plan. As of the Effective Date, (i) no additional awards may be granted under the Prior Plan and (ii) all outstanding awards granted under the Prior Plan will remain subject to the terms of the Prior Plan; *provided, however*, that any Returning Shares will become available for issuance pursuant to Stock Awards granted under this Plan. All Stock Awards granted under this Plan will be subject to the terms of this Plan.

(b) Eligible Stock Award Recipients. Employees, Directors and Consultants are eligible to receive Stock Awards.

(c) Available Stock Awards. The Plan provides for the grant of the following types of Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights, (iv) Restricted Stock Awards, (v) Restricted Stock Unit Awards and (vi) Other Stock Awards.

(d) Purpose. The Plan, through the grant of Stock Awards, is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and provide a means by which the eligible recipients may benefit from increases in value of the Common Stock.

2. Administration.

(a) Administration by the Board. The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) Powers of the Board. The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine (A) who will be granted Stock Awards; (B) when and how each Stock Award will be granted; (C) what type of Stock Award will be granted; (D) the provisions of each Stock Award (which need not be identical), including when a person will be permitted to exercise or otherwise receive cash or Common Stock under the Stock Award; (E) the number of shares of Common Stock subject to, or the cash value of, a Stock Award; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Stock Awards. The Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it will deem necessary or expedient to make the Plan or Stock Award fully effective.

(iii) To settle all controversies regarding the Plan and Stock Awards granted under it.

(iv) To accelerate, in whole or in part, the time at which a Stock Award may be exercised or vest (or the time at which cash or shares of Common Stock may be issued in settlement thereof).

(v) To suspend or terminate the Plan at any time. Except as otherwise provided in the Plan or a Stock Award Agreement, suspension or termination of the Plan will not impair a Participant's rights under the Participant's then-outstanding Stock Award without the Participant's written consent except as provided in subsection (viii) below.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or bringing the Plan or Stock Awards granted under the Plan into compliance with the requirements for Incentive Stock Options or ensuring that they are exempt from, or compliant with, the requirements for nonqualified deferred compensation under Section 409A of the Code, subject to the limitations, if any, of applicable law. If required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan that (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Stock Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan, (D) materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (E) materially extends the term of the Plan, or (F) materially expands the types of Stock Awards available for issuance under the Plan. Except as otherwise provided in the Plan or a Stock Award Agreement, no amendment of the Plan will materially impair a Participant's rights under an outstanding Stock Award without the Participant's written consent.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 422 of the Code regarding Incentive Stock Options.

(viii) To approve forms of Stock Award Agreements for use under the Plan and to amend the terms of any one or more Stock Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Stock Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however,* that a Participant's rights under any Stock Award will not be impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing. Notwithstanding the foregoing, (1) a Participant's rights will not be deemed to have been impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant's rights, and (2) subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Stock Awards without the affected Participant's consent (A) to maintain the qualified status of the Stock Award as an Incentive Stock Option under Section 422 of the Code; (B) to change the terms of an Incentive Stock Option, if such change results in impairment of the Stock Award solely because it impairs the qualified status of the Stock Award as an Incentive Stock Option under Section 422 of the Code; (C) to clarify the manner of exemption from, or to bring the Stock Award into compliance with, Section 409A of the Code; or (D) to comply with other applicable laws or listing requirements.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Stock Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Stock Award Agreement that are required for compliance with the laws of the relevant foreign jurisdiction).

(xi) To effect, with the consent of any adversely affected Participant, (A) the reduction of the exercise, purchase or strike price of any outstanding Stock Award; (B) the cancellation of any outstanding Stock Award and the grant in substitution therefor of a new (1) Option or SAR, (2) Restricted Stock Award, (3) Restricted Stock Unit Award, (4) Other Stock Award, (5) cash and/or (6) other valuable consideration determined by the Board, in its sole discretion, with any such substituted award (x) covering the same or a different number of shares of Common Stock as the cancelled Stock Award and (y) granted under the Plan or another equity or compensatory plan of the Company; or (C) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee, as applicable). Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of the Plan, adopted from time to time by the Board or Committee (as applicable). The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(d) Delegation to an Officer. The Board may delegate to one or more Officers the authority to do one or both of the following: (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by applicable law, other Stock Awards) and, to the extent permitted by applicable law, the terms of such Stock Awards, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided*, *however*, that the Board resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Any such Stock Awards will be granted on the form of Stock Award Agreement most recently approved for use by the Committee or the Board, unless otherwise provided in the resolutions approving the delegation authority. The Board may not delegate authority to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) to determine the Fair Market Value pursuant to Section 13(t) below.

(e) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

3. Shares Subject to the Plan.

(a) Share Reserve.

(i) Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards from and after the Effective Date will not exceed 9,798,199 shares, which equals the sum of (i) 9,336,412 shares plus (ii) the Returning Shares, if any, as such shares become available from time to time (the "***Share Reserve***").

(ii) For clarity, the Share Reserve in this Section 3(a) is a limitation on the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Stock Awards except as provided in Section 7(a).

(b) Reversion of Shares to the Share Reserve. If a Stock Award or any portion thereof (i) expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or (ii) is settled in cash (*i.e.*, the Participant receives cash rather than stock), such expiration, termination or settlement will not reduce (or otherwise offset) the number of shares of Common Stock that may be available for issuance under the Plan. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to or repurchased by the Company, then the shares that are forfeited or repurchased will revert to and again become available for issuance under the Plan. Any shares reacquired by the Company in satisfaction of tax withholding obligations on a Stock Award or as consideration for the exercise or purchase price of a Stock Award will again become available for issuance under the Plan.

(c) Incentive Stock Option Limit. Subject to the Share Reserve and Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options will be 28,009,236.

(d) Source of Shares. The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

4. Eligibility.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; *provided, however*, that Stock Awards may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405, unless (i) the stock underlying such Stock Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Stock Awards are granted pursuant to a corporate transaction such as a spin off transaction), (ii) the Company, in consultation with its legal counsel, has determined that such Stock Awards are otherwise exempt from Section 409A of the Code, or (iii) the Company, in consultation with its legal counsel, has determined that such Stock Awards comply with the distribution requirements of Section 409A of the Code.

(b) Ten Percent Stockholders. A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five years from the date of grant.

(c) Consultants. A Consultant will not be eligible for the grant of a Stock Award if, at the time of grant, either the offer or sale of the Company's securities to such Consultant is not exempt under Rule 701 because of the nature of the services that the Consultant is providing to the Company, because the Consultant is not a natural person, or because of any other provision of Rule 701, unless the Company determines that such grant need not comply with the requirements of Rule 701 and will satisfy another exemption under the Securities Act as well as comply with the securities laws of all other relevant jurisdictions.

5. Provisions Relating to Options and Stock Appreciation Rights.

Each Option or SAR will be in such form and will contain such terms and conditions as the Board deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; *provided, however*, that each Stock Award Agreement will conform to (through incorporation of provisions hereof by reference in the applicable Stock Award Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of 10 years from the date of its grant or such shorter period specified in the Stock Award Agreement.

(b) Exercise Price. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will be not less than 100% of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Stock Award is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value of the Common Stock subject to the Stock Award if such Stock Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Section 409A of the Code and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

(c) Purchase Price for Options. The purchase price of Common Stock acquired pursuant to the exercise of an Option may be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board will have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to use a particular method of payment. The permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if an Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company will accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are used to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations;

(v) according to a deferred payment or similar arrangement with the Optionholder; *provided, however*, that such arrangement will include interest that will compound at least annually and will be charged at the minimum rate of interest necessary to avoid (A) the imputation of interest income to the Company and compensation income to the Optionholder under any applicable provisions of the Code, and (B) the classification of the Option as a liability for financial accounting purposes; or

(vi) in any other form of legal consideration that may be acceptable to the Board and specified in the applicable Stock Award Agreement.

(d) Exercise and Payment of a SAR. To exercise any outstanding SAR, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such SAR. The appreciation distribution payable on the exercise of a SAR will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the SAR) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such SAR, and with respect to which the Participant is exercising the SAR on such date, over (B) the aggregate strike price of the number of Common Stock equivalents with respect to which the Participant is exercising the SAR on such date. The appreciation distribution may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Stock Award Agreement evidencing such SAR.

(e) Transferability of Options and SARs. The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board will determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs will apply:

(i) Restrictions on Transfer. An Option or SAR will not be transferable except by will or by the laws of descent and distribution (or pursuant to subsections (ii) and (iii) below), and will be exercisable during the lifetime of the Participant only by the Participant. The Board may permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws. Except as explicitly provided in the Plan, neither an Option nor a SAR may be transferred for consideration.

(ii) Domestic Relations Orders. Subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by

Treasury Regulation 1.421-1(b)(2). If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Subject to the approval of the Board or a duly authorized Officer, a Participant may, by delivering written notice to the Company, in a form approved by the Company (or the designated broker), designate a third party who, upon the death of the Participant, will thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, upon the death of the Participant, the executor or administrator of the Participant's estate will be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

(f) Vesting Generally. The total number of shares of Common Stock subject to an Option or SAR may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of performance goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) Termination of Continuous Service. Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause and other than upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Stock Award as of the date of termination of Continuous Service) within the period of time ending on the earlier of (i) the date three months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Stock Award Agreement, which period will not be less than 30 days if necessary to comply with applicable laws unless such termination is for Cause) and (ii) the expiration of the term of the Option or SAR as set forth in the Stock Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time frame, the Option or SAR will terminate.

(h) Extension of Termination Date. If the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause and other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Stock Award Agreement. In addition, unless otherwise provided in a Participant's Stock Award Agreement, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR will terminate on the earlier of (i) the expiration of the period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's

insider trading policy, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Stock Award Agreement.

(i) Disability of Participant. Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date 12 months following such termination of Continuous Service (or such longer or shorter period specified in the Stock Award Agreement, which period will not be less than six months if necessary to comply with applicable laws unless such termination is for Cause), and (ii) the expiration of the term of the Option or SAR as set forth in the Stock Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the applicable time frame, the Option or SAR (as applicable) will terminate.

(j) Death of Participant. Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Stock Award Agreement for exercisability after the termination of the Participant's Continuous Service (for a reason other than death or for Cause), then the Option or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date 18 months following the date of death (or such longer or shorter period specified in the Stock Award Agreement, which period will not be less than six months if necessary to comply with applicable laws unless such termination is for Cause), and (ii) the expiration of the term of such Option or SAR as set forth in the Stock Award Agreement. If, after the Participant's death, the Option or SAR is not exercised within the applicable time frame, the Option or SAR (as applicable) will terminate.

(k) Termination for Cause. Except as explicitly provided otherwise in a Participant's Stock Award Agreement or other individual written agreement between the Company or any Affiliate and the Participant, if a Participant's Continuous Service is terminated for Cause, the Option or SAR will terminate immediately upon such Participant's termination of Continuous Service, and the Participant will be prohibited from exercising his or her Option or SAR (whether vested or unvested) from and after the date of such termination of Continuous Service.

(l) Non-Exempt Employees. If an Option or SAR is granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, the Option or SAR will not be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option or SAR (although the Stock Award may vest prior to such date). Consistent with the provisions of the Worker Economic Opportunity Act, (i) if such non-exempt Employee dies or suffers a Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Stock Award Agreement, in another agreement between the Participant and the Company, or, if no such definition, in accordance with the Company's then current employment policies and guidelines), the vested portion of any Options and SARs may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will

be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Stock Award will be exempt from the employee's regular rate of pay, the provisions of this Section 5(l) will apply to all Stock Awards and are hereby incorporated by reference into such Stock Award Agreements.

(m) Early Exercise of Options. An Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Subject to the "Repurchase Limitation" in Section 8(l), any unvested shares of Common Stock so purchased may be subject to a repurchase right in favor of the Company or to any other restriction the Board determines to be appropriate. Provided that the "Repurchase Limitation" in Section 8(l) is not violated, the Company will not be required to exercise its repurchase right until at least six months (or such longer or shorter period of time required to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option Agreement.

(n) Right of Repurchase. Subject to the "Repurchase Limitation" in Section 8(l), the Option or SAR may include a provision whereby the Company may elect to repurchase all or any part of the vested shares of Common Stock acquired by the Participant pursuant to the exercise of the Option or SAR.

(o) Right of First Refusal. The Option or SAR may include a provision whereby the Company may elect to exercise a right of first refusal following receipt of notice from the Participant of the intent to transfer all or any part of the shares of Common Stock received upon the exercise of the Option or SAR. Such right of first refusal will be subject to the "Repurchase Limitation" in Section 8(l). Except as expressly provided in this Section 5(o) or in the Stock Award Agreement, such right of first refusal will otherwise comply with any applicable provisions of the bylaws of the Company.

6. Provisions of Stock Awards Other than Options and SARs.

(a) Restricted Stock Awards. Each Restricted Stock Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock underlying a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical. Each Restricted Stock Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of legal consideration (including future services) that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) **Vesting**. Subject to the "Repurchase Limitation" in Section 8(l), shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) **Termination of Participant's Continuous Service**. If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right, any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) **Transferability**. Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(v) **Dividends**. A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

(b) **Restricted Stock Unit Awards**. Each Restricted Stock Unit Award Agreement will be in such form and will contain such terms and conditions as the will Board deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical. Each Restricted Stock Unit Award Agreement will conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) **Consideration**. At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) **Vesting**. At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) **Payment**. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) **Additional Restrictions**. At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) **Dividend Equivalents**. Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted

Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

(vi) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(vii) Compliance with Section 409A of the Code. Notwithstanding anything to the contrary set forth herein, any Restricted Stock Unit Award granted under the Plan that is not exempt from the requirements of Section 409A of the Code will contain such provisions so that such Restricted Stock Unit Award will comply with the requirements of Section 409A of the Code. Such restrictions, if any, will be determined by the Board and contained in the Restricted Stock Unit Award Agreement evidencing such Restricted Stock Unit Award. For example, such restrictions may include, without limitation, a requirement that any Common Stock that is to be issued in a year following the year in which the Restricted Stock Unit Award vests must be issued in accordance with a fixed pre-determined schedule. In no event shall the Company or any of its Subsidiaries or Affiliates be liable for any additional tax, interest or penalties that may be imposed on a Participant under Section 409A of the Code or for any damages for failing to comply with Section 409A of the Code.

(c) Other Stock Awards. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

7. Covenants of the Company.

(a) Availability of Shares. The Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy then-outstanding Stock Awards.

(b) Securities Law Compliance. The Company will seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however,* that this undertaking will not require the Company to register under the Securities Act or other securities or applicable laws the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary or advisable for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise or vesting of such Stock Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of a Stock Award or the subsequent issuance of cash or Common Stock pursuant to the Stock Award if such grant or issuance would be in violation of any applicable securities law.

(c) No Obligation to Notify or Minimize Taxes. The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

8. Miscellaneous.

(a) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Stock Awards will constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Stock Awards. Corporate action constituting a grant by the Company of a Stock Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Stock Award Agreement or related grant documents as a result of a clerical error in the papering of the Stock Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Stock Award Agreement or related grant documents.

(c) Stockholder Rights. No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to a Stock Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares of Common Stock under, the Stock Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to the Stock Award has been entered into the books and records of the Company.

(d) No Employment or Other Service Rights. Nothing in the Plan, any Stock Award Agreement or any other instrument executed thereunder or in connection with any Stock Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state or foreign jurisdiction in which the Company or the Affiliate is domiciled or incorporated, as the case may be.

(e) Change in Time Commitment. In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Stock Award to the Participant, the Board has the right in its sole discretion to (x) make a corresponding reduction in the number of shares subject to any portion of such Stock Award that is scheduled to vest or become payable after the date of such change in time commitment, and (y) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Stock Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Stock Award that is so reduced or extended.

(f) Incentive Stock Option Limitations. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds $100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(g) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that the Participant is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, will be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(h) Withholding Obligations. Unless prohibited by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to a Stock Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Stock Award; *provided, however*, that no shares of Common Stock are withheld with a value exceeding the maximum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from a Stock Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Stock Award Agreement.

(i) Electronic Delivery. Any reference herein to a "written" agreement or document will include any agreement or document delivered electronically or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access).

(j) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Stock Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Stock Awards and determine when, and in what

annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(k) Compliance with Section 409A of the Code. To the extent that the Board determines that any Stock Award granted hereunder is subject to Section 409A of the Code, the Stock Award Agreement evidencing such Stock Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Stock Award Agreements will be interpreted in accordance with Section 409A of the Code. Notwithstanding anything to the contrary in the Plan (and unless the Stock Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding a Stock Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six months following the date of such Participant's "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

(l) Repurchase Limitation. The terms of any repurchase right will be specified in the Stock Award Agreement. The repurchase price for vested shares of Common Stock will be the Fair Market Value of the shares of Common Stock on the date of repurchase. The repurchase price for unvested shares of Common Stock will be the lower of (i) the Fair Market Value of the shares of Common Stock on the date of repurchase or (ii) their original purchase price. However, the Company will not exercise its repurchase right until at least six months (or such longer or shorter period of time necessary to avoid classification of the Stock Award as a liability for financial accounting purposes) have elapsed following delivery of shares of Common Stock subject to the Stock Award, unless otherwise specifically provided by the Board.

9. Adjustments upon Changes in Common Stock; Other Corporate Events.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), and (iii) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board will make such adjustments, and its determination will be final, binding and conclusive. Unless otherwise determined by the Board in its sole discretion, no fractional shares of Common Stock (or other applicable securities) shall be issued under the Plan resulting from such Capitalization Adjustment, however the Board, in its sole discretion, may make a cash payment in lieu of fractional shares.

(b) Dissolution or Liquidation. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company

notwithstanding the fact that the holder of such Stock Award is providing Continuous Service, *provided, however,* that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions will apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board may take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting, in whole or in part, of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of the Corporate Transaction as the Board determines (or, if the Board does not determine such a date, to the date that is five days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction; *provided*, *however*, that the Board may require Participants to complete and deliver to the Company a notice of exercise before the effective date of the Corporate Transaction, which exercise is contingent upon the effectiveness of the Corporate Transaction;

(iv) suspend the exercise of the Stock Awards, prior to the effective time of the Corporate Transaction, for such period as the Board determines is necessary to facilitate the negotiation and consummation of the Corporate Transaction;

(v) if a Stock Award is eligible for "early exercise," cancel or arrange for the cancellation of any such "early exercise" rights upon the Corporate Transaction, such that following the Corporate Transaction, such Stock Award may only be exercised to the extent vested;

(vi) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(vii) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration (including no consideration) as the Board, in its sole discretion, may consider appropriate; and

(viii) make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of

the Stock Award immediately prior to the effective time of the Corporate Transaction, over (B) any exercise price payable by such holder in connection with such exercise. For clarity, this payment may be zero ($0) if the value of the property is equal to or less than the exercise price. Subject to the requirements of applicable law, including Section 409A of the Code, payments under this provision may be delayed to the same extent that payment of consideration to the holders of the Company's Common Stock in connection with the Corporate Transaction is delayed as a result of escrows, earn outs, holdbacks or any other contingencies, and the Board, in its sole discretion, may condition a Participant's right to receive such payment upon the Participant's delivery of an agreement (x) acknowledging such escrows, earn outs, holdbacks or other contingencies, (y) appointing a representative to act on the Participant's behalf following the Corporate Transaction with respect to matters relating to the Corporate Transaction, and/or (z) agreeing to or acknowledging any indemnification or other agreements or obligations required of recipients of proceeds pursuant to the Corporate Transaction.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants. The Board may take different actions with respect to the vested and unvested portions of a Stock Award.

(d) Appointment of Stockholder Representative. As a condition to the receipt of a Stock Award under this Plan, a Participant will be deemed to have agreed that the Stock Award will be subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on the Participant's behalf with respect to any escrow or other contingent consideration.

(e) No Restriction on Right to Undertake Corporate Transactions. The grant of any Stock Award under the Plan and the issuance of shares pursuant to any Stock Award does not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, Options or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(f) Change in Control. A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration will occur.

10. Plan Term; Earlier Termination or Suspension of the Plan.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. Unless terminated sooner by the Board, the Plan will automatically terminate on the day before the 10th anniversary of the earlier of (i) the date the Plan is adopted by the Board or (ii) the date the Plan is approved by the stockholders of the Company. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) **No Impairment of Rights**. Suspension or termination of the Plan will not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant or as otherwise permitted in the Plan.

11. **Effective Date of Plan**.

This Plan will become effective on the Effective Date.

12. **Choice of Law**.

The laws of the State of Delaware will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

13. **Definitions**. As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

(a) "***Affiliate***" means, at the time of determination, any "parent" or "majority-owned subsidiary" of the Company, as such terms are defined in Rule 405. The Board will have the authority to determine the time or times at which "parent" or "majority-owned subsidiary" status is determined within the foregoing definition.

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

(c) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure, or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(d) "***Cause***" will have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any of the following events: (i) Participant's conviction of or plea of nolo contendere to any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) Participant's engaging or participating in a fraud or act of dishonesty against the Company, or any of its employees or directors; (iii) Participant's intentional, material violation of any contract or agreement between the Participant and the Company, the Company's employment policies, or of any statutory or other duty owed to the Company; (iv) Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) Participant's gross misconduct in the performance of their duties. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause will be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Stock Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(e) "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control will not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (C) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction; or

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition.

Notwithstanding the foregoing definition or any other provision of this Plan, (A) the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant will supersede the foregoing definition with respect to Stock Awards subject to such agreement; *provided, however*, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the definition set forth herein will apply, and (C) if at any time the Company's Certificate of Incorporation provides definitions of various analogous transactions that would be deemed a liquidation event for the Company, then such definition will apply as if it were the definition set forth herein except as is otherwise expressly provided in an individual written agreement between the Company or any Affiliate and the Participant.

(f) "***Code***" means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(g) "***Committee***" means a committee of one or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(h) "***Common Stock***" means the common stock of the Company.

(i) "***Company***" means NeuroPace, Inc., a Delaware corporation.

(j) "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan.

(k) "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service; *provided*, *however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board in its sole discretion, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director will not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(l) "***Corporate Transaction***" means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of more than 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger,

consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

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

(n) "***Disability***" means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(o) "***Effective Date***" means the effective date of this Plan, which is the earlier of (i) the date that this Plan is first approved by the Company's stockholders, and (ii) the date this Plan is adopted by the Board.

(p) "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

(q) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(r) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(s) "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities.

(t) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined by the Board in compliance with Section 409A of the Code or, in the case of an Incentive Stock Option, in compliance with Section 422 of the Code.

(u) "***Incentive Stock Option***" means an option granted pursuant to Section 5 of the Plan that is intended to be, and that qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(v) "***Nonstatutory Stock Option***" means an option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

(w) "***Officer***" means any person designated by the Company as an officer.

(x) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(y) "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

(z) "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(aa) "***Other Stock Award***" means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(c).

(bb) "***Other Stock Award Agreement***" means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement will be subject to the terms and conditions of the Plan.

(cc) "***Own***," "***Owned***," "***Owner***," "***Ownership***" A person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(dd) "***Participant***" means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(ee) "***Plan***" means this 2020 Stock Plan.

(ff) "***Prior Plan***" means the Company's the Company's 2009 Stock Plan, as amended.

(gg) "***Restricted Stock Award***" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

(hh) "***Restricted Stock Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(ii) "***Restricted Stock Unit Award***" means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(jj) "***Restricted Stock Unit Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement will be subject to the terms and conditions of the Plan.

(kk) "***Returning Shares***" means shares subject to outstanding stock awards granted under the Prior Plan and that following the Effective Date: (A) are not issued because such stock award for any reason expires or otherwise terminates without having been exercised in full; (B) are forfeited back to or repurchased by the Company; (C) are not issued because such stock award or any portion thereof is

settled in cash; (D) are withheld or reacquired to satisfy the exercise price; or (E) are withheld or reacquired to satisfy tax withholding obligations.

(ll) "***Rule 405***" means Rule 405 promulgated under the Securities Act.

(mm) "***Rule 701***" means Rule 701 promulgated under the Securities Act.

(nn) "***Securities Act***" means the Securities Act of 1933, as amended.

(oo) "***Stock Appreciation Right***" or "***SAR***" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(pp) "***Stock Appreciation Right Agreement***" means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement will be subject to the terms and conditions of the Plan.

(qq) "***Stock Award***" means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right or any Other Stock Award.

(rr) "***Stock Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement will be subject to the terms and conditions of the Plan.

(ss) "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(tt) "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

NEUROPACE, INC.

STOCK OPTION GRANT NOTICE
(2020 STOCK PLAN)

NeuroPace, Inc. (the "***Company***"), pursuant to its 2020 Stock Plan (as amended and/or restated as of the Date of Grant set forth below, the "***Plan***"), has granted to Optionholder an option to purchase the number of shares of the Common Stock set forth below (the "***Option***"). The Option is subject to all of the terms and conditions as set forth in this Stock Option Grant Notice (the "***Grant Notice***") and in the Plan, the Option Agreement, and the Notice of Exercise, all of which are attached to this Grant Notice and incorporated into this Grant Notice in their entirety. Capitalized terms not explicitly defined in this Grant Notice but defined in the Plan or the Option Agreement shall have the meanings set forth in the Plan or the Option Agreement, as applicable. If the Company uses an electronic capitalization table system (such as Carta or Shareworks) and the fields below are blank or the information is otherwise provided in a different format electronically, the blank fields and other information (such as exercise schedule and type of grant) shall be deemed to come from the electronic capitalization system and is considered part of this Grant Notice.

Optionholder:	
Date of Grant:	
Vesting Commencement Date:	
Number of Shares Subject to Option:	
Exercise Price (Per Share):	
Total Exercise Price:	
Expiration Date:	
Exercise Schedule:	[Same as Vesting Schedule] [Early Exercise Permitted]
Type of Grant:[1]	[Incentive Stock Option] [Nonstatutory Stock Option]

Vesting Schedule: ***[Sample Only:]*** 12/48ths of the total shares will vest on the one-year anniversary of the Vesting Commencement Date, and 1/48th of the total shares will vest each month thereafter on the same day of the month as the Vesting Commencement Date (or if there is no corresponding day, on the last day of the month), subject to Optionholder's Continuous Service as of each such date.

Optionholder Acknowledgements: By Optionholder's signature below or by electronic acceptance or authentication in a form authorized by the Company, Optionholder understands and agrees that the Option is governed by this Stock Option Grant Notice, and the provisions of the Plan and the Option Agreement and the Notice of Exercise, all of which are made a part of this document.

By accepting this Option, Optionholder consents to receive this Grant Notice, the Option Agreement, the Plan, and any other Plan-related documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company. Optionholder represents that he or she has read and is familiar with the provisions of the Plan and the Option Agreement. Optionholder acknowledges and agrees that this Grant Notice and the Option Agreement may not be modified, amended or revised except in writing signed by Optionholder and a duly authorized officer of the Company.

[1] If this is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options) cannot be first *exercisable* for more than $100,000 in value (measured by exercise price) in any calendar year. Any excess over $100,000 is a Nonstatutory Stock Option.

Optionholder further acknowledges that in the event of any conflict between the provisions in this Grant Notice, the Option Agreement, the Notice of Exercise and the terms of the Plan, the terms of the Plan shall control. Optionholder further acknowledges that the Option Agreement sets forth the entire understanding between Optionholder and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of other equity awards previously granted to Optionholder and any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and Optionholder in each case that specifies the terms that should govern this Option.

Optionholder further acknowledges that this Grant Notice has been prepared on behalf of the Company by Cooley LLP, counsel to the Company and that Cooley LLP does not represent, and is not acting on behalf of, Optionholder in any capacity. Optionholder has been provided with an opportunity to consult with Optionholder's own counsel with respect to this Grant Notice.

This Grant Notice may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

NeuroPace, Inc.		**Optionholder:**	
By:	_____	By:	_____
	(Signature)		(Signature)
Title:	_____	Email:	_____
Date:	_____	Date:	_____

Attachments: Option Agreement, 2020 Stock Plan and Notice of Exercise

ATTACHMENT I

OPTION AGREEMENT

NEUROPACE, INC.

2020 Stock Plan

OPTION AGREEMENT
(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)

Pursuant to your Stock Option Grant Notice ("***Grant Notice***") and this Option Agreement, **NeuroPace, Inc.** (the "***Company***") has granted you an option under its 2020 Stock Plan (the "***Plan***") to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. The option is granted to you effective as of the date of grant set forth in the Grant Notice (the "***Date of Grant***"). If there is any conflict between the terms in this Option Agreement and the Plan, the terms of the Plan will control. Capitalized terms not explicitly defined in this Option Agreement or in the Grant Notice but defined in the Plan will have the same definitions as in the Plan.

The details of your option, in addition to those set forth in the Grant Notice and the Plan, are as follows:

1. **Vesting**. Your option will vest as provided in your Grant Notice. Vesting will cease upon the termination of your Continuous Service.

2. **Number of Shares and Exercise Price**. The number of shares of Common Stock subject to your option and your exercise price per share in your Grant Notice will be adjusted for Capitalization Adjustments.

3. **Exercise Restriction for Non-Exempt Employees**. If you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (that is, a "***Non-Exempt Employee***"), and except as otherwise provided in the Plan, you may not exercise your option until you have completed at least six months of Continuous Service measured from the Date of Grant, even if you have already been an employee for more than six months. Consistent with the provisions of the Worker Economic Opportunity Act, you may exercise your option as to any vested portion prior to such six month anniversary in the case of (i) your death or disability, (ii) a Corporate Transaction in which your option is not assumed, continued or substituted, (iii) a Change in Control or (iv) your termination of Continuous Service on your "retirement" (as defined in the Company's benefit plans).

4. **Exercise prior to Vesting ("Early Exercise")**. If permitted in your Grant Notice (*i.e.*, the "Exercise Schedule" indicates "Early Exercise Permitted") and subject to the provisions of your option, you may elect at any time that is both (i) during the period of your Continuous Service and (ii) during the term of your option, to exercise all or part of your option, including the unvested portion of your option; *provided*, *however,* that:

(a) a partial exercise of your option will be deemed to cover first vested shares of Common Stock and then the earliest vesting installment of unvested shares of Common Stock;

(b) any shares of Common Stock so purchased from installments that have not vested as of the date of exercise will be subject to the purchase option in favor of the Company as described in the Company's form of Early Exercise Stock Purchase Agreement;

(c) you will enter into the Company's form of Early Exercise Stock Purchase Agreement with a vesting schedule that will result in the same vesting as if no early exercise had occurred; and

(d) if your option is an Incentive Stock Option, then, to the extent that the aggregate Fair Market Value (determined at the Date of Grant) of the shares of Common Stock with respect to which your option plus all other Incentive Stock Options you hold are exercisable for the first time by you during any calendar year (under all plans of the Company and its Affiliates) exceeds $100,000, your option(s) or portions thereof that exceed such limit (according to the order in which they were granted) will be treated as Nonstatutory Stock Options.

5. **Method of Payment**. You must pay the full amount of the exercise price for the shares you wish to exercise. You may pay the exercise price as follows:

(a) Cash or by check, bank draft, electronic funds transfer or money order payable to the Company.

(b) Subject to Company and/or Board consent at the time of exercise and provided that at the time of exercise the Common Stock is publicly traded, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds. This manner of payment is also known as a "broker-assisted exercise", "same day sale", or "sell to cover".

(c) Subject to Company and/or Board consent at the time of exercise and provided that at the time of exercise the Common Stock is publicly traded, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time you exercise your option, will include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. You may not exercise your option by delivery to the Company of Common Stock if doing so would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

(d) If this option is a Nonstatutory Stock Option, subject to the consent of the Company and/or Board at the time of exercise, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price and, if permitted by the Company, your tax withholding obligations. You must pay any remaining balance of the aggregate exercise price not satisfied by the "net exercise" in cash or other permitted form of payment. Shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter if those shares (i) are used to pay the exercise price pursuant to the "net exercise," (ii) are delivered to you as a result of such exercise, and (iii) are withheld to satisfy your tax withholding obligations.

6. **Whole Shares**. You may exercise your option only for whole shares of Common Stock.

7. **Securities Law Compliance**. In no event may you exercise your option unless the shares of Common Stock issuable upon exercise are then registered under the Securities Act or, if not registered, the Company has determined that your exercise and the issuance of the shares would be

exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with all other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations (including any restrictions on exercise required for compliance with Treas. Reg. 1.401(k)-1(d)(3), if applicable).

8. **Term**. You may not exercise your option before the Date of Grant or after the expiration of the option's term. Except as set forth in your Grant Notice, the term of your option expires, subject to the provisions of Section 5(h) of the Plan, upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three months after the termination of your Continuous Service for any reason other than Cause, your Disability or your death (except as otherwise provided in Section 8(d) below); *provided*, *however*, that if during any part of such three month period your option is not exercisable solely because of the condition set forth in the section above relating to "Securities Law Compliance," your option will not expire until the earlier of the Expiration Date or until it has been exercisable for an aggregate period of three months after the termination of your Continuous Service; *provided further*, that if (i) you are a Non-Exempt Employee, (ii) your Continuous Service terminates within six months after the Date of Grant, and (iii) you have vested in a portion of your option at the time of your termination of Continuous Service, your option will not expire until the earlier of (x) the later of (A) the date that is seven months after the Date of Grant, and (B) the date that is three months after the termination of your Continuous Service, and (y) the Expiration Date;

(c) 12 months after the termination of your Continuous Service due to your Disability (except as otherwise provided in Section 8(d)) below;

(d) 18 months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates for any reason other than Cause;

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the 10th anniversary of the Date of Grant.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the Date of Grant and ending on the day three months before the date of your option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three months after the date your employment with the Company or an Affiliate terminates.

9. **Exercise**.

(a) You may exercise the vested portion of your option (and the unvested portion of your option if your Grant Notice so permits) during its term by delivering a Notice of Exercise (in a form designated by the Company) together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours. If required by the Company,

your exercise may be made contingent on your execution of any additional documents specified by the Company (including, without limitation, any voting agreement or other agreement between the Company and some or all of its stockholders).

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

(c) If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within 15 days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two years after the Date of Grant or within one year after such shares of Common Stock are transferred upon exercise of your option.

(d) By exercising your option you agree that you will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company held by you, for a period of 180 days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company will request to facilitate compliance with the applicable FINRA rules or similar rules or regulations (the "***Lock-Up Period***"); *provided*, *however*, that nothing contained in this section will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. You also agree that any transferee of any shares of Common Stock (or other securities) of the Company held by you will be bound by this Section 9(d). The underwriters of the Company's stock are intended third party beneficiaries of this Section 9(d) and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto. You further agree that the obligations contained in this Section 9(d) shall also, if so determined by the Board, apply in the Company's initial listing of its Common Stock on a national securities exchange by means of a registration statement on Form S-1 under the Securities Act (or any successor registration form under the Securities Act subsequently adopted by the Securities and Exchange Commission) filed by the Company with the Securities and Exchange Commission that registers shares of existing capital stock of the Company for resale (i.e., a direct listing).

10. **Transferability**. Except as otherwise provided in this Section 10, your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you.

(a) **Certain Trusts**. Upon receiving written permission from the Board or its duly authorized designee, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust. You and the trustee must enter into transfer and other agreements required by the Company.

(b) **Domestic Relations Orders**. Upon receiving written permission from the Board or its duly authorized designee, and provided that you and the designated transferee enter into transfer and other agreements required by the Company, you may transfer your option pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulation 1.421-1(b)(2) that contains the information required by the Company to effectuate the transfer. You are encouraged to discuss the proposed terms of any division of this option with the Company prior to finalizing the domestic relations order or marital settlement agreement to help ensure the required information is contained within the domestic relations order or marital settlement agreement. If this option is an Incentive Stock Option, this option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(c) **Beneficiary Designation**. Upon receiving written permission from the Board or its duly authorized designee, you may, by delivering written notice to the Company, in a form approved by the Company and any broker designated by the Company to handle option exercises, designate a third party who, on your death, will thereafter be entitled to exercise this option and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, your executor or administrator of your estate will be entitled to exercise this option and receive, on behalf of your estate, the Common Stock or other consideration resulting from such exercise.

11. **Right of First Refusal**. Shares of Common Stock that you acquire upon exercise of your option are subject to any right of first refusal that may be described in the Company's bylaws in effect at such time the Company elects to exercise its right; *provided, however,* that if there is no right of first refusal described in the Company's bylaws at such time, the right of first refusal described below will apply. The Company's right of first refusal will expire on the first date upon which any security of the Company is listed (or approved for listing) upon notice of issuance on a national securities exchange or quotation system (the "***Listing Date***").

(a) Prior to the Listing Date, you may not validly Transfer (as defined below) any shares of Common Stock acquired upon exercise of your option, or any interest in such shares, unless such Transfer is made in compliance with the following provisions:

(i) Before there can be a valid Transfer of any shares of Common Stock or any interest therein, the record holder of the shares of Common Stock to be transferred (the "***Offered Shares***") will give written notice (by registered or certified mail) to the Company. Such notice will specify the identity of the proposed transferee, the cash price offered for the Offered Shares by the proposed transferee (or, if the proposed Transfer is one in which the holder will not receive cash, such as an involuntary transfer, gift, donation or pledge, the holder will state that no purchase price is being proposed), and the other terms and conditions of the proposed Transfer. The date such notice is mailed will be hereinafter referred to as the "***Notice Date***" and the record holder of the Offered Shares will be hereinafter referred to as the "***Offeror***." If, from time to time, there is any stock dividend, stock split or other change in the character or amount of any of the outstanding Common Stock which is subject to the provisions of your option, then in such event any and all new, substituted or additional securities to which you are entitled by reason of your ownership of the shares of Common Stock acquired upon exercise of your option will be immediately subject to the Company's Right of First Refusal (as defined below) with the same force and effect as the shares subject to the Right of First Refusal immediately before such event.

(ii) For a period of 30 calendar days after the Notice Date, or such longer period as may be required to avoid the classification of your option as a liability for financial accounting

purposes, the Company will have the option to purchase all (but not less than all) of the Offered Shares at the purchase price and on the terms set forth in Section 11(a)(iii) (the Company's "***Right of First Refusal***"). In the event that the proposed Transfer is one involving no payment of a purchase price, the purchase price will be deemed to be the Fair Market Value of the Offered Shares as determined in good faith by the Board in its discretion. The Company may exercise its Right of First Refusal by mailing (by registered or certified mail) written notice of exercise of its Right of First Refusal to the Offeror prior to the end of said 30 days (including any extension required to avoid classification of the option as a liability for financial accounting purposes).

(iii) The price at which the Company may purchase the Offered Shares pursuant to the exercise of its Right of First Refusal will be the cash price offered for the Offered Shares by the proposed transferee (as set forth in the notice required under Section 11(a)(i)), or the Fair Market Value as determined by the Board in the event no purchase price is involved. To the extent consideration other than cash is offered by the proposed transferee, the Company will not be required to pay any additional amounts to the Offeror other than the cash price offered (or the Fair Market Value, if applicable). The Company's notice of exercise of its Right of First Refusal will be accompanied by full payment for the Offered Shares and, upon such payment by the Company, the Company will acquire full right, title and interest to all of the Offered Shares.

(iv) If, and only if, the option given pursuant to Section 11(a)(ii) is not exercised, the Transfer proposed in the notice given pursuant to Section 11(a)(i) may take place; *provided, however*, that such Transfer must, in all respects, be exactly as proposed in said notice except that such Transfer may not take place either before the 10th calendar day after the expiration of the 30 day option exercise period or after the ninetieth 90th calendar day after the expiration of the 30 day option exercise period, and if such Transfer has not taken place prior to said 90th day, such Transfer may not take place without once again complying with this Section 11(a). The option exercise periods in this Section 11(a)(iv) will be adjusted to include any extension required to avoid the classification of your option as a liability for financial accounting purposes.

(b) As used in this Section 11, the term "***Transfer***" means any sale, encumbrance, pledge, gift or other form of disposition or transfer of shares of Common Stock or any legal or equitable interest therein; *provided, however*, that the term Transfer does not include a transfer of such shares or interests by will or intestacy to your Immediate Family (as defined below). In such case, the transferee or other recipient will receive and hold the shares of Common Stock so transferred subject to the provisions of this Section, and there will be no further transfer of such shares except in accordance with the terms of this Section 11. As used herein, the term "***Immediate Family***" will mean your spouse, the lineal descendant or antecedent, father, mother, brother or sister, child, adopted child, grandchild or adopted grandchild of you or your spouse, or the spouse of any child, adopted child, grandchild or adopted grandchild of you or your spouse.

(c) None of the shares of Common Stock purchased on exercise of your option will be transferred on the Company's books nor will the Company recognize any such Transfer of any such shares or any interest therein unless and until all applicable provisions of this Section 11 have been complied with in all respects. The certificates of stock evidencing shares of Common Stock purchased on exercise of your option will bear an appropriate legend referring to the transfer restrictions imposed by this Section 11.

(d) To ensure that the shares subject to the Company's Right of First Refusal will be available for repurchase by the Company, the Company may require you to deposit the certificates

evidencing the shares that you purchase upon exercise of your option with an escrow agent designated by the Company under the terms and conditions of an escrow agreement approved by the Company. If the Company does not require such deposit as a condition of exercise of your option, the Company reserves the right at any time to require you to so deposit the certificates in escrow. As soon as practicable after the expiration of the Company's Right of First Refusal, the agent will deliver to you the shares and any other property no longer subject to such restriction. In the event the shares and any other property held in escrow are subject to the Company's exercise of its Right of First Refusal, the notices required to be given to you will be given to the escrow agent, and any payment required to be given to you will be given to the escrow agent. Within 30 days after payment by the Company for the Offered Shares, the escrow agent will deliver the Offered Shares that the Company has repurchased to the Company and will deliver the payment received from the Company to you.

12. **Option not a Service Contract**. Your option is not an employment or service contract, and nothing in your option will be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option will obligate the Company or an Affiliate, their respective stockholders, boards of directors, officers or employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

13. **Withholding Obligations**.

(a) At the time you exercise your option, in whole or in part, and at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "same day sale" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

(b) If this option is a Nonstatutory Stock Option, then upon your request and subject to approval by the Company, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence will not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock will be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure will be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company will have no obligation to issue a

certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein, if applicable, unless such obligations are satisfied.

14. **Tax Consequences**. You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You will not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the "fair market value" per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option. Because the Common Stock is not traded on an established securities market, the Fair Market Value is determined by the Board, perhaps in consultation with an independent valuation firm retained by the Company. You acknowledge that there is no guarantee that the Internal Revenue Service will agree with the valuation as determined by the Board, and you will not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that the valuation determined by the Board is less than the "fair market value" as subsequently determined by the Internal Revenue Service.

15. **Notices**. Any notices provided for in your option or the Plan will be given in writing (including electronically) and will be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company. The Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan and this option by electronic means or to request your consent to participate in the Plan by electronic means. By accepting this option, you consent to receive such documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

16. **Governing Plan Document**. Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. If there is any conflict between the provisions of your option and those of the Plan, the provisions of the Plan will control.

ATTACHMENT II

2020 Stock Plan

ATTACHMENT III

NOTICE OF EXERCISE

NEUROPACE, INC.
NOTICE OF EXERCISE

This constitutes notice to **NeuroPace, Inc.** (the "***Company***") under my stock option that I elect to purchase the below number of shares of Common Stock of the Company (the "***Shares***") for the price set forth below. Use of certain payment methods is subject to Company and/or Board consent and certain additional requirements set forth in the Option Agreement and the Plan. If the Company uses an electronic capitalization table system (such as Carta or Shareworks) and the fields below are blank, the blank fields shall be deemed to come from the electronic capitalization system and is considered part of this Notice of Exercise.

Option Information

Type of option (check one):	Incentive ☐ Nonstatutory ☐
Stock option dated:	
Number of Shares as to which option is exercised:	
Certificates to be issued in name of:[2]	

Exercise Information

Date of Exercise:	
Total exercise price:	
Cash:[3]	
Regulation T Program (cashless exercise):[4]	
Value of _____ Shares delivered with this notice:[5]	
Value of _____ Shares pursuant to net exercise:[6]	

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the 2020 Stock Plan, (ii) to provide for the payment by me to you (in the manner designated by you) of your withholding obligation, if any, relating to the exercise of this option, and (iii) if this exercise relates to an incentive stock option, to notify you in writing within 15 days after the date of any disposition of any of the Shares issued upon exercise of this option that occurs within two years after the date of grant of this option or within one year after such Shares are issued upon exercise of this option. I further agree that this Notice of Exercise may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

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[2] If left blank, will be issued in the name of the option holder.
[3] Cash may be in the form of cash, check, bank draft, electronic funds transfer or money order payment.
[4] Subject to Company and/or Board consent and must meet the public trading and other requirements set forth in the Option Agreement.
[5] Subject to Company and/or Board consent and must meet the public trading and other requirements set forth in the Option Agreement. Shares must be valued in accordance with the terms of the option being exercised, and must be owned free and clear of any liens, claims, encumbrances or security interests. Certificates must be endorsed or accompanied by an executed assignment separate from certificate.
[6] Subject to Company and/or Board consent and must be a Nonstatutory Option.

I hereby make the following certifications and representations with respect to the number of Shares listed above, which are being acquired by me for my own account upon exercise of the option as set forth above:

I acknowledge that the Shares have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), and are deemed to constitute "restricted securities" under Rule 701 and Rule 144 promulgated under the Securities Act. I warrant and represent to the Company that I have no present intention of distributing or selling said Shares, except as permitted under the Securities Act and any applicable state securities laws.

I further acknowledge and agree that, except for such information as required to be delivered to me by the Company pursuant to the option or the Plan (if any), I will have no right to receive any information from the Company by virtue of the grant of the option or the purchase of shares of Common Stock through exercise of the option, ownership of such shares of Common Stock, or as a result of my being a holder of record of stock of the Company. Without limiting the foregoing, to the fullest extent permitted by law, I hereby waive all inspection rights under Section 220 of the Delaware General Corporation Law and all such similar information and/or inspection rights that may be provided under the law of any jurisdiction, or any federal, state or foreign regulation, that are, or may become, applicable to the Company or the Company's capital stock (the "***Inspection Rights***"). I hereby covenant and agree never to directly or indirectly commence, voluntarily aid in any way, prosecute, assign, transfer, or cause to be commenced any claim, action, cause of action, or other proceeding to pursue or exercise the Inspection Rights.

I further acknowledge that I will not be able to resell the Shares for at least 90 days after the stock of the Company becomes publicly traded (*i.e.*, subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934) under Rule 701 and that more restrictive conditions apply to affiliates of the Company under Rule 144.

I further acknowledge that all certificates representing any of the Shares subject to the provisions of the option will have endorsed thereon appropriate legends reflecting the foregoing limitations, as well as any legends reflecting restrictions pursuant to the Company's Certificate of Incorporation, Bylaws and/or applicable securities laws.

I further agree that, if required by the Company (or a representative of the underwriters) in connection with the first underwritten registration of the offering of any securities of the Company under the Securities Act, I will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company for a period of 180 days following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company will request to facilitate compliance with the applicable FINRA rules or similar rules or regulations) (the "***Lock-Up Period***") *provided*, *however*, that nothing contained in this paragraph will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. I further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stoptransfer instructions with respect to securities subject to the foregoing restrictions until the end of such period. I further agree that the obligations contained in this paragraph shall also, if so determined by the Company's Board, apply in the Company's initial listing of its Common Stock on a national securities exchange by means of a registration statement on Form S-1 under the Securities Act (or any successor registration form under the Securities Act subsequently adopted by the Securities and Exchange Commission) filed by the Company with the Securities and Exchange Commission that registers shares of existing capital stock of the Company for resale (i.e., a direct listing).

Very truly yours,

_____

(Signature)

_____

Name (Please Print)

Address of Record: _____

_____

_____

Email: _____

July 23, 2019

Michael Favet
[Address Intentionally Omitted]

Dear Mike:

On behalf of NeuroPace, Inc. (the "Company"), I am pleased to offer you the position of President and Chief Executive Officer. Speaking for myself, as well as the other members of the Board of Directors (the "Board"), we all look forward to working with you and to your future success with the Company.

The terms of your new position with the Company are as set forth below in this agreement (the "Agreement"):

1. **Position:**

    a. You will report to the Board of Directors.

    b. You agree to the best of your ability and experience that you will at all times loyally and conscientiously perform all of the duties and obligations required of and from you pursuant to the express and implicit terms hereof, and to the satisfaction of the Company. During the term of your employment by the Company, you further agree that you will not, without the Company's express written consent, directly or indirectly engage or participate in any business activity that is competitive in any manner with the business of the Company, or would otherwise with conflict with your employment by the Company.

2. **Start Date**: If you find the terms of this letter agreeable, you will commence this new position with the Company on a mutually agreed upon date no later August1, 2019

3. **Proof of Right to Work:** For purposes of federal immigration law, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your date of hire, or our employment relationship with you may be terminated.

4. **Compensation:**

    a. **Base Salary:** You will be paid every 2 weeks a base salary of $17,307.70, less payroll deductions and withholdings, which is equivalent to $450,000.00 on an annualized basis.

    b. **Bonus:** You will be eligible for an annual bonus, capped at 50% of your then current annual base salary. This bonus will be pro-rated to your start date and your performance objectives will be set by the Board within your first 90 days of employment (and annually thereafter). Whether you receive a bonus in any given year, and the amount of any such bonus, will be determined by the

Board in its sole discretion based upon your performance, the Company's performance and such other criteria that the Board deems relevant. In order to earn a bonus, you must be employed on the date that any bonus is paid to you (which will usually be in the first 60 days of the calendar year). Except as set forth in the following sentence, if your employment ends for any reason prior to the bonus being paid, then you will not have earned the bonus, and no partial or prorated bonus will be paid. If, however, your employment is terminated pursuant to Sections 9 or 10 below and said termination occurs after the preceding year end and before a bonus is paid, (for example, your termination occurs in January and the preceding year's bonus has not been paid), then you will be entitled to the bonus for the preceding year as set forth in Sections 9 and 10, as applicable but would not be eligible for the bonus in the year you are terminated.

5. **Stock Options:**

   a. **Option Grant:** In connection with the commencement of your employment, the Board will grant you an option to purchase the number of shares of the Company's Common Stock that is equal to five percent (5%) of the fully diluted shares of the Company at the time of grant. If the Company completes an additional private round of equity financing in 2019 or within the first six months of 2020 (the "Equity Financing"), then an additional stock option grant for Common Stock shall be made to you so that following the Equity Financing the two stock options shall equal 5% of the fully diluted shares of the Company. The vesting of this additional option grant shall be the same as the initial grant (e.g. the vesting commencement date and vesting terms shall be the same). The stock options shall have an exercise price equal to the fair market value on the date of the grant. 25% of these option shares will vest one year after your employment start date, with the balance of the shares vesting at the rate of 1/36th per month over the next thirty-six months. Vesting will, of course, depend on your continued employment with the Company. The option will be an incentive stock option to the maximum extent allowed by the tax code and will be subject to the terms of the applicable Stock Option Plan and Stock Option Agreement between you and the Company.

6. **Benefits:**

   a. **Insurance Benefits:** The Company will provide you with standard medical, dental and vision insurance benefits for you and your eligible dependents, subject to the terms and conditions of the applicable plan documents. You will be required to make a small contribution to the cost of such benefits for you and your dependents. Details about these benefits are provided in the Employee Handbook and Summary Plan Descriptions, available for your review.

   b. **Vacation:** You will accrue paid vacation at the rate of 1.67 days for each month of employment beginning on your first day of employment, which is equal to 4 weeks per year and will be subject to any cap pursuant to

Company policy. Notwithstanding the foregoing, for 2019 you will have two weeks' vacation credit upon commencement of your employment.

7. **Severance Benefits**. You shall be eligible to receive severance benefits upon termination of employment only as set forth in Sections 7 through 10 of this Agreement. As a condition of receiving the severance benefits, you agree to (I) resign from all of your positions with the Company (and any subsidiary) including as a member of the Board of Directors, (ii) to execute an agreement not to engage, directly or indirectly, or participate in any business or proposed business that is competitive in any manner with the business of the Company for the period of time following termination of your employment during which the Company is providing severance benefits to you, and (iii) to execute, and allow to become effective, a release of claims agreement ("Release") not later than thirty (30) days (or such earlier time period as is specified in the Release) following your "separation from service", as such term is defined in Section 409A of the Internal Revenue Code of 1986, as amended, ("Code Section 409A") and Treasury Regulation Section 1.409A-1(h) (a "Separation from Service"). Unless the Release is timely executed by you, delivered to the Company, and becomes effective within the required period (the date on which the Release becomes effective, the "Release Date"), you will not receive any of the severance benefits provided for under this Agreement.

8. **Voluntary Termination or Termination for Cause**. You agree to provide NeuroPace with a minimum of 30 days' notice if you decide to resign your employment without Good Reason. If you resign your employment with the Company without Good Reason as defined in Section 11(c) below, or if the Company or a successor entity terminates your employment for Cause, as defined in Section 11(a) below, then you shall not be entitled to receive payment of any severance benefits. You will receive payment for all salary and unpaid vacation accrued as of the date of your termination of employment and your benefits will be continued in accordance with the Company's benefit plans and policies in effect on the date of termination and in accordance with applicable law. In the event of your termination of employment with the Company due to your death or your Disability (as such term is defined in Section 22(e)(3) of the Code), then such termination shall be deemed a voluntary termination of your employment with the Company for purposes of this Agreement.

9. **Involuntary Termination apart from a Change of Control**. If your employment is terminated by the Company or a successor entity without Cause (as defined in Section 11(a) below) or by you due to a Resignation for Good Reason (as defined in Section 11(c) below), and such termination constitutes a Separation from Service, prior to, or more than 24 months after, a Change of Control (as defined in section 11(b) below), you will receive payment for all salary and unpaid vacation accrued as of the date of your termination of employment, and, in addition, you will be eligible to receive the following termination benefits, subject to Section 7 above:

   a. An amount equal to nine (9) months of your current base salary paid over such 9-month period immediately following your Separation from Service (the

"Salary Continuation Payments"). The Salary Continuation Payments will be paid in equal installments on the Company's regular payroll schedule and will be subject to applicable tax withholdings over the period outlined above following your Separation from Service; provided, however, that if necessary to avoid any adverse tax consequences under Code Section 409A and the guidance issued thereunder,

i. No payments will be made prior to the 30th day following your Separation from Service.

ii. On the 30th day following your Separation from Service, the Company will pay you in a lump sum for Salary Continuation Payments that you would have received on or prior to such date under the original schedule but for the delay while waiting for the 30th day in compliance with Code Section 409A and the effectiveness of the Release, with the balance of the Salary Continuation Payments being paid as originally scheduled.

b. Reimbursement of your premium cost for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or the California Continuation of Benefits Replacement Act of 1997, as amended (collectively, "COBRA"), whichever is applicable, for the first nine (9) months of such continuation coverage provided you make a timely election for such continuation coverage and present reasonably requested documentation of payment of such premiums;

c. Payment of 50% of your current year target bonus, if applicable, which payment shall be made in a lump sum on the thirtieth (30th) day after your Separation from Service; and

d. Accelerated vesting of the number of then unvested option shares, and the shares of restricted stock purchased by you through the exercise of an option that have not been released from the Company's repurchase right, equal to the number of shares that would have vested or been released had you remained an employee of the Company for the nine (9) month period following your termination date of employment with the Company.

10. **Involuntary Termination following a Change of Control**. If your employment is terminated by the Company or a successor entity without Cause (as defined in Section 11(a) below) or by you due to a Resignation for Good Reason (as defined in Section 11(c) below), and such termination constitutes a Separation from Service, in connection with or within 24 months following a Change of Control (as defined in Section 11(b) below), you will receive payment for all salary and unpaid vacation accrued as of the date of your termination of employment and, in addition, you will be eligible to receive the following termination benefits, subject to Section 7 above:

a. An amount equal to twelve (12) months of your then current base salary paid over such 12-month period immediately following your Separation from

Service (the "Change of Control Salary Continuation Payment"). The Change of Control Salary Continuation Payments will be paid in equal installments on the Company's regular payroll schedule and will be subject to applicable tax withholdings over the period outlined above following your Separation from Service; provided, however, that if necessary to avoid any adverse tax consequences under Code Section 409A and the guidance issued thereunder,

i. No payments will be made prior to the 30th day following your Separation from Service.

ii. On the 30th day following your Separation from Service, the Company will pay you in a lump sum for Salary Continuation Payments that you would have received on or prior to such date under the original schedule but for the delay while waiting for the 30th day in compliance with Code Section 409A and the effectiveness of the Release, with the balance of the Salary Continuation Payments being paid as originally scheduled.

b. Reimbursement of your premium cost for continuation coverage under COBRA for up to twelve months, provided you make a timely election for such continuation coverage and present reasonably requested documentation of payment of such premiums;

c. Payment of 100% of your current year target bonus, which payment shall be made in a lump sum on the thirtieth (30th) day after your Separation from Service; and

d. Accelerated vesting of 100% of all then unvested option shares, and all shares of restricted stock purchased by you through the exercise of an option that have not been released from the Company's repurchase right.

11. **Definitions**. For purposes of this Agreement, the following definitions shall apply:

a. "Cause". Means the good faith judgment of the Board, subject to your right to arbitrate such determination in accordance with Section 15 below, that you have engaged in or committed any of the following: (i) gross negligence or willful misconduct in the performance of your duties to the Company where such gross negligence or willful misconduct had resulted or is likely to result in substantial and material harm to the Company or its subsidiaries, (ii) a material and willful violation of any federal or state law, (iii) commission of any act of fraud with respect to the Company or any of its subsidiaries or (iv) conviction of or pleading nolo contendere to a felony or a crime involving moral turpitude.

b. "Change of Control". Means a sale of all or substantially all of the Company's assets, or any merger or consolidation of the Company with or into another corporation other than a merger or consolidation in which the holders of more than 50% of the share of capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by the voting

securities remaining outstanding or by their being converted into voting securities of the surviving entity) more than 50% of the total voting power represented by the voting securities of the Company or such surviving entity, outstanding immediately after such transaction, provided that a Change of Control shall not be deemed to occur (i) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (ii) on account of a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

c. "Resignation for Good Reason". Means, subject to the right of either party to arbitrate a dispute with respect thereto in accordance with Section 15 below, your resignation as a result of the occurrence of one of the following events without your written consent: (i) your removal from your position of President and Chief Executive Officer of the Company (or a successor company, in the event of a Change of Control); (ii) a material reduction in your job, duties, or responsibilities in a manner that is substantially inconsistent with the position, duties, or responsibilities held by you immediately before such reduction; or (iii) a material reduction (10% or greater) in your base salary (other than a reduction that similarly applies to your direct reports), *provided, however*, that to resign for Good Reason, you must (1) provide written notice to the Company within 30 days after the first occurrence of the event giving rise to Good Reason setting forth the basis for your resignation, (2) allow the Company 30 days from receipt of such written notice to cure such event, and (3) if such event is not reasonably cured within such period, your resignation from all positions you then hold with the Company that is effective not later than 10 days after the expiration of the cure period.

12. **Confidential Information and Invention Assignment Agreement**. As a Company employee, you will be expected to abide by Company rules and policies, and acknowledge in writing that you have read the Company's Employee Handbook. Your acceptance of this offer and commencement of employment with the Company is contingent upon the execution, and delivery to an officer of the Company, of the Company's Confidential Information and Invention Assignment Agreement, a copy of which is enclosed for your review and execution (the "Confidentiality Agreement"), prior to or on your Start Date.

13. **Additional Obligations Regarding Confidential Information**. In your work for the Company, you will be expected and you agree not to use or disclose any confidential information, including trade secrets, of any former employer or other person to whom you have an obligation of confidentiality. Rather, you will be expected to use only that information which is generally known and used by persons with training and experience comparable to your own, which is common knowledge in the industry or otherwise legally in the public domain, or which is otherwise provided or developed by the Company. You hereby represent that you have disclosed to the Company any contract you have signed that may restrict your activities on behalf of the Company.

14. **At-Will Employment**. Your employment with the Company will be on an "at will" basis, meaning you may terminate your employment with the company at any time and for any reason whatsoever simply by notifying the Company. Likewise, the Company may terminate your employment at any time, with or without cause or advance notice. Your employment at-will status can only be modified in a written agreement signed by you and by an officer of the Company.

15. **Arbitration**. To ensure the timely and economical resolution of disputes that may arise between you and the Company, both you and the Company mutually agree that pursuant to the Federal Arbitration Act, 9 U.S.C. §1-16, and to the fullest extent permitted by applicable law, you will submit solely to final, binding and confidential arbitration any and all disputes, claims, or causes of action arising from or relating to: (a) the negotiation, execution, interpretation, performance, breach or enforcement of this Agreement; or (b) your employment with the Company (including but not limited to all statutory claims); or (iii) the termination of your employment with the Company (including but not limited to all statutory claims); provided, however, that this provision shall not apply to any claim or cause of action brought in court by you pursuant to the California Private Attorneys General Act of 2004, as amended. BY AGREEING TO THIS ARBITRATION PROCEDURE, BOTH YOU AND THE COMPANY WAIVE THE RIGHT TO RESOLVE ANY SUCH DISPUTES THROUGH A TRIAL BY JURY OR JUDGE OR THROUGH AN ADMINISTRATIVE PROCEEDING. The Arbitrator shall have the sole and exclusive authority to determine whether a dispute, claim or cause of action is subject to arbitration under this provision and to determine any procedural questions which grow out of such disputes, claims or causes of action and bear on their final disposition. All claims, disputes, or causes of action under this provision, whether by you or the Company, must be brought solely in an individual capacity, and shall not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The Arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any form of representative or class proceeding. To the extent that the preceding sentences are found to violate applicable law or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class shall proceed in a court of law rather than by arbitration. Any arbitration proceeding under this provision shall be presided over by a single arbitrator and conducted by JAMS, Inc. ("JAMS") in the JAMS office in San Francisco, under the then applicable JAMS rules for the resolution of employment disputes (available upon request and also currently available at http://www.jamsadr.com/rules-employment-arbitration/). You and the Company both have the right to be represented by legal counsel at any arbitration proceeding, at each party's own expense. The Arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute; (ii) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award; and (iii) be authorized to award any or all remedies that you or the Company would be entitled to seek in a court of law. The Company shall pay all JAMS arbitration fees in excess of the amount of court fees that would be required of you if the dispute were decided in a court of law. Nothing in this provision is intended to prevent either you or the Company from obtaining injunctive relief in court to

prevent irreparable harm pending the conclusion of any such arbitration. Any final award in any arbitration proceeding hereunder may be entered as a judgment in the federal and state courts of any competent jurisdiction and enforced accordingly.

16. **Section 409A**. To the extent (i) any payments to which you become entitled under this Agreement, or any agreement or plan referenced herein, in connection with your termination of employment with the Company constitute deferred compensation subject to Section 409A of the Code and (ii) you are deemed at the time of such termination of employment to be a "specified" employee under Section 409A of the Code, then such payment or payments shall not be made or commence until the earlier of (i) the expiration of the six (6)-month period measured from the date of your "separation from service" (as such term is at the time defined in regulations under Section 409A of the Code) with the Company; or (ii) the date of your death following such separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to you, including (without limitation) the additional twenty percent (20%) tax for which you would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this paragraph shall be paid to you or your beneficiary in one lump sum (without interest).

    Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement (or otherwise referenced herein) is determined to be subject to (and not exempt from) Section 409A of the Code, the amount of any such expenses eligible for reimbursement, or the provision of any in-kind benefit, in one calendar year shall not affect the expenses eligible for reimbursement or in kind benefits to be provided in any other calendar year, in no event shall any expenses be reimbursed after the last day of the calendar year following the calendar year in which you incurred such expenses, and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit.

    To the extent that any provision of this Agreement is ambiguous as to its exemption or compliance with Section 409A, the provision will be read in such a manner so that all payments hereunder are exempt from Section 409A to the maximum permissible extent, and for any payments where such construction is not tenable, that those payments comply with Section 409A to the maximum permissible extent. To the extent any payment under this Agreement may be classified as a "short-term deferral" within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this Agreement (or referenced in this Agreement), and each installment thereof, are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the regulations under Section 409A. If the period of time comprising (x) the time to consider and make effective the Release

or (y) the time after the expiration or cessation of any cure period or attempt to cure Good Reason, spans two calendar years, then, any payments that constitute deferred compensation subject to Section 409A will be made in the second calendar year.

17. **Section 280G**. If any payment or benefit you would receive from the Company pursuant to this Agreement or otherwise (a "Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then such Payment will be equal to the Revised Amount (defined below). The "Revised Amount" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Revised Amount, reduction shall occur in the manner that results in the greatest economic benefit for you. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata. In no event will the Company or any stockholder be liable to you for any amounts not paid as a result of the operation of this Section 17. The Company shall use commercially reasonable efforts to cause the accounting or law firm engaged to make the determinations hereunder to provide its calculations, together with detailed supporting documentation, to you and the Company within twenty (20) calendar days after the date on which your right to a Payment is triggered (if requested at that time by you or the Company) or such other time as requested by the you or the Company.

18. **Successors**. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligation in the absence of a succession. The terms of this Agreement and all of Executive's rights hereunder shall inure to the benefit of, and be enforceable by, Executive's personal or legal representatives, executors, administrators, successors, heirs, distributes devisees and legatees.

This offer is contingent upon satisfactory proof of your right to work in the United States as well as the successful completion of a background check, reference checks, and a multiple panel drug screen. NeuroPace will arrange and pay for the drug screen process. You agree to assist as needed and to complete any documentation at the Company's request to meet these conditions.

We are all delighted to be able to extend you this offer and look forward to working with you. To indicate your acceptance of the Company's offer under the terms described above, please sign

and date this letter in the space provided below and return it to me, along with a signed and dated copy of the Confidentiality Agreement. This letter, together with the Confidentiality Agreement, set forth the complete and exclusive statement of your employment agreement with the Company and supersedes any prior representations or agreements made to you by anyone, whether written or oral. This letter may not be modified or amended except by a written agreement, signed by a representative of the Board of the Company and by you.

With Best Regards,

/s/ Greg Garfield

Board Member for
NeuroPace, Inc.

ACCEPTED AND AGREED:

/s/ Michael Favet

Michael Favet

7/23/2019

Date

8/1/2019

Start Date

November 04, 2020

Irina A. Ridley
[Address Intentionally Omitted]

Via Email: [Email Address Intentionally Omitted]

Dear Irina:

On behalf of NeuroPace, Inc. (the "Company"), I am pleased to offer you the position of General Counsel and Corporate Secretary. Speaking for myself, as well as the other members of the Company, we all look forward to working with you and to your future success with NeuroPace, Inc.

The terms of your new position with the Company are as set forth below:

1. **Position**.

    a. You will be the General Counsel and Corporate Secretary initially working out of your home office in San Carlos, CA during the COVID pandemic and then working out of our Mountain View office. You will report to Mike Favet, President and Chief Executive Officer.

    b. You agree to the best of your ability and experience that you will at all times loyally and conscientiously perform all of the duties and obligations required of and from you pursuant to the express and implicit terms hereof, and to the reasonable satisfaction of the Company. During the term of your employment you further agree that you will not directly or indirectly engage or participate in any business that is competitive in any manner with the business of the Company.

2. **Start Date**: If you find the terms of this letter agreeable, you will commence this new position with the Company on a mutually agreed upon date no later than November 30, 2020. Unless amended in writing, this offer will expire on November 06, 2020.

3. **Proof of Right to Work**: For purposes of federal immigration law, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your date of hire, or our employment relationship with you may be terminated.

4. **Compensation**.

    a. **Base Salary**: You will be paid a biweekly salary of $12,500.00 which is equivalent to $325,000 on an annualized basis.

    b. **Bonus**: Effective 1/1/2021, you will be eligible for an annual bonus, capped at 20% of your then current annual base salary. Your performance objectives will be set by the President and CEO within your first 90 days of employment (and annually thereafter). Whether you receive a bonus in any given year, and the amount of any such bonus, will be determined by the Company in its sole discretion based upon your performance, the Company's performance and such other criteria that the Company deems relevant. In order to earn a bonus, you must be employed on the date that any bonus is paid to you (which will usually be in the first 60 days of the calendar year). Except as set forth in the following sentence, if your employment ends for any reason prior to the bonus being paid, then you will not have earned the bonus, and no partial or prorated bonus will be paid. If, however, your employment is terminated pursuant to Sections 9 or 10 below and said termination occurs after the preceding year end and before a bonus is paid, (for example, your termination occurs in January and the

preceding year's bonus has not been paid), then you will be entitled to the bonus for the preceding year as set forth in Sections 9 and 10, as applicable but would not be eligible for the bonus in the year you are terminated..

5. **Stock Options**.

   a. **Option Grant**: In connection with the commencement of your employment, the Company will recommend that the Board of Directors grant you an option to purchase 240,000 shares of the Company's Common Stock ("Shares") with an exercise price equal to the fair market value on the date of the grant. This is equivalent to 0.45% of fully diluted shares. 25% of these option shares will vest one year after your employment start date, with the balance of the shares vesting at the rate of 1/36th per month over the next thirty six months. Vesting will, of course, depend on your continued employment with the Company. The option will be an incentive stock option to the maximum extent allowed by the tax code and will be subject to the terms of the Stock Option Agreement between you and the Company.

6. **Benefits**.

   a. **Insurance Benefits**: The Company will provide you with standard medical and dental insurance benefits. You will be required to make a small contribution to the cost of such benefits for you and your dependents.

   b. **Vacation**: You will accrue paid vacation at the rate of 1.67 days for each month of employment beginning on your first day of employment, which is equal to 4 weeks per year.

7. **Severance Benefits**. You shall be entitled to receive severance benefits upon termination of employment only as set forth in this Section and Section 8 through Section 12 below. As a condition of receiving the severance benefits, you agree to (i) resign from all of your positions with the Company, (ii) to execute an agreement not to engage, directly or indirectly, or participate in any business or proposed business that is competitive in any manner with the business of the Company for the period of time following termination of your employment during which the Company is providing severance benefits to you, and (iii) to execute, and allow to become effective, a release of claims agreement ("Release") not later than thirty (30) days (or such earlier time period as is specified in the Release) following your "separation from service", as such term is defined in Section 409A of the Internal Revenue Code of 1986, as amended, ("Code Section 409A") and Treasury Regulation Section 1.409A-1(h) (a "Separation from Service"). Unless the Release is timely executed by you, delivered to the Company, and becomes effective within the required period (the date on which the Release becomes effective, the "Release Date"), you will not receive any of the severance benefits provided for under this Agreement."

8. **Voluntary Termination or Termination for Cause**. You agree to provide NeuroPace with a minimum of one (1) month notice if you decide to voluntarily terminate your employment. If you voluntarily elect to terminate your employment with the company other than by your Resignation for Good Reason, as defined in Section 11(c) below, or if the company or a successor entity terminates your employment for Cause, as defined in Section 11(a) below, then you shall not be entitled to receive payment of any severance benefits. You will receive payment for all salary and unpaid vacation accrued as of the date of your termination of employment and your benefits will be continued in accordance with the Company's benefit plans and policies in effect on the date of termination and in accordance with applicable law.

9. **Involuntary Termination apart from a Change of Control**. If your employment is terminated by the Company or a successor entity without Cause (as defined in Section 11(a) below) or by your Resignation for Good Reason (as defined in Section 11(c) below), and such termination constitutes a Separation from Service, prior to, or more than 24 months after, a Change of Control

(as defined in section 11(b) below), you will receive payment for all salary and unpaid vacation accrued as of the date of your termination of employment, and, in addition, you will be entitled to receive the following termination benefits:

a. An amount equal to six (6) months of your current cash compensation (base plus bonus) paid over such 6-month period immediately following your Separation from Service (the "Salary Continuation Payments"). The Salary Continuation Payments will be paid in equal installments on the Company's regular payroll schedule and will be subject to applicable tax withholdings over the period outlined above following your Separation from Service; *provided*, *however*, that if necessary to avoid any adverse tax consequences under Code Section 409A and the guidance issued thereunder, no payments will be made prior to the 30th day following your Separation from Service. On the 30th day following your Separation from Service, the Company will pay you in a lump sum the Salary Continuation Payments that you would have received on or prior to such date under the original schedule but for the delay while waiting for the 30th day in compliance with Code Section 409A and the effectiveness of the Release, with the balance of the Salary Continuation Payments being paid as originally scheduled.

b. Reimbursement of your premium cost for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or the California Continuation of Benefits Replacement Act of 1997, as amended (collectively, "COBRA"), whichever is applicable for the first six (6) months of such continuation coverage provided you make a timely election for such continuation coverage and present reasonably requested documentation of payment of such premiums; and

c. Accelerated vesting of the number of then unvested option shares, and the shares of restricted stock purchased by you through the exercise of an option that have not been released from the Company's repurchase right, equal to the number of shares that would have vested or been released if you had remained an employee of the Company for six (6) months after the termination date."

10. **Involuntary Termination following a Change of Control**. If your employment is terminated by the Company or a successor entity without Cause (as defined in Section 11(a) below) up to 4 months prior to or 24 months following a change of control or by your Resignation for Good Reason (as defined in Section 11(c) below), and such termination constitutes a Separation from Service, (as defined in Section 11(b) below), you will receive payment for all salary and unpaid vacation accrued as of the date of your termination of employment and, in addition, you will be entitled to receive the following termination benefits:

a. An amount equal to twelve (12) months of your current cash compensation (base plus bonus) paid over such 12-month period immediately following your Separation from Service (the "Change of Control Salary Continuation Payments"). The Change of Control Salary Continuation Payments will be paid in equal installments on the Company's regular payroll schedule and will be subject to applicable tax withholdings over the period outlined above following your Separation from Service; provided, however, that if necessary to avoid any adverse tax consequences under Code Section 409A, no payments will be made prior to the 30th day following your Separation from Service. On the 30th day following your termination the Company will pay you in a lump sum the Salary Continuation Payments that you would have received on or prior to such date under the original schedule but for the delay while waiting for the 30th day in compliance with Code Section 409A and the effectiveness of the Release, with the balance of the Salary Continuation Payments being paid as originally scheduled.;

b. Reimbursement of your premium cost for continuation coverage under COBRA for the maximum period (not to exceed twelve months) of such continuation coverage provided you

make a timely election for such continuation coverage and present reasonably requested documentation of payment of such premiums; and

c. Accelerated vesting of 100% of all then unvested option shares, and all shares of restricted stock purchased by you through the exercise of an option that have not been released from the Company's repurchase right."

11. **Definitions**. For purposes of this Agreement, the following definitions shall apply:

a. "Cause". Means the good faith judgment of the Company's Board of directors, subject to your right to arbitrate such determination in accordance with Section 18 below, that you have engaged in or committed any of the following: (i) gross negligence or willful misconduct in the performance of your duties to the Company where such gross negligence or willful misconduct had resulted or is likely to result in substantial and material damage to the Company or its subsidiaries, (ii) a material and willful violation of any federal or state law, (iii) commission of any act of fraud with respect to the Company or (iv) conviction of a felony or a crime involving moral turpitude causing material harm to the standing and reputation of the Company, in each case as determined in good faith by the Board of Directors of the Company.

b. "Change of Control". Means a sale of all or substantially all of the Company's assets, or any merger or consolidation of the Company with or into another corporation other than a merger or consolidation in which the holders of more than 50% of the share of capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by the voting securities remaining outstanding or by their being converted into voting securities of the surviving entity) more than 50% of the total voting power represented by the voting securities of the Company or such surviving entity, outstanding immediately after such transaction.

c. "Resignation for Good Reason". Means, subject to the right of either party to arbitrate a dispute with respect thereto in accordance with Section 18 below, your resignation as a result of the occurrence of one of the following events without your written consent: (i) your removal from your position with the Company (or a successor company, in the event of a Change of Control); (ii) a material reduction in your job, duties, or responsibilities in a manner that is substantially inconsistent with the position, duties, or responsibilities held by you immediately before such reduction, (iii) a material reduction (10% or greater) in your base salary other than in connection with and consistent with a general reduction of all officer base salaries; or (iv) a relocation of the Company's executive offices to a location more than 35 miles from the Company's current location, which requires you to be onsite daily provided, however, that to resign for Good Reason, you must (1) provide written notice to the Company within 60 days after the first occurrence of the event giving rise to Good Reason setting forth the basis for your resignation, (2) allow the Company at least 30 days from receipt of such written notice to cure such event, and (3) if such event is not reasonably cured within such period, your resignation from all positions you then hold with the Company is effective not later than 30 days after the expiration of the cure period.".

12. **Confidential Information and Invention Assignment Agreement**. Your acceptance of this offer and commencement of employment with the Company is contingent upon the execution, and delivery to an officer of the Company, of the Company's Confidential Information and Invention Assignment Agreement, a copy of which is included for your review and execution as Attachment A (the "Confidentiality Agreement"), prior to or on your Start Date.

13. **Confidentiality of Terms**. You agree to follow the Company's strict policy that employees must not disclose, either directly or indirectly, any information, including any of the terms of this

agreement, regarding salary, bonuses, or stock purchase or option allocations to any person, including other employees of the Company; provided, however, that you may discuss such terms with members of your immediate family and any legal, tax or accounting specialists who provide you with individual legal, tax or accounting advice.

14. **At-Will Employment**. Your employment with the Company will be on an "at will" basis, meaning that either you or the Company may terminate your employment at any time for any reason or no reason, without further obligation or liability.

15. **Arbitration**. Any dispute, controversy or claim arising under or in connection with this Agreement or breach hereof (including whether Cause or Resignation for Good Reason exists), shall be settled exclusively by arbitration in San Francisco, California, in accordance with the Rules of the American Arbitration Association then in effect. The Rules can be found at www.adr.org, or a printout can be requested at any time from Human Resources. Both Parties understand and agree that this arbitration provision replaces the right of both Parties to go to court, including the right to have a jury decide a Party's claims. NeuroPace will pay the arbitrator's fees and costs that are unique to the arbitration to the extent required by law.

16. **Successors**. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligation in the absence of a succession. The terms of this Agreement and all of Executive's rights hereunder shall inure to the benefit of, and be enforceable by, Executive's personal or legal representatives, executors, administrators, successors, heirs, distributes devisees and legatees.

17. **Code Section 409A**. It is intended that all of the benefits and payments under this letter satisfy, to the greatest extent possible, the exemptions from the application of Code Section 409A provided under Treasury Regulations 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9), and this letter agreement will be construed to the greatest extent possible as consistent with those provisions. If not so exempt, this letter agreement (and any definitions hereunder) will be construed in a manner that complies with Section 409A, and incorporates by reference all required definitions and payment terms. For purposes of Code Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), your right to receive any installment payments under this letter agreement (whether severance payments, reimbursements or otherwise) will be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder will at all times be considered a separate and distinct payment. Notwithstanding any provision to the contrary in this letter, if you are deemed by the Company at the time of your Separation from Service to be a "specified employee" for purposes of Code Section 409A(a)(2)(B)(i), and if any of the payments upon Separation from Service set forth herein and/or under any other agreement with the Company are deemed to be "deferred compensation", then if delayed commencement of any portion of such payments is required to avoid a prohibited distribution under Code Section 409A(a)(2)(B)(i) and the related adverse taxation under Section 409A, the timing of the payments upon a Separation from Service will be delayed as follows: on the earlier to occur of (i) the date that is six months and one day after the effective date of your Separation from Service, and (ii) the date of your death (such earlier date, the "Delayed Initial Payment Date"), the Company will (A) pay to you a lump sum amount equal to the sum of the payments upon Separation from Service that you would otherwise have received through the Delayed Initial Payment Date if the commencement of the payments had not been delayed pursuant to this paragraph, and (B) commence paying the balance of the payments in accordance with the applicable payment schedules set forth above."

This offer is contingent upon satisfactory proof of your right to work in the United States as well as the successful completion of a background check and reference checks. You agree to assist as needed and to complete any documentation at the Company's request to meet these conditions.

We are all delighted to be able to extend you this offer and look forward to working with you. To indicate your acceptance of the Company's offer, please sign and date this letter in the space provided below and return it to me, along with a signed and dated copy of the Confidentiality Agreement. This letter, together with the Confidentiality Agreement, set forth the terms of your employment with the Company and supersedes any prior representations or agreements, whether written or oral. This letter may not be modified or amended except by a written agreement, signed by the Company and by you.

With Best Regards,

/s/ Irene Holloway Thomas

Irene Holloway Thomas
Vice President, Human Resources
and Corporate Services
NeuroPace, Inc.

ACCEPTED AND AGREED:

/s/ Irina A. Ridley

Irina A. Ridley

November 05, 2020

Signature Date

November 30, 2020

Start Date

THE SECURITIES REPRESENTED BY THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

THE SECURITIES REPRESENTED BY THIS WARRANT ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION IN CERTAIN CIRCUMSTANCES) AFTER THE EFFECTIVE DATE OF THE ISSUER'S REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL PURCHASER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE ISSUER'S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

Warrant No. [___] Date of Issuance: September 14, 2020

NEUROPACE, INC.

Common Stock Purchase Warrant

NeuroPace, Inc. (the "Company"), for value received, hereby certifies that [___], or its registered assigns (the "Registered Holder"), is entitled, subject to the terms set forth below, to purchase from the Company, at any time after the date hereof and on or before the Expiration Date (as defined in Section 5 below) shares of Common Stock of the Company ("Common Stock") at an exercise price per share equal $1.00 (as adjusted for stock splits, stock dividends, recapitalizations and like transactions with respect to the Common Stock). The shares issuable upon exercise of this Warrant and the exercise price per share, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Stock" and the "Exercise Price," respectively.

This Warrant is issued pursuant to, and is subject to the terms and conditions of, that certain Term Loan Agreement, among the Company and the Subsidiary Guarantors and Lenders named therein, dated as of November 18, 2014, as may be amended from time to time (the "Loan Agreement"), and issued to [___], and was subsequently reclassified as a warrant to purchase the Company's Common Stock, and transferred to the Registered Holder.

1. **Number of Shares.** Subject to the terms and conditions hereinafter set forth, the Registered Holder is entitled, upon surrender of this Warrant, to purchase from the Company [___] shares of Common Stock.

2. **Exercise.**

(a) **Manner of Exercise.** This Warrant may be exercised by the Registered Holder, in whole or in part, by surrendering this Warrant, with the purchase/exercise form appended hereto as Exhibit A duly executed by such Registered Holder or by such Registered Holder's duly authorized attorney, at the principal office of the Company, or at such other office or agency as the Company may designate, accompanied by payment in full of the aggregate Exercise Price payable in respect of the number of shares of Warrant Stock purchased upon such exercise (the "Purchase Price"). The Purchase Price may be paid by cash, check, wire transfer, or by the surrender of promissory notes or other instruments representing indebtedness of the Company to the Registered Holder.

(b) **Effective Time of Exercise.** Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in Section 2(a) above. At such time, the person or persons in whose name or names any certificates for Warrant Stock shall be issuable upon such exercise as provided in Section 2(d) below shall be deemed to have become the holder or holders of record of the Warrant Stock to be represented by such certificates.

(c) **Net Issue Exercise.**

(i) In lieu of exercising this Warrant in the manner provided above in Section 2(a), the Registered Holder may elect to receive shares equal to the value of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with notice of such election on the purchase/exercise form appended hereto as Exhibit A duly executed by such Registered Holder or such Registered Holder's duly authorized attorney, in which event the Company shall issue to such Registered Holder a number of shares of Warrant Stock computed using the following formula:

$$X = \frac{Y\,(A - B)}{A}$$

Where X = The number of shares of Warrant Stock to be issued to the Registered Holder.

Y = The number of shares of Warrant Stock purchasable under this Warrant (at the date of such calculation).

A = The fair market value of one share of Warrant Stock (at the date of such calculation).

B = The Exercise Price (as adjusted to the date of such calculation).

(ii) For purposes of this Section 2(c), the fair market value of one share of Warrant Stock on the date of calculation shall mean:

(A) if the exercise is in connection with an initial public offering of the common stock of the Company (the "Common Stock"), and if the Company's Registration Statement relating to such public offering has been declared effective by the Securities and Exchange Commission, then the fair market value shall be the product of (x) the initial "Price to Public" per share specified in the final prospectus with respect to the offering and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the date of calculation;

(B) if (A) is not applicable, the fair market value of Warrant Stock shall be at the highest price per share which the Company could obtain on the date of calculation from a willing buyer (not a current employee or director) for shares of Warrant Stock sold by the Company, from authorized but unissued shares, as determined in good faith by the Board of Directors, unless the Company is at such time subject to an acquisition as described in Section 5(c) below, in which case the fair market value of Warrant Stock shall be deemed to be the value of consideration per share received by the holders of such stock pursuant to such acquisition.

(d) **Delivery to Registered Holder.** As soon as practicable after the exercise of this Warrant in whole or in part, and in any event within ten days thereafter, the Company at its expense will cause to be issued in the name of, and delivered to, the Registered Holder, or as such Holder (upon payment by such Registered Holder of any applicable transfer taxes) may direct:

(i) a certificate or certificates for the number of shares of Warrant Stock to which such Registered Holder shall be entitled, and

(ii) in case such exercise is in part only, a new warrant or warrants (dated the date hereof) of like tenor and with the same date, calling in the aggregate on the face or faces thereof for the number of shares of Warrant Stock equal (without giving effect to any adjustment thereof) to the number of such shares called for on the face of this Warrant minus the number of such shares purchased by the Registered Holder upon such exercise as provided in Section 2(a) or 2(c) above (without giving effect to any adjustment thereof).

3. **Adjustments.**

(a) **Redemption or Conversion of Preferred Stock.** If all of the outstanding Preferred Stock is redeemed or converted into shares of Common Stock, then this Warrant shall automatically become exercisable for that number of shares of Common Stock equal to the number of shares of Common Stock that would have been received if this Warrant had been exercised in full and the shares of Preferred Stock received thereupon had been simultaneously converted into shares of Common Stock immediately prior to such event, and the Exercise Price shall be automatically adjusted to equal the number obtained by dividing (i) the aggregate Purchase Price of the shares of Preferred Stock for which this Warrant was exercisable

immediately prior to such redemption or conversion, by (ii) the number of shares of Common Stock for which this Warrant is exercisable immediately after such redemption or conversion.

(b) **Stock Splits and Dividends.** If outstanding shares of the Company's Preferred Stock shall be subdivided into a greater number of shares or a dividend in Preferred Stock shall be paid in respect of Preferred Stock, the Exercise Price in effect immediately prior to such subdivision or at the record date of such dividend shall simultaneously with the effectiveness of such subdivision or immediately after the record date of such dividend be proportionately reduced. If outstanding shares of Preferred Stock shall be combined into a smaller number of shares, the Exercise Price in effect immediately prior to such combination shall, simultaneously with the effectiveness of such combination, be proportionately increased. When any adjustment is required to be made in the Exercise Price, the number of shares of Warrant Stock purchasable upon the exercise of this Warrant shall be changed to the number determined by dividing (i) an amount equal to the number of shares issuable upon the exercise of this Warrant immediately prior to such adjustment, multiplied by the Exercise Price in effect immediately prior to such adjustment, by (ii) the Exercise Price in effect immediately after such adjustment.

(c) **Reclassification, Etc.** In case there occurs any reclassification or change of the outstanding securities of the Company (or any other corporation the stock or securities of which are at the time receivable upon the exercise of this Warrant) or any similar corporate reorganization on or after the date hereof, then and in each such case the Registered Holder, upon the exercise hereof at any time after the consummation of such reclassification, change, or reorganization shall be entitled to receive, in lieu of the stock or other securities and property receivable upon the exercise hereof prior to such consummation, the stock or other securities or property to which such Registered Holder would have been entitled upon such consummation if such Registered Holder had exercised this Warrant immediately prior thereto, all subject to further adjustment pursuant to the provisions of this Section 3.

(d) **Adjustment Certificate.** When any adjustment is required to be made in the Warrant Stock or the Exercise Price pursuant to this Section 3, the Company shall promptly mail to the Registered Holder a certificate setting forth (i) a brief statement of the facts requiring such adjustment, (ii) the Exercise Price after such adjustment and (iii) the kind and amount of stock or other securities or property into which this Warrant shall be exercisable after such adjustment.

(e) **Acknowledgement.** In order to avoid doubt, it is acknowledged that the holder of this Warrant shall be entitled to the benefit of all adjustments in the number of shares of Common Stock of the Company issuable upon conversion of the Preferred Stock of the Company which occur prior to the exercise of this Warrant, including without limitation, any increase in the number of shares of Common Stock issuable upon conversion as a result of a dilutive issuance of capital stock.

4. **Transfers.**

(a) **Unregistered Security.** Each holder of this Warrant acknowledges that this Warrant, the Warrant Stock and the Common Stock of the Company have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), and agrees not to sell, pledge, distribute, offer for sale, transfer or otherwise dispose of this Warrant, any Warrant Stock issued upon its exercise or any Common Stock issued upon conversion of the Warrant Stock in the absence of (i) an effective registration statement under the Securities Act as to this Warrant, such Warrant Stock or such Common Stock and registration or qualification of this Warrant, such Warrant Stock or such Common Stock under any applicable U.S. federal or state securities law then in effect, or (ii) an opinion of counsel, satisfactory to the Company, that such registration and qualification are not required. Each certificate or other instrument for Warrant Stock issued upon the exercise of this Warrant shall bear a legend substantially to the foregoing effect.

(b) **Transferability.** Subject to the provisions of Sections 4(a) and 7(f) hereof, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of the Warrant with a properly executed assignment (in the form of Exhibit B hereto) at the principal office of the Company provided, however, that this Warrant may not be transferred in part unless the transferee acquires the right to purchase at least 50% of the number of shares of Warrant Stock originally purchasable under this Warrant (as adjusted pursuant to Section 3).

(c) **Warrant Register.** The Company will maintain a register containing the names and addresses of the Registered Holders of this Warrant. Until any transfer of this Warrant is made in the warrant register, the Company may treat the Registered Holder of this Warrant as the absolute owner hereof for all purposes; provided, however, that if this Warrant is properly assigned in blank, the Company may (but shall not be required to) treat the bearer hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary. Any Registered Holder may change such Registered Holder's address as shown on the warrant register by written notice to the Company requesting such change.

5. **Termination.** This Warrant (and the right to purchase securities upon exercise hereof) shall terminate upon the earliest to occur of the following (the "Expiration Date"): (a) December 1, 2024; (b) the closing of an initial public offering of the Common Stock of the Company; and (c) the consummation of (i) a sale, conveyance, disposal, or encumbrance of all or substantially all of the Company's property or business or the Company's merger into or consolidation with any other corporation (other than a wholly owned subsidiary corporation) or (ii) any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of. Notwithstanding anything to the contrary herein, if (i) the Registered Holder has not exercised this Warrant in full prior to the Expiration Date and (ii) the fair market value of one share of Warrant Stock on the Expiration Date exceeds the Exercise Price, this Warrant shall be deemed to be exercised by the Registered Holder pursuant to Section 2(c) above immediately prior to termination of this Warrant on the Expiration Date.

6. **Notices of Certain Transactions.** In case:

(a) the Company shall set a record date for all holders of its Preferred Stock (or other stock or securities at the time deliverable upon the exercise of this Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right, or

(b) of any capital reorganization of the Company, any reclassification of the capital stock of the Company, any consolidation or merger of the Company with or into another corporation (other than a consolidation or merger in which the Company is the surviving entity), or any transfer of all or substantially all of the assets of the Company, or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company, or

(d) of any redemption of the Preferred Stock or mandatory conversion of the Preferred Stock into Common Stock,

then, and in each such case, the Company will mail or cause to be mailed to the Registered Holder of this Warrant a notice specifying, as the case may be, (i) the record date for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up, redemption or conversion is to take place, and the time, if any is to be fixed, as of which the holders of record of Preferred Stock (or such other stock or securities at the time deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up, redemption or conversion) are to be determined. Such notice shall be mailed at least ten days prior to the record date or effective date for the event specified in such notice.

7. **Representations and Warranties of Registered Holder.** The Registered Holder represents and warrants to the Company as follows:

(a) Purchase for Own Account. This Warrant, the Warrant Stock and any Common Stock issued or issuable upon conversion of the Warrant Stock (collectively, the "Securities") to be acquired by the Registered Holder will be acquired for investment for the Registered Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Securities Act and the Registered Holder has no present intention of selling or engaging in any public distribution of the same. The Registered Holder also represents that the Registered Holder has not been formed for the specific purpose of acquiring the Securities.

(b) Disclosure of Information. The Registered Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of the Securities. The Registered Holder further has had an opportunity to ask questions and receive answers from the Company regarding

the terms and conditions of the offering of the Securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Registered Holder or to which the Registered Holder has access.

(c) Investment Experience. The Registered Holder understands that the purchase of the Securities involves substantial risk. The Registered Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Registered Holder can bear the economic risk of the Registered Holder's investment in the Securities and has such knowledge and experience in financial or business matters that the Registered Holder is capable of evaluating the merits and risks of its investment in the Securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Registered Holder to be aware of the character, business acumen and financial circumstances of such persons.

(d) Accredited Investor Status. The Registered Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

(e) The Securities Act. The Registered Holder understands that the Securities have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Registered Holder's investment intent as expressed herein. The Registered Holder understands that this the Securities must be held indefinitely unless subsequently registered under the Securities Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. The Registered Holder acknowledges that the Company has no obligation to register or qualify the Securities for resale.

(f) Market Stand-Off. In connection with the initial public offering of the Company's securities (the "IPO"), the Registered Holder hereby agrees that, during the period of duration (up to, but not exceeding, 180 days, but subject to such extension or extensions as may be required by the underwriters in order to publish research reports while complying with Rule 2711 of the Financial Industry Regulatory Authority; provided, however, that such extension or extensions shall in no event exceed 18 days following the date of release of the material information by the Company that requires such extension) specified by the Company or the underwriters managing such IPO, following the effective date of the registration statement for such IPO, it shall not, to the extent requested by the Company and such underwriter, directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to donees who agree to be similarly bound) any securities of the Company held by it at any time during such period except Common Stock included in such registration; provided, however, that all officers and directors of the Company and all five-percent securityholders enter into similar agreements. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the securities held by the Registered Holder until the end of such period, and the Registered Holder agrees that, if so requested, the Registered Holder will execute an agreement in the form

provided by the underwriter containing terms which are essentially consistent with the provisions of this Section 7(f). Notwithstanding the foregoing, the obligations described in this Section 7(f) shall not apply to a registration relating solely to employee benefit plans on Form S-8 or successor thereto which may be promulgated in the future, or a registration relating solely to an Securities and Exchange Commission Rule 145 transaction on Form S-4 or similar forms which may be promulgated in the future.

(g) No Public Market**.** The Registered Holder understands that no public market now exists for any of the securities issued by the Company, and that the Company has made no assurances that a public market will ever exist for the Warrant or the Warrant Stock.

8. **Legends.** The Warrant Stock issued upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Warrant Stock, if any) shall be imprinted with a legend in substantially the following form (together with any other legends required by applicable law or the Company's Certificate of Incorporation or Bylaws):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION IN CERTAIN CIRCUMSTANCES) AFTER THE EFFECTIVE DATE OF THE ISSUER'S REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL PURCHASER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE ISSUER'S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

9. **Reservation of Stock.** The Company will at all times reserve and keep available, solely for the issuance and delivery upon the exercise of this Warrant, such shares of Warrant Stock and other stock, securities and property, as from time to time shall be issuable upon the exercise of this Warrant.

10. **Exchange of Warrants.** Upon the surrender by the Registered Holder of any Warrant or Warrants, properly endorsed, to the Company at the principal office of the Company, the Company will, subject to the provisions of Section 4 hereof, issue and deliver to or upon the order of such Registered Holder, at the Company's expense, a new Warrant or Warrants of like tenor, in the name of such Registered Holder or as such Registered Holder (upon payment by

such Registered Holder of any applicable transfer taxes) may direct, calling in the aggregate on the face or faces thereof for the number of shares of Preferred Stock called for on the face or faces of the Warrant or Warrants so surrendered.

11. **Replacement of Warrants.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor.

12. **No Rights as Stockholder.** Until the exercise of this Warrant, the Registered Holder of this Warrant shall not have or exercise any rights by virtue hereof as a stockholder of the Company.

13. **No Fractional Shares.** No fractional shares of Preferred Stock will be issued in connection with any exercise hereunder. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of Preferred Stock on the date of exercise, as determined in good faith by the Company's Board of Directors.

14. **Amendment or Waiver.** Any term of this Warrant may be amended or waived upon written consent of the Company and the holders of at least 50% of the Warrant Stock issuable upon exercise of outstanding warrants issued pursuant to the Loan Agreement. By acceptance hereof, the Registered Holder acknowledges that in the event the required consent is obtained, any term of this Warrant may be amended or waived with or without the consent of the Registered Holder.

15. **Headings.** The headings in this Warrant are used for convenience only and are not to be considered in construing or interpreting any provision of this Warrant.

16. **Governing Law.** This Warrant shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

17. **Successors and Assigns.** Unless otherwise provided in this Warrant, the terms and conditions of this Warrant shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties. Nothing in this Warrant, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Warrant, except as expressly provided in this Warrant.

18. **Counterparts.** This Warrant may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

19. **Severability.** If one or more provisions of this Warrant are held to be unenforceable under applicable law, such provision shall be excluded from this Warrant, the balance of this Warrant shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

20. **Delays or Omissions.** No delay or omission to exercise any right, power or remedy accruing to any party under this Warrant, upon any breach or default of any other party under this Warrant, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Warrant, or any waiver on the part of any party of any provisions or conditions of this Warrant, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Warrant or by law or otherwise afforded to any party, shall be cumulative and not alternative.

21. **Notices.** Unless otherwise provided herein, any notice required or permitted by this Warrant shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by overnight courier or sent by facsimile, or 48 hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, addressed to the party to be notified at such party's address as set forth on the signature page, or as subsequently modified by written notice.

[Signature Pages Follow]

The parties have executed this Common Stock Purchase Warrant as of the date first written above.

COMPANY:

NEUROPACE, INC.

By: _____

Name: Rebecca Kuhn

Title: Chief Financial Officer

Address: 455 N. Bernardo Avenue
Mountain View, CA 94043

AGREED TO AND ACCEPTED:

REGISTERED HOLDER:

By: _____

Name: _____

Title: _____

EXHIBIT A

PURCHASE/EXERCISE FORM

To: NeuroPace, Inc. Dated:

The undersigned, pursuant to the provisions set forth in the attached Warrant No. [___], hereby irrevocably elects to (a) purchase _____ shares of the Common Stock covered by such Warrant and herewith makes payment of $ _____, representing the full purchase price for such shares at the price per share provided for in such Warrant, or (b) exercise such Warrant for _____ shares purchasable under the Warrant pursuant to the Net Issue Exercise provisions of Section 2(c) of such Warrant.

The undersigned acknowledges that it has reviewed the representations and warranties contained in Section 7 of the Warrant and by its signature below hereby makes such representations and warranties to the Company. Defined terms contained in such representations and warranties shall have the meanings assigned to them in the Warrant, provided that the term "Registered Holder" shall refer to the undersigned.

The undersigned further acknowledges that it has reviewed the market standoff provisions set forth in Section 7(f) of the Warrant, and agrees to be bound by such provisions.

Signature: _____

Name (print): _____

Title (if applic.): _____

Company (if applic.): _____

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers all of the rights of the undersigned under the attached Warrant with respect to the number of shares of Common Stock covered thereby set forth below, unto:

Name of Assignee	**Address/Facsimile Number**	**No. of Shares**

Dated: _____ Signature: _____

_____

Witness: _____

THE SECURITIES REPRESENTED BY THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT.

THE SECURITIES REPRESENTED BY THIS WARRANT ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION IN CERTAIN CIRCUMSTANCES) AFTER THE EFFECTIVE DATE OF THE COMPANY'S REGISTRATION STATEMENT FILED UNDER THE SECURITIES ACT, AS SET FORTH IN HEREIN. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

Warrant No. [___] Date of Issuance: September 24, 2020

NEUROPACE, INC.

Series B' Preferred Stock Purchase Warrant

NeuroPace, Inc. (the "Company"), for value received, hereby certifies that [_____], or its registered assigns (the "Registered Holder"), is entitled, subject to the terms set forth below, to purchase from the Company, at any time after the date hereof and on or before the Expiration Date (as defined in Section 5 below) shares of Series B' Preferred Stock of the Company ("Preferred Stock") at an exercise price per share equal $2.50515 (as adjusted for stock splits, stock dividends, recapitalizations and like transactions with respect to the Series B' Preferred Stock). The shares issuable upon exercise of this Series B' Preferred Stock Purchase Warrant (this "Warrant") and the exercise price per share, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Stock" and the "Exercise Price," respectively.

This Warrant is issued pursuant to, and is subject to the terms and conditions of, that certain Term Loan Agreement, among the Company and the Subsidiary Guarantors (as defined in the Loan Agreement) and Lenders (as defined in the Loan Agreement) named therein, dated as of September 24, 2020, as may be amended from time to time (the "Loan Agreement").

1. **Number of Shares.** Subject to the terms and conditions hereinafter set forth, the Registered Holder is entitled, upon surrender of this Warrant, to purchase from the Company up to [___] shares of Preferred Stock.

2. **Exercise.**

(a) **Manner of Exercise.** This Warrant may be exercised by the Registered Holder, in whole or in part, by surrendering this Warrant, with the purchase/exercise form appended hereto as Exhibit A duly executed by such Registered Holder or by such Registered Holder's duly authorized attorney, at the principal office of the Company, or at such other office or agency as the Company may designate, accompanied by payment in full of the aggregate Exercise Price payable in respect of the number of shares of Warrant Stock purchased upon such exercise (the "Purchase Price"). The Purchase Price may be paid by cash, check, wire transfer, or by the surrender of promissory notes or other instruments representing indebtedness of the Company to the Registered Holder.

(b) **Effective Time of Exercise.** Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in Section 2(a) above. At such time, the person or persons in whose name or names any certificates for Warrant Stock shall be issuable upon such exercise as provided in Section 2(d) below shall be deemed to have become the holder or holders of record of the Warrant Stock to be represented by such certificates.

(c) **Net Issue Exercise.**

(i) In lieu of exercising this Warrant in the manner provided above in Section 2(a), the Registered Holder may elect to receive shares equal to the value of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with notice of such election on the purchase/exercise form appended hereto as Exhibit A duly executed by such Registered Holder or such Registered Holder's duly authorized attorney, in which event the Company shall issue to such Registered Holder a number of shares of Warrant Stock computed using the following formula:

$$X = \frac{Y\,(A - B)}{A}$$

Where X = The number of shares of Warrant Stock to be issued to the Registered Holder.

Y = The number of shares of Warrant Stock purchasable under this Warrant (at the date of such calculation).

A = The fair market value of one share of Warrant Stock (at the date of such calculation).

B = The Exercise Price (as adjusted to the date of such calculation).

(ii) For purposes of this Section 2(c), the fair market value of one share of Warrant Stock on the date of calculation shall mean:

(A) if the exercise is in connection with an initial public offering of the common stock of the Company (the "Common Stock"), and if the Company's Registration Statement relating to such public offering has been declared effective by the Securities and Exchange Commission, the product of (x) the initial "Price to Public" per share specified in the final prospectus with respect to the offering and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the date of calculation;

(B) if (A) is not applicable, the highest price per share which the Company could obtain on the date of calculation from a willing buyer (not a current employee or director) for shares of Warrant Stock sold by the Company, from authorized but unissued shares, as determined in good faith by the Board of Directors, unless the Company is at such time subject to an acquisition as described in Section 5(c) below, in which case the fair market value of Warrant Stock shall be deemed to be the value of consideration per share received by the holders of such stock pursuant to such acquisition.

(d) **Delivery to Registered Holder.** As soon as practicable after the exercise of this Warrant in whole or in part, and in any event within ten days thereafter, the Company at its expense will cause to be issued in the name of, and delivered to, the Registered Holder, or as such Holder (upon payment by such Registered Holder of any applicable transfer taxes) may direct:

(i) a certificate or certificates for the number of shares of Warrant Stock to which such Registered Holder shall be entitled, and

(ii) in case such exercise is in part only, a new warrant or warrants (dated the date hereof) of like tenor and with the same date, calling in the aggregate on the face or faces thereof for the number of shares of Warrant Stock equal (without giving effect to any adjustment thereof) to the number of such shares called for on the face of this Warrant minus the number of such shares purchased by the Registered Holder upon such exercise as provided in Section 2(a) or 2(c) above (without giving effect to any adjustment thereof).

3. **Adjustments.**

(a) **Redemption or Conversion of Preferred Stock.** If all of the outstanding Preferred Stock is redeemed or converted into shares of Common Stock, then this Warrant shall automatically become exercisable for that number of shares of Common Stock equal to the number of shares of Common Stock that would have been received if this Warrant had been exercised in full and the shares of Preferred Stock received

thereupon had been simultaneously converted into shares of Common Stock immediately prior to such event, and the Exercise Price shall be automatically adjusted to equal the number obtained by dividing (i) the aggregate Purchase Price of the shares of Preferred Stock for which this Warrant was exercisable immediately prior to such redemption or conversion, by (ii) the number of shares of Common Stock for which this Warrant is exercisable immediately after such redemption or conversion.

(b) **Stock Splits and Dividends.** If outstanding shares of the Company's Preferred Stock shall be subdivided into a greater number of shares or a dividend in Preferred Stock shall be paid in respect of Preferred Stock, the Exercise Price in effect immediately prior to such subdivision or at the record date of such dividend shall simultaneously with the effectiveness of such subdivision or immediately after the record date of such dividend be proportionately reduced. If outstanding shares of Preferred Stock shall be combined into a smaller number of shares, the Exercise Price in effect immediately prior to such combination shall, simultaneously with the effectiveness of such combination, be proportionately increased. When any adjustment is required to be made in the Exercise Price, the number of shares of Warrant Stock purchasable upon the exercise of this Warrant shall be changed to the number determined by dividing (i) an amount equal to the number of shares issuable upon the exercise of this Warrant immediately prior to such adjustment, multiplied by the Exercise Price in effect immediately prior to such adjustment, by (ii) the Exercise Price in effect immediately after such adjustment.

(c) **Reclassification, Etc.** In case there occurs any reclassification or change of the outstanding securities of the Company (or any other corporation the stock or securities of which are at the time receivable upon the exercise of this Warrant) or any similar corporate reorganization on or after the date hereof, then and in each such case the Registered Holder, upon the exercise hereof at any time after the consummation of such reclassification, change, or reorganization shall be entitled to receive, in lieu of the stock or other securities and property receivable upon the exercise hereof prior to such consummation, the stock or other securities or property to which such Registered Holder would have been entitled upon such consummation if such Registered Holder had exercised this Warrant immediately prior thereto, all subject to further adjustment pursuant to the provisions of this Section 3.

(d) **Adjustment Certificate.** When any adjustment is required to be made in the Warrant Stock or the Exercise Price pursuant to this Section 3, the Company shall promptly mail to the Registered Holder a certificate setting forth (i) a brief statement of the facts requiring such adjustment, (ii) the Exercise Price after such adjustment and (iii) the kind and amount of stock or other securities or property into which this Warrant shall be exercisable after such adjustment.

(e) **Acknowledgement.** In order to avoid doubt, it is acknowledged that the holder of this Warrant shall be entitled to the benefit of all adjustments in the number of shares of Common Stock of the Company issuable upon conversion of the Preferred

Stock of the Company which occur prior to the exercise of this Warrant, including without limitation, any increase in the number of shares of Common Stock issuable upon conversion as a result of a dilutive issuance of capital stock. Notwithstanding the foregoing, if (i) any such adjustment under the Preferred Stock is waived by the requisite number of the holders of the Preferred Stock and such waiver is applicable to all holders of the Preferred Stock and (ii) the Company promptly pays to the holder of this Warrant the same type and amount of consideration paid (if any) to the holders of the Preferred Stock providing such waiver, then the holder of this Warrant shall not be entitled to the benefit of any such adjustment.

4. **Transfers.**

(a) **Unregistered Security.** Each holder of this Warrant acknowledges that this Warrant, the Warrant Stock and the Common Stock of the Company have not been registered under the Securities Act, and agrees not to sell, pledge, distribute, offer for sale, transfer or otherwise dispose of this Warrant, any Warrant Stock issued upon its exercise or any Common Stock issued upon conversion of the Warrant Stock in the absence of (i) an effective registration statement under the Securities Act as to this Warrant, such Warrant Stock or such Common Stock and registration or qualification of this Warrant, such Warrant Stock or such Common Stock under any applicable U.S. federal or state securities law then in effect, or (ii) an opinion of counsel, satisfactory to the Company, that such registration and qualification are not required. Each certificate or other instrument for Warrant Stock issued upon the exercise of this Warrant shall bear a legend substantially to the foregoing effect. Notwithstanding the transfer restrictions set forth in the preceding sentences of this Section 4(a), the Registered Holder may assign this Warrant or any Warrant Stock issued upon its exercise or any Common Stock issued upon conversion of the Warrant Stock or any or all of its rights and interests hereunder or thereunder, in the absence of registration or qualification of such securities and any opinion of counsel as contemplated in clauses (i) and (ii) above, to one or more of its affiliates or to CR Group L.P., a Delaware limited partnership, or its affiliates, provided that such transferee shall agree to be bound by the terms and conditions of this Warrant as a Registered Holder hereunder.

(b) **Transferability.** Subject to the provisions of Sections 4(a) and 7(f) hereof, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of the Warrant with a properly executed assignment (in the form of Exhibit B hereto) at the principal office of the Company, provided, however, that (i) this Warrant may not be transferred in part unless the transferee acquires the right to purchase at least 50% of the number of shares of Warrant Stock originally purchasable under this Warrant (as adjusted pursuant to Section 3), and (ii) such transferee shall agree to be bound by the terms and conditions of this Warrant as a Registered Holder hereunder. Notwithstanding the transfer restriction set forth in proviso (i) of the preceding sentence of this Section 4(b), the Registered Holder may assign this Warrant and all rights hereunder in any amount to one or more of its affiliates or to CR Group L.P., a Delaware limited partnership, or its affiliates.

(c) **Warrant Register.** The Company will maintain a register containing the names and addresses of the Registered Holders of this Warrant. Until any transfer of this Warrant is made in the warrant register, the Company may treat the Registered Holder of this Warrant as the absolute owner hereof for all purposes; provided, however, that if this Warrant is properly assigned in blank, the Company may (but shall not be required to) treat the bearer hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary. Any Registered Holder may change such Registered Holder's address as shown on the warrant register by written notice to the Company requesting such change.

5. **Termination.** This Warrant (and the right to purchase securities upon exercise hereof) shall terminate upon the earliest to occur of the following (the "Expiration Date"): (a) September 24, 2030; (b) the closing of an initial public offering of the Common Stock of the Company; and (c) the consummation of (i) a sale, conveyance, disposal, or encumbrance of all or substantially all of the Company's property or business or the Company's merger into or consolidation with any other corporation (other than a wholly owned subsidiary corporation) or (ii) any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of. Notwithstanding anything to the contrary herein, if (i) the Registered Holder has not exercised this Warrant in full prior to the Expiration Date and (ii) the fair market value of one share of Warrant Stock on the Expiration Date exceeds the Exercise Price, this Warrant shall be deemed to be exercised by the Registered Holder pursuant to Section 2(c) above immediately prior to termination of this Warrant on the Expiration Date.

6. **Notices of Certain Transactions.** In case:

(a) the Company shall set a record date for all holders of its Preferred Stock (or other stock or securities at the time deliverable upon the exercise of this Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right, or

(b) of any capital reorganization of the Company, any reclassification of the capital stock of the Company, any consolidation or merger of the Company with or into another corporation (other than a consolidation or merger in which the Company is the surviving entity), or any transfer of all or substantially all of the assets of the Company, or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company, or

(d) of any redemption of the Preferred Stock or mandatory conversion of the Preferred Stock into Common Stock,

then, and in each such case, the Company will mail or cause to be mailed to the Registered Holder of this Warrant a notice specifying, as the case may be, (i) the record date for the purpose

of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up, redemption or conversion is to take place, and the time, if any is to be fixed, as of which the holders of record of Preferred Stock (or such other stock or securities at the time deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up, redemption or conversion) are to be determined. Such notice shall be mailed at least ten days prior to the record date or effective date for the event specified in such notice.

7. **Representations and Warranties of Registered Holder.** The Registered Holder represents and warrants to the Company as follows:

(a) Purchase for Own Account. This Warrant, the Warrant Stock and any Common Stock issued or issuable upon conversion of the Warrant Stock (collectively, the "Securities") to be acquired by the Registered Holder will be acquired for investment for the Registered Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Securities Act and the Registered Holder has no present intention of selling or engaging in any public distribution of the same. The Registered Holder also represents that the Registered Holder has not been formed for the specific purpose of acquiring the Securities.

(b) Disclosure of Information. The Registered Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of the Securities. The Registered Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Registered Holder or to which the Registered Holder has access.

(c) Investment Experience. The Registered Holder understands that the purchase of the Securities involves substantial risk. The Registered Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Registered Holder can bear the economic risk of the Registered Holder's investment in the Securities and has such knowledge and experience in financial or business matters that the Registered Holder is capable of evaluating the merits and risks of its investment in the Securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Registered Holder to be aware of the character, business acumen and financial circumstances of such persons.

(d) Accredited Investor Status. The Registered Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

(e) The Securities Act. The Registered Holder understands that the Securities have not been registered under the Securities Act and are being issued in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Registered Holder's investment intent as expressed herein. The Registered Holder understands that this the Securities must be held indefinitely unless subsequently registered under the Securities Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. The Registered Holder acknowledges that the Company has no obligation to register or qualify the Securities for resale.

(f) No Public Market**.** The Registered Holder understands that no public market now exists for any of the securities issued by the Company, and that the Company has made no assurances that a public market will ever exist for the Warrant or the Warrant Stock.

8. **Market Stand-Off.** In connection with the initial public offering of the Company's securities ("IPO"), the Registered Holder hereby agrees that, during the period of duration (up to, but not exceeding, 180 days, but subject to such extension or extensions as may be required by the underwriters in order to publish research reports while complying with Rule 2241 of the Financial Industry Regulatory Authority, or any successor provisions or amendments thereto) specified by the Company or the underwriters managing such IPO, following the effective date of such registration statement, it shall not, to the extent requested by the Company and such underwriter, directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to donees who agree to be similarly bound) any securities of the Company held by it at any time during such period except Common Stock included in such registration. The foregoing provisions of this Section 8 shall apply only to the IPO and shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, the sale of any shares acquired in the open market after the IPO, or the transfer of any shares to any trust for the direct or indirect benefit of the Registered Holder or the immediate family of the Registered Holder, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value. The restrictions in this Section 8 shall be applicable to the Registered Holder only if all officers, directors and stockholders individually (and with their Affiliates) owning more than one percent (1%) of the Company's outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding preferred stock of the Company) are subject to the same restrictions. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Securities of the Registered Holder until the end of such period, and the Registered Holder agrees that, if so requested, the Registered Holder will execute an agreement in the form provided by the underwriter containing terms which are essentially consistent with the provisions of this Section 8.

Notwithstanding the foregoing, the obligations described in this Section 8 shall not apply to a registration relating solely to employee benefit plans on Form S-8 or successors thereto

which may be promulgated in the future, or a registration relating solely to an SEC Rule 145 transaction on Form S-4 or similar forms which may be promulgated in the future.

9. **Legends.** The Warrant Stock issued upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Warrant Stock, if any) shall be imprinted with a legend in substantially the following form (together with any other legends required by applicable law or the Company's Amended and Restated Certificate of Incorporation or Bylaws):

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT.
>
> THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION IN CERTAIN CIRCUMSTANCES) AFTER THE EFFECTIVE DATE OF THE COMPANY'S REGISTRATION STATEMENT FILED UNDER THE SECURITIES ACT, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL PURCHASER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE COMPANY'S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

10. **Reservation of Stock.** The Company will at all times reserve and keep available, solely for the issuance and delivery upon the exercise of this Warrant, such shares of Warrant Stock and other stock, securities and property, as from time to time shall be issuable upon the exercise of this Warrant.

11. **Exchange of Warrants.** Upon the surrender by the Registered Holder of any Warrant or Warrants, properly endorsed, to the Company at the principal office of the Company, the Company will, subject to the provisions of Section 4 hereof, issue and deliver to or upon the order of such Registered Holder, at the Company's expense, a new Warrant or Warrants of like tenor, in the name of such Registered Holder or as such Registered Holder (upon payment by such Registered Holder of any applicable transfer taxes) may direct, calling in the aggregate on the face or faces thereof for the number of shares of Preferred Stock called for on the face or faces of the Warrant or Warrants so surrendered.

12. **Replacement of Warrants.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably

required) in an amount reasonably satisfactory to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor.

13. **No Rights as Stockholder.** Until the exercise of this Warrant, the Registered Holder of this Warrant shall not have or exercise any rights by virtue hereof as a stockholder of the Company.

14. **No Fractional Shares.** No fractional shares of Preferred Stock will be issued in connection with any exercise hereunder. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of Preferred Stock on the date of exercise, as determined in good faith by the Company's Board of Directors.

15. **Additional Warrant Stock.** If, under that certain Series B' Preferred Stock Purchase Agreement dated as of August 19, 2020 (as amended, supplemented or restated from time to time, the "Stock Purchase Agreement") entered into among the Company and the Purchasers (as defined in the Stock Purchase Agreement) named therein in connection with the issuance of Preferred Stock by the Company to such Purchasers (the "Initial Series B' Issuance"), or under any other stock purchase agreement (howsoever described) that is substantially similar to, and forms a single series with, the Stock Purchase Agreement, the Company issues additional shares of the Preferred Stock following the date hereof (such issuances, "Subsequent Series B' Issuances"), the Company shall, promptly following the last of such Subsequent Series B' Issuances, issue such additional warrants, which shall be substantially identical to, and form a single series with, this Warrant, to the name of the Registered Holder, so that the Registered Holder shall be entitled to purchase, under this Warrant and all other additional warrants so issued, the number of shares of Preferred Stock representing the Registered Holder's *pro rata* share (calculated by dividing (a) the total number of shares of Warrant Stock issuable to the Registered Holder upon exercise of this Warrant, by (b) the total number of shares of Warrant Stock issuable upon exercise of all outstanding warrants issued pursuant to the Loan Agreement, in each case, subject to applicable further adjustment pursuant to the terms of this Warrant and such other outstanding warrants, but prior to giving effect to any additional warrants issued pursuant to this Section 15 and the corresponding provisions in such other warrants) of 2.00% of the Equity Interest (as defined in the Loan Agreement) of the Company, on a fully diluted basis, which, for the avoidance of doubt, gives effect to (i) the Initial Series B' Issuance, all Subsequent Series B' Issuances and all of the initial and the additional Warrants (for this purpose as defined in the Loan Agreement) granted on the date hereof or at a later date pursuant to this Section 15, as the case may be, and issued pursuant to the Loan Agreement and (ii) all applicable further adjustments made to the Equity Interest of the Company, or any reclassification thereof, following the date of the Loan Agreement. For the avoidance of doubt, the obligation of the Company in this Section 15 is set forth only in furtherance of Section 6.02(v) and other applicable sections of the Loan Agreement and does not create an additional or duplicative obligation of the Company.

16. **Amendment or Waiver.** Any term of this Warrant may be amended or waived upon written consent of the Company and the holders of at least 50% of the Warrant Stock issuable upon exercise of outstanding warrants issued pursuant to the Loan Agreement. By acceptance hereof, the Registered Holder acknowledges that in the event the required consent is obtained, any term of this Warrant may be amended or waived with or without the consent of the Registered Holder.

17. **Headings.** The headings in this Warrant are used for convenience only and are not to be considered in construing or interpreting any provision of this Warrant.

18. **Governing Law.** This Warrant shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

19. **Successors and Assigns.** Unless otherwise provided in this Warrant, the terms and conditions of this Warrant shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties. Nothing in this Warrant, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Warrant, except as expressly provided in this Warrant.

20. **Counterparts.** This Warrant may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

21. **Severability.** If one or more provisions of this Warrant are held to be unenforceable under applicable law, such provision shall be excluded from this Warrant, the balance of this Warrant shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

22. **Delays or Omissions.** No delay or omission to exercise any right, power or remedy accruing to any party under this Warrant, upon any breach or default of any other party under this Warrant, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Warrant, or any waiver on the part of any party of any provisions or conditions of this Warrant, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Warrant or by law or otherwise afforded to any party, shall be cumulative and not alternative.

23. **Notices.** Unless otherwise provided herein, any notice required or permitted by this Warrant shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by overnight courier or sent by facsimile, or 48 hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, addressed to the party to be

notified at such party’s address as set forth on the signature page, or as subsequently modified by written notice.

[Signature Pages Follow]

The parties have executed this Series B' Preferred Stock Purchase Warrant as of the date first written above.

COMPANY:

NEUROPACE, INC.

By: _____

Name: Rebecca Kuhn

Title: Chief Financial Officer

Address: 455 N. Bernardo Ave, Mountain View, CA 94043

AGREED TO AND ACCEPTED:

REGISTERED HOLDER:

By: _____

Name: _____

Title: _____

EXHIBIT A

PURCHASE/EXERCISE FORM

To: NeuroPace, Inc. Dated: [__]

The undersigned, pursuant to the provisions set forth in the attached Warrant No. [___], hereby irrevocably elects to (choose one):

_____ (a) purchase _____ shares of the Series B' Preferred Stock covered by such Warrant and herewith makes payment of $_____, representing the full purchase price for such shares at the price per share provided for in such Warrant, or

_____ (b) exercise such Warrant for _____ shares purchasable under the Warrant pursuant to the Net Issue Exercise provisions of Section 2(c) of such Warrant.

The undersigned acknowledges that it has reviewed the representations and warranties contained in Section 7 of the Warrant and by its signature below hereby makes such representations and warranties to the Company. Defined terms contained in such representations and warranties shall have the meanings assigned to them in the Warrant, provided that the term "Registered Holder" shall refer to the undersigned.

The undersigned further acknowledges that it has reviewed the market stand-off provisions set forth in Section 8 of the Warrant, and agrees to be bound by such provisions.

Signature: _____

Name (print): _____

Title (if applicable): _____

Company (if applicable): _____

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers all of the rights of the undersigned under the attached Warrant with respect to the number of shares of Series B' Preferred Stock covered thereby set forth below, unto:

Name of Assignee	**Address/Facsimile Number**	**No. of Shares**

Dated: _____ Signature: _____

_____

Witness: _____

TERM LOAN AGREEMENT

dated as of

September 24, 2020 between

NEUROPACE, INC.
as Borrower,

The SUBSIDIARY GUARANTORS from Time to Time Party Hereto,

The Lenders from time to time party hereto

and

CRG SERVICING LLC,

as Administrative Agent and Collateral Agent

U.S. $60,000,000

TABLE OF CONTENTS

SCHEDULES AND EXHIBITS

This TERM LOAN AGREEMENT is entered into as of September 24, 2020 (this "***Agreement***"), among NEUROPACE, INC., a Delaware corporation ("***Borrower***"), the SUBSIDIARY GUARANTORS from time to time party hereto, the Lenders from time to time party hereto and CRG SERVICING LLC, a Delaware limited liability company ("***CRG Servicing***"), as administrative agent and collateral agent for the Lenders (in such capacities, together with its successors and assigns, the "***Administrative Agent***").

WITNESSETH:

Borrower has requested the Lenders to make term loans to Borrower, and the Lenders are prepared to make such term loans on and subject to the terms and conditions hereof;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

SECTION 1
DEFINITIONS

1.01 Certain Defined Terms. As used herein, the following terms have the following respective meanings:

"***acceleration***" and "***Acceleration***" have the meanings set forth in **Section 11.02**.

"***Acceleration Premium***" has the meaning set forth in **Section 11.02(c)**.

"***Accounting Change Notice***" has the meaning set forth in **Section 1.04(a)**.

"***Act***" has the meaning set forth in **Section 13.17**.

"***Acquisition***" means any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of a take-over bid, tender offer, amalgamation, merger, purchase of assets, or similar transaction having the same effect as any of the foregoing, (a) acquires any business or any division, product or line of business or all or substantially all of the assets, in each case, of any Person, (b) acquires control of securities of a Person representing more than 50% of the ordinary voting power for the election of directors or other governing body if the business affairs of such Person are managed by a board of directors or other governing body, or (c) acquires control of more than 50% of the ownership interest in any Person that is not managed by a board of directors or other governing body.

"***Affected Lender***" has the meaning set forth in **Section 2.06(a)**.

"***Affiliate***" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"***Agreement***" has the meaning set forth in the introduction hereto.

"***Anti-Corruption Laws***" means all laws, rules, and regulations of any jurisdiction applicable to any Obligor, its Subsidiaries or Affiliates from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"***Anti-Money Laundering Laws***" means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules applicable to an Obligor, its Subsidiaries or Affiliates related to terrorism financing or money laundering, including any applicable provision of the Act and The Currency and Foreign Transaction Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

"***Asset Sale***" has the meaning set forth in **Section 9.09**.

"***Asset Sale Net Proceeds***" means the aggregate amount of the cash proceeds received from any Asset Sale plus, with respect to any non-cash proceeds of an Asset Sale, the fair market value of such non-cash proceeds as determined by Borrower, acting reasonably, net of (a) any bona fide fees, costs and reasonable out-of-pocket expenses incurred in connection with such Asset Sale, (b) income, franchise, sales and other applicable taxes paid or required to be paid (as reasonably estimated in good faith by Borrower) in connection with such Asset Sale in respect of the taxable year such Asset Sale is consummated, the computation of which shall, in each case take into account the reduction in tax liability resulting from any available operating losses, net operating loss carryovers, tax credits, tax carry forwards or similar tax attributes, or deductions and any tax sharing arrangements, (c) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness (other than the Obligations) secured by a Permitted Priority Lien on the asset which is the subject of such Asset Sale and (d) amounts required to be reserved in accordance with GAAP against liabilities associated with assets disposed of in such Asset Sale.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an assignee of such Lender.

"***Back-End Facility Fee***" has the meaning set forth in the Fee Letter.

"***Bankruptcy Code***" means Title 11 of the United States Code entitled "Bankruptcy."

"***Benefit Plan***" means any of: (a) an "employee benefit plan" (as defined in 3(3) of ERISA) that is subject to Title I of ERISA; (b) a "plan" as defined in, and subject to, Section 4975 of the Code; or (c) any Person whose assets include (for purposes of Section 3(42) of ERISA, or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"***Board***" means (a) with respect to a corporation, the board of directors of the corporation or any committee thereof to the extent duly authorized to act on behalf of such board, (b) with respect to a partnership, the board of directors of the general partner of the partnership, (c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof or if not member-managed, the managers thereof, or any committee of managing members or managers thereof to the extent duly authorized to act on behalf of such Persons, and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"***Borrower***" has the meaning set forth in the introduction hereto.

"***Borrower Facility***" means the premises located at 455 N. Bernardo Avenue, Mountain View, CA 94043, which are leased by Borrower pursuant to the Borrower Lease.

"***Borrower Landlord***" means BP MV Research Park LLC, a Delaware limited liability company, or as its successor in interest under the Borrower Lease, BXP Research Park LLC.

"***Borrower Lease***" means the Office Lease, dated August 24, 2011, by and between Borrower and Borrower Landlord.

"***Borrower Party***" has the meaning set forth in **Section 13.03(b)**.

"***Borrowing***" means a borrowing consisting of Loans made on the same day by the Lenders according to their respective Commitments (including a borrowing of a PIK Loan).

"***Borrowing Date***" means, with respect to any Borrowing, the date of such Borrowing.

"***Borrowing Notice Date***" means, (a) in the case of the Borrowing on the Closing Date, a date that is at least one (1) Business Day prior to the Closing Date and, (b) in the case of a subsequent Borrowing (other than with respect to a PIK Loan), a date that is at least twenty (20) Business Days (or such shorter period as shall be acceptable to Administrative Agent) prior to the Borrowing Date of such Borrowing.

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City.

"***Capital Lease Obligations***" means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal Property which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP (subject to **Section 1.03(b)**).

"***Change of Control***" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert of capital stock representing more than 50% (or after a Qualified IPO, 25%) of the aggregate ordinary voting power represented by the issued and outstanding capital stock of Borrower, (b) during any period of twelve (12) consecutive calendar months, the occupation of a majority of the seats (other than vacant seats) on the Board of Borrower by Persons who were neither (i) nominated by the Board of Borrower, nor (ii) appointed by directors so nominated, or (c) the acquisition of direct or indirect Control of Borrower by any Person or group of Persons acting jointly or otherwise in concert; in each case whether as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise; *provided*, *however*, *that*, the occurrence of a Qualified IPO shall be deemed not to constitute a Change of Control.

"***Claims***" means any claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions, informations (brought by a public prosecutor without grand jury indictment) or other similar processes, assessments or reassessments.

"***Closing Date***" means September 24, 2020.

"***Code***" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"***Collateral***" means any Property in which a Lien is purported to be granted under any of the Security Documents (or all such Property, as the context may require).

"***Commitment***" means, with respect to each Lender, the obligation of such Lender to make Loans to Borrower pursuant to **Section 2.01** in accordance with the terms and conditions of this Agreement, which commitment is in the principal amount set forth opposite such Lender's name on **Schedule 1** under the caption "Commitment", as such Schedule may be amended from time to time. The aggregate amount of

the Commitments on the Closing Date is $60,000,000.00. For purposes of clarification, the amount of any PIK Loans shall not reduce the amount of the available Commitment.

"***Commitment Period***" means the period from and including the first date on which all of the conditions precedent set forth in **Section 6.01** have been satisfied (or waived by the Lenders) and through and including March 31, 2022.

"***Commodity Account***" has the meaning set forth in the Security Agreement.

"***Compliance Certificate***" has the meaning given to such term in **Section 8.01(c)**.

"***Connection Income Taxes***" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"***Contracts***" means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied).

"***Control***" means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"***Controlled Foreign Corporation***" means a "controlled foreign corporation" as defined in Section 957 of the Code.

"***Copyright***" is defined in the Security Agreement.

"***Default***" means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

"***Default Rate***" has the meaning set forth in **Section 3.02(b)**.

"***Defaulting Lender***" means, subject to **Section 2.05**, any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified Borrower or any Lender that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, or (c) has, or has a direct or indirect parent company that has, (i) become the subject of an Insolvency Proceeding, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; *provided*, *that*, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

"***Deposit Account***" is defined in the Security Agreement.

"***Disqualified Equity Interest***" means, with respect to any Person, any Equity Interest of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is

putable or exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, prior to the ninety-first (91st) day after the Stated Maturity Date, (b) requires the payment of any cash dividends at any time prior to the ninety-first (91st) day after the Stated Maturity Date, (c) contains any repurchase obligation which may come into effect prior to the Stated Maturity Date, or (d) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in **clause (a)**, **(b)** or **(c)** above, at any time prior to the ninety-first (91st) day after the Stated Maturity Date; *provided*, *that* (x) any Equity Interests that would not constitute Disqualified Equity Interests but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the ninety-first (91st) day after the Stated Maturity Date shall not constitute Disqualified Equity Interests to the extent that such Equity Interests provide that the issuer thereof will not redeem or repurchase any such Equity Interests pursuant to such provisions prior to the termination of all Commitments and repayment in full of the Obligations (other than contingent indemnification obligations for which no claim has been made) and (y) if any Equity Interest is issued to any current or former employee, director or consultant or to any plan for the benefit of current or former employees, directors or consultants of Borrower or any of its Subsidiaries or by any such plan to such current or former employees, directors or consultants, such Equity Interest will not constitute Disqualified Equity Interests solely because it may be required to be repurchased by Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"***Dollars***" and "***$***" means lawful money of the United States of America.

"***Domestic Subsidiary***" means any Subsidiary that is organized under the laws of any state of the United States or the District of Columbia.

"***Eligible Transferee***" means and includes a commercial bank, an insurance company, a finance company, a financial institution, any investment fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes; *provided*, *that*, at any time that no Event of Default has occurred and is continuing, such Person is approved by Borrower, such approval not to be unreasonably withheld. Notwithstanding the foregoing, (x) in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Transferee shall mean any Person or party (and any further assignee of any such Person) and (y) in connection with a Lender's own financing, borrowing facilities or securitization transactions, the restrictions set forth herein shall not apply and Eligible Transferee shall mean any Person or party providing such financing or formed to undertake such securitization transaction, any affiliate of such Person and any transferee of such Person or party (and any further assignee of any such Person); *provided*, *that*, no such sale, transfer, pledge or assignment under this **clause (y)** shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until the Majority Lenders shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to the Majority Lenders executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Transferee as the Majority Lenders reasonably shall require.

"***Environmental Law***" means any federal, state, provincial or local governmental law, rule, regulation, order, writ, judgment, injunction or decree relating to pollution or protection of the environment or the treatment, storage, disposal, release, threatened release or handling of hazardous materials, and all

local laws and regulations related to environmental matters and any specific agreements entered into with any competent authorities which include commitments related to environmental matters.

"***Environmental Liability***" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Material, (c) any exposure to any Hazardous Material, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Equity Interest***" means, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, but excluding any debt securities convertible or exchangeable into such equity or other interests described in this definition unless and until such debt securities have been so converted into equity or other interests described in this definition.

"***Equivalent Amount***" means, with respect to an amount denominated in one currency, the amount in another currency that would be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination.

"***ERISA***" means the United States Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Affiliate***" means, collectively, any Obligor, Subsidiary thereof, and any Person under common control, or treated as a single employer, with any Obligor or Subsidiary thereof, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"***ERISA Event***" means (a) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (c) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (f) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of

Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (j) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof may be directly or indirectly liable; (m) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof may be directly or indirectly liable; (n) the occurrence of an act or omission which could give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (o) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such plan; (p) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (q) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; or (r) the establishment or amendment by any Obligor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor, other than those benefits required under the Consolidated Omnibus Budget Reconciliation Act.

"***ERISA Funding Rules***" means the rules regarding minimum required contributions (including any installment payment thereof) to Title IV Plans, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"***Event of Default***" has the meaning set forth in **Section 11.01**.

"***Exchange Rate***" means the rate at which any currency (the "***Pre-Exchange Currency***") may be exchanged into another currency (the "***Post-Exchange Currency***"), as set forth on such date on the relevant Reuters screen at or about 11:00 a.m. (Central time) on such date. In the event that such rate does not appear on the Reuters screen, the "Exchange Rate" with respect to exchanging such Pre-Exchange Currency into such Post-Exchange Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by Borrower and Administrative Agent or, in the absence of such agreement, such Exchange Rate shall instead be determined by Administrative Agent by any reasonable method as they deem applicable to determine such rate, and such determination shall be conclusive absent manifest error.

"***Excluded Subsidiary***" means any Subsidiary that is (a) a Controlled Foreign Corporation, (b) a FSHCo or (c) a Subsidiary owned by a Subsidiary described in **clause (a)**, and, in each case, is not itself a Subsidiary Guarantor.

"***Excluded Taxes***" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal

withholding Taxes that are imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under **Section 5.03(g)**) or (ii) such Lender changes its lending office, except in each case to the extent, pursuant to **Section 5.03**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) any withholding Taxes imposed under FATCA, and (d) Taxes attributable to such Recipient's failure to comply with **Section 5.03(e)**.

"***Existing Loan Agreement***" means that certain Term Loan Agreement, dated as of November 18, 2014, by and among Borrower, the subsidiary guarantors from time to time party thereto, and the lenders from time to time party thereto, as amended, restated, supplemented or otherwise modified prior to the Closing Date.

"***Expense Cap***" has the meaning set forth in the Fee Letter.

"***FATCA***" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules, or practices adopted pursuant to any intergovernmental agreement, treaty, or convention among Governmental Authorities and implementing such Sections of the Code.

"***Federal Funds Effective Rate***" means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by Administrative Agent from three federal funds brokers of recognized standing selected by it.

"***Fee Letter***" means that fee letter agreement dated as of the Closing Date between Borrower and Administrative Agent.

"***First-Tier Excluded Subsidiary***" means an Excluded Subsidiary that is a direct Subsidiary of an Obligor and is not itself a Subsidiary Guarantor.

"***Foreign Lender***" means a Lender that is not a U.S. Person.

"***Foreign Subsidiary***" means a Subsidiary of Borrower that is not a Domestic Subsidiary.

"***FSHCo***" means any Subsidiary substantially all the assets of which consist of Equity Interests of (or Equity Interests of and debt obligations owed or treated as owed by) one or more Controlled Foreign Corporations.

"***GAAP***" means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. Subject to **Section 1.02**, all references to "GAAP" shall be to GAAP applied

consistently with the principles used in the preparation of the financial statements described in **Section 7.04(a)**.

"***Governmental Approval***" means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"***Governmental Authority***" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any State, territory, county, city or other political subdivision of the United States.

"***Guarantee***" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; *provided*, *that*, the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business or indemnification obligations incurred in the ordinary course of business or in connection with transactions permitted under this Agreement. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guarantor in good faith.

"***Guarantee Assumption Agreement***" means a Guarantee Assumption Agreement substantially in the form of **Exhibit A** by an entity that, pursuant to **Section 8.12(a)**, is required to become a "Subsidiary Guarantor" hereunder.

"***Guaranteed Obligations***" has the meaning set forth in **Section 14.01**.

"***Hazardous Material***" means any substance, element, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic, and includes, (a) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (b) any material classified or regulated as "hazardous" or "toxic" or words of like import pursuant to an Environmental Law.

"***Hedging Agreement***" means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"***Indebtedness***" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar

instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) obligations under any Hedging Agreement currency swaps, forwards, futures or derivatives transactions, (k) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (l) all obligations of such Person under license or other similar agreements (excluding, for the avoidance of doubt, supply agreements and/or real property leases entered into by such Person with third parties on arms' length terms in the ordinary course of business) containing a guaranteed minimum payment or purchase by such Person, and (m) all Disqualified Equity Interests of such Person. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"***Indemnified Party***" has the meaning set forth in **Section 13.03(b)**.

"***Indemnified Taxes***" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation (other than Warrant Obligations) and (b) to the extent not otherwise described in **clause (a)**, Other Taxes.

"***Insolvency Proceeding***" means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"***Intellectual Property***" means all Patents, Trademarks, Copyrights, Technical Information, domain names and URLs, and all other intellectual property or proprietary rights, whether registered or not, domestic and foreign. Intellectual Property shall include all:

(a) applications and registrations relating to such Intellectual Property;

(b) rights and privileges arising under applicable Laws with respect to such Intellectual Property;

(c) rights to sue for past, present and future infringements of such Intellectual Property; and

(d) rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

"***Interest-Only Period***" means the period from and including the Closing Date and through and including the twelfth (12^{th}) Payment Date following the first full fiscal quarter to occur after the Closing Date (i.e. September 30, 2023); *provided*, *that*, if a Qualified IPO has occurred on or prior to the twelfth (12^{th}) Payment Date following the first full fiscal quarter to occur after the Closing Date (i.e. September 30,

2023), at Borrower's option (delivered in writing to Administrative Agent on or before such Payment Date), the Interest-Only Period shall continue to, but shall not include, the Maturity Date.

"***Interest Period***" means, with respect to each Borrowing, (a) initially, the period commencing on and including the Borrowing Date thereof and ending on and excluding the next Payment Date, and, (b) thereafter, each period beginning on and including the last day of the immediately preceding Interest Period and ending on and excluding the next succeeding Payment Date.

"***Invention***" means any novel, inventive and useful art, apparatus, method, process, machine (including article or device), system, manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), system, manufacture or composition of matter.

"***Investment***" means, for any Person, any direct or indirect acquisition or investment by such Person, whether by means of: (a) the acquisition (whether for cash, property, services or securities or otherwise) of Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; (d) the entering into of any Hedging Agreement; or (e) an Acquisition.

"***Involuntary Disposition***" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of Borrower or any Subsidiary.

"***IRS***" means the U.S. Internal Revenue Service or any successor agency, and to the extent relevant, the U.S. Department of the Treasury.

"***Knowledge***" means, with respect to any Person, the actual knowledge of any Responsible Officer of such Person and, including, in the case of Borrower or any Subsidiary, so long as he or she is employed by Borrower or any of its Subsidiaries, the actual knowledge of Mike Favet or Rebecca Kuhn.

"***Landlord Consent***" means a Landlord Consent substantially in the form of **Exhibit E**, or such other form as is reasonably acceptable to Administrative Agent.

"***Laws***" means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"***Lender***" means each Person listed as a "Lender" on a signature page hereto, together with its successors, and each permitted assignee of a Lender pursuant to **Section 13.05(b)**.

"***Lien***" means any mortgage, lien, pledge, charge or other security interest, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) or other encumbrance of any kind or character whatsoever or any preferential arrangement that has the practical effect of creating a security interest.

"***Liquidity***" means the balance of unencumbered (other than by Liens described in **Section 9.02(a)**) cash and Permitted Cash Equivalent Investments (which for greater certainty shall not include any undrawn credit lines) of the Obligors, in each case to the extent held in an account over which Administrative Agent, on behalf of the Secured Parties, has a perfected security interest.

"***Loan***" means (a) each loan advanced by a Lender pursuant to **Section 2.01** and (b) each PIK Loan deemed to have been advanced by a Lender pursuant to **Section 3.02(d)**. For purposes of clarification, any calculation of the aggregate outstanding principal amount of Loans on any date of determination shall include both the aggregate principal amount of loans advanced pursuant to **Section 2.01** and not yet repaid, and all PIK Loans deemed to have been advanced and not yet repaid, on or prior to such date of determination.

"***Loan Documents***" means, collectively, this Agreement, the Fee Letter, the Security Documents, each Warrant, the Management Rights Letter, the Perfection Certificate, any subordination agreement or any intercreditor agreement entered into by Administrative Agent (on behalf of the Lenders) with any other creditors of Obligors or any agent acting on behalf of such creditors, and any other present or future document, instrument, agreement or certificate executed by Obligors and delivered to Administrative Agent or any Secured Party in connection with or pursuant to this Agreement or any of the other Loan Documents, all as amended, restated, supplemented or otherwise modified.

"***Loss***" means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

"***Majority Lenders***" means, at any time, Lenders having at such time in excess of fifty percent (50%) of the aggregate Total Credit Exposure of all Lenders at such time, ignoring, in such calculation, the Commitments of and outstanding Loans owing to any Defaulting Lender.

"***Management Rights Letter***" means that certain management rights letter dated as of the Closing Date delivered by Borrower in favor of each VCOC Lender.

"***Margin Stock***" means "margin stock" within the meaning of Regulations U and X.

"***Material Adverse Change***" and "***Material Adverse Effect***" mean a material adverse change in or effect on (a) the business, financial condition, operations, performance or Property of Borrower and its Subsidiaries taken as a whole, (b) the ability of the Obligors, taken as a whole, to perform their obligations under the Loan Documents or (c) the legality, validity, binding effect or enforceability of the Loan Documents or the rights and remedies of Administrative Agent or any Lender under any of the Loan Documents. For the avoidance of doubt, the following events, in and of themselves, shall not constitute a Material Adverse Change or a Material Adverse Effect: (t) a "going concern" or like qualification or "emphasis of matter" paragraph in an auditor's opinion, (u) a claimed or notice of breach or termination of a Permitted Commercialization Arrangement, (v) negative or equivocal clinical trial results in respect of the Product or any other product, (w) inspection results from any regulatory authority with jurisdiction over the Product, (x) any voluntary or involuntary recall, (y) a non-coverage determination by any third party

payor providing reimbursement for procedures involving the Product, and (z) the mere filing of any claim for damages or injunctive relief, whether or not relating to the Intellectual Property of Borrower or any Subsidiary; it being understood, however, that the consequences of any such event might give rise to a Material Adverse Change or a Material Adverse Effect.

"***Material Agreements***" means (a) the agreements which are listed in **Schedule 7.14** (as updated by Borrower from time to time in accordance with **Section 7.21** to list all such agreements that meet the description set forth in **clauses (b)** and **(c)** of this definition), (b) material inbound and outbound license agreements and (c) all other agreements held by Borrower or any Subsidiary from time to time, the absence or termination of any of which would reasonably be expected to result in a Material Adverse Effect; *provided*, *however*, *that*, "Material Agreements" excludes all: (i) licenses implied by the sale of a product, (ii) paid-up licenses for commonly available software programs under which an Obligor is the licensee and (iii) customer agreements and commercial agreements entered into in the ordinary course of business with hospitals or similar health services providers for the sale of Borrower's products. "***Material Agreement***" means any one such agreement.

"***Material Indebtedness***" means, at any time, any Indebtedness of Borrower or any Subsidiary, the outstanding principal amount of which, individually or in the aggregate, exceeds $500,000 (or the Equivalent Amount in other currencies).

"***Material Intellectual Property***" means, the Obligor Intellectual Property described in **Schedule 7.05(c)** and any other Obligor Intellectual Property that is or becomes material to any Obligor's business or assets.

"***Maturity Date***" means the earlier to occur of (a) the Stated Maturity Date, and (b) the date on which the Loans are accelerated pursuant to **Section 11.02.**

"***Maximum Rate***" has the meaning set forth in **Section 13.18**.

"***Minimum Required Revenue***" has the meaning set forth in **Section 10.02**.

"***Multiemployer Plan***" means any multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Non-Consenting Lender***" has the meaning set forth in **Section 2.06(a)**.

"***Non-Disclosure Agreement***" has the meaning set forth in **Section 13.16**.

"***Notice of Borrowing***" has the meaning set forth in **Section 2.02**.

"***Obligations***" means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to Administrative Agent, any Lender, any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (a) all Loans, (b) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (c) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges,

costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document.

"***Obligor Intellectual Property***" means Intellectual Property owned by or licensed to any of the Obligors.

"***Obligors***" means, collectively, Borrower and the Subsidiary Guarantors and their respective successors and permitted assigns.

"***OFAC***" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"***Other Connection Taxes***" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.03(g)**).

"***Participant***" has the meaning set forth in **Section 13.05(e)**.

"***Participant Register***" has the meaning set forth in **Section 13.05(f)**.

"***Patents***" has the meaning set forth in the Security Agreement.

"***Payment Date***" means each March 31, June 30, September 30, December 31 and the Maturity Date, commencing on the first such date to occur following the first Borrowing Date; *provided*, *that*, if any such date shall occur on a day that is not a Business Day, the applicable Payment Date shall be the next preceding Business Day.

"***PBGC***" means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"***Perfection Certificate***" means that certain Perfection Certificate, dated as of the Closing Date delivered by the Obligors to Administrative Agent.

"***Permitted Acquisition***" means any Acquisition by any Obligor; *provided*, *that*:

(a) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable Laws and in conformity with all applicable Governmental Approvals;

(c) in the case of the Acquisition of the Equity Interests of any Person, all of the Equity Interests (except for any such securities in the nature of directors' qualifying shares required pursuant to applicable Law) acquired or otherwise issued or issuable by such Person, and any Subsidiary of Borrower formed in connection with such Acquisition, shall be owned 100% by an Obligor or any other Subsidiary, and Borrower shall have taken, or caused to be taken, within thirty (30) days (or such longer period to which Administrative Agent may agree) of the date such Person becomes a Subsidiary of Borrower, each of the actions set forth in **Section 8.12**, if applicable;

(d) Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in **Section 10.01** and **Section 10.02** on a *pro forma* basis after giving effect to such Acquisition; and

(e) such Person (in the case of an Acquisition of Equity Interests) or assets (in the case of an Acquisition of assets or a division or line of business) shall be engaged or used, as the case may be, in the same or similar business or lines of business, or business ancillary thereto, in which Borrower and/or its Subsidiaries are engaged.

"***Permitted Cash Equivalent Investments***" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than two (2) years from the date of acquisition, (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc., (c) Dollar-denominated time deposits, insured certificates of deposit, overnight bank deposits or bankers' acceptances issued or accepted by any commercial bank that is organized under the laws of the United States, any state thereof or the District of Columbia and (d) money market funds publicly traded or regulated by a Governmental Authority at least ninety five percent (95%) of the assets of which are invested in cash equivalents of the type described in **clauses (a)** through **(c)** above.

"***Permitted Commercialization Arrangement"*** means such commercialization, research and development, co-marketing and other collaborative arrangements, including joint ventures, in each case where (a) such arrangements provide for licenses to Patents, Trademarks, Copyrights or other Intellectual Property rights and assets of Borrower with Persons with a primary line of business in the development, commercialization or manufacture of medical or pharmaceutical products or devices; *provided*, *that*, (i) such licenses must be bona fide arms'-length licenses of the right to use such Intellectual Property that do not have the economic substance of a sale, (ii) the terms of such licenses, on their face, do not provide for a sale or assignment of any Intellectual Property, (iii) Borrower retains legal ownership of such Intellectual Property, and (iv) such licenses do not interfere in any respect with the ordinary conduct of, or materially detract from, the value of the business or assets of Borrower and its Subsidiaries, and (b) all upfront payments, royalties, milestone payments or other proceeds arising from such licensing agreements that are payable to Borrower or any of its Subsidiary Guarantors are paid only to Deposit Accounts that are governed by control agreements in favor of Administrative Agent on behalf of the Secured Parties.

"***Permitted Commercialization Arrangement Vehicle***" means an entity, which may be a joint venture enterprise, engaged in the business of a Permitted Commercialization Arrangement and in which Borrower or its Subsidiaries have substantial representation in the governing body of such entity.

"***Permitted Indebtedness***" means any Indebtedness permitted under **Section 9.01**.

"***Permitted Liens***" means any Liens permitted under **Section 9.02**.

"***Permitted Priority Debt***" means Indebtedness of Borrower, in an amount not to exceed at any time the sum of (a) eighty percent (80%) of the face amount at such time of Borrower's non delinquent accounts receivable and (b) fifty percent (50%) of the fair market value of Borrower's eligible inventory at the time

of any advance; *provided*, *that*, (i) such Indebtedness, if secured, is secured solely by (A) accounts, (B) inventory, (C) cash and cash equivalents, (D) deposit and investment accounts, (E) to the extent evidencing, governing, securing or otherwise related to accounts or inventory, general intangibles (excluding Intellectual Property), chattel paper, instruments and documents (excluding investments and documents relating to capital stock of subsidiaries), (F) to the extent not held as the direct proceeds of Collateral in which Administrative Agent has a first priority security interest in a segregated account, cash proceeds of Collateral, and (G) proceeds of insurance policies covering Borrower's accounts and inventory received with respect to such accounts and inventory; *provided*, *further*, *that*, for purposes of clarification, notwithstanding the foregoing, in no event shall "Permitted Priority Debt" be secured by (i) any right, title or interest of any Obligor in any Intellectual Property, any licenses, or any proceeds of the sale or licensing of any Intellectual Property or licenses, (ii) equipment, (iii) to the extent evidencing, governing, securing or otherwise related to equipment, any general intangibles, chattel paper, instruments or documents, or (iv) proceeds of equipment or proceeds of insurance policies with respect to equipment, and (b) the holders or lenders thereof shall have executed and delivered to Administrative Agent an intercreditor agreement in substantially the form of **Exhibit F** and with such changes thereto as shall be mutually satisfactory to Administrative Agent and the provider of such Indebtedness.

"***Permitted Priority Liens***" means (a) Liens permitted under **Section 9.02(d), (e), (f), (g), (h), (j) and (n)**, and (b) Liens permitted under **Section 9.02(b)** *provided*, *that*, such Liens are also of the type described in **Section 9.02(d), (e), (f), (g), (h), (j) and (n)**.

"***Permitted Refinancing***" means, with respect to any Indebtedness, any extensions, renewals, refinancings and replacements of such Indebtedness; *provided*, *that*, such extension, renewal, refinancing or replacement (a) shall not increase the outstanding principal amount of such Indebtedness, (b) contains terms relating to outstanding principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole no less favorable in any material respect to Borrower and its Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing such existing Indebtedness, (c) shall have an applicable interest rate which does not exceed the rate of interest of the Indebtedness being replaced by more than two percent (2.00%) per annum, (d) shall not contain any new requirement to grant any lien or security or to give any guarantee that was not an existing requirement of such Indebtedness and (e) shall not have a maturity date earlier than that of such existing Indebtedness.

"***Person***" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

"***PIK Loan***" has the meaning set forth in **Section 3.02(d)**.

"***PIK Period***" means the period beginning on the first Borrowing Date through and including the earlier to occur of (a) the twentieth (20^{th}) Payment Date after the first Borrowing Date and (b) the date on which any Default shall have occurred (*provided*, *that*, if such Default shall have been cured or waived, the PIK Period shall resume until the earlier to occur of the next Default and the twentieth (20^{th}) Payment Date after the first Borrowing Date).

"***Plan***" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"***PPP Loan***" means that certain unsecured Indebtedness of Borrower under the Small Business Administration's Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Security Act, in an aggregate principal amount of up to $4,048,890.

"***Prepayment Premium***" means, if the prepayment occurs:

(a) on or prior to the fifth (5th) Payment Date, the Prepayment Premium shall be an amount equal to twenty percent (20%) of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

(b) after the fifth (5th) Payment Date, and on or prior to the ninth (9th) Payment Date, the Prepayment Premium shall be an amount equal to ten percent (10%) of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date; and

(c) after the ninth (9th) Payment Date, the Prepayment Premium shall be an amount equal to zero percent (0.00%) of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

provided, *that*, to determine the aggregate outstanding principal amount of the Loans, and how many Payment Dates have occurred, as of any Redemption Date for purposes of this definition:

(i) if, as of such Redemption Date, Borrower shall have made only one Borrowing, the number of Payment Dates shall be deemed to be the number of Payment Dates that shall have occurred following the Closing Date; and

(ii) if, as of such Redemption Date, Borrower shall have made more than one Borrowing, then the Prepayment Premium shall equal the sum of multiple Prepayment Premiums calculated with respect to the Loans of each Borrowing, each of which Prepayment Premiums shall be calculated based on solely the aggregate outstanding principal amount of the Loans borrowed in such Borrowing (and PIK Loans subsequently borrowed in respect of interest payments thereon), as though the applicable number of Payment Dates equals the number of Payment Dates that shall have occurred following the applicable Borrowing Date. In the case of any partial prepayment, the amount of such prepayment shall be allocated to Loans made in the various Borrowings (and PIK Loans in respect thereof) in the order in which such Borrowings were made.

The Prepayment Premium payable upon any prepayment shall be in addition to any payments required pursuant to the Fee Letter.

"***Product***" means the NeuroPace RNS System, and each of its successors.

"***Property***" of any Person means any property or assets, or interest therein, of such Person.

"***Proportionate Share***" means, (a) at any time during the Commitment Period, the percentage obtained by dividing (i) the sum of (A) the unused Commitment of such Lender then in effect plus (B) the aggregate outstanding principal amount of the Loans of such Lender at such time by (ii) the sum of (A) the unused Commitments of all Lenders then in effect plus (B) the aggregate outstanding principal amount of the Loans of all Lenders at such time and (b) at any time thereafter, the percentage obtained by dividing (i) the aggregate outstanding principal amount of the Loans of such Lender at such time by (ii) the aggregate outstanding principal amount of the Loans of all Lenders at such time.

"Publicly Reporting Company" means an issuer generally subject to the public reporting requirements of the Securities and Exchange Act of 1934.

"***Qualified IPO***" means (a) an underwritten initial public offering of the Equity Interests of Borrower or any direct or indirect parent of Borrower which generates cash proceeds of at least $50,000,000 and results in a listing of such entity's Equity Interests on a recognized public securities exchange at a post-money valuation of at least $200,000,000 or (b) a Qualified SPAC Transaction.

"***Qualified Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (b) that is intended to be tax qualified under Section 401(a) of the Code.

"***Qualified SPAC Transaction***" means an acquisition, merger or other business combination between Borrower or any direct or indirect parent of Borrower, on the one hand, and a special purpose acquisition company on the other, *provided*, *that*, (a) the surviving entity shall be Borrower or a direct or indirect parent of Borrower, as applicable, (b) the transaction shall result in a listing of such entity's Equity Interests on a recognized public securities exchange at a post-money valuation of at least $200,000,000, and (c) Borrower shall have provided at least five (5) Business Days' (or such shorter time period as Administrative Agent may agree) prior written notice of the transaction to Administrative Agent, and Administrative Agent shall have received copies of the material documents entered into to effect such Qualified SPAC Transaction, together with any documents that Administrative Agent may reasonably request to maintain Administrative Agent's security interest in the Collateral.

"***Real Property Security Documents***" means the Landlord Consent and any mortgage or deed of trust or any other real property security document executed or required hereunder to be executed by any Obligor and granting a security interest in real Property owned or leased (as tenant) by any Obligor in favor of the Secured Parties.

"***Recipient***" means Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any Obligation.

"***Redemption Date***" means, as the context may require, (a) the Payment Date on which an optional prepayment is made pursuant to **Section 3.03(a)**, (b) the date of an Asset Sale or Change of Control in connection with which a prepayment is required pursuant to **Section 3.03(b)**, (c) the date mandated by a Requirement of Law as described in **Section 5.02(b)** and (d) in the event that Loans become due and payable prior to the Stated Maturity Date for any reason not related to the foregoing **clauses (a)** through **(c)** (other than by reason of the Loans becoming due and payable pursuant to an Acceleration), the date on which a prepayment is due.

"***Redemption Price***" means an amount equal to the aggregate principal amount of the Loans being prepaid plus the Prepayment Premium plus any accrued but unpaid interest and any fees then due and owing pursuant to the Loan Documents (including the Back-End Facility Fee).

"***Register***" has the meaning set forth in **Section 13.05(d)**.

"***Regulation T***" means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation U***" means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation X***" means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

"***Regulatory Approvals***" means any registrations, licenses, authorizations, permits or approvals issued by any Governmental Authority and applications or submissions related to any of the foregoing.

"***Related Person***" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"***Representative***" has the meaning set forth in **Section 8.15**.

"***Requirement of Law***" means, as to any Person, any statute, law, treaty, rule or regulation or determination, order, injunction or judgment of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Properties or revenues.

"***Responsible Financial Officer***" of any Person means each of the president, chief executive officer, and chief financial officer of such Person.

"***Responsible Officer***" of any Person means each of the president, chief executive officer, chief financial officer, chief development officer and chief technology officer of such Person.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of Borrower or any of its Subsidiaries or any option, warrant or other right to acquire any such Equity Interests of Borrower or any of its Subsidiaries.

"***Restrictive Agreement***" has the meaning set forth in **Section 7.15**.

"***Revenue***" of a Person means all revenue properly recognized under GAAP, consistently applied, less all rebates, discounts and other price allowances.

"***Sanctions***" means any international economic sanction administered or enforced by the United States Government (including OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"***Sanctioned Jurisdiction***" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"***Sanctioned Person***" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Jurisdiction or (c) any Person owned or Controlled by any such person or Persons described in **clauses (a)** and **(b)**.

"***SEC***" means the U.S. Securities and Exchange Commission.

"***Secured Parties***" means the Lenders, Administrative Agent, each other Indemnified Party, each other holder of any Obligation and each co-agent and sub-agent appointed by Administrative Agent from time to time pursuant to **Section 12.04**.

"***Security Agreement***" means the Security Agreement, dated as of the Closing Date, among the Obligors and Administrative Agent, granting a security interest in the Obligors' personal Property in favor of Administrative Agent, for the benefit of the Secured Parties.

"***Security Documents***" means, collectively, the Security Agreement, each Short-Form IP Security Agreement, each Real Property Security Document, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Secured Parties.

"***Securities Account***" has the meaning set forth in the Security Agreement.

"***Short-Form IP Security Agreements***" means short-form copyright, patent or trademark (as the case may be) security agreements, entered into by one or more Obligors in favor of Administrative Agent, for the benefit of the Secured Parties, each in form and substance reasonably satisfactory to Administrative Agent (and as amended, modified or replaced from time to time).

"***Solvent***" means, with respect to any Person at any time, that (a) the present fair saleable value of the Property of such Person is greater than the total amount of liabilities (including contingent liabilities) of such Person, (b) the present fair saleable value of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured and (c) such Person has not incurred and does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature.

"***Stated Maturity Date***" means the twentieth (20^{th}) Payment Date following the first full fiscal quarter to occur after the Closing Date (i.e. September 30, 2025).

"***Subsidiary***" means, with respect to any Person (the "***parent***") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent or (b) that is, as of such date, otherwise Controlled by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless the context requires otherwise, "Subsidiary" refers to a Subsidiary of Borrower.

"***Subsidiary Guarantors***" means each of the Subsidiaries identified under the caption "SUBSIDIARY GUARANTORS" on the signature pages hereto and each Subsidiary that becomes, or is required to become, a "Subsidiary Guarantor" after the Closing Date pursuant to **Section 8.12(a)** or **(b)**.

"***Substitute Lender***" has the meaning set forth in **Section 2.06(a)**.

"***Tax Affiliate***" means (a) Borrower and its Subsidiaries, (b) each other Obligor and (c) any Affiliate of an Obligor with which such Obligor files or is eligible to file consolidated, combined or unitary Tax returns.

"***Tax Returns***" has the meaning set forth in **Section 7.08.**

"***Taxes***" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"***Technical Information***" means all trade secrets and other proprietary or confidential information, which may include information of a scientific, technical, or business nature in any form or medium, standards and specifications, conceptions, ideas, innovations, discoveries, Inventions, Invention disclosures, all documented research, developmental, demonstration or engineering work, data, plans, specifications, reports, summaries, experimental data, manuals, models, samples, know-how, technical information, systems, methodologies, computer programs or information technology.

"***Title IV Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (b) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"***Total Credit Exposure***" means, as to any Lender at any time, the unused Commitments of such Lender at such time and the aggregate outstanding principal amount of all Loans of such Lender at such time.

"***Trademarks***" is defined in the Security Agreement.

"***Transactions***" means (a) the execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is a party and the Borrowings contemplated hereby, (b) the repayment in full of all existing Indebtedness (other than contingent indemnification obligations for which no claim has been submitted) of Borrower and its Subsidiaries under the Existing Loan Agreement and the termination of all Liens with respect thereto (other than Liens permitted under **Sections 9.02(b)** and **(c)**) and all commitments thereunder), in each case, on the Closing Date and (c) the payment of related fees, costs and expenses in connection with the matters described in **clauses (a)** and **(b)**.

"***U.S. Person***" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***" has the meaning set forth in **Section 5.03(e)(ii)(B)(3)**.

"***United States***" and "***U.S.***" mean the United States of America.

"***VCOC Lender***" means CRG PARTNERS IV L.P., CRG PARTNERS IV – CAYMAN LEVERED L.P., and each other Affiliate of Administrative Agent that is intended to qualify as a "venture capital operating company" for purposes of ERISA and that is or becomes a Lender under this Agreement.

"***Warrant***" means each warrant, including any amendments, restatements, supplements or other modifications thereto, to purchase Equity Interests of Borrower, issued by Borrower to the Lenders in connection with the Transactions, per the Warrant Shares table on **Schedule I**.

"***Warrant Obligations***" means, with respect to any Obligor, all Obligations arising out of, under or in connection with, any Warrant.

"***Withdrawal Liability***" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

"***Withholding Agent***" means any Obligor and Administrative Agent.

1.02 Accounting Terms and Principles. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. All components of financial calculations made to determine compliance with this Agreement, including **Section 10**, shall be adjusted to include or exclude, as the case may be, without duplication, such components of such calculations attributable to any Acquisition, Asset Sale or Involuntary Disposition, in each case, consummated after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by Borrower based on assumptions expressed therein and that were reasonable based on the information available to Borrower at the time of preparation of the Compliance Certificate setting forth such calculations.

1.03 Interpretation. (a) For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, (i) the terms defined in this Agreement include the plural as well as the singular and vice versa; (ii) words importing gender include all genders; (iii) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement; (iv) any reference to "this Agreement" refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision; (v) references to days, months and years refer to calendar days, months and years, respectively; (vi) all references herein to "include" or "including" shall be deemed to be followed by the words "without limitation"; (vii) the word "from" when used in connection with a period of time means "from and including" and the word "until" means "to but not including"; (viii) accounting terms not specifically defined herein shall be construed in accordance with GAAP (except for the term "property", which shall be interpreted as broadly as possible, including, in any case, cash, securities, other assets, rights under contractual obligations and permits and any right or interest in any property, except where otherwise noted) and (ix) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified, extended, restated, replaced or supplemented from time to time. Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all permitted subsequent amendments, restatements, extensions, supplements and other modifications thereto.

(b) Notwithstanding any other provision contained in this Agreement, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (i) other than with respect to the preparation of financial statements in accordance with GAAP (it being understood that, if requested by Administrative Agent or any Lender, Borrower shall provide to Administrative Agent and the Lenders financial statements and other documents setting forth a reconciliation between the applicable calculations, amounts and definitions set forth herein both with and without giving effect to such change), any change to GAAP occurring after December 31, 2017 as a result of ASU 2016-02, Leases (Topic 842) by the Financial Accounting Standards Board or any other proposals issued by the Financial Accounting Standards Board in connection therewith, in each case if such change would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) was not required to be so treated under GAAP as in effect on December 31, 2017, (ii) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting

Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Borrower or any Subsidiary at "fair value," as defined therein and (iii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(c) Notwithstanding any provision in this Agreement or any other Loan Document to the contrary, the Lenders are not assuming any liability or obligation of any Obligor or any of its Affiliates of whatever nature, whether presently in existence or arising or asserted hereafter. All such liabilities and obligations shall be retained by and remain obligations and liabilities of the Obligors and/or their Affiliates as the case may be. Without limiting the foregoing, the Lenders are not assuming and shall not be responsible for any liabilities or Claims of Obligors or their Affiliates, whether present or future, absolute or contingent and whether or not relating to the Obligors, the Obligor Intellectual Property, and/or the Material Agreements, and Borrower shall indemnify and save harmless the Lenders from and against all such liabilities, Claims and Liens.

(d) In the event that the Obligors acquire Obligor Intellectual Property during the term of this Agreement, then the provisions of this Agreement shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral under the Security Documents, without further action by any party, in each case from and after the date of such acquisition (except that any representations or warranties of any Obligor shall apply to any such Obligor Intellectual Property only from and after the date, if any, subsequent to such acquisition that such representations and warranties are brought down or made anew as provided herein).

1.04 Changes to GAAP. If, after the Closing Date, any change occurs in GAAP or in the application thereof and such change would cause any amount required to be determined for the purposes of the covenants to be maintained or calculated pursuant to **Section 8**, **Section 9** or **Section 10** to be materially different than the amount that would be determined prior to such change, then:

(a) Borrower will, and Majority Lenders may elect to, provide a detailed notice of such change (an "***Accounting Change Notice***") to Administrative Agent, which, for any such Accounting Change Notice delivered by Borrower, shall be delivered concurrently with the delivery of the next Compliance Certificate;

(b) either Borrower or the Majority Lenders may indicate within ninety (90) days following the date of the Accounting Change Notice that they wish to revise the method of calculating such financial covenants or amend any such amount, in which case the parties will in good faith attempt to agree upon a revised method for calculating the financial covenants;

(c) until Borrower and the Majority Lenders have reached agreement on such revisions, (i) such financial covenants or amounts will be determined without giving effect to such change and (ii) all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP;

(d) if no party elects to revise the method of calculating the financial covenants or amounts, then the financial covenants or amounts will not be revised and will be determined in accordance with GAAP without giving effect to such change; and

(e) any Event of Default arising as a result of such change which is cured by operation of this **Section 1.04** shall be deemed to be of no effect ab initio.

1.05 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 2
THE COMMITMENT

2.01 Commitments. Each Lender agrees severally, on and subject to the terms and conditions of this Agreement (including **Section 6**), to make up to two term loans (*provided*, *that*, PIK Loans shall be deemed not to constitute "term loans" for purposes of this **Section 2.01**) to Borrower, in each case on a Business Day during the Commitment Period in Dollars and in an aggregate principal amount for such Lender not to exceed such Lender's then unfunded Commitment; *provided*, *however*, *that*, no Lender shall be obligated to make a term loan in excess of such Lender's Proportionate Share of the applicable Borrowing. Amounts of Loans repaid may not be reborrowed.

2.02 Borrowing Procedures. Subject to the terms and conditions of this Agreement (including **Section 6**), each Borrowing (other than a Borrowing of PIK Loans) shall be made on written notice in the form of **Exhibit B** given by Borrower to Administrative Agent not later than 4:00 p.m. (Central time) on the Borrowing Notice Date (a "***Notice of Borrowing***").

2.03 Fees. Borrower shall pay to Administrative Agent and/or the Lenders, as applicable, such fees as described in the Fee Letter.

2.04 Use of Proceeds. Borrower shall use the proceeds of the Loans for repayment of all outstanding Indebtedness and obligations under the Existing Loan Agreement, general working capital and corporate purposes and to pay fees, costs and expenses incurred in connection with the Transactions; *provided*, *that*, the Lenders shall have no responsibility as to the use of any proceeds of Loans.

2.05 Defaulting Lenders.

(a) **Adjustments**. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in **Section 13.04**.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Lenders or Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 11** or otherwise), shall be applied at such time or times as follows: first, as Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; second, if so determined by the Majority Lenders and Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans

under this Agreement; third, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fourth, so long as no Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided*, *that*, if (A) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans were made at a time when the conditions set forth in **Section 6** were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this **Section 2.05(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure**. If Borrower and the Majority Lenders agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as necessary to cause the Loans to be held on a *pro rata* basis by the Lenders in accordance with their Proportionate Share, whereupon that Lender will cease to be a Defaulting Lender; *provided*, *that*, no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; *provided*, *further*, *that*, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.06 Substitution of Lenders.

(a) **Substitution Right**. If any Lender (an "***Affected Lender***"), (i) becomes a Defaulting Lender or (ii) does not consent to any amendment, waiver or consent to any Loan Document for which the consent of the Majority Lenders is obtained but that requires the consent of other Lenders (a "***Non-Consenting Lender***"), then (x) Borrower may elect to pay in full such Affected Lender with respect to all Obligations (other than Warrant Obligations) due to such Affected Lender (which for the avoidance of doubt, shall not include any Prepayment Premium due) or (y) either Borrower or Administrative Agent shall identify any willing Lender or Affiliate of any Lender or Eligible Transferee (in each case, a "***Substitute Lender***") to substitute for such Affected Lender; *provided*, *that*, any substitution of a Non-Consenting Lender shall occur only with the consent of Administrative Agent.

(b) **Procedure**. To substitute such Affected Lender or pay in full all Obligations (other than Warrant Obligations) owed to such Affected Lender, Borrower shall deliver a notice to such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery by Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations (other than Warrant Obligations) owing to such Affected Lender (which for the avoidance of doubt, shall not include any Prepayment Premium) and (ii) in the case of a substitution, an Assignment and Assumption executed by the Substitute Lender, which shall thereunder, among other things, agree to be bound by the terms of the Loan Documents; *provided*, *however*, *that*, if the Affected Lender does not execute such Assignment and Assumption within ten (10) Business Days of delivery of the notice required hereunder, such Affected Lender shall be deemed to have executed such Assignment and Assumption.

(c) **Effectiveness**. Upon satisfaction of the conditions set forth in **Sections 2.06(a)** and **(b)**, Administrative Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full of all Obligations owing to an Affected Lender, such Affected Lender's Commitments shall be terminated and (ii) in the case of any substitution of an Affected Lender, (A) such Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Loan Documents, except that the Affected Lender shall retain such rights under the Loan Documents that expressly provide that they survive the repayment of the Obligations and the termination of the Commitments, (B) such Affected Lender shall no longer constitute a "Lender" hereunder and such Substitute Lender shall become a "Lender" hereunder and (C) such Affected Lender shall execute and deliver an Assignment and Assumption to evidence such substitution; *provided*, *however*, *that*, the failure of any Affected Lender to execute any such Assignment and Assumption shall not render such sale and purchase (or the corresponding assignment) invalid.

2.07 Non-Disturbance Agreements. Lenders agree not to unreasonably withhold consent in entering into a mutually acceptable non-disturbance agreement in connection with any exclusive license of Intellectual Property otherwise permitted under this Agreement for (a) clinical indications for epilepsy outside the United States or (b) clinical indications other than epilepsy.

2.08 Termination or Reduction of Commitments.

(a) **Voluntary**. Borrower may, upon notice to Administrative Agent during the Commitment Period, on any Payment Date, terminate in part or in full the then unfunded Commitments; *provided*, *that*, any such notice shall be received by Administrative Agent not later than 4:00 p.m. (Central time) five (5) Business Days prior to the date of termination. Upon any partial termination of the Commitments, the Commitments of each Lender shall be reduced by such Lender's Proportionate Share of such reduction amount.

(b) **Mandatory**. The Commitments shall be automatically and permanently reduced (i) on the Closing Date, by the amount of the Borrowing made on such date, and (ii) on the earlier to occur of (A) the Borrowing Date for a Borrowing made in accordance with **Section 6.02(b)** and (B) March 31, 2022, by $10,000,000.00. Additionally, the Commitments shall be automatically and permanently reduced to zero on the date that the Commitment Period shall end. Upon any reduction of the Commitments, the Commitments of each Lender shall be reduced by such Lender's Proportionate Share of such reduction amount.

SECTION 3
PAYMENTS OF PRINCIPAL AND INTEREST

3.01 Repayment.

(a) **Repayment**. During the Interest-Only Period, no scheduled payments of principal of the Loans shall be due. Borrower agrees to repay to the Lenders the outstanding principal amount of the Loans, on each Payment Date occurring after the Interest-Only Period, in equal installments. The amounts of such installments shall be calculated by dividing (i) the sum of the aggregate principal amount of the Loans outstanding on the first day following the end of the Interest-Only Period, by (b) the number of Payment Dates remaining prior to (and including) the Maturity Date. To the extent not previously paid, the principal amount of the Loans (including, for the avoidance of doubt, PIK Loans), together with all other outstanding Obligations (other than Warrant Obligations), shall be due and payable on the Maturity Date.

(b) **Application**. Any optional prepayment of the Loans after the Interest-Only Period shall be applied to the installments thereof under **Section 3.01(a)** in the order directed by Borrower or, if

Borrower does not provide direction, in direct order of maturity. Any mandatory prepayment of the Loans occurring after the Interest-Only Period shall be applied to the installments thereof under **Section 3.01(a)** in the inverse order of maturity.

3.02 Interest.

(a) **Interest Generally**. Subject to **Section 3.02(d)**, Borrower agrees to pay to the Lenders interest on the unpaid principal amount of the Loans (including, for the avoidance of doubt, PIK Loans) and the amount of all other outstanding Obligations (other than the Warrant Obligations), in the case of the Loans, for the period from the applicable Borrowing Date, and in the case of any other Obligation (other than Warrant Obligations), from the date such other Obligation (other than Warrant Obligations) is due and payable, in each case, to and including the date such Loan or Obligation is paid in full, at a rate *per annum* equal to twelve and one half of one percent (12.50%).

(b) **Default Interest**. Notwithstanding the foregoing, automatically upon the occurrence and during the continuance of any Event of Default under **Section 11.01(a)**, **Section 11.01(i)**, **Section 11.01(j)**, or **Section 11.01(k)**, and after written notice from Administrative Agent upon the occurrence and during the continuance of any other Event of Default, the interest payable pursuant to **Section 3.02(a)** shall increase by four percent (4.00%) *per annum* (such aggregate increased rate, the "***Default Rate***"). Notwithstanding any other provision herein (including **Section 3.02(d)**), if interest is required to be paid at the Default Rate, it shall be paid entirely in cash.

(c) **Interest Payment Dates**. Subject to **Section 3.02(d)**, accrued interest on the Loans shall be payable in arrears on each Payment Date with respect to the most recently completed Interest Period in cash, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); *provided*, *that*, interest payable at the Default Rate shall be payable from time to time on demand.

(d) **Paid In-Kind Interest**. Notwithstanding **Section 3.02(a)**, at any time during the PIK Period, Borrower may elect to pay the interest on the outstanding principal amount of the Loans payable pursuant to **Section 3.01** as follows: (i) for the period commencing on the Closing Date and continuing through December 31, 2020, entirely as compounded interest, added to the aggregate principal amount of the Loans (the amount of any such compounded interest being a "***PIK Loan***"), and (ii) thereafter (A) seven and one half of one percent (7.50%) *per annum* interest in cash and (B) five percent (5.00%) *per annum* interest as a PIK Loan. The principal amount of each PIK Loan shall accrue interest in accordance with the provisions of this Agreement applicable to the Loans. For purposes of clarification, Borrower may only elect to pay interest as provided in this **Section 3.02(d)** for Interest Periods that are entirely within the PIK Period (such that interest for the entirety of any Interest Period in which a Default exists and is continuing must be paid in cash in accordance with **Section 3.02(a)**).

3.03 Prepayments.

(a) **Optional Prepayments**. Upon prior written notice to Administrative Agent delivered pursuant to **Section 4.03**, Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans on any Payment Date for the Redemption Price as of such Payment Date. No partial prepayment shall be made under this **Section 3.03(a)** in connection with any event described in **Section 3.03(b)**.

(b) **Mandatory Prepayments**.

(i) **Asset Sales**. In the event of any contemplated Asset Sale or series of Asset Sales (other than any Asset Sale permitted under **Section 9.09(a)**, **(d)**, **(f)** or **(g)**) yielding Asset Sale Net Proceeds

in excess of $1,000,000 in the aggregate, Borrower shall provide thirty (30) days' prior written notice of such Asset Sale to Administrative Agent and, if within such notice period Majority Lenders or Administrative Agent advise Borrower in writing that the Majority Lenders require a prepayment pursuant to this **Section 3.03(b)(i)**, Borrower shall: (x) if the assets sold represent substantially all of the consolidated assets or Revenues of Borrower and its Subsidiaries, or represent any specific line of business which either on its own or together with other lines of business sold over the term of this Agreement account for Revenue generated by such lines of business exceeding ten percent (10%) of the Revenue of Borrower and its Subsidiaries in the immediately preceding year, prepay the aggregate outstanding principal amount of the Loans in an amount equal to the Redemption Price applicable on the date of such Asset Sale, and (y) in the case of all other Asset Sales not described in the foregoing **clause (x)**, prepay the Loans in an amount equal to the entire amount of the Asset Sale Net Proceeds of such Asset Sale, plus any accrued but unpaid interest, Prepayment Premium and any fees (including the Back-End Facility Fee) then due and owing, plus any Claims or Losses referred to in **Section 13.03** then due and owing, credited in the following order:

(A) first, in reduction of Borrower's obligation to pay any unpaid interest, Prepayment Premium and any fees then due and owing;

(B) second, in reduction of Borrower's obligation to pay any Claims or Losses referred to in **Section 13.03** then due and owing;

(C) third, in reduction of Borrower's obligation to pay any amounts due and owing on account of the unpaid principal amount of the Loans;

(D) fourth, in reduction of any other Obligation (other than a Warrant Obligation) then due and owing; and

(E) fifth, to Borrower or such other Persons as may lawfully be entitled to or directed by Borrower to receive the remainder.

(ii) **Change of Control**. In the event of a Change of Control, Borrower shall immediately provide notice of such Change of Control to Administrative Agent and, if within ten (10) days of receipt of such notice the Majority Lenders or Administrative Agent advise Borrower that the Majority Lenders require a prepayment pursuant to this **Section 3.03(b)(ii)**, Borrower shall prepay the aggregate outstanding principal amount of the Loans in an amount equal to the Redemption Price applicable on the date of such Change of Control and pay any fees payable (including the Back-End Facility Fee).

(c) **Prepayment Premiums**. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if all or any portion of the Loans are prepaid, or required to be prepaid, pursuant to this **Section 3**, then, in all cases, Borrower shall pay to the Lenders, for their respective ratable accounts, on the date on which such prepayment is paid or required to be paid, in addition to (but without duplication of) the other Obligations so prepaid or required to be prepaid, the applicable Prepayment Premium.

SECTION 4
PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally**. Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made in Dollars, in immediately available funds, without deduction, set off or counterclaim, to an account to be designated by Administrative Agent by notice to Borrower, not later than 4:00 p.m. (Central time) on the date on which

such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments**. To the extent the order of application is not otherwise specified by another provision hereof, each Obligor shall, at the time of making each payment under this Agreement or any other Loan Document, specify to Administrative Agent the amounts payable by such Obligor hereunder to which such payment is to be applied (and in the event that Obligors fail to so specify, or if an Event of Default has occurred and is continuing, the Lenders may apply such payment in the manner they determine to be appropriate).

(c) **Non-Business Days**. If the due date of any payment under this Agreement (other than of principal of or interest on the Loans) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of 360 days and actual days elapsed during the period for which payable.

4.03 Notices. Each notice of optional prepayment shall be effective only if received by Administrative Agent not later than 4:00 p.m. (Central time) on the date five (5) Business Days (or such shorter period as may be agreed to in Administrative Agent's sole discretion) prior to the date of prepayment. Each notice of optional prepayment shall specify the amount to be prepaid and the date of prepayment and may be conditioned upon the consummation of other transactions.

4.04 Set-Off.

(a) **Set-Off Generally**. Upon the occurrence and during the continuance of any Event of Default, each of Administrative Agent, each Lender and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Administrative Agent, any Lender or any of their Affiliates to or for the credit or the account of any Obligor against any and all of the Obligations (other than Warrant Obligations), whether or not such Person shall have made any demand and although such obligations may be unmatured. Administrative Agent and each Lender agree promptly to notify Borrower after any such set-off and application; *provided*, *that*, the failure to give such notice shall not affect the validity of such set-off and application. The rights of Administrative Agent, each Lender and each of their Affiliates under this **Section 4.04** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) **Exercise of Rights Not Required**. Nothing contained herein shall require Administrative Agent, any Lender or any of their respective Affiliates to exercise any such right or shall affect the right of such Person to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of any Obligor.

4.05 Pro Rata Treatment.

(a) Unless Administrative Agent shall have been notified in writing by any Lender prior to the proposed date of any Borrowing that such Lender will not make the amount that would constitute its share of such Borrowing available to Administrative Agent, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such date in accordance with **Section 2**, and Administrative Agent may, in reliance upon such assumption, make available to Borrower a corresponding amount. If such amount is not in fact made available to Administrative Agent by the required time on the

applicable Borrowing Date therefor, such Lender and Borrower severally agree to pay to Administrative Agent forthwith, on demand, such corresponding amount with interest thereon, for each day from and including the date on which such amount is made available to Borrower but excluding the date of payment to Administrative Agent, at a rate equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate reasonably determined by Administrative Agent in accordance with banking industry rules on interbank compensation. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

(b) Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation. Nothing herein shall be deemed to limit the rights of Administrative Agent or any Lender against any Obligor.

(c) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the principal of or interest on any Loan made by it or other obligations hereunder, as applicable (other than pursuant to a provision hereof providing for non-pro rata treatment), in excess of its Proportionate Share, of such payment on account of the Loans, such Lender shall (i) notify Administrative Agent of the receipt of such payment, and (ii) within five (5) Business Days of such receipt, purchase (for cash at face value) from the other Lenders, as applicable (directly or through Administrative Agent), without recourse, such participations in the Loans made by them or make such other adjustments as shall be equitable, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders in accordance with their respective Proportionate Shares, as applicable; *provided*, *however*, *that* (A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (B) the provisions of this paragraph shall not be construed to apply to (x) any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans to any assignee or participant, other than to Borrower or any of its Affiliates (as to which the provisions of this paragraph shall apply). Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this **Section 4.05(c)** may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. No documentation other than notices and the like referred to in this **Section 4.05(c)** shall be required to implement the terms of this **Section 4.05(c)**. Administrative Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this **Section 4.05(c)** and shall in each case notify the Lenders following any such purchase. Borrower consents on behalf of itself and each other Obligor to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may

exercise against each Obligor rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Obligor in the amount of such participation.

SECTION 5
YIELD PROTECTION, ETC.

5.01 Additional Costs.

(a) **Change in Requirements of Law Generally**. If, on or after the Closing Date, the adoption of any Requirement of Law, or any change in any Requirement of Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by any of the Lenders (or their respective lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority made or issued after the Closing Date, (i) shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the Closing Date, against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office), (ii) shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Connection Income Taxes) on its Loans, loan principal, Commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or (iii) shall impose on a Lender (or its lending office) any other condition affecting its Loans or its Commitments, and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining its Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, by an amount deemed by such Lender to be material, then Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction. Borrower shall not be required to compensate any Lender for any increased cost or reduction in payment incurred or arising more than one hundred eighty (180) days prior to the date such Lender notifies Borrower of the change giving rise to such increased cost or payment reduction; *provided*, *that*, such Lender has actual knowledge of such change during such one hundred eighty (180) day period.

(b) **Change in Capital Requirements**. If a Lender shall have determined that, on or after the Closing Date, the adoption of any Requirement of Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the Closing Date, has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender**. Each Lender (directly or through Administrative Agent) will promptly notify Borrower of any event of which it has knowledge, occurring after the Closing Date, which will entitle such Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of the Lender claiming compensation under this **Section 5.01**, setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on Borrower in the absence of manifest error.

(d) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Requirements of Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the Closing Date the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify Borrower thereof following which (a) the Lender's Commitment shall be suspended until such time as such Lender may again make and maintain its Loans hereunder and (b) if such Requirement of Law shall so mandate, the Loans of such Lender shall be prepaid by Borrower on or before such date as shall be mandated by such Requirement of Law in an amount equal to the Redemption Price applicable on the date of such prepayment.

5.03 Taxes.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5.03**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by Borrower**. The Obligors shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent and/or each Lender, timely reimburse it for, Other Taxes.

(c) **Evidence of Payments**. As soon as practicable after any payment of Taxes by any Obligor to a Governmental Authority pursuant to this **Section 5.03**, such Obligor shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment.

(d) **Indemnification**. The Obligors shall jointly and severally reimburse and indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5.03**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; *provided*, *that* the Obligors shall not be required to indemnify a Recipient pursuant to this **Section 5.03(d)** to the extent that such Recipient fails to notify Borrower of its intent to make a claim for indemnification under this **Section 5.03(d)** within one hundred eighty (180) days of the later of (i) the date on which the

Indemnified Taxes are due to be paid by Recipient, or (ii) the date on which the relevant Governmental Authority asserts a claim for such Indemnified Taxes against Recipient. A certificate as to the amount of such payment or liability delivered to Borrower by Administrative Agent or any Lender shall be conclusive absent manifest error.

(e) **Status of Lenders**.

(i) Any Lender that is entitled to an exemption from, or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower (directly or through Administrative Agent), at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender shall deliver (directly or through Administrative Agent) such other documentation prescribed by applicable law as reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 5.03(e)(ii)(A)**, **(B)** or **(D)**) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to Borrower (directly or through Administrative Agent) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed originals of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (directly or through Administrative Agent and in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or successor form) establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or successor form) establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit C-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section

881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "***U.S. Tax Compliance Certificate***") and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or successor form); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or successor form), a U.S. Tax Compliance Certificate substantially in the form of **Exhibit C-2** or **Exhibit C-3**, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; *provided*, *that*, if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit C-4** on behalf of each such direct and indirect partner.

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (directly or through Administrative Agent and in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this **clause (D)**, "***FATCA***" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered becomes obsolete or inaccurate in any respect, or if Borrower notifies such Lender that any form or certification such Lender previously delivered has expired or becomes obsolete in any respect, such Lender shall update such form or certification or promptly notify Borrower in writing of its legal inability to do so.

(f) **Treatment of Certain Refunds**. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 5.03** (including by the payment of additional amounts pursuant to this **Section 5.03**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 5.03** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (plus any penalties, interest or other charges imposed by the relevant Governmental

Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(f)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.03(f)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This **Section 5.03(f)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) **Mitigation Obligations**. If Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or this **Section 5.03**, then such Lender shall (at the request of Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or this **Section 5.03**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

SECTION 6
CONDITIONS PRECEDENT

6.01 Conditions to the Closing Date. This Agreement shall not become effective, and the obligation of each Lender to make a Loan as part of the Borrowing on the Closing Date shall not become effective, in each case, until the following conditions precedent shall have been satisfied or waived in writing by the Lenders:

(a) **Terms of Material Agreements, Etc**. Lenders shall be reasonably satisfied with the terms and conditions of all Material Agreements.

(b) **No Law Restraining Transactions**. No applicable law or regulation shall restrain, prevent or, in the reasonable judgment of the Lenders, impose materially adverse conditions upon the Transactions.

(c) **Payment of Fees**. The Lenders shall be satisfied with the arrangements to deduct the fees set forth in the Fee Letter that are payable as of the Closing Date (including without limitation the financing fee required pursuant to the Fee Letter) from the proceeds advanced on the Closing Date.

(d) **Lien Searches**. The Lenders shall be satisfied with Lien searches regarding Borrower and its Subsidiaries made prior to the Closing Date.

(e) **Required Equity Financing**. Borrower shall have received cash proceeds from the issuance of its Series B' Preferred Stock (which shall not, for the avoidance of doubt, be Disqualified Equity Interests) in an aggregate amount of at least $33,000,000 as of the Closing Date with a committed second tranche of at least $27,000,000 available to be drawn thereafter at Borrower's sole option.

(f) **Documentary Deliveries**. The Lenders shall have received the following documents, each of which shall be in form and substance satisfactory to the Lenders:

(i) **Agreement**. This Agreement duly executed and delivered by Borrower and each of the other parties hereto.

(ii) **Security Documents**.

(A) The Security Agreement, duly executed and delivered by each of the Obligors.

(B) Each of the Short-Form IP Security Agreements, duly executed and delivered by the applicable Obligor.

(C) With respect to all Equity Interests owned by the Obligors required to be pledged under the Loan Documents, (1) to the extent that such Equity Interests are certificated or required to be certificated pursuant to the applicable issuer's organizational documents, original share certificates or other documents or evidence of title, together with share transfer documents, undated and executed in blank and (2) to the extent that such Equity Interests are uncertificated and permitted to be uncertificated pursuant to the applicable issuer's organizational documents, an issuer's acknowledgment in form and substance reasonably satisfactory to Administrative Agent.

(D) UCC-1 financing statements in proper form for filing against each Obligor in its jurisdiction of formation or incorporation, as the case may be.

(E) Without limitation, all other documents and instruments reasonably required to perfect the Liens of Administrative Agent, for the benefit of the Secured Parties, and security interests in, the Collateral required to be delivered on the Closing Date shall have been duly executed and delivered and be in proper form for filing, and shall create in favor of Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on, and security interest in, the Collateral, subject to no Liens other than Permitted Liens.

(iii) **Warrants**. For the Lenders, *pro rata* in accordance with their Proportionate Shares, the ten-year Warrants, duly executed by Borrower, for the purchase of Series B' Preferred Stock of Borrower in an amount equal to 2.00% of the Equity Interests of Borrower on a fully diluted basis (inclusive of the issuance of such Warrants) with an exercise price equal to $2.50515 per share (such number of shares, as indicated on **Schedule 1**).

(iv) **Perfection Certificate**. The Perfection Certificate duly executed and delivered by a Responsible Financial Officer of the Obligors.

(v) **Approvals**. Certified copies of all material licenses, consents, authorizations and approvals of, and notices to and filings and registrations with, any Governmental Authority (including all foreign exchange approvals), and of all third-party consents and approvals, necessary in connection with the execution, delivery and performance by the Obligors of the Loan Documents and the Transactions.

(vi) **Corporate Documents**. Certified copies of (A) the constitutive documents of each Obligor (if publicly available in such Obligor's jurisdiction of formation), (B) resolutions of the Board (and/or shareholders, if applicable) of each Obligor authorizing the making and performance by it of the Loan Documents to which it is a party and (C) good standing certificates (or their equivalent) of each Obligor dated as of a recent date.

(vii) **Incumbency Certificate**. A certificate of each Obligor as to the authority, incumbency and specimen signatures of the Responsible Officers and Responsible Financial Officers who have executed the Loan Documents and any other documents in connection herewith on behalf of the Obligors.

(viii) **Officer's Certificate**. A certificate, dated as of the Closing Date and signed by a Responsible Financial Officer of Borrower, confirming compliance with the conditions set forth in **Section 6.01(b)**, **Section 6.01(e)** and **Section 6.03**.

(ix) **Opinions of Counsel**. A favorable opinion, dated as of the Closing Date, of counsel to each Obligor in form acceptable to the Lenders and their counsel.

(x) **Insurance**. Certificates of insurance evidencing the existence of all insurance required to be maintained by the Obligors and their respective Subsidiaries pursuant to **Section 8.05** and the designation of Administrative Agent as the lenders' loss payee or additional named insured, as the case may be, thereunder.

(xi) **Management Rights Letter**. Borrower shall have executed and delivered to Administrative Agent the Management Rights Letter.

(xii) **Payoff Letter**. A duly executed and delivered payoff letter with respect to the Existing Loan Agreement, in form and substance reasonably satisfactory to Administrative Agent.

6.02 Additional Conditions to Specific Borrowings. The obligation of each Lender to make a Loan (except in the case of a PIK Loan) as part of a Borrowing is subject to the following conditions additional precedent, which shall have been satisfied or waived in writing by the Lenders:

(a) **Closing Date Borrowing**:

(i) **Borrowing Date and Amount**. Such Borrowing shall occur on the Closing Date in an amount equal to $50,000,000.00.

(ii) **Fees**. Administrative Agent shall have received, for the account of each Lender, as applicable, the fees payable pursuant to the Fee Letter.

(b) **Additional Tranche**. One subsequent Borrowing shall be subject to the following conditions precedent, which shall have been satisfied or waived in writing by the Lenders:

(i) **Borrowing Date and Amount**. Such Borrowing shall occur on or prior to March 31, 2022 in an amount equal to $10,000,000.00 (or, if requested by Borrower to be less than $10,000,000.00, in an amount equal to $7,500,000.00, $5,000,000.00 or $2,500,000.00).

(ii) **Borrowing Milestone**. Administrative Agent shall have received evidence in form and substance reasonably satisfactory to Administrative Agent demonstrating that consolidated Revenues for Borrower and its Subsidiaries for any three (3) consecutive month period ending after the Closing Date but on or prior to December 31, 2021 were greater than or equal to $15,000,000.

(iii) **Notice of Milestone Achievement and Audit**. Borrower shall have delivered to Administrative Agent a notice certifying satisfaction of the condition set forth in **Section 6.02(b)(ii)** no later than thirty (30) days thereafter, and Administrative Agent shall have been reasonably satisfied with the results of its audit of such Revenues of Borrower and its Subsidiaries by examining Borrower's books and records.

(iv) **Notice of Borrowing.** A Notice of Borrowing shall have been received no later than sixty (60) calendar days after satisfaction of the condition set forth in **Section 6.02(b)(ii)**.

(v) **Additional Tranche Warrants**. For the Lenders, *pro rata* in accordance with their Proportionate Shares, the ten-year Warrants, duly executed by Borrower, for the purchase of Series B' Preferred Stock of Borrower in the amount required to cause the Lenders, in the aggregate taken together with the Warrants issued on the Closing Date, to have been issued 2.00% of the Equity Interests of Borrower on a fully diluted basis (inclusive of the issuance of such Warrants) with an exercise price equal to $2.50515 per share.

(vi) **Fees**. Administrative Agent shall have received, for the account of each Lender, as applicable, the fees payable pursuant to the Fee Letter.

6.03 Conditions to Each Borrowing. The obligation of each Lender to make a Loan as part of any Borrowing (including the initial Borrowing made on the Closing Date) is also subject to satisfaction of the following further conditions precedent on the applicable Borrowing Date, which shall have been satisfied or waived in writing by the Lenders:

(a) **No Default; Representations and Warranties; No Material Adverse Effect**. Both immediately prior to the making of such Loan and after giving effect thereto and to the intended use of the proceeds thereof:

(i) no Default shall have occurred and be continuing or would result from such proposed Loan or the application of proceeds thereof;

(ii) with respect to any Loan (other than any PIK Loan), the representations and warranties in **Section 7** and in the other Loan Documents shall be true and correct in all material respects (an in all respects if such representation or warranty is qualified by materiality or reference to Material Adverse Change or Material Adverse Effect) on and as of the Borrowing Date, and immediately after giving effect to the application of the proceeds of the Borrowing, with the same force and effect as if made on and as of such date (except that the representation regarding representations and warranties that refer to a specific earlier date shall be that they were true and correct in all material respects (and in all respects if such representation or warranty is qualified by materiality or reference to Material Adverse Change or Material Adverse Effect) on such earlier date); and

(iii) no Material Adverse Effect has occurred or is reasonably likely to occur after giving effect to such proposed Borrowing or the application of the proceeds thereof; *provided*, *that*, solely for purposes of the Borrowing on the Closing Date, the direct impacts of the COVID-19 pandemic on the business, financial condition, operations, performance or Property of Borrower and its Subsidiaries that were disclosed in writing to Administrative Agent prior to the Closing Date, including, without limitation, in Board materials or presentations delivered to Administrative Agent, shall be disregarded.

(b) **Notice of Borrowing**. Except in the case of any PIK Loan, the Agent shall have received a Notice of Borrowing as and when required pursuant to **Section 2.02**.

Each Borrowing shall constitute a certification by Borrower to the effect that the conditions set forth in this **Section 6.03** have been fulfilled as of the applicable Borrowing Date.

SECTION 7
REPRESENTATIONS AND WARRANTIES

Each Obligor represents and warrants to Administrative Agent and the Lenders that:

7.01 Power and Authority. Each of Borrower and its Subsidiaries (a) is duly organized and validly existing under the laws of its jurisdiction of organization, (b) has all requisite corporate or other equivalent power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted except to the extent that failure to have the same could not reasonably be expected to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify could (either individually or in the aggregate) have a Material Adverse Effect, and (d) has full power, authority and legal right to make and perform each of the Loan Documents to which it is a party and, in the case of Borrower, to borrow the Loans hereunder.

7.02 Authorization; Enforceability. The Transactions are within each Obligor's corporate or equivalent powers and have been duly authorized by all necessary corporate or equivalent action and, if required, by all necessary shareholder action. This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against each Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party, except for (i) such as have been obtained or made and are in full force and effect and (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents, (b) will not violate any applicable law or regulation or the charter, bylaws or other organizational documents of Borrower and its Subsidiaries, (c) will not violate any order of any Governmental Authority in any material respect, (d) will not violate or result in a default under any indenture, agreement or other instrument binding upon Borrower and its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person, and (e) will not result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of Borrower and its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements**. Borrower has heretofore furnished to the Lenders certain financial statements as provided for in **Section 8.01**. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the previously-delivered statements of the type described in **Section 8.01(a)**. Neither Borrower nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments not disclosed in the aforementioned financial statements.

(b) **No Material Adverse Change**. Since December 31, 2019, there has been no Material Adverse Change; *provided*, *that*, the direct impacts of the COVID-19 pandemic on the business, financial condition, operations, performance or Property of Borrower and its Subsidiaries that were disclosed in

writing to Administrative Agent prior to the Closing Date, including, without limitation, in Board materials or presentations delivered to Administrative Agent, shall be disregarded.

7.05 Properties.

(a) **Property Generall**y. Each Obligor has good title to, or valid leasehold interests in, all its real and personal Property material to its business, subject only to Permitted Liens and except as would not reasonably be expected to interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) **Intellectual Property**.

(i) **Schedule 7.05(b)(i)** (as amended from time to time by Borrower in accordance with **Section 7.21**) contains:

(A) a complete and accurate list of all applied for or registered Patents, owned by any Obligor, including the jurisdiction and patent number;

(B) a complete and accurate list of all applied for or registered Trademarks, owned by any Obligor, including the jurisdiction, trademark application or registration number and the application or registration date;

(C) a complete and accurate list of all applied for or registered Copyrights, owned by any Obligor; and

(D) a complete and accurate list of all material common-law Trademarks used by Borrower or any Subsidiary;

(E) a complete and accurate list of all trade names used by Borrower or any Subsidiary;

(F) a complete and accurate list of all material domain names and URLs owned by Borrower or any Subsidiary; and

(G) a complete and accurate list of each material inbound and outbound license of Borrower or any Subsidiary.

(ii) Each Obligor is the absolute beneficial owner of all right, title and interest in and to (except with respect to any in-licensed Obligor Intellectual Property) and has the right to use its Obligor Intellectual Property with no breaks in chain of title, with good and marketable title, free and clear of any Liens or Claims of any kind whatsoever other than Permitted Liens. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)(ii)**:

(A) other than with respect to the Material Agreements, or as permitted by **Section 9.09**, the Obligors have not transferred ownership of Material Intellectual Property, in whole or in part, to any other Person who is not an Obligor;

(B) other than (i) the Material Agreements, (ii) customary restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements, or (iii) as would have been or is permitted by **Section 9.09**, there are no judgments, covenants not to sue, permits, grants, licenses, Liens (other than Permitted Liens), Claims, or other agreements or arrangements relating to the Material

Intellectual Property, including any development, submission, services, research, license or support agreements, which bind, obligate or otherwise restrict the Obligors;

(C) the use of any of the Obligor Intellectual Property and the conduct of the Obligors' business, to any Obligor's Knowledge, does not breach, violate, infringe or interfere with or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person;

(D) there are no pending or, to any Obligor's Knowledge, threatened in writing Claims against the Obligors asserted by any other Person relating to the Obligor Intellectual Property, including any Claims of adverse ownership, invalidity, infringement, misappropriation, violation or other opposition to or conflict with such Intellectual Property; no Obligor has received any written notice from any Person that any Obligor's business, the use of the Obligor Intellectual Property, or the manufacture, use or sale of any product or the performance of any service by any Obligor infringes upon, violates or constitutes a misappropriation of, or may infringe upon, violate or constitute a misappropriation of, or otherwise interfere with, any other Intellectual Property of any other Person;

(E) no Obligor has any Knowledge that the Obligor Intellectual Property is being infringed, violated, misappropriated or otherwise used by any other Person without the express authorization of the Obligors. Without limiting the foregoing, no Obligor has put any other Person on notice of actual or potential infringement, violation or misappropriation of any of the Obligor Intellectual Property; no Obligor has initiated the enforcement of any Claim with respect to any of the Obligor Intellectual Property;

(F) to the Knowledge of the Obligors, all relevant current and former employees and independent contractors of each Obligor have executed written confidentiality and Intellectual Property assignment Contracts with such Obligor that irrevocably assign to such Obligor or its designee all of their rights to any Intellectual Property relating to any Obligor's business;

(G) to the Knowledge of the Obligors, the Obligor Intellectual Property is all the Intellectual Property necessary for the operation of Obligors' business as it is currently conducted or as currently contemplated to be conducted;

(H) each Obligor has taken reasonable precautions to protect the secrecy, confidentiality and value of its Obligor Intellectual Property consisting of trade secrets and confidential information;

(I) each Obligor has delivered to Administrative Agent accurate and complete copies of all Material Agreements relating to the Obligor Intellectual Property; and

(J) there are no pending or, to the Knowledge of any of the Obligors, Claims threatened in writing against the Obligors asserted by any other Person relating to the Material Agreements, including any Claims of breach or default under such Material Agreements.

(K) no Obligor has made any assignment or agreement in conflict in any material respect with, and no license agreement with respect to, any Obligor Intellectual Property conflicts in any material respect with the Lien on and security interest in the Intellectual Property granted to Administrative Agent, for the benefit of the Secured Parties, pursuant to the terms of the Security Documents; and

(L) the consummation of the transactions contemplated hereby and the exercise by Administrative Agent or any Secured Party of any right or protection set forth in the Loan

Documents will not constitute a breach or violation of, or otherwise affect the use or enforceability of, any inbound or outbound licenses associated with any Obligor Intellectual Property in any material respect;

provided, *that*, the representations in **Section 7.05(b)(ii)** are made solely as of the Closing Date, each Borrowing Notice Date and each Borrowing Date.

(iii) With respect to the Obligor Intellectual Property, except as set forth in **Schedule 7.05(b)(ii)**, and without limiting the representations and warranties in Section 7**.05(b)(ii)**:

(A) each item of Material Intellectual Property is subsisting and, to Obligors' Knowledge, is valid and enforceable;

(B) the inventors of each Patent that constitutes Material Intellectual Property claimed in such Patents have executed written Contracts with an Obligor or its predecessor-in-interest that properly and irrevocably assign to an Obligor or predecessor-in-interest all of their rights to any of the Inventions claimed in such Patents to the extent permitted by applicable law;

(C) none of the Material Intellectual Property has been abandoned or dedicated to the public except as a result of intentional, commercially reasonable decisions made by the applicable Obligor;

(D) to any Obligor's Knowledge, all prior art material to Patents constituting Material Intellectual Property was adequately disclosed to or considered by the respective patent offices during prosecution of such Patents to the extent required by applicable law or regulation;

(E) subsequent to the issuance of the Patents constituting Material Intellectual Property, neither any Obligor nor its predecessors in interest have filed any disclaimer or filed any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(F) no allowable or allowed subject matter of the Patents constituting Material Intellectual Property, to any Obligor's Knowledge, is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or patents of any third party and have not been the subject of any interference, re-examination, inter partes review, post grant review or opposition proceedings, nor are the Obligors aware of any basis for any such interference, re-examination, inter partes review, post grant review or opposition proceedings;

(G) no Material Intellectual Property has ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of rejections issued by a Governmental Authority in the ordinary course of prosecuting Patent or Trademark applications, and no Obligor has received any notice asserting that any Material Intellectual Property is invalid, unpatentable or unenforceable; if any of Patents constituting Material Intellectual Property are terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(H) there is no fact or circumstance known to the Obligors that would cause them to reasonably conclude that any of the issued patents constituting Material Intellectual Property is invalid or unenforceable;

(I) no Obligor has any Knowledge that any Obligor or any prior owner of any Patents constituting Material Intellectual Property or their respective agents or representatives have engaged

in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any such Patents; and

(J) all maintenance fees, renewal fees, annuities, and the like due or payable on the Material Intellectual Property have been timely paid, and all other acts required to maintain the same in full force and effect have been performed, except where the failure to so pay (1) was the result of an intentional, commercially reasonable decision by the applicable Obligor or (2) could not reasonably be expected to result in a Material Adverse Change.

(iv) None of the foregoing representations and statements of fact contains any untrue statement of material fact or omits to state any material fact necessary to make any such statement or representation not misleading to a prospective Lender seeking full information as to the Obligor Intellectual Property and the Obligors' business.

(c) Material Intellectual Property. **Schedule 7.05(c)** (as amended from time to time by Borrower in accordance with **Section 7.21**) contains an accurate list of the Obligor Intellectual Property that is material to any Obligor's business with an indication as to whether the applicable Obligor owns or has an exclusive or non-exclusive license to such Obligor Intellectual Property.

7.06 No Actions or Proceedings.

(a) **Litigation**. There is no litigation, investigation or proceeding pending or, to any Obligor's Knowledge, threatened in writing with respect to Borrower and its Subsidiaries by or before any Governmental Authority or arbitrator (i) that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect, or (ii) that involves this Agreement or the Transactions.

(b) **Environmental Matters**. The operations and Property of Borrower and its Subsidiaries comply with all applicable Environmental Laws, except to the extent the failure to so comply (either individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect.

(c) **Labor Matters**. Borrower and its Subsidiaries have not engaged in unfair labor practices and there are no labor actions or disputes involving the employees of Borrower or its Subsidiaries that could reasonably be expected to have a Material Adverse Effect.

7.07 Compliance with Laws and Agreements. Each of the Obligors is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

7.08 Taxes. All federal income and other material Tax returns, reports and statements (collectively, the "***Tax Returns***") required to be filed by any Tax Affiliate have been timely filed with the appropriate Governmental Authorities, all such Tax Returns are true, correct and complete in all material respects, and all material Taxes reflected therein or otherwise due and payable have been timely paid (except to the extent the amount or validity of any such Taxes are contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP). No Tax Return is under audit or examination by any Governmental Authority and no notice of any material audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority that has not been fully resolved or otherwise settled. Proper and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in full and complete compliance with the Tax, social security and unemployment withholding provisions

of applicable Laws and such withholdings have been timely paid to the respective Governmental Authorities. No Tax Affiliate has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

7.09 Full Disclosure. Obligors have disclosed to Administrative Agent and the Lenders all Material Agreements to which Borrower or any Subsidiary is subject, and all other matters to any Obligor's Knowledge, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of Borrower or any Subsidiary to Administrative Agent or any Lender in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *that*, with respect to projected financial information, the Obligors represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

7.10 Regulation.

(a) **Investment Company Act**. Neither Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(b) **Margin Stock**. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, U or X.

(c) **OFAC; Sanctions, Etc.** Neither Borrower nor any of its Subsidiaries or, to the knowledge of any Obligor, any Related Person (i) is currently the subject of any Sanctions or is a Sanctioned Person, (ii) is located (or has its assets located), organized or residing in any Sanctioned Jurisdiction, (iii) is or has been (within the previous five (5) years) engaged in any impermissible transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Sanctioned Jurisdiction, (iv) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, (v) has taken any action, directly or indirectly, that would result in a violation by such Persons of any Anti-Corruption Laws, or (vi) has violated any Anti-Money Laundering Laws. No Loan, nor the proceeds from any Loan, has been or will be used, directly or indirectly, to lend, contribute or provide to, or has been or will be otherwise made available to fund, any impermissible activity or business of any Person located, organized or residing in any Sanctioned Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including the Lender and its Affiliates) of Sanctions or otherwise in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws. Each of Borrower and its Subsidiaries has implemented and maintains in effect policies and procedures designed to promote compliance by Borrower and its Subsidiaries and their respective directors, officers, employees, agents and Related Persons with the Anti-Corruption Laws.

7.11 Solvency. Borrower is, and the Obligors on a consolidated basis are, and, immediately after giving effect to each Borrowing and the use of proceeds thereof Borrower will be, and the Obligors on a consolidated basis will be, Solvent.

7.12 Subsidiaries. Set forth on **Schedule 7.12** is a complete and correct list of all Subsidiaries as of the Closing Date. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by Borrower of each such Subsidiary is as shown in said **Schedule 7.12**.

7.13 Indebtedness and Liens. Set forth on **Part I** of **Schedule 7.13(a)** is a complete and correct list of all Material Indebtedness of each Obligor outstanding as of the Closing Date. **Part I** of **Schedule 7.13(b)** is a complete and correct list of all Liens either (a) affirmatively granted by Borrower and other Obligors or (b) of which Borrower or any other Obligor has Knowledge, in each case, with respect to their respective Property and outstanding as of the Closing Date.

7.14 Material Agreements. Set forth on **Schedule 7.14** (as amended from time to time by Borrower in accordance with **Section 7.21**) is a complete and correct list of (i) each Material Agreement and (ii) each agreement (other than the Loan Documents) creating or evidencing any Material Indebtedness. Neither Borrower nor any Subsidiary is in default under any such Material Agreement or agreement creating or evidencing any Material Indebtedness. Except as otherwise disclosed on **Schedule 7.14**, all material vendor purchase agreements and provider contracts of Borrower and its Subsidiaries are in full force and effect without material modification from the form in which the same were disclosed to Administrative Agent and the Lenders.

7.15 Restrictive Agreements. Neither Borrower nor any Subsidiary is subject to any indenture, agreement, instrument or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets (other than (x) customary provisions in contracts (other than any such contracts relating to Material Intellectual Property) restricting the assignment thereof, (y) restrictions or conditions imposed by any agreement governing secured Permitted Indebtedness permitted under **Section 9.01(h)**, to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness or (z) as such may apply to the interest of any Obligor in a Permitted Commercialization Arrangement Vehicle), or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to Borrower or any other Subsidiary or to Guarantee Indebtedness of Borrower or any other Subsidiary (each, a "***Restrictive Agreement***"), except those listed on **Schedule 7.15** or otherwise permitted under **Section 9.11**; *provided*, *that*, none of the following shall constitute Restrictive Agreements: (i) customary restrictions and conditions contained in agreements relating to the sale or other disposition of a Subsidiary or assets pending such sale or other disposition, *provided*, *that*, such restrictions and conditions apply only to the Subsidiary or assets that are to be sold or otherwise disposed of and such sale or other disposition is permitted hereunder and (ii) any stockholder agreement, charter, bylaws or other organizational documents of Borrower or any Subsidiary as in effect on the Closing Date, a copy of which has been provided to Administrative Agent.

7.16 Real Property.

(a) **Generally**. Neither Borrower nor any of its Subsidiaries owns or leases (as tenant thereof) any real property, except as described on **Schedule 7.16** (as amended from time to time by Borrower in accordance with **Section 7.21**).

(b) **Borrower Lease**. Borrower has delivered a true, accurate and complete copy of the Borrower Lease to Administrative Agent.

(ii) The Borrower Lease is in full force and effect and no default has occurred under the Borrower Lease and, to the Knowledge of Borrower, there is no existing condition which, but for the passage of time or the giving of notice, could reasonably be expected to result in a default under the terms of the Borrower Lease.

(c) Borrower is the tenant under the Borrower Lease and has not transferred, sold, assigned, conveyed, disposed of, mortgaged, pledged, hypothecated, or encumbered any of its interest in, the Borrower Lease.

7.17 Pension Matters. **Schedule 7.17** sets forth, as of the Closing Date, a complete and correct list of, and that separately identifies, (a) all Title IV Plans, (b) all Multiemployer Plans and (c) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law so qualifies. Except for those that could not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the Knowledge of any Obligor or Subsidiary thereof, threatened in writing) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Obligor or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and (z) no ERISA Event is reasonably expected to occur. Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%, and neither Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent valuation date. As of the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. As of the Closing Date, Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments. No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Collateral; Security Interest. Each Security Document is effective to create in favor of Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest in the Collateral subject thereto and each such security interest is perfected to the extent required by (and has the priority required by) the applicable Security Document. The Security Documents collectively are effective to create in favor of Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest in the Collateral, which security interests are first-priority (subject only to Permitted Priority Liens).

7.19 Regulatory Approvals. Borrower and its Subsidiaries hold, and will continue to hold, either directly or through licensees and agents, all Regulatory Approvals, licenses, permits and similar governmental authorizations of a Governmental Authority necessary or required for Borrower and its Subsidiaries to conduct their operations and business in the manner currently conducted.

7.20 Update of Schedules. Each of **Schedules 7.05(b)(i)**, **7.05(c)**, **7.14** and **7.16** may be updated by Borrower from time to time in order to ensure the continued accuracy of such Schedule as of any upcoming date on which representations and warranties are made incorporating the information contained on such Schedule. Such update may be accomplished by Borrower providing to Administrative Agent, in writing (including by electronic means), a revised version of such Schedule in accordance with the provisions of **Section 13.02**. Each such updated Schedule shall be effective immediately upon the receipt thereof by Administrative Agent.

SECTION 8
AFFIRMATIVE COVENANTS

Each Obligor covenants and agrees with Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and contingent indemnification obligations for which no claim has been made) have been paid in full indefeasibly in cash:

8.01 Financial Statements and Other Information. Borrower will furnish to Administrative Agent (and, in the case of **Sections 8.01(a)** through **(b)**, **(d)**, **(i)** and **(k)**, each VCOC Lender):

(a) (i) so long as Borrower is not a Publicly Reporting Company, as soon as available and in any event within forty five (45) days (or ninety (90) days, in the case of the fourth fiscal quarter) after the end of each fiscal quarter of each fiscal year, the consolidated balance sheets of Borrower and its Subsidiaries as of the end of such quarter, and the related consolidated statements of income and cash flows of Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such quarter, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with a certificate of a Responsible Financial Officer of Borrower stating that such financial statements fairly present the financial condition of Borrower and its Subsidiaries as at such date and the results of operations of Borrower and its Subsidiaries for the period ended on such date and have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of footnotes; and

(ii) after Borrower becomes a Publicly Reporting Company, as soon as available and in any event within five (5) days following the date Borrower files the Quarterly Report on Form 10-Q with the SEC, the consolidated balance sheets of Borrower and its Subsidiaries as of the end of such quarter, and the related consolidated statements of income and cash flows of Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such quarter, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with a certificate of a Responsible Financial Officer of Borrower stating that such financial statements fairly present the financial condition of Borrower and its Subsidiaries as at such date and the results of operations of Borrower and its Subsidiaries for the period ended on such date and have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of footnotes;

(b) (i) so long as Borrower is not a Publicly Reporting Company, as soon as available and in any event within two hundred and seventy (270) days after the end of each fiscal year, the consolidated balance sheets of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such fiscal year, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of PricewaterhouseCoopers LLP or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Lenders; *provided*, that any of the "big four" accounting firms shall be reasonably acceptable to the Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern' or like qualification or exception or any qualification or exception as to the scope of such audit except to the extent such "going concern" or like qualification or exception or "emphasis of matter" paragraph relates expressly solely to (x) Borrower's projected need for additional funding to continue operations, (y) any potential inability to satisfy the financial covenants set forth in **Section 10** on a future date or in a future period and/or (z) a current maturity of the Loans;

(ii) after Borrower becomes a Publicly Reporting Company, as soon as available and in any event within five (5) days following the date Borrower files the Annual Report on Form 10-K with the SEC, the consolidated balance sheets of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such fiscal year, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report containing the opinion of PricewaterhouseCoopers LLP or another firm of independent certified public

accountants of recognized national standing reasonably acceptable to the Lenders; *provided*, that any of the "big four" accounting firms shall be reasonably acceptable to the Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern' or like qualification or exception or any qualification or exception as to the scope of such audit except to the extent such "going concern" or like qualification or exception or "emphasis of matter" paragraph relates expressly solely to (x) Borrower's projected need for additional funding to continue operations, (y) any potential inability to satisfy the financial covenants set forth in **Section 10** on a future date or in a future period and/or (z) a current maturity of the Loans;

(c) together with the financial statements required pursuant to **Sections 8.01(a)** and **(b)**, a compliance certificate of a Responsible Financial Officer of Borrower as of the end of the applicable accounting period (which delivery may, unless a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) in the form of **Exhibit D** (a "***Compliance Certificate***") including details of any issues that are material that are raised by auditors and including (solely to the extent not previously disclosed on **Schedule 7.05(b)(i)** or a Compliance Certificate with respect to a prior period): (i) a complete and accurate list of all applied for or registered Patents, owned by any Obligor, including the jurisdiction and patent number, (ii) a complete and accurate list of all applied for or registered Trademarks, owned by any Obligor, including the jurisdiction, trademark application or registration number and the application or registration date, (iii) a complete and accurate list of all applied for or registered Copyrights, owned by any Obligor, (iv) a complete and accurate list of all material common-law Trademarks used by Borrower or any Subsidiary, (v) a complete and accurate list of all trade names used by Borrower or any Subsidiary, (vi) a complete and accurate list of all material domain names and URLs owned by Borrower or any Subsidiary, and (vii) a complete and accurate list of each material inbound and outbound license of Borrower or any Subsidiary;

(d) as soon as available, but in no event later than February 28th of each fiscal year of Borrower, a consolidated financial forecast for Borrower and its Subsidiaries for the following two (2) fiscal years (including, for the avoidance of doubt, the fiscal year in which such forecast is delivered), including forecasted consolidated balance sheets, consolidated statements of income and cash flows of Borrower and its Subsidiaries, it being recognized by the Lenders that such forecasts as they relate to future events are not to be viewed as fact and that factual results during the period or periods covered by such forecasts may differ from such forecasts;

(e) promptly after the same are released, copies of all press releases;

(f) promptly, and in any event within five (5) Business Days after receipt thereof by Borrower or any Subsidiary, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which Borrower or any Subsidiary may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of Borrower or any Subsidiary;

(g) the information regarding insurance maintained by the Obligors and their respective Subsidiaries as required under **Section 8.05**;

(h) promptly following Administrative Agent's request at any time, evidence of Borrower's compliance with **Section 10.01**;

(i) within five (5) days of delivery, copies of all statements, reports and notices (including board kits) made available to Borrower's Board, or holders of Borrower's Equity Interests; *provided*, *that*,

any such material may be redacted by Borrower to exclude information relating to the Lenders (including Borrower's strategy regarding the Loans)

(j) after Borrower becomes a Publicly Reporting Company, within five (5) days of filing, provide access (via posting and/or links on Borrower's web site) to all reports on Form 10-K and Form 10-Q filed with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange; and within five (5) days of filing, provide notice and access (via posting and/or links on Borrower's web site) to all reports on Form 8-K filed with the SEC, and copies of (or access to, via posting and/or links on Borrower's web site) all other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any of the functions of the SEC or with any national securities exchange; and

(k) promptly following Administrative Agent's request from time to time, such other information respecting the operations, properties, business or condition (financial or otherwise) of the Obligors pursuant to or in response to any environmental, social and governance policies and questionnaires of Administrative Agent or any Lender.

Documents required to be delivered pursuant to **Section 8.01(a)(ii)**, **Section 8.01(b)(ii)** or **Section 8.01(i)** may be delivered electronically and if so delivered, shall be deemed to have been delivered to, and received by, Administrative Agent and Lenders on the date (x) on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet, (y) on which such documents are posted on Borrower's behalf on Intralinks or another relevant website, if any, to which each Lender and Administrative Agent have access (whether a commercial or governmental third-party website or whether sponsored by Administrative Agent) or (z) on which Borrower has filed such reports with the SEC via the EDGAR filing system; *provided*, *that*, at the request of Administrative Agent, Borrower shall provide by electronic mail electronic versions (i.e., soft copies) of such documents.

8.02 Notices of Material Events.

(a) Borrower will furnish to Administrative Agent written notice of the following promptly after a Responsible Officer of Borrower or any Subsidiary first learns of the existence of:

(i) the occurrence of any Default;

(ii) notice of the occurrence of any event with respect to an Obligor's property or assets resulting in a Loss, to the extent not covered by insurance, aggregating $500,000 (or the Equivalent Amount in other currencies) or more;

(iii) (A) any proposed acquisition of stock, assets or property by Borrower or any Subsidiary that would reasonably be expected to result in environmental liability under Environmental Laws, and (B)(1) spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material required to be reported to any Governmental Authority under applicable Environmental Laws, and (2) all actions, suits, claims, notices of violation, hearings, investigations or proceedings pending, or to any Obligor's Knowledge, threatened in writing against or affecting Borrower or any of its Subsidiaries or with respect to the ownership, use, maintenance and operation of their respective businesses, operations or properties, relating to Environmental Laws or Hazardous Material;

(iv) the assertion in writing of any environmental matter by any Person against, or with respect to the activities of, Borrower or any of its Subsidiaries and any alleged violation of or non-compliance with any Environmental Laws or any permits, licenses or authorizations which could reasonably be expected to involve damages in excess of $500,000 other than any environmental matter or

alleged violation that, if adversely determined, could not (either individually or in the aggregate) have a Material Adverse Effect;

(v) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting Borrower or any of its Affiliates that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(vi) (A) on or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, a copy of such notice and (B) promptly, and in any event within ten days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto;

(vii) (A) the termination of any Material Agreement (other than upon the expiration thereof in accordance with its terms); (B) the receipt by Borrower or any of its Subsidiaries of a notice under any Material Agreement, the content of which could reasonably be expected to be materially adverse to Lenders or Administrative Agent; (C) the entering into of any new Material Agreement by Borrower or any Subsidiary; or (D) any amendment to a Material Agreement that is materially adverse to Lenders or Administrative Agent; *provided*, *that*, the notices required to be delivered pursuant to this **clause (vii)** may be delivered with Borrower's immediately subsequent quarterly Compliance Certificate unless any of the foregoing events could reasonably be expected to have a Material Adverse Effect;

(viii) the reports and notices as required by the Security Documents;

(ix) concurrently with the delivery of any financial statements pursuant to **Section 8.01**, notice of any material change in accounting policies or financial reporting practices by Borrower or any Subsidiary;

(x) promptly after the occurrence thereof, notice of any labor controversy resulting in or reasonably expected to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving an Obligor, in each case, which could reasonably be expected to result in a Material Adverse Effect;

(xi) a licensing agreement or arrangement entered into by Borrower or any Subsidiary in connection with any infringement or alleged infringement of the Intellectual Property of another Person; and

(xii) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this **Section 8.02(a)** shall be accompanied by a statement of a financial officer or other executive officer of Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

(b) Borrower will furnish to Administrative Agent written notice of any change to any Obligor's ownership of Deposit Accounts, Securities Accounts and Commodity Accounts, by delivering to Administrative Agent an updated Schedule 7 to the Security Agreement setting forth a complete and correct list of all such accounts within ten (10) days of such change.

(c) Borrower promptly will furnish to Administrative Agent such other information respecting the operations, properties, business or condition (financial or otherwise) of Borrower and its Subsidiaries (including with respect to the Collateral) as Administrative Agent may from time to time reasonably request in writing.

8.03 Existence; Conduct of Business. Such Obligor will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; *provided*, *that*, the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations. Such Obligor will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (a) all federal income and other material Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful claims for labor, materials and supplies which, if unpaid, could reasonably be expected to become a Lien upon any properties or assets of Borrower or any Subsidiary, except to the extent such federal income and other material Taxes, fees, assessments or governmental charges or levies, or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien; and (c) all Indebtedness other than Permitted Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

8.05 Insurance. Such Obligor will, and will cause each of its Subsidiaries to, maintain insurance with financially sound and reputable insurance companies in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations, it being understood and agreed that the insurance held by Borrower on the Closing Date is deemed to fulfill this requirement on the Closing Date. Upon the written request of Administrative Agent or the Majority Lenders, such Obligor shall furnish Administrative Agent from time to time with full information as to the insurance carried by it and its Subsidiaries and, if so requested, copies of all such insurance policies. Such Obligor also shall furnish to Administrative Agent from time to time upon the request of Administrative Agent or the Majority Lenders a certificate from such Obligor's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. Such Obligor shall use commercially reasonable efforts to ensure, or cause others to ensure, that all insurance policies required under this **Section 8.05** shall provide that they shall not be terminated or cancelled without at least thirty (30) days' (or ten (10) days' in the case of nonpayment of premium) prior written notice to such Obligor and Administrative Agent. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Secured Parties to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case at the expense of such Obligor (payable on demand). The amount of any such expenses shall accrue interest at the Default Rate if not paid on demand, and shall constitute "Obligations."

8.06 Books and Records; Inspection Rights.

(a) Such Obligor will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made sufficient for the preparation of financial statements in accordance with GAAP.

(b) Such Obligor will, and will cause each of its Subsidiaries to, permit any representatives designated by Administrative Agent and each VCOC Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, to inspect its facilities and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and intervals (but not more often than once per quarter unless an Event of Default has occurred and is continuing) as Administrative Agent or a VCOC Lender, as applicable, may request; *provided*, *that*, Administrative Agent and each VCOC Lender shall use their commercially reasonable efforts to exercise their rights under this **Section 8.06(b)**, together with any other rights under **Section 8.06** and **Section 8.15**, in conjunction with Administrative Agent and each other Lender or VCOC Lender, as applicable.

(c) Administrative Agent and each VCOC Lender, and any representatives designated by Administrative Agent and each VCOC Lender (as applicable), shall be entitled to consult with and advise management of the Obligors on matters relating to the operation and business of such Obligors, including management's proposed annual operating plans and budgets, and management will use commercially reasonable efforts to make itself available to meet with Administrative Agent or such VCOC Lender, or any representatives designated by Administrative Agent or such VCOC Lender, regularly during each year at the Obligors' facilities at mutually agreeable times for such consultation and advice and to review progress in achieving said plans; *provided*, *that*, such meetings do not cause any material disruption of the business; *provided*, *further*, *that*, Administrative Agent and each VCOC Lender shall use their commercially reasonable efforts to exercise their rights under this **Section 8.06(c)**, together with any other rights under **Section 8.06** and **Section 8.15**, in conjunction with Administrative Agent and each other Lender or VCOC Lender, as applicable.

(d) Upon prior written request, such Obligor shall permit each VCOC Lender or any representative designated by each VCOC Lender to attend all meetings of its Board as a non-voting observer, except that such representative may be excluded from access to such meeting (or portion thereof) or any material during any such meeting if its Board determines in good faith, upon advice of counsel, that such exclusion is reasonably necessary to preserve attorney-client privilege or to protect highly confidential proprietary information of such Obligor. Upon reasonable notice and at a scheduled meeting of its Board or such other time, if any, as such Board may determine in its sole discretion (but no more than one (1) time per year, unless an Event of Default has occurred and is continuing), such VCOC Lender or such representative may address its Board with respect to the applicable VCOC Lender's concerns regarding significant business issues facing such Obligor; *provided*, *that*, each VCOC Lender shall use their commercially reasonable efforts to exercise their rights under this **Section 8.06(d)**, together with any other rights under **Section 8.06** and **Section 8.15**, in conjunction with Administrative Agent and each other Lender or VCOC Lender, as applicable.

(e) The Obligors shall pay all documented out-of-pocket costs of all such inspections and meetings; *provided*, *that*, so long as no Event of Default has occurred and is continuing, (i) in the case of inspections, the Obligors shall not be required to pay such expenses for more than one (1) inspection for each fiscal year and (ii) in the case of meetings, the Obligors shall not be obligated to pay such expenses for more than one (1) meeting per fiscal year.

(f) If Administrative Agent's or any VCOC Lender's outside counsel determines in writing that other rights of consultation are necessary under applicable legal authorities promulgated after the Closing Date to preserve the qualification of Administrative Agent's, such VCOC Lender's or any Lender's investment as a "venture capital investment" for purposes of ERISA, the Obligors will work in good faith to agree to an amendment to this **Section 8.06** to reflect such other rights at such VCOC Lender's sole expense.

8.07 Compliance with Laws and Other Obligations. Such Obligor will, and will cause each of its Subsidiaries to, (a) comply in all material respects with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including Environmental Laws) and (b) comply in all material respects with all terms of Indebtedness and all other Material Agreements, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

8.08 Maintenance of Properties, Etc.

(a) Such Obligor shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its properties necessary or useful in the proper conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted.

(b) Without limiting the generality of **Section 8.08(a)**, each Obligor shall comply with each of the following covenants with respect to the Borrower Lease:

(i) Borrower shall diligently perform and timely observe, in all material respects, all of the terms, covenants and conditions of the Borrower Lease on the part of Borrower to be performed and observed prior to the expiration of any applicable grace period therein provided and do everything necessary to preserve and to keep unimpaired and in full force and effect the Borrower Lease.

(ii) Borrower shall promptly notify Administrative Agent of the giving of any written notice by Borrower Landlord to Borrower of any default by Borrower thereunder, and promptly deliver to Administrative Agent a true copy of each such notice.

(iii) Subject to the terms and requirements of the Borrower Lease, within ten (10) days after receipt of written request by Administrative Agent or the Lenders, Borrower shall use reasonable efforts to obtain from Borrower Landlord under the Borrower Lease and furnish to Administrative Agent an estoppel certificate from Borrower Landlord stating the date through which rent has been paid and whether or not, to Borrower Landlord's knowledge, there are any defaults thereunder and specifying the nature of such claimed defaults, if any, and such other matters as Administrative Agent or the Lenders may reasonably request or in the form required pursuant to the terms of the Borrower Lease. Borrower shall furnish to Administrative Agent all information that Administrative Agent or the Lenders may reasonably request from time to time, but in no event more than once per fiscal quarter unless an Event of Default has occurred and is continuing, in the possession of Borrower (or reasonably available to Borrower) concerning the Borrower Lease and Borrower's compliance with the Borrower Lease.

(iv) Borrower, promptly upon learning that Borrower Landlord has failed to perform the material terms and provisions under the Borrower Lease and immediately upon learning of a rejection or disaffirmance or purported rejection or disaffirmance of the Borrower Lease pursuant to any state or federal bankruptcy law, shall notify Administrative Agent thereof. Borrower shall promptly notify Administrative Agent of (A) any request that any party to the Borrower Lease makes for arbitration or other dispute resolution procedure pursuant to the Borrower Lease, (B) the commencement of any such arbitration or other dispute resolution procedure, and (C) material developments in such arbitration or other dispute resolution procedure. Borrower hereby authorizes Administrative Agent and the Lenders to attend any such arbitration or dispute resolution, and upon the occurrence and during the continuance of an Event of Default participate in any such arbitration or dispute resolution but such participation shall not be to the exclusion of Borrower; *provided*, *however*, *that*, in any case, Borrower shall consult with Administrative Agent with respect to the matters related thereto. Borrower shall deliver to Administrative Agent a copy of the determination of each such arbitration or dispute resolution mechanism promptly upon receipt thereof.

(v) Promptly upon obtaining knowledge of any filing by or against Borrower Landlord of a petition under the Bankruptcy Code, Borrower shall notify Administrative Agent in writing, setting forth the court in which such petition was filed and the relief sought in such filing, in each case to the extent such information is available to Borrower. Borrower shall promptly deliver to Administrative Agent any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating to such petition.

If Borrower shall be in default under the Borrower Lease, Administrative Agent and the Lenders shall have the right (but not the obligation) to cause the default or defaults under the Borrower Lease to be remedied and otherwise exercise any and all rights of Borrower under the Borrower Lease, as may be necessary to prevent or cure any default. Administrative Agent and the Lenders shall have the right to enter all or any portion of the Property, at such times and in such manner as Administrative Agent or the Majority Lenders reasonably deem necessary, to prevent or to cure any such default. Without limiting the foregoing, upon any such default, Borrower shall promptly execute, acknowledge and deliver to Administrative Agent such instruments as may reasonably be required of Borrower to permit Administrative Agent and the Lenders to cure any default under the Borrower Lease or permit Administrative Agent and the Lenders to take such other action required to enable Administrative Agent and the Lenders to cure or remedy the matter in default and preserve the security interest of the Administrative Agent, on behalf of the Secured Parties, under the Loan Documents with respect to the Borrower Facility. Any amounts paid by Administrative Agent or any Lender pursuant to this **Section 8.08(b)** shall be payable on demand by Obligors, shall accrue interest at the Default Rate if not paid on demand, and shall constitute "Obligations" but shall not, for the avoidance of doubt, constitute "Loans" or be deemed to reduce the Commitments.

If Administrative Agent, any Lender or any of their respective designees shall acquire or obtain a new Borrower Lease following a termination of the Borrower Lease, then Borrower shall have no right, title or interest whatsoever in or to such new Borrower Lease, or any proceeds or income arising from the estate arising under any such new Borrower Lease, including from any sale or other disposition thereof. Administrative Agent, such Lender or such designee shall hold such new Borrower Lease free and clear of any right or claim of Borrower.

8.09 Licenses. (a) Such Obligor shall, and shall cause each of its Subsidiaries to, obtain, maintain and comply with all material licenses, authorizations, consents, filings, exemptions, registrations and other Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Promptly after entering into or becoming bound by any inbound license or other similar agreement (other than over-the-counter software that is commercially available to the public), the failure, breach or termination of which could reasonably be expected to cause a Material Adverse Effect or a material adverse effect on the commercialization of any material product of, or performance of any material service by, such Obligor or any of its Subsidiaries, such Obligor shall: (i) provide written notice to Administrative Agent of the material terms of such license or agreement with a description of its likely impact on such Obligor's or Subsidiary's business or financial condition and (ii) if the party to such license or agreement is an Obligor, in good faith take such actions as Administrative Agent may reasonably request to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for (A) such Obligor's interest in such licenses or contract rights to be deemed Collateral and for Administrative Agent to have a security interest therein that might otherwise be restricted by the terms of the applicable license or agreement, whether now existing or entered into in the future, and (B) Administrative Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Administrative Agent's exercise of its rights and remedies under this Agreement and the other Loan

Documents; *provided*, *however*, *that*, the failure to obtain any such consent or waiver shall not in and of itself constitute a Default under this Agreement.

8.10 Action under Environmental Laws. Such Obligor shall, and shall cause each of its Subsidiaries to, upon becoming aware of the presence of any Hazardous Materials or the existence of any environmental liability under applicable Environmental Laws with respect to their respective businesses, operations or properties, take all actions, at their cost and expense, as shall be necessary or advisable to investigate and clean up the condition of their respective businesses, operations or properties, including all required removal, containment and remedial actions, and restore their respective businesses, operations or properties to a condition in compliance with applicable Environmental Laws.

8.11 Use of Proceeds. Such Obligor will, and will cause each of its Subsidiaries to, use the proceeds of the Loans only as provided in **Section 2.04**. Such Obligor will, and will cause each of its Subsidiaries to, ensure that no part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

8.12 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **Subsidiary Guarantors**. Such Obligor will take such action, and will cause each of its Subsidiaries to take such action, from time to time as shall be necessary to ensure that all Subsidiaries (other than any Excluded Subsidiary not required to be a Subsidiary Guarantor under **Section 8.12(b)(i)**), are "Subsidiary Guarantors" hereunder. Without limiting the generality of the foregoing, in the event that Borrower or any of its Subsidiaries shall form or acquire any new Subsidiary (other than any new Excluded Subsidiary not required to be a Subsidiary Guarantor under **Section 8.12(b)(i)**), such Obligor and its Subsidiaries will promptly and in any event within thirty (30) days (or such longer time as consented to by the Majority Lenders in writing) of the formation or acquisition of such Subsidiary (it being understood that any Subsidiary ceasing to be an Excluded Subsidiary but remaining a Subsidiary shall be deemed to be the acquisition of a Subsidiary for purposes hereof):

(i) cause such new Subsidiary to become a "Subsidiary Guarantor" hereunder, and a "Grantor" under the Security Agreement, pursuant to a Guarantee Assumption Agreement;

(ii) take such action or cause such Subsidiary to take such action (including delivering such shares of stock together with undated transfer powers executed in blank) as shall be necessary to create and perfect valid and enforceable first priority (subject to Permitted Priority Liens) Liens on substantially all of the property of such new Subsidiary as collateral security for the obligations of such new Subsidiary hereunder;

(iii) to the extent that the parent of such Subsidiary is not a party to the Security Agreement or has not otherwise pledged Equity Interests in its Subsidiaries in accordance with the terms of the Security Agreement and this Agreement, cause the parent of such Subsidiary to execute and deliver a pledge agreement in favor of the Secured Parties in respect of all outstanding issued shares of such Subsidiary; and

(iv) deliver such evidence of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01** or as Administrative Agent or the Majority Lenders shall have requested.

(b) **Excluded Subsidiaries**.

(i) In the event that, at any time, Excluded Subsidiaries that are not Obligors have, in the aggregate, (A) total Revenues constituting five percent (5.00%) or more of the total Revenues of Borrower and its Subsidiaries on a consolidated basis, or (B) total assets constituting five percent (5.00%) or more of the total assets of Borrower and its Subsidiaries on a consolidated basis, promptly (and, in any event, within thirty (30) days after such time (or such longer time as consented to in writing by Administrative Agent)) Obligors shall cause one or more of such Excluded Subsidiaries to become Subsidiary Guarantors in the manner set forth in **Section 8.12(a)**, such that, after such Subsidiaries become Subsidiary Guarantors, the non-guarantor Excluded Subsidiaries in the aggregate shall cease to have Revenues or assets, as applicable, that meet the thresholds set forth in **clauses (A)** and **(B)** above; *provided*, *that*, no Excluded Subsidiary shall be required to become a Subsidiary Guarantor if doing so would result in material adverse tax consequences for Borrower and its Subsidiaries, taken as a whole.

(ii) With respect to each First-Tier Excluded Subsidiary, such Obligor shall grant a security interest and Lien in sixty five percent (65.00%) of each class of voting Equity Interests and 100% of all other Equity Interests in such First-Tier Excluded Subsidiary in favor of the Secured Parties as Collateral for the Obligations, in each case including entering into any necessary local law security documents and delivery of certificated securities issued by such First-Tier Excluded Subsidiary as required by this Agreement or the Security Agreement. Without limiting the generality of the foregoing, in the event that any Obligor shall form or acquire any new Subsidiary that is a First-Tier Excluded Subsidiary, such Obligor will promptly and in any event within thirty (30) days of the formation or acquisition of such Subsidiary (or such longer time as consented to by Administrative Agent in writing) grant a security interest and Lien in sixty five percent (65.00%) of each class of voting Equity Interests and one hundred percent (100.00%) of all other Equity Interests in such First-Tier Excluded Subsidiary in favor of the Secured Parties as Collateral for the Obligations, in each case including entering into any necessary local law security documents and delivery of certificated securities issued by such First-Tier Excluded Subsidiary as required by this Agreement or the Security Agreement.

(iii) For the purposes of this **Section 8.12(b)**, the determination of whether a "material adverse tax consequence" shall be deemed to result from any Foreign Subsidiary becoming a Subsidiary Guarantor shall be made by Administrative Agent in its reasonable discretion, following consultation with Borrower, taking into consideration and weighing, among others, the following relevant factors: (1) the magnitude of an increase in Borrower's tax liability or a reduction in Borrower's net operating loss carryforward, taken as a whole; (2) the amount of revenues generated by or assets accumulated at such Foreign Subsidiary compared with those generated by or accumulated at the Obligors; (3) whether the Loans are over- or under-collateralized; (4) the financial performance of Borrower and its Subsidiaries, taken as a whole, and the Obligors' ability to perform the Obligations (other than Warrant Obligations) at such time; and (5) the cost to Borrower and its Subsidiaries balanced against the practical benefit to the Lenders (it being understood that the Administrative Agent shall give heavier weight to the factors set forth in **clauses (2)** and **(3)**).

(c) **Further Assurances**. Such Obligor will, and will cause each of its Subsidiaries to, take such action from time to time as shall reasonably be requested by Administrative Agent or the Majority Lenders to effectuate the purposes and objectives of this Agreement.

Without limiting the generality of the foregoing, each Obligor will, and will cause each Person that is required to be a Subsidiary Guarantor or whose voting Equity Interests are required to be pledged to, take such action from time to time (including executing and delivering such assignments, security agreements, control agreements and other instruments) as shall be reasonably requested by Administrative Agent or the Majority Lenders in writing to create, in favor of the Secured Parties, perfected security interests and Liens

in substantially all of the property of such Obligor as collateral security for the Obligations (other than Warrant Obligations); *provided*, *that*, (x) any such security interest or Lien shall be subject to the relevant requirements of the Security Documents; and (y) no actions in any jurisdiction outside the United States shall be required in order to create any security interests in immaterial assets, including immaterial Intellectual Property; *provided*, *further*, *that*, notwithstanding any provision under this Agreement or the other Loan Documents to the contrary, Borrower and its Subsidiaries shall not be responsible for legal and filing costs, fees, expenses and other amounts in excess of $50,000 in respect of actions required under this **Section 8.12** for each foreign jurisdiction, or $100,000 in the aggregate for all foreign jurisdictions.

(d) The Obligors shall execute and deliver to Administrative Agent Short-Form IP Security Agreements regarding all incremental applied-for or registered Intellectual Property within thirty (30) days of Administrative Agent's reasonable request.

8.13 Termination of Non-Permitted Liens. In the event that Borrower or any of its Subsidiaries shall become aware or be notified by Administrative Agent or any Lender of the existence of any outstanding Lien against any Property of Borrower or any of its Subsidiaries, which Lien is not a Permitted Lien, the applicable Obligor shall, and shall cause its Subsidiaries to, use its best efforts to promptly terminate or cause the termination of such Lien.

8.14 Intellectual Property. Such Obligor shall use commercially reasonable efforts to renew, prosecute, enforce and maintain its Obligor Intellectual Property, excluding (i) the renewal, prosecution and maintenance of its Obligor Intellectual Property that in the commercially reasonable business judgment of such Obligor is not (A) necessary or material for the conduct of the businesses of the Obligors or (B) material to the assets or value of such Obligor and (ii) the prosecution of its Obligor Intellectual Property for which such Obligor has a reasonable, good faith business purposes for not prosecuting.

8.15 Board Observation Rights. Borrower shall, concurrently with delivery thereof to Borrower's Board, give a designated representative of the Lenders (who may change from time to time at the sole discretion of Administrative Agent) (the "***Representative***") copies of all notices, minutes, consents and other material that Borrower provides to its directors, and shall permit the Representative to attend all meetings of the Board as a non-voting observer, except that the Representative may be excluded from access to any material or meeting or portion thereof if the Board determines in good faith, upon advice of counsel, that such exclusion is reasonably necessary to preserve attorney-client privilege, to protect highly confidential proprietary information or to exclude information pertaining to Borrower's strategy regarding the Loans. Upon reasonable notice and at a scheduled meeting of the Board or such other time, if any, as the Board may determine in its sole discretion, the Borrower will allow the Representative to address the Borrower's Board with respect to a Lender's concerns regarding significant business issues facing Borrower.

8.16 Post-Closing Items.

(a) Within five (5) Business Days of the Closing Date (or such longer period as Administrative Agent may agree), Borrower shall deliver duly executed control agreements in favor of Administrative Agent, for the benefit of the Secured Parties, for all Deposit Accounts, Securities Accounts and Commodity Accounts (other than Excluded Accounts (as defined in the Security Agreement)) owned by the Obligors.

(b) Borrower shall use commercially reasonable efforts to cause the Borrower Landlord to execute and deliver to Administrative Agent, for the benefit of the Secured Parties, a Landlord Consent with respect to the Borrower Facility within thirty (30) days of the Closing Date (or such longer period as Administrative Agent may agree).

SECTION 9
NEGATIVE COVENANTS

Each Obligor covenants and agrees with Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and contingent indemnification obligations for which no claim has been made) have been paid in full indefeasibly in cash:

9.01 Indebtedness. Such Obligor will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) the Obligations;

(b) Indebtedness existing on the Closing Date and set forth on **Part II** of **Schedule 7.13(a)** and Permitted Refinancings thereof;

(c) Permitted Priority Debt;

(d) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of Borrower's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

(e) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by Borrower or any of its Subsidiaries in the ordinary course of business;

(f) Indebtedness of any Obligor to the extent the same is permitted as an Investment pursuant to **Section 9.05(e)** and **(f)**;

(g) Guarantees by (i) any Obligor of Indebtedness of any other Obligor and (ii) any Subsidiary not a Subsidiary Guarantor of Indebtedness of any other Subsidiary not a Subsidiary Guarantor;

(h) normal course of business equipment financings (including Capital Lease Obligations); provided, that (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto, and (ii) the aggregate outstanding principal amount of such Indebtedness does not exceed the greater of (A) $1,000,000 and (B) an amount equal to five percent (5.00%) of consolidated Revenues of Borrower and its Subsidiaries in the immediately preceding fiscal year, (or the Equivalent Amount in other currencies) at any time;

(i) unsecured Indebtedness incurred in connection with corporate credit cards, purchasing cards or bank card products in an aggregate principal amount at any time outstanding not to exceed the greater of (i) $500,000 and (ii) an amount equal to one percent (1.00%) of Borrower's operating expenses in the immediately preceding fiscal year;

(j) Indebtedness in respect of any agreement providing for treasury, depositary, or cash management services, including in connection with any automated clearing house transfers of funds or any similar transactions, securities settlements, foreign exchange contracts, assumed settlement, netting services, overdraft protections and other cash management, intercompany cash pooling and similar arrangements, in each case in the ordinary course of business;

(k) Indebtedness with respect to letters of credit outstanding; *provided*, *that*, the aggregate outstanding principal amount of such Indebtedness shall not exceed $500,000 at any time;

(l) (i) Indebtedness in an aggregate outstanding principal amount not to exceed $1,500,000 incurred, assumed or otherwise acquired in connection with a Permitted Acquisition (which may be Indebtedness existing prior to the Permitted Acquisition secured by the assets acquired as described in **Section 9.02(j)(ii)**), and (ii) and Permitted Refinancings thereof;

(m) obligations under bona fide time-based licenses of Borrower or any Subsidiary in the ordinary course of business;

(n) advance or deposits from customers or vendors received in the ordinary course of business and held with a deposit bank insured by the Federal Deposit Insurance Corporation;

(o) Indebtedness (other than for borrowed money) that may be deemed to exist pursuant to any bona fide guarantees, warranty or contractual service obligations, performance, surety, statutory, appeal, bid, prepayment guarantee, payment (other than payment of Indebtedness) or completion of performance guarantees or similar obligations incurred in the ordinary course of business;

(p) Indebtedness consisting of (i) the bona fide financing of insurance premiums or self-insurance obligations (which must be commercially reasonable and consistent with insurance practices generally) or (ii) take-or-pay obligations contained in supply or similar agreements, in each case, in the ordinary course of business;

(q) any indemnification, purchase price adjustment, earn-out or similar obligations incurred in connection with Investments permitted by **Section 9.03(e)** (but subject to the same monetary limits as described in **Section 9.03(e)**);

(r) workers' compensation claims, payment obligations in connection with health, disability or other types of social security benefits, unemployment or other insurance obligations, reclamation and statutory obligations, in each case incurred in the ordinary course of Borrower's or its Subsidiary's business; and

(s) other Indebtedness in an aggregate outstanding principal amount not to exceed $300,000 at any time;

9.02 Liens. Such Obligor will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of Borrower or any of its Subsidiaries existing on the Closing Date and set forth in **Part II** of **Schedule 7.13(b)**; *provided*, *that*, (i) no such Lien shall extend to any other property or asset of Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the Closing Date and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) Liens described in the definition of "Permitted Priority Debt";

(d) Liens securing Indebtedness permitted under **Section 9.01(h)**; *provided*, *that*, such Liens are restricted solely to the collateral described in **Section 9.01(h)**;

(e) Liens imposed by law which were incurred in the ordinary course of business, including (but not limited to) carriers', warehousemen's and mechanics' liens, liens relating to leasehold improvements and other similar liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the Property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Property subject to such liens and for which adequate reserves have been made if required in accordance with GAAP;

(f) Liens, pledges or deposits made in the ordinary course of business in connection with and to secure payment of workers' compensation, unemployment insurance or other similar social security legislation;

(g) Liens securing taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(h) servitudes, easements, rights of way, restrictions and other similar encumbrances on real Property imposed by applicable Laws and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of Borrower or any of its Subsidiaries;

(i) with respect to any real Property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real Property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real Property pursuant to applicable Laws; (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in applicable Laws, which, in the aggregate for **clauses (i)**, **(ii)** and **(iii)**, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of Borrower or any of its Subsidiaries; and (iv) leases or subleases granted in the ordinary course of business;

(j) bankers liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business;

(k) (i) Liens securing Indebtedness permitted in reliance on **Section 9.01(l);** *provided*, *that*, such Liens extend solely to the assets acquired in such Permitted Acquisition; and (ii) Liens on property acquired in and existing at the time of a Permitted Acquisition; *provided*, *that*, such Liens do not attach to any other property of any other Obligor or Subsidiary; and *provided*, *that*, such Liens are of the type otherwise permitted under this **Section 9.02**;

(l) non-exclusive licenses or sublicenses, leases or subleases of property (other than real Property or Intellectual Property) granted in the ordinary course of business of Borrower and its Subsidiaries, if the leases, subleases, licenses and sublicenses do not prohibit an Obligor from granting Administrative Agent or any Lender a security interest in such property;

(m) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under **Section 11.01(l)**;

(n) cash collateral arrangements made with respect to letters of credit permitted by **Section 9.01(k)** but not exceeding the amount of the Indebtedness permitted by **Section 9.01(k)**;

(o) Liens in connection with transfers permitted under **Section 9.09**; and

(p) other Liens encumbering assets with a fair market value not to exceed $100,000 in the aggregate in any fiscal year.

provided, *that*, no Lien otherwise permitted under any of the foregoing (other than **Section 9.02(a)** and **Section 9.02(o)**) shall apply to any Material Intellectual Property.

9.03 Fundamental Changes and Acquisitions. Such Obligor will not, and will not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) (iii) make any Acquisition or otherwise acquire any business or substantially all the property from, or capital stock of, or be a party to any acquisition of, any Person, except:

(a) Investments permitted under **Section 9.05(e)** and 9**.05(f)**;

(b) the merger, amalgamation or consolidation of any Subsidiary Guarantor with or into Borrower or any other Obligor (it being understood that, to the extent such merger, amalgamation or consolidation involves Borrower, Borrower shall be the surviving entity);

(c) the sale, lease, transfer or other disposition by any Subsidiary Guarantor of any or all of its property (upon voluntary liquidation or otherwise) to Borrower or any other Obligor; and

(d) the sale, transfer or other disposition of the capital stock of any Subsidiary Guarantor to Borrower or any other Obligor;

(e) Permitted Acquisitions in an amount not exceeding $25,000,000 (as measured by total purchase price) in the aggregate entered into by Borrower and its Subsidiaries during the term of this Agreement; and

(f) the Obligors may enter into Permitted Commercialization Arrangements.

9.04 Lines of Business. Such Obligor will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than the business engaged in on the Closing Date by Borrower or any Subsidiary or a business reasonably related, incidental or complimentary thereto or reasonable extensions thereof.

9.05 Investments. Such Obligor will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments outstanding on the Closing Date and identified in **Schedule 9.05**;

(b) operating deposit accounts with banks;

(c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business;

(d) Permitted Cash Equivalent Investments;

(e) Investments by Borrower or Subsidiary Guarantors in Subsidiary Guarantors;

(f) Investments by Borrower or Subsidiary Guarantors in Foreign Subsidiaries consisting of (i) cash and equipment only in an aggregate amount at any time outstanding (net of any intercompany loan repayments and returns of invested capital) not to exceed on the date any such Investment is made $1,000,000 or (ii) the transfer of Intellectual Property pursuant to a comprehensive plan that is approved by Borrower's Board and designed to increase the tax efficiency of Borrower and its Subsidiaries as a whole; *provided*, *that*, Majority Lenders shall have provided prior written consent thereto (Lenders agree to consider in good faith through negotiation with Borrower the advantages of such plan to Borrower and its shareholders compared to any potential loss in collateral value, priority of rights with respect to collateral or ability to enforce timely the Loan Documents for the Lenders and any related changes in creditworthiness of Borrower and the Subsidiary Guarantors, in each case, associated with any such transfer of Intellectual Property);

(g) Hedging Agreements entered into in the ordinary course of Borrower's financial planning solely to hedge currency risks (and not for speculative purposes) and in an aggregate net exposure amount for all such Hedging Agreements not in excess of $100,000 (or the Equivalent Amount in other currencies);

(h) Investments consisting of security deposits with utilities, landlords and other like Persons made in the ordinary course of business;

(i) employee loans, travel advances and guarantees in accordance with Borrower's usual and customary practices with respect thereto (if permitted by applicable law) which in the aggregate shall not exceed $200,000 outstanding at any time (or the Equivalent Amount in other currencies);

(j) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(k) Investments as part of a Permitted Commercialization Arrangement; *provided*, *that*, the value of the cash and tangible property components of such Investment shall not exceed $1,000,000 in the aggregate at any time outstanding for all such Permitted Commercialization Arrangements taken together;

(l) Investments permitted under **Section 9.03** (other than by reference to this **Section 9.05** or any clause hereof);

(m) Investments acquired as a result of a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence prior to the date of such Permitted Acquisition, in an aggregate amount not to exceed $1,000,000 at any time outstanding (or such higher threshold as consented to by Majority Lenders, such consent not to be unreasonably withheld), subject to the other limits on Investments set forth in this **Section 9.05**; and

(n) Investments permitted by Borrower's investment policy as in effect as of the date of this Agreement, with such changes thereto as shall be approved by Borrower's Board with the consent to Majority Lenders, which consent shall not be unreasonably withheld.

9.06 Restricted Payments. Such Obligor will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) Borrower may declare and pay dividends with respect to its capital stock payable solely in additional shares of its common stock;

(b) Borrower may purchase, redeem, retire, or otherwise acquire shares of its capital stock or other Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Equity Interests (other than Disqualified Equity Interests);

(c) Borrower may acquire (or withhold) its Equity Interests pursuant to any employee stock option or similar plan approved by Borrower's Board in order to pay withholding taxes for which Borrower is liable in respect of a current or former officer, director, employee, member of management or consultant upon such grant or award (or upon vesting or exercise thereof);

(d) Borrower may make payments pursuant to employee stock plans in an aggregate amount not to exceed the sum of $1,000,000 during the term of this Agreement;

(e) any Subsidiary Guarantor may make a Restricted Payment to any other Obligor; and

(f) any Subsidiary that is not an Obligor may make a Restricted Payment to any Obligor or any other Subsidiary.

9.07 Payments of Indebtedness. Such Obligor will not, and will not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (a) payments of the Obligations, (b) scheduled payments of other Indebtedness, (c) repayment of intercompany Indebtedness permitted in reliance upon **Section 9.01(f)** and (d) subject to any applicable terms of subordination, other Permitted Indebtedness.

9.08 Change in Fiscal Year. Such Obligor will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the Closing Date, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of Borrower.

9.09 Sales of Assets, Etc. Unless the prepayment required under **Section 3.03(b)(i)** simultaneously is made, such Obligor will not, and will not permit any of its Subsidiaries to, sell, lease, license, transfer, or otherwise dispose of any of its Property (including accounts receivable and Equity Interests of Subsidiaries) to any Person in one transaction or series of transactions (any thereof, an "***Asset Sale***"), except for any of the following:

(a) transfers of cash for equivalent value and inventory in the ordinary course of its business;

(b) sales or leases of inventory in the ordinary course of its business on ordinary business terms;

(c) development and other collaborative arrangements where such arrangements provide for the licenses or disclosure of Patents, Trademarks, Copyrights or other Intellectual Property rights in the ordinary course of business and consistent with general market practices where such license requires periodic payments based on per unit sales of a product over a period of time; *provided*, *that*, such licenses must be true licenses as opposed to licenses that are sales transactions in substance and that such licenses do not interfere in any respect with the ordinary conduct of, or materially detract from the value of, the business or assets of the Obligors and their Subsidiaries;

(d) transfers of Property by any Obligor to any other Obligor;

(e) a sale, lease, exclusive license, transfer or other disposition of any Property that is obsolete or worn out or no longer used or useful in connection with the business of Borrower or its Subsidiaries and is not material to the value of the business or assets of Borrower and its Subsidiaries;

(f) placements of specialized equipment for manufacturing components of the Product where Borrower retains title to such equipment, *provided*, *that*, to the extent such placements of equipment exceed $1,000,000 in aggregate fair market value, equipment with a fair market value exceeding such amount shall be (i) located at venues over which Borrower has delivered to Administrative Agent a Landlord Consent or similar landlord access agreement and Administrative Agent, on behalf of Secured Parties, has a perfected priority lien on such equipment (subject only to Liens described in **Section 9.02(e)**) and (ii) for venues outside the United States, only where the foreign jurisdiction provides lenders with rights to collateral not materially different from the rights provided to lenders under the Uniform Commercial Code and relevant real estate law in the United States;

(g) dispositions consisting of the sale, transfer, assignment or other disposition of unpaid and overdue accounts receivable in connection with the collection, compromise or settlement thereof in the ordinary course of business and not as part of a financing transaction;

(h) dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds (determined on an after-tax basis) of such disposition are applied to the purchase price of such replacement property within 180 days;

(i) dispositions resulting from casualty events;

(j) so long as no Event of Default has occurred and is continuing, non-exclusive licenses of Borrower's Intellectual Property to Foreign Subsidiaries that are terminable, at Majority Lenders' request, upon the occurrence of an Event of Default unless such Foreign Subsidiaries become Subsidiary Guarantors hereunder;

(k) licenses for the use of the Intellectual Property of Borrower or its Subsidiaries (but not to any of Borrower's Affiliates except for a Permitted Commercialization Arrangement Vehicle) that are approved by Borrower's Board and which would not result in a legal transfer of title of the licensed property, used either (i) for clinical indications other than epilepsy (which may be exclusive or non-exclusive licenses), (ii) for clinical indications for epilepsy within the United States (which may be non-exclusive licenses only), or (iii) for clinical indications for epilepsy outside the United States to distributors only (which may be non-exclusive licenses, or licenses that are exclusive in scope or geography only); *provided*, *that*, in each case such licenses do not interfere in any respect with the ordinary conduct of, or materially detract from the value of, the business or assets of Borrower and its Subsidiaries;

(l) nonexclusive licenses of Intellectual Property granted in the ordinary course of business; *provided*, *that*, such licenses do not interfere in any respect with the ordinary conduct of, or materially detract from the value of, the business or assets of Borrower and its Subsidiaries;

(m) any transaction permitted under **Section 9.03** or **9.05** (in each case, other than by reference to this **Section 9.09**); and

(n) the disposition of other Property (other than Intellectual Property); *provided*, *that*, (i) at least seventy five percent (75%) of the consideration paid in connection with each such disposition of other Property shall be cash proceeds paid contemporaneously with the consummation of such disposition and (ii) the aggregate net book value of all of the Property disposed of in reliance on this **clause (m)** in any fiscal year, taken together, shall not exceed $100,000.

9.10 Transactions with Affiliates. Such Obligor will not, and will not permit any of its Subsidiaries to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates; *provided*, *that*, the foregoing restriction shall not apply to the following:

(a) transactions between or among Obligors;

(b) any transaction permitted under **Section 9.01**, **9.05**, **9.06** or **9.09** (in each case, other than by reference to this **Section 9.10**);

(c) customary compensation and indemnification of, and other employment arrangements with, directors, officers and employees of Borrower or any Subsidiary in the ordinary course of business;

(d) Borrower may issue Equity Interests (other than Disqualified Equity Interests) to Affiliates in exchange for cash, *provided*, *that*, the terms thereof are no less favorable (including the amount of cash received by Borrower) to Borrower than those that would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of Borrower;

(e) transactions consented to by Majority Lenders, which consent shall not be unreasonably withheld, which increase the tax efficiency of Borrower and its Subsidiaries as a whole that are undertaken between Borrower and its Subsidiaries in good faith based on advice of external legal counsel and that comply with arm's length principles pursuant to Section 482 of the Code and regulations thereunder; and

(f) the transactions set forth on **Schedule 9.10**.

9.11 Restrictive Agreements. Such Obligor will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (a) restrictions and conditions imposed by law or by this Agreement and (b) Restrictive Agreements listed on **Schedule 7.15**.

9.12 Amendments to Material Agreements; Organizational Documents. Such Obligor will not, and will not permit any of its Subsidiaries to, (a) enter into any amendment to or modification of any Material Agreement which could reasonably be expected to be materially adverse to the Lenders or Administrative Agent or (b) terminate any Material Agreement (unless replaced with another agreement(s) that, viewed as a whole, is on the same or better terms for Borrower or such Subsidiary), without, in each case, the prior written consent of Administrative Agent (which consent shall not be unreasonably withheld or delayed). Such Obligor will not, and will not permit any of its Subsidiaries to, enter into any amendment to or modification of its organizational documents in a manner that could reasonably be expected to be materially adverse to the interests, or rights or remedies, of Administrative Agent and the Lenders.

9.13 Operating Leases. Such Obligor will not, and will not permit any of its Subsidiaries to, make any expenditures in respect of operating leases, except for:

(a) real estate operating leases;

(b) operating leases between Borrower and any of its wholly-owned Subsidiaries or between any of Borrower's wholly-owned Subsidiaries; and

(c) operating leases that would not cause Borrower and its Subsidiaries, on a consolidated basis, to make payments exceeding $250,000 (or the Equivalent Amount in other currencies) in any fiscal year.

9.14 Sales and Leasebacks. Except as disclosed on **Schedule 9.14** or as permitted by **Section 9.01(h)** or **Section 9.13**, such Obligor will not, and will not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (a) which Borrower or such Subsidiary has sold or transferred or is to sell or transfer to any other Person and (b) which Borrower or such Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.15 Hazardous Material. Such Obligor will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not reasonably be expected to result in a Material Adverse Change.

9.16 Accounting Changes. Such Obligor will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

9.17 Compliance with ERISA. Such Obligor will not, nor will it permit any of its Subsidiaries or any ERISA Affiliate to cause or suffer to exist (a) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event that would, in the aggregate, have a Material Adverse Effect. Such Obligor will not, nor will it permit any of its Subsidiaries or any ERISA Affiliate to cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

9.18 Use of Proceeds. Such Obligor shall not, nor shall it permit its Subsidiaries to, use any part of the proceeds of the Loans, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulation T, Regulation U and Regulation X.

9.19 Ownership of Subsidiaries. Notwithstanding any other provisions of this Agreement to the contrary, such Obligor shall not, and shall not permit any of its Subsidiaries to (a) permit any Person (other than any Obligor or any wholly-owned Subsidiary) to own any Equity Interests of any Subsidiary, except to qualify directors where required by applicable Law or to satisfy other requirements of applicable Law with respect to the ownership of Equity Interests of Foreign Subsidiaries, (b) issue or have outstanding any shares of Disqualified Equity Interests or (c) permit any Person (other than Administrative Agent) to possess any Lien on the Equity Interests of such Obligor or any Subsidiary.

SECTION 10
FINANCIAL COVENANTS

Each Obligor covenants and agrees with Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and contingent indemnification obligations for which no claim has been made) have been paid in full indefeasibly in cash:

10.01 Minimum Liquidity. The Obligors shall maintain at all times Liquidity in an amount which shall exceed (a) prior to the consummation of a Qualified IPO, $3,000,000, or (b) upon and at all times after the consummation of a Qualified IPO, $5,000,000.

10.02 Minimum Revenue. Borrower and its Subsidiaries shall have annual consolidated Revenue from sales and usage of the Product (for each respective calendar year, the "***Minimum Required Revenue***"):

(a) during the twelve month period beginning on January 1, 2021, of at least $43,000,000;

(b) during the twelve month period beginning on January 1, 2022, of at least $50,000,000;

(c) during the twelve month period beginning on January 1, 2023, of at least $60,000,000;

(d) during the twelve month period beginning on January 1, 2024, of at least $70,000,000;

(e) during each twelve month period beginning on January 1 of a given year thereafter, of at least $70,000,000.

SECTION 11
EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an "***Event of Default***":

(a) Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Obligor shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier;

(d) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Section 8.02**, **Section 8.03** (with respect to Borrower's existence), **Section 8.11**, **Section 8.12**, **Section 8.14**, **Section 9** or **Section 10**;

(e) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a)**, **(b)** or **(d)**) or any other Loan Document, and such failure shall continue unremedied for a period of twenty five (25) or more days after the earlier of the date on which (i) a Responsible Officer of any Obligor obtains Knowledge of such failure and (ii) written notice of such failure shall have been given to Borrower by Administrative Agent or any Lender;

(f) Borrower or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness;

(g) any material breach of, or "event of default" or similar event by Borrower or any Subsidiary under, any Material Agreement shall occur, which would give the counterparty to such Material Agreement

the right to terminate such Material Agreement pursuant to the terms thereof (after giving effect to any applicable grace or cure period and provided that such material breach, "event of default" or similar event is not being contested in good faith with reasonable basis by such Obligor), to the extent that (i) the Obligor has received written notice of (A) termination of such Material Agreement or (B) written notice of such material breach, "event of default", or similar event and written notice of the counterparty's intent to terminate such Material Agreement on the basis thereof and (ii) the counterparty to such Material Agreement has not waived such material breach, "event of default" or similar event;

(h) (i) any material breach of, or "event of default" or similar event under, the documentation governing any Material Indebtedness shall occur and such breach or "event of default" or similar event shall continue unremedied, uncured or unwaived after a period of five (5) Business Days after the expiration of any cure period thereunder, or (ii) any event or condition occurs (A) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided*, *that*, this **Section 11.01(h)** shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness and (y) the conversion of any Material Indebtedness into Equity Interests in accordance with its terms or the occurrence of any event that results in such Material Indebtedness becoming convertible into Equity Interests, so long as such Equity Interests are not Disqualified Equity Interests. Notwithstanding the foregoing or anything to the contrary contained herein or in any other Loan Document (including, for the avoidance of doubt, the PPP Consent), solely for the purposes of this **Section 11.01(h)** and not for any other purposes hereunder or under any other Loan Document, the PPP Loan shall not constitute Material Indebtedness.

(i) any Obligor:

(i) becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors;

(ii) commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so);

(iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property; or

(v) takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this **Section 11.01(i)** or **(j)**, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof;

(j) any petition is filed, application made or other proceeding instituted against or in respect of Borrower or any Subsidiary:

(i) seeking to adjudicate it an insolvent;

(ii) seeking a receiving order against it;

(iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and, in the case of each of the foregoing, such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of forty-five (45) days after the institution thereof; *provided*, *that*, if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against Borrower or such Subsidiary thereunder in the interim, such grace period will cease to apply; *provided*, *further*, *that*, if Borrower or such Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply;

(k) any other event occurs which, under the laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in either of **Section 11.01(i)** or **(j)**;

(l) one or more judgments or settlements for the payment of money in an aggregate amount in excess of $250,000 (or the Equivalent Amount in other currencies) (to the extent not fully covered (other than to the extent of customary deductibles not to exceed $250,000 in the aggregate) by independent third-party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage) shall be rendered against, or entered into by, any Obligor or any combination thereof and (i) the same shall remain undischarged for a period of forty five (45) consecutive days during which execution shall not be effectively stayed or (ii) any action shall be legally taken by a judgment or settlement creditor to attach or levy upon any assets of any Obligor to enforce any such judgment or settlement;

(m) an ERISA Event shall have occurred that, in the opinion of the Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of Borrower and its Subsidiaries in an aggregate amount exceeding (i) $250,000 in any year or (ii) $750,000 during the term of this Agreement;

(n) a Change of Control shall have occurred;

(o) a Material Adverse Change shall have occurred;

(p) (i) any Lien created by any of the Security Documents shall at any time (except as expressly permitted by the terms of any Loan Document or due to the failure of Administrative Agent to take any action within its control required by Administrative Agent to maintain perfection) not constitute a valid and perfected Lien on the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens), (ii) except for expiration in accordance with its terms, any of the Security

Documents or any Guarantee of any of the Obligations (including that contained in **Section 14**) shall for whatever reason cease to be in full force and effect, or (iii) any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 14**), or the enforceability thereof, shall be repudiated or contested by any Obligor; and

(q) any injunction, whether temporary or permanent, shall be rendered against any Obligor that prevents the Obligors from selling or manufacturing in the United States for more than forty five (45) consecutive calendar days (i) the Product or its commercially available successors, or (ii) any of their other material and commercially available products where the injunction on the sale or manufacture of such other material product could reasonably be expected to cause a Material Adverse Effect.

11.02 Remedies.

(a) Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(i)**, **Section 11.01(j)** or **Section 11.01(k)**), and at any time thereafter during the continuance of such event, the Majority Lenders may, by notice to Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable) (an "***acceleration***"), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations (other than Warrant Obligations) shall become due and payable immediately and the Obligors shall immediately pay all such Obligations, including the Back-End Facility Fee and an Acceleration Premium as calculated below, all without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

(b) Upon the occurrence of any Event of Default described in **Section 11.01(i)**, **Section 11.01(j)** or **Section 11.01(k)**, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations (other than Warrant Obligations), shall automatically become due and payable immediately (an "***acceleration***" and, together with any acceleration defined in **Section 11.02(a)**, each, an "***Acceleration***") and the Obligors shall immediately pay all such Obligations, including the Back-End Facility Fee and an Acceleration Premium as calculated below, all without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

(c) **Acceleration Premium Calculation**. The applicable "***Acceleration Premium***" shall be an amount calculated as follows:

(i) If the date of Acceleration occurs:

(A) on or prior to the fifth (5^{th}) Payment Date, the Acceleration Premium shall be an amount equal to twenty percent (20%) of the aggregate outstanding principal amount of the Loans subject to the Acceleration;

(B) after the fifth (5^{th}) Payment Date, and on or prior to the ninth (9^{th}) Payment Date, the Acceleration Premium shall be an amount equal to ten percent (10%) of the aggregate outstanding principal amount of the Loans subject to the Acceleration; and

(C) after the ninth (9^{th}) Payment Date, the Acceleration Premium shall be an amount equal to zero percent (0.00%) of the aggregate outstanding principal amount of the Loans subject to the Acceleration.

(ii) To determine the aggregate outstanding principal amount of the Loans subject to the Acceleration, and how many Payment Dates have occurred, as of any date of Acceleration, for purposes of this **Section 11.02(c)**:

(A) if, as of such date of Acceleration, Borrower shall have made only one Borrowing, the number of Payment Dates shall be deemed to be the number of Payment Dates that shall have occurred following the first Borrowing Date; and

(B) if, as of such date of Acceleration, Borrower shall have made more than one Borrowing, then the Acceleration Premium shall equal the sum of multiple Acceleration Premiums calculated with respect to the Loans of each Borrowing, each of which Acceleration Premiums shall be calculated based on solely the aggregate outstanding principal amount of the Loans borrowed in such Borrowing (and PIK Loans subsequently borrowed in respect of interest payments thereon), as though the applicable number of Payment Dates equals the number of Payment Dates that shall have occurred following the applicable Borrowing Date. In the case that the amount of the Loans subject to Acceleration does not equal the full principal amount of Loans outstanding, the amount of such payment shall be allocated to Loans made in the various Borrowings (and PIK Loans in respect thereof) in the order in which such Borrowings were made (i.e., first, to the outstanding principal amount of the Loans borrowed on the first Borrowing Date (and PIK Loans subsequently borrowed in respect of interest payments thereon), second, if any, to the outstanding principal amount of the Loans borrowed on the second Borrowing Date (and PIK Loans subsequently borrowed in respect of interest payments thereon) and third, if any, to the outstanding principal amount of the Loans borrowed on any subsequent Borrowing Dates (and PIK Loans subsequently borrowed in respect of interest payments thereon)).

(d) (i) For the avoidance of doubt, the Acceleration Premium and the Back-End Facility Fee that are payable upon Acceleration of the Loans shall be due and payable at any time the Loans become due and payable prior to the Stated Maturity Date for any reason whether due to Acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of notice to Borrower in accordance with **Section 11.02(a)**, or automatically, in accordance with **Section 11.02(b)**), whether by operation of law or otherwise (including where bankruptcy filings or the exercise of any bankruptcy right or power, whether in any plan of reorganization or otherwise, results or would result in a payment, discharge, modification or other treatment of the Loans or Loan Documents that would otherwise evade, avoid, or otherwise disappoint the expectations of Lenders in receiving the full benefit of their bargained-for Acceleration Premium and their bargained-for Back-End Facility Fee as provided herein and in the Fee Letter). The Obligors and Lenders acknowledge and agree that any Acceleration Premium and the Back-End Facility Fee due and payable in accordance with the Loan Documents shall not constitute unmatured interest, whether under section 502(b)(2) of the Bankruptcy Code or otherwise, but instead is reasonably calculated to ensure that the Lenders receive the benefit of their bargain under the terms of this Agreement, whether in a bankruptcy case or otherwise.

(ii) Each Obligor acknowledges and agrees that, prior to executing this Agreement, it has had the opportunity to review, evaluate and negotiate the Acceleration Premium calculation and the Back-End Facility Fee with its advisors and acknowledges that the Acceleration Premium is a reasonable approximation of Lenders' liquidated damages upon Acceleration and, accordingly, each Obligor will not contest or object to the reasonableness thereof. Each Obligor understands and acknowledges that Lenders have entered into this Agreement in reliance upon the Acceleration Premium and the Back-End Facility Fee. Each Obligor acknowledges and agrees that the Lenders shall be entitled to recover the full amount of the Obligations, including the Acceleration Premium and the Back-End Facility Fee in each and every circumstance in which such amount is due pursuant to or in connection with this Agreement and the Fee Letter, including in the case of any Obligor's bankruptcy filing, so that the Lenders shall receive the benefit of their bargain hereunder and otherwise receive full recovery of the agreed-upon return under every

possible circumstance, and Borrower hereby waives any defense to payment, whether such defense may be based in public policy, ambiguity, or otherwise. Each Obligor further acknowledges and agrees, and waives any argument to the contrary, that payment of such amounts does not constitute a penalty or an otherwise unenforceable or invalid obligation. Any damages that the Lenders may suffer or incur resulting from or arising in connection with any breach by Borrower shall constitute secured obligations owing to the Lenders.

For the avoidance of doubt, in the event of any Acceleration, interest pursuant to **Sections 3.02(a)** and **(b)** shall accrue on all Obligations (other than Warrant Obligations), including the Back-End Facility Fee and any Acceleration Premium, from and after the date such Obligations are due and payable until paid in full.

SECTION 12
ADMINISTRATIVE AGENT

12.01 Appointment and Duties.

(a) **Appointment of Administrative Agent**. Each Lender hereby irrevocably appoints CRG Servicing (together with any successor Administrative Agent pursuant to **Section 12.09**) as Administrative Agent hereunder and authorizes Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Obligor or any of their respective Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Administrative Agent under such Loan Documents, (iii) act as agent of such Lender for purposes of acquiring, holding, enforcing and perfecting all Liens granted by the Obligors on the Collateral to secure any of the Obligations (other than Warrant Obligations) and (iv) exercise such powers as are reasonably incidental thereto.

(b) **Duties as Collateral and Disbursing Agent**. Without limiting the generality of **Section 12.01(a)**, Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(i)**, **Section 11.01(j)** or **Section 11.01(k)** or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(i)**, **Section 11.01(j)** or **Section 11.01(k)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of acquiring, holding, enforcing and perfecting all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise, (vii) enter into any subordination agreement or intercreditor agreement with respect to Indebtedness of an Obligor, (viii) enter into non-disturbance agreements and similar agreements and (ix) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; *provided*, *however*, *that*, Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Administrative Agent and the Secured Parties for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by an Obligor with, and cash and Permitted Cash Equivalent Investments held by, such Lender, and may further authorize and direct any Lender to take further actions as collateral sub-

agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties**. Under the Loan Documents, Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Administrative Agent", the terms "agent", "administrative agent" and "collateral agent" and similar terms in any Loan Document to refer to Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender hereby waives and agrees not to assert any claim against Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in the foregoing **clauses (i)** through **(iii)**.

12.02 Binding Effect. Each Lender agrees that (a) any action taken by Administrative Agent or the Majority Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (b) any action taken by Administrative Agent in reliance upon the instructions of the Majority Lenders (or, where so required, such greater proportion) and (c) the exercise by Administrative Agent or the Majority Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, in each case, shall be authorized and binding upon all of the Secured Parties.

12.03 Use of Discretion. (a) **No Action without Instructions**. Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions**. Notwithstanding **Section 12.03(a)**, Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against Administrative Agent or any Related Person thereof or (ii) that is, in the opinion of Administrative Agent or its counsel, contrary to any Loan Document or applicable Requirement of Law.

12.04 Delegation of Rights and Duties. Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through or to any trustee, co-agent, sub-agent, employee, attorney-in-fact and any other Person (including any other Secured Party). Any such Person shall benefit from this **Section 12** to the extent provided by Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

12.05 Reliance and Liability. (a) Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Obligor) and (ii) rely and act upon any document and information and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) Neither Administrative Agent nor any of its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and each Obligor hereby waives and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Administrative Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Majority Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Administrative Agent, when acting on behalf of Administrative Agent);

(ii) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Person, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Administrative Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Obligor or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from Borrower or any Lender describing such Default or Event of Default clearly labeled “notice of default” (in which case Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in **clauses (i)** through **(iv)** above, each Lender and each Obligor hereby waives and agrees not to assert any right, claim or cause of action it might have against Administrative Agent based thereon.

12.06 Administrative Agent Individually. Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire Equity Interests of, engage in any kind of business with, any Obligor or Affiliate thereof as though it were not acting Administrative Agent and may receive separate fees and other payments therefor. To the extent Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “Lender”, “Majority Lender”, and any similar terms shall, except where otherwise expressly provided in any Loan Document, include Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively.

12.07 Lender Credit Decision. Each Lender acknowledges that it shall, independently and without reliance upon Administrative Agent, any Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by Administrative Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Obligor and make and continue to make its own credit decisions in connection with entering into, and taking or not

taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

12.08 Expenses; Indemnities. (a) Each Lender agrees to reimburse Administrative Agent and each of its Related Persons (to the extent not reimbursed by any Obligor) promptly upon demand for such Lender's Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Obligor) that may be incurred by Administrative Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify Administrative Agent and each of its Related Persons (to the extent not reimbursed by any Obligor), from and against such Lender's aggregate Proportionate Share of the liabilities (including Taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against Administrative Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any related document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Administrative Agent or any of its Related Persons under or with respect to any of the foregoing; *provided*, *however*, *that*, no Lender shall be liable to Administrative Agent or any of its Related Persons to the extent such liability is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Administrative Agent's or such Related Person's gross negligence or willful misconduct.

12.09 Resignation of Administrative Agent. (a) Administrative Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrower, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective. If Administrative Agent delivers any such notice, the Majority Lenders shall have the right to appoint a successor Administrative Agent. If, within thirty (30) days after the retiring Administrative Agent having given notice of resignation, no successor Administrative Agent has been appointed by the Majority Lenders that has accepted such appointment, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent from among the Lenders. Each appointment under this **Section 12.09(a)** shall be subject to the prior consent of Borrower, which may not be unreasonably withheld but shall not be required during the continuance of an Event of Default.

(a) Effective immediately upon its resignation, (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the retiring Administrative Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Administrative Agent was, or because such Administrative Agent had been, validly acting as Administrative Agent under the Loan Documents and (iv) subject to its rights under **Section 12.03**, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent under the Loan Documents.

12.10 Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs Administrative Agent to release (or, in the case of **Section 12.10(b)(ii)**, release or subordinate) the following:

(a) any Subsidiary of Borrower from its guaranty of any Obligation of any Obligor if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Sale, such Subsidiary would not be required to guaranty any Obligations pursuant to **Section 8.12**; and

(b) any Lien held by Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by an Obligor in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to **Section 8.12** after giving effect to such Asset Sale have been granted, (ii) any property subject to a Lien described in **Section 9.02(d)** and (iii) all of the Collateral and all Obligors, upon (A) termination of the Commitments and (B) payment and satisfaction in full of all Loans and all other Obligations (other than Warrant Obligations).

Each Lender hereby directs Administrative Agent, and Administrative Agent hereby agrees, upon receipt of reasonable advance notice from Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this **Section 12.10**.

12.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to Administrative Agent) this **Section 12** and the decisions and actions of Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; *provided*, *however*, *that*, notwithstanding the foregoing, (a) such Secured Party shall be bound by **Section 12.08** only to the extent of liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Proportionate Share or similar concept, (b) each of Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

SECTION 13
MISCELLANEOUS

13.01 No Waiver. No failure on the part of Administrative Agent or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

13.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including by telecopy or electronic mail) delivered, if to Borrower, another Obligor, Administrative Agent or any Lender, to its address specified on the signature pages hereto or its Guarantee Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy or electronic mail shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication).

13.03 Expenses, Indemnification, Etc.

(a) **Expenses**. Borrower agrees to pay or reimburse (i) Administrative Agent and the Lenders for all of their reasonable and documented out-of-pocket costs and expenses (including the reasonable and documented fees and expenses of Moore & Van Allen PLLC, special counsel to Administrative Agent and the Lenders, and any sales, goods and services or other similar Taxes applicable thereto, and reasonable and documented printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) Administrative Agent and the Lenders for all of their documented out-of-pocket costs and expenses (including the fees and expenses of legal counsel) in connection with any enforcement or collection proceedings resulting from the occurrence of an Event of Default; *provided*, *however*, *that*, Borrower shall not be required to pay or reimburse any amounts pursuant to **Section 13.03(a)(i)(x)** in excess of the Expense Cap; *provided*, *further*, *that*, notwithstanding any provision under this Agreement or other Loan Document to the contrary, Borrower and its Subsidiaries shall not be responsible for legal and filing costs, fees, expenses and other amounts with respect to actions taken in foreign jurisdictions in excess of $50,000 in respect of actions required under **Section 8.12** for each foreign jurisdiction, or $100,000 in the aggregate for all foreign jurisdictions.

(b) **Indemnification**. Borrower hereby indemnifies Administrative Agent, each Lender, their respective Affiliates, and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an "***Indemnified Party***") from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind (including reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to this Agreement or any of the other Loan Documents or the transactions contemplated hereby or thereby or any use made or proposed to be made with the proceeds of the Loans, and any claim, investigation, litigation or proceeding or the preparation of any defense with respect thereto arising out of or in connection with or relating to any of the foregoing, whether or not any Indemnified Party is a party to an actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based in contract, tort or any other theory, and whether or not such investigation, litigation or proceeding is brought by Borrower, any of its shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. No Obligor shall assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions

contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans. Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a "***Borrower Party***." No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans; *provided*, *that*, the foregoing shall in no event limit any Borrower Party's indemnification obligations under this **clause (b)** to the extent such consequential, indirect, special or punitive damages are included in any third-party claim in connection with which such Indemnified Party is otherwise entitled to indemnification hereunder. This **Section 13.03(b)** shall not apply with respect to Taxes other than any Taxes that represent Claims, Losses, damages, or similar items, in each case, arising from any non-Tax claim.

13.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be modified or supplemented only by an instrument in writing signed by Borrower and the Majority Lenders (or Administrative Agent on behalf of such Majority Lenders); *provided*, *however*, *that*:

(a) the consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal, interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans;

(ii) amend the provisions of **Section 6**;

(iii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release all or substantially all of the Collateral subject thereto other than pursuant to the terms hereof or thereof; or

(iv) amend this **Section 13.04**; and

(b) no amendment, waiver or consent shall affect the rights or duties under any Loan Document of, or any payment to, Administrative Agent (or otherwise modify any provision of **Section 12** or the application thereof) unless in writing and signed by Administrative Agent in addition to any signature otherwise required.

Notwithstanding anything to the contrary herein, a Defaulting Lender shall not have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

13.05 Successors and Assigns.

(a) **General**. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents without the prior written consent of the Lenders. Any of the Lenders may assign or otherwise transfer any of their rights or obligations hereunder or under any of the other Loan Documents to an assignee (i) in accordance with the provisions of **Section 13.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 13.05(e)** or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 13.05(g)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section13.05(e)** and, to the extent expressly contemplated hereby, the Indemnified Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders**. Any of the Lenders may at any time assign to one or more Eligible Transferees (or, if an Event of Default has occurred and is continuing, to any Person) all or a portion of their rights and obligations under this Agreement (including all or a portion of the Commitment and the Loans at the time owing to it); *provided*, *however*, *that*, no such assignment shall be made to Borrower, an Affiliate of Borrower, or any employees or directors of Borrower at any time. Subject to the recording thereof by Administrative Agent pursuant to **Section 13.05(d)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lenders under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of a Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 13.03**. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 13.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 13.05(e)**.

(c) **Amendments to Loan Documents.** Each of Administrative Agent, the Lenders and the Obligors agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to Administrative Agent, the Lenders and the Obligors, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 13.05**.

(d) **Register**. Administrative Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices located within the United States a register for the recordation of the name and address of any assignee of the Lenders and the Commitment and outstanding principal amount (and stated interest) of the Loans owing thereto (the "***Register***"). The entries in the Register shall be conclusive, absent manifest error, and Borrower shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the "Lender" hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower, at any reasonable time and from time to time upon reasonable prior notice.

(e) **Participations**. Any of the Lenders may at any time, without the consent of, or notice to, Borrower, sell participations to any Person (other than a natural person or Borrower or any of Borrower's Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to

it); *provided*, *that* (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower shall continue to deal solely and directly with the Lenders in connection therewith.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided*, *that*, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 13.05(f)**, Borrower agrees that each Participant shall be entitled to the benefits of **Section 5.01** and **Section 5.03** (subject to the requirements and limitations therein, including the requirements of **Section 5.03(e)** (it being understood that the documentation required under **Section 5.03(e)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.05(b)**. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 4.04(a)** as though it were the Lender.

(f) **Limitations on Rights of Participants**. A Participant shall not be entitled to receive any greater payment under **Section 5.01** or **Section 5.03** than a Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); *provided*, *that*, no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitment, loan, letter of credit or other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letters of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(g) **Certain Pledges**. The Lenders may at any time pledge or assign a security interest in all or any portion of their respective rights under this Agreement and any other Loan Document to secure obligations of the Lenders, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided*, *that*, no such pledge or assignment shall release the Lenders from any of their obligations hereunder or substitute any such pledgee or assignee for the Lenders as a party hereto.

13.06 Survival. The obligations of the Obligors under **Section 5.01**, **Section 5.02**, **Section 5.03**, **Section 13.03**, **Section 13.05**, **Section 13.09**, **Section 13.10**, **Section 13.11**, **Section 13.12**, **Section 13.13**, **Section 13.14**, **Section 13.21** and **Section 14** (solely to the extent guaranteeing any of the obligations under the foregoing Sections) shall survive the repayment of the Obligations and the termination of the Commitment and, in the case of the Lenders' assignment of any interest in the Commitment or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In

addition, each representation and warranty made, or deemed to be made by a Notice of Borrowing, herein or pursuant hereto shall survive the making of such representation and warranty.

13.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

13.08 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

13.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; *provided*, *that*, Section 5-1401 of the New York General Obligations Law shall apply.

13.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction**. Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in Houston, Texas or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 13.10(a)** is for the benefit of Administrative Agent and the Lenders only and, as a result, neither Administrative Agent nor any Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by applicable Laws, Administrative Agent and the Lenders may take concurrent proceedings in any number of jurisdictions.

(b) **Alternative Process**. Nothing herein shall in any way be deemed to limit the ability of Administrative Agent or the Lenders to serve any such process or summonses in any other manner permitted by applicable law.

(c) **Waiver of Venue, Etc**. Each Obligor irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

13.11 Waiver of Jury Trial. EACH OBLIGOR AND EACH LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

13.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its Property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether

or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

13.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

13.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by applicable law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

13.15 No Fiduciary Relationship. Each Obligor acknowledges that Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

13.16 Confidentiality. Administrative Agent and the Lenders agree to maintain the confidentiality of the Confidential Information (as defined in the Non-Disclosure Agreement) in accordance with the terms of that certain confidentiality agreement dated June 17, 2014 between Borrower and Capital Royalty L.P (the "***Non-Disclosure Agreement***"). Any new Lender that becomes party to this Agreement hereby agrees to be bound by the terms of the Non-Disclosure Agreement. The parties to this Agreement shall prepare a mutually agreeable press release announcing the completion of this transaction on the Closing Date.

13.17 USA PATRIOT ACT. Administrative Agent and the Lenders hereby notify the Obligors that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Act***") or any Anti-Money Laundering Laws, they are required to obtain, verify and record information that identifies such Obligor, which information includes the name and address of such Obligor and other information that will allow such Lender to identify such Obligor in accordance with the Act or other Anti-Money Laundering Laws.

13.18 Maximum Rate of Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (in each case, the "***Maximum Rate***"). If the Lenders shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans, and not to the payment of interest, or, if the excessive interest exceeds such unpaid principal, the amount exceeding the unpaid balance shall be refunded to the applicable Obligor. In determining whether the interest contracted for, charged, or received by the Lenders exceeds the Maximum Rate, the Lenders may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Indebtedness and other obligations of any Obligor hereunder, or (d) allocate interest between portions of such Indebtedness and other obligations under the

Loan Documents to the end that no such portion shall bear interest at a rate greater than that permitted by applicable Law.

13.19 Redemption Price.

(a) For the avoidance of doubt, the Prepayment Premium (as a component of the Redemption Price) and Back-End Facility Fee shall be due and payable whenever so stated in this Agreement (and the Fee Letter, as applicable), or by any applicable operation of law, regardless of the circumstances causing any related payment prior to the Stated Maturity Date (other than an Acceleration, in which case the Acceleration Premium instead shall be payable).

(b) The Obligors and the Lenders acknowledge and agree that any Prepayment Premium due and payable in accordance with the Loan Documents shall not constitute unmatured interest, whether under section 502(b)(2) of the Bankruptcy Code or otherwise, but instead is reasonably calculated to ensure that the Lenders receive the benefit of their bargain under the terms of this Agreement.

(c) Each Obligor acknowledges and agrees that, prior to executing this Agreement, it has had the opportunity to review, evaluate and negotiate the Prepayment Premium calculation with its advisors and acknowledges that the Prepayment Premium is a reasonable approximation of the Lenders' liquidated damages upon repayment on any Redemption Date prior to the Stated Maturity Date and, accordingly, each Obligor will not contest or object to the reasonableness thereof. Each Obligor understands and acknowledges that the Lenders have entered into this Agreement in reliance upon the Prepayment Premium. Each Obligor acknowledges and agrees that the Lenders shall be entitled to recover the full amount of the Obligations, including the Prepayment Premium in each and every circumstance in which such amount is due pursuant to or in connection with this Agreement, so that the Lenders shall receive the benefit of their bargain hereunder and otherwise receive full recovery of the agreed-upon return under every possible circumstance, and Borrower hereby waives any defense to payment, whether such defense may be based in public policy, ambiguity, or otherwise. Each Obligor further acknowledges and agrees, and waives any argument to the contrary, that payment of such amounts does not constitute a penalty or an otherwise unenforceable or invalid obligation. Any damages that the Lenders may suffer or incur resulting from or arising in connection with any breach by Borrower shall constitute secured obligations owing to the Lenders.

13.20 Certain Waivers.

(a) **Real Property Security Waivers**.

(i) Each Obligor acknowledges that all or any portion of the Obligations (other than Warrant Obligations) may now or hereafter be secured by a Lien or Liens upon real property evidenced by certain documents including deeds of trust and assignments of rents. The Secured Parties may, pursuant to the terms of said real property security documents and applicable law, foreclose under all or any portion of one or more of said Liens by means of judicial or nonjudicial sale or sales. Each Obligor agrees that the Secured Parties may exercise whatever rights and remedies they may have with respect to said real property security, all without affecting the liability of any Obligor under the Loan Documents, except to the extent the Secured Parties realize payment by such action or proceeding. No election to proceed in one form of action or against any party, or on any obligation shall constitute a waiver of any Secured Party's rights to proceed in any other form of action or against any Obligor or any other Person, or diminish the liability of any Obligor, or affect the right of the Secured Parties to proceed against any Obligor for any deficiency, except to the extent the Secured Parties realize payment by such action, notwithstanding the effect of such action upon any Obligor's rights of subrogation, reimbursement or indemnity, if any, against Obligor or any other Person.

(ii) To the extent permitted under applicable law, each Obligor hereby waives any rights and defenses that are or may become available to such Obligor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code.

(iii) To the extent permitted under applicable law, each Obligor hereby waives all rights and defenses that such Obligor may have because the Obligations are or may be secured by real property. This means, among other things:

(A) the Secured Parties may collect from any Obligor without first foreclosing on any real or personal property collateral pledged by any other Obligor;

(B) If the Secured Parties foreclose on any real property collateral pledged by any Obligor:

(1) the amount of the Loans may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price;

(2) the Secured Parties may collect from each Obligor even if the Secured Parties, by foreclosing on the real property collateral, have destroyed any right that such Obligor may have to collect from any other Obligor; and

(3) to the extent permitted under applicable law, this is an unconditional and irrevocable waiver of any rights and defenses each Obligor may have because the Obligations are or may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(iv) To the extent permitted under applicable law, each Obligor waives all rights and defenses arising out of an election of remedies by the Secured Parties, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Obligor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

(b) **Waiver of Marshaling**. Without limiting the foregoing in any way, each Obligor hereby irrevocably waives and releases, to the extent permitted by Law, any and all rights it may have at any time (whether arising directly or indirectly, by operation of law, contract or otherwise) to require the marshaling of any assets of any Obligor, which right of marshaling might otherwise arise from any payments made or obligations performed.

13.21 Original Issue Discount. For purposes of Sections 1272, 1273 and 1275 of the Code, each Loan is being issued with original issue discount; please contact Rebecca Kuhn, Chief Financial Officer, Vice President, Finance & Administration, 455 N Bernardo Avenue, Mountain View, CA 94043, telephone: (650) 237-2739 to obtain information regarding the issue price, the amount of original issue discount and the yield to maturity.

13.22 Releases of Guarantees and Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, each Lender agrees, and the Administrative Agent is hereby irrevocably authorized by each Lender and given a limited power of attorney by each Lender to perform the actions as described hereafter in this

Section 13.22 (without requirement of notice to or consent of any Lender except as expressly required by **Section 13.04**), to take any action reasonably requested by Borrower having the effect of releasing any Collateral or Obligations (i) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to by the Lenders or (ii) under the circumstances described in **clause (b)** below.

(b) At such time as the Loans and the other Obligations (other than the Warrant Obligations and inchoate indemnity obligations) under the Loan Documents shall have been indefeasibly paid in full and the Commitments have been terminated, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Obligor under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

SECTION 14
GUARANTEE

14.01 The Guarantee. The Subsidiary Guarantors hereby jointly and severally guarantee to the Secured Parties and their respective successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans and all fees and other amounts from time to time owing to the Secured Parties by Borrower under this Agreement or under any other Loan Document and by any other Obligor under any of the Loan Documents, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "***Guaranteed Obligations***"). The Subsidiary Guarantors hereby further jointly and severally agree that if Borrower shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Subsidiary Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

14.02 Obligations Unconditional; Subsidiary Guarantor Waivers. The obligations of the Subsidiary Guarantors under **Section 14** are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Borrower under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this **Section 14.02** that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above, and each Subsidiary Guarantor hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

(a) any change in the time, including the time for any performance or compliance with, place or manner of payment of, or in any other term of, the Guaranteed Obligations or any other obligation of any Obligor under any Loan Document, or any rescission, waiver, amendment or other modification of any Loan Document or any other agreement, including any increase in the Guaranteed Obligations resulting from any extension of additional credit or otherwise;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(d) any taking, exchange, substitution, release, impairment or non-perfection of any Collateral, any taking, release, impairment, amendment, waiver or other modification of any guaranty, for the Guaranteed Obligations or any lien or security interest granted to, or in favor of, the Secured Parties as security for any of the Guaranteed Obligations shall fail to be perfected; and

(e) the failure of any other Person to execute or deliver this Agreement, any Loan Document or any other guaranty or agreement or the release or reduction of liability of any Obligor or other guarantor or surety with respect to the Guaranteed Obligations.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against Borrower under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

14.03 Reinstatement. The obligations of the Subsidiary Guarantors under this **Section 14.03** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Secured Parties on demand for all reasonable costs and expenses (including fees of counsel) incurred by the Lenders in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

14.04 Subrogation. The Subsidiary Guarantors hereby jointly and severally agree that until the payment and satisfaction in full of all Guaranteed Obligations (other than Warrant Obligations) and the expiration and termination of the Commitments under this Agreement, they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in **Section 14**, whether by subrogation or otherwise, against Borrower or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

14.05 Remedies. The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors and the Secured Parties, the obligations of Borrower under this Agreement and under the other Loan Documents (other than any Warrant Obligations) may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 14** notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of **Section 14**.

14.06 Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this **Section 14** constitutes an instrument for the payment of money, and consents and

agrees that the Secured Parties, at their sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.

14.07 Continuing Guarantee. The guarantee in this **Section 14** is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

14.08 Rights of Contribution. The Subsidiary Guarantors hereby agree, as between themselves, that if any Subsidiary Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Subsidiary Guarantor of any Guaranteed Obligations, each other Subsidiary Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Subsidiary Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Subsidiary Guarantor to any Excess Funding Guarantor under this **Section 14.08** shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Subsidiary Guarantor under the other provisions of this **Section 14** and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

For purposes of this **Section 14.08**, (a) "***Excess Funding Guarantor***" means, in respect of any Guaranteed Obligations, a Subsidiary Guarantor that has paid an amount in excess of its Pro Rata Share of such Guaranteed Obligations, (b) "***Excess Payment***" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guaranteed Obligations and (c) "***Pro Rata Share***" means, for any Subsidiary Guarantor, the ratio (expressed as a percentage) of (i) the amount by which the aggregate present fair saleable value of all properties of such Subsidiary Guarantor (excluding any shares of stock of any other Subsidiary Guarantor) exceeds the amount of all the debts and liabilities of such Subsidiary Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Subsidiary Guarantor hereunder and any obligations of any other Subsidiary Guarantor that have been Guaranteed by such Subsidiary Guarantor) to (ii) the amount by which the aggregate fair saleable value of all properties of all of the Subsidiary Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of Borrower and the Subsidiary Guarantors hereunder and under the other Loan Documents) of all of the Subsidiary Guarantors, determined (A) with respect to any Subsidiary Guarantor that is a party hereto on the first Borrowing Date, as of such Borrowing Date, and (B) with respect to any other Subsidiary Guarantor, as of the date such Subsidiary Guarantor becomes a Subsidiary Guarantor hereunder.

14.09 General Limitation on Guarantee Obligations. In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under **Section 14** would otherwise, taking into account the provisions of **Section 14.08**, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under **Section 14**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Secured Party or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

NEUROPACE, INC.

By:	/s/ Rebecca Kuhn
Name:	Rebecca Kuhn
Title:	Chief Financial Officer, Vice President, Finance and Administration, and Assistant Security

Address for Notices:

NeuroPace, Inc.
455 N Bernardo Avenue
Mountain View, CA 94043
Attn: Rebecca Kuhn, Chief Financial Officer and Vice President
Tel.: 650.237.2739
Fax: 650.237.2701
Email: rkuhn@neuropace.com

with a copy to:

NeuroPace, Inc.
455 N Bernardo Avenue
Mountain View, CA 94043
Attn: Pamela Maher, General Counsel
Tel.: 650.237.2743
Fax: 650.237.2701
Email: pmaher@neuropace.com

ADMINISTRATIVE AGENT:

CRG SERVICING LLC

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: Portfolio Reporting
Tel.: 713.209.7350
Fax: 713.209.7351
Email: notices@crglp.com

LENDERS:

CRG PARTNERS IV L.P.

By: CRG PARTNERS IV GP L.P.,
its general partner

By: CRG PARTNERS IV GP LLC,
its general partner

By: /s/ Nathan Hukill

Name: Nathan Hukill

Title: Sole Member

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: Portfolio Reporting
Tel.: 713.209.7350
Fax: 713.209.7351
Email: notices@crglp.com

CRG PARTNERS IV – PARALLEL FUND "C" (CAYMAN) L.P.

By: CR GROUP L.P.,
its investment advisor

By: /s/ Nathan Hukill

Name: Nathan Hukill

Title: Authorized Signatory

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: Portfolio Reporting
Tel.: 713.209.7350
Fax: 713.209.7351
Email: notices@crglp.com

CRG PARTNERS IV – CAYMAN LEVERED L.P.

By: CRG PARTNERS IV (CAYMAN) GP L.P.,
its general partner

By: CRG PARTNERS IV GP LLC,
Its general partner

By: /s/ Nathan Hukill

Name: Nathan Hukill

Title: Authorized Signatory

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: Portfolio Reporting
Tel.: 713.209.7350
Fax: 713.209.7351
Email: notices@crglp.com

VCOC LENDERS:

CRG PARTNERS IV L.P.

By: CRG PARTNERS IV GP L.P.,
its general partner

By: CRG PARTNERS IV GP LLC,
its general partner

By: /s/ Nathan Hukill
Name: Nathan Hukill
Title: Sole Member

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CRG PARTNERS IV – CAYMAN LEVERED L.P.

By: CRG PARTNERS IV (CAYMAN) GP L.P.,
its general partner

By: CRG PARTNERS IV GP LLC,
its general partner

By: /s/ Nathan Hukill
Name: Nathan Hukill
Title: Authorized Signatory

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