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# DELTA REPORT

## 10-K

STIM - NEURONETICS, INC.

10-K - DECEMBER 31, 2023 COMPARED TO 10-K - DECEMBER 31, 2022

The following comparison report has been automatically generated

**TOTAL DELTAS** 5668

<span style="color: yellow;">■</span>	CHANGES	370
<span style="color: pink;">■</span>	DELETIONS	804
<span style="color: green;">■</span>	ADDITIONS	4494

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 10-K**

(Mark One)

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

For the fiscal year ended December 31, **2022** 2023

OR

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

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

Commission File Number: 001-38546

**NEURONETICS, INC.**  
(Exact name of registrant as specified in its charter)

Delaware

33-1051425

(State or other jurisdiction of  
incorporation or organization)

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

3222 Phoenixville Pike, Malvern, Pennsylvania 19355

(Address of principal executive offices including zip code)

Registrant's telephone number, including area code: (610) 640-4202

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	STIM	The Nasdaq Stock Market LLC

Securities registered pursuant to section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes  No

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

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter (June 30, 2022 2023) was approximately \$67.7 million \$56.5 million.

The number of shares of Registrant's Common Stock outstanding as of March 1, 2023 February 29, 2024 was 28,363,420 29,756,053.

#### DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Definitive Proxy Statement relating to the 2023 2024 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission within 120 days after the end of the Registrant's fiscal year ended December 31, 2022 December 31, 2023, are incorporated by reference into Part III of this Report.

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#### [Table of Contents](#)

#### NEURONETICS, INC.

## Table of Contents

	<u>Page</u>
<a href="#"><u>Cautionary Note Regarding Forward-Looking Statements</u></a>	1
<b>PART I</b>	
<a href="#"><u>Item 1. Business.</u></a>	<b>23</b>
<a href="#"><u>Item 1A. Risk Factors.</u></a>	<b>2021</b>
<a href="#"><u>Item 1B. Unresolved Staff Comments.</u></a>	<b>6364</b>
<a href="#"><u>Item 1C. Cybersecurity.</u></a>	64
<a href="#"><u>Item 2. Properties.</u></a>	<b>6365</b>
<a href="#"><u>Item 3. Legal Proceedings.</u></a>	<b>6365</b>
<a href="#"><u>Item 4. Mine Safety Disclosures.</u></a>	<b>6365</b>
<b>PART II</b>	
<a href="#"><u>Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.</u></a>	<b>6466</b>
<a href="#"><u>Item 6. [Reserved]</u></a>	<b>6567</b>
<a href="#"><u>Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.</u></a>	<b>6567</b>
<a href="#"><u>Item 7A. Quantitative and Qualitative Disclosures About Market Risk.</u></a>	77
<a href="#"><u>Item 8. Financial Statements and Supplementary Data.</u></a>	78
<a href="#"><u>Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.</u></a>	78
<a href="#"><u>Item 9A. Controls and Procedures.</u></a>	78
<a href="#"><u>Item 9B. Other Information.</u></a>	<b>7980</b>
<a href="#"><u>Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections</u></a>	<b>7980</b>
<b>PART III</b>	
<a href="#"><u>Item 10. Directors, Executive Officers and Corporate Governance.</u></a>	<b>7980</b>
<a href="#"><u>Item 11. Executive Compensation.</u></a>	<b>7980</b>
<a href="#"><u>Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.</u></a>	<b>7980</b>
<a href="#"><u>Item 13. Certain Relationships and Related Transactions, and Director Independence.</u></a>	80
<a href="#"><u>Item 14. Principal Accounting Fees and Services.</u></a>	80
<b>PART IV</b>	
<a href="#"><u>Item 15. Exhibits, Financial Statement Schedules.</u></a>	80
<a href="#"><u>Item 16. Form 10-K Summary.</u></a>	<b>8384</b>
<a href="#"><u>EXHIBIT INDEX</u></a>	81
<a href="#"><u>SIGNATURES</u></a>	

#### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended **or the Securities Act**, (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended **or the Exchange Act**, (the "Exchange Act"). All statements other than statements of historical facts contained herein, including statements regarding our future results of operations and financial position, business strategy, current and prospective products, product approvals, research and development costs, current and prospective collaborations, timing and likelihood of success, plans and objectives of management for future operations and future results of current and anticipated products, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as "may," "will," "would," "should," "expect," "plan," "design," "anticipate," "could," "intend," "target," "project," "contemplates," "contemplate," "believes," "believe," "estimates," "estimate," "predicts," "predict," "potential," "outlook" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this Annual Report on Form 10-K are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this Annual Report on Form 10-K and are subject to a number of risks, uncertainties and assumptions described under the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere herein. These risks and uncertainties include, without limitation, risks and uncertainties related to: the impact of public health crises on the Company's operations, manufacturing and supply chain interruptions or delays; the Company's ability to execute its business strategy; the Company's ability to achieve or sustain profitable operations due to its history of losses; the Company's reliance on the sale and use of its NeuroStar Advanced Therapy system to generate revenues; the scale and efficacy of the Company's salesforce; the Company's ability to retain talent; availability of coverage and reimbursement from third-party payors for treatments using the Company's products; physician and patient demand for treatments using the Company's products; developments in competing technologies and therapies for the indications that the Company's products treat; product defects; the Company's ability to obtain and maintain intellectual property protection for its technology; developments in clinical trials or regulatory review of NeuroStar Advanced Therapy system for additional indications; developments in regulation in the U.S. and other applicable jurisdictions; our ability to successfully roll-out our Better Me Guarantee Provider Program on the planned timeline; our self-sustainability and existing cash balances; and our ability to achieve cash flow break-even in the fourth quarter of 2024 and on a full-year basis in 2025. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. The Company cautions investors not to place undue reliance on these forward-looking statements. Moreover, we operate in an evolving environment. New risk factors and uncertainties may emerge from time to time, and it is not possible for us to predict all risk factors and uncertainties. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained in this Annual Report on Form 10-K, whether as a result of any new information, future events, changed circumstances or otherwise.

#### Disclosure Channels to Disseminate Information

The Company announces material information to the public about the Company, its products and services and other matters through a variety of means, including filings with the **U.S.** **United States** Securities and Exchange Commission **or SEC**, (the "SEC"), press releases, public conference calls, the Company's website (<https://neurostar.com/neuronetics/>), including the Investors section thereof, and/or social media, including its Facebook page (<https://www.facebook.com/NeuroStarAdvancedTMS/>), **Twitter** (formerly **Twitter**) account (@TMSTherapy), Instagram account (@NeurostarAdvancedTMS), YouTube account (<https://www.youtube.com/user/NeuroStarTMSTherapy>) and/or LinkedIn account (<https://www.linkedin.com/company/neuronetics-inc/>), in order to achieve broad, non-exclusionary distribution

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[Table of Contents](#)

of information to the public. The Company encourages investors and others to review the information it makes public in these locations, as such information could be deemed to be material information. Please note that this list may be updated from time to time. Our **internet** website, Facebook page, **X** account, Instagram account, YouTube account and LinkedIn account, and the information contained therein or connected thereto, shall not be and is not intended to be incorporated by reference into this Annual Report on Form 10-K or our other filings with the SEC unless otherwise expressly provided.

12

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[Table of Contents](#)

## PART I

### **Item 1. Business.**

#### **Overview**

We are a commercial stage medical technology company focused on designing, developing and marketing products that improve the quality of life for patients who suffer from neurohealth disorders. Our first commercial product, the NeuroStar Advanced Therapy System, is a non-invasive and non-systemic office-based treatment that uses transcranial magnetic stimulation ("TMS") to create a pulsed, MRI-strength magnetic field that induces electrical currents designed to stimulate specific areas of the brain associated with mood. The system is cleared by the United States Food and Drug Administration (the "FDA") to treat adult patients with major depressive disorder ("MDD") **that** **who** have failed to achieve satisfactory improvement from at least one prior antidepressant medication in the current MDD episode. It is also cleared by the FDA as an adjunct for adults with obsessive-compulsive disorder ("OCD"), and to decrease anxiety symptoms in adult patients with MDD that may exhibit comorbid anxiety symptoms (anxious depression). NeuroStar Advanced Therapy **System** is safe, clinically effective, reproducible and precise and we believe is supported by the largest clinical data set of any competing TMS system. We believe we are the market leader in TMS therapy based on the estimated **147,400** **169,068** global patients treated with over **5.3 million** **6.1 million** of our treatment sessions through **December 31, 2022** **December 31, 2023**. We generated revenues of **\$65.2 million** **\$71.3 million** for the year ended **December 31, 2022** **December 31, 2023**.

MDD is a mood disorder characterized by the presence of one or both of two major diagnostic criteria: a depressed mood or loss of interest in pleasure that continues for at least two weeks. The presence of at least one of these diagnostic symptoms must be accompanied by several of the following additional symptoms: sleep disturbance, changes in appetite, sexual dysfunction, anxiety, fatigue, difficulty concentrating and suicidal thinking. MDD is a recurrent disease and follows a fluctuating course over an individual's lifetime. It can be characterized by periods of remission and relapse.

The World Health Organization (the "WHO") ranks MDD as the **single** largest contributor to global disability and a major contributor to suicide worldwide. According to a study published in the Journal of PharmacoEconomics in 2021, the economic burden of MDD was estimated to be \$326.2 billion, an increase of 37.9% relative to 2010. **The** WHO estimates indicate the proportion of the global population with depression to be 4.4% and that there are over 300 million people in the world living with

depression. Based on U.S. Census Bureau data and a study published in the *Journal of the American Medical Association*, we estimate that approximately 21 million people between the ages of 22 and 70 years in the United States suffer from MDD annually, of whom an estimated 13.9 million, based on data from the *Journal of the American Medical Association*, are being treated by a psychiatrist. We estimate, based on data from the Sequenced Treatment Alternatives to Relieve Depression study (the "STAR\*D Study") that approximately 6.4 million of these patients have failed to achieve remission of their MDD from their prior antidepressant medication therapy and that approximately 3.8 million of those patients have commercial insurance or **Medicare** **federal** **healthcare** **programs** coverage for NeuroStar Advanced **Therapy**. **Therapy** **System**. As a result, based on our expected revenues for a standard course of treatment, we believe our total annual addressable market opportunity for treatment sessions in the United States is approximately \$8.9 billion.

Initial treatment options for MDD often consist of antidepressant medication prescribed by a primary care physician. Although a variety of antidepressant medications are available, drug therapy has at least two primary limitations: limited effectiveness and treatment-emergent side effects. These limitations were demonstrated in the STAR\*D Study, a large clinical trial funded by the U.S. National Institute of Mental Health that enrolled more than 4,000 adult MDD patients at 41 clinical sites to examine the outcomes to a sequenced series of antidepressant medication attempts that mimicked best practices. In the **study**, **STAR\*D** **Study**, only approximately 28% and 21% of patients achieved remission in their first and second medication attempts, respectively. Many patients taking antidepressant medications experience intolerable or troubling side effects that contribute to a delay or failure in attaining an effective or optimal antidepressant dose, poor patient **treatment**.

23

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#### [Table of Contents](#)

**treatment** adherence or discontinuation of treatment therapy. The likelihood of achieving remission is limited and declines with each successive medication attempt.

TMS is considered an appropriate therapy for the treatment of MDD patients who have failed to achieve satisfactory improvement from at least one prior antidepressant medication. TMS is typically performed as an office-based procedure using a capital equipment system designed to deliver the magnetic pulses necessary to stimulate the areas of the brain associated with mood. A course of treatment typically requires treatment sessions five times **a** **per** **week** for up to six weeks **that** **and** can last from as **low** **short** as three to as long as forty-five minutes per session. We believe the effectiveness of TMS depends on the **psychiatrist's** **healthcare** **provider's** ability to deliver a precise amount of magnetic pulses to a specific area of the brain in a manner that can be consistently repeated during each treatment session.

We designed the NeuroStar Advanced Therapy **System** as a non-invasive therapeutic alternative to treat patients who suffer from MDD and to address many of the key limitations of existing treatment options. We believe our NeuroStar Advanced Therapy **System** provides our psychiatrist customers and their patients with several benefits, including clinically demonstrated response and remission with durable results, a demonstrated safety profile with limited treatment-emergent side effects and high patient adherence. Additionally, NeuroStar Advanced Therapy **System** was designed to provide a precise and reproducible office-based therapy that is efficient and convenient. Our therapy is delivered without general anesthesia or sedation, enabling the patient to drive and resume normal activities immediately following each treatment session. We couple our product's clinical benefits with significant practice development resources, on-site clinical training and reimbursement and service support to help our psychiatrist customers develop a successful NeuroStar Advanced Therapy **System** practice. We also provide cloud-based practice management solutions that enhance convenience for both psychiatrists and patients. Based on our commercial data, we believe psychiatrists can recoup their initial capital investment in our system by providing a standard course of treatment to approximately 12 patients, assuming these patients receive reimbursement from **Medicare** **federal** **healthcare** **programs** or

commercial insurance at rates that are similar to what our customers have observed for existing and prior patients. We believe psychiatrists can generate approximately \$8,500 of average revenue per patient for a standard course of treatment, which may provide meaningful incremental income to their practices. We believe that the NeuroStar Advanced Therapy **System** coupled with these advantages offer significant improvement over competing TMS, which lack the ability to reproduce consistent treatments, significant clinical data from randomized outcome trials, practice development resources, and a cloud-based practice management system.

The safety, effectiveness and durability of NeuroStar Advanced Therapy **System** is supported by a large clinical data set published in **28****31** articles in peer-reviewed medical journals, including from 15 clinical studies that have collectively enrolled more than 1,000 adult patients suffering from MDD. Dunner, et. al. published results of a naturalistic, prospective, observational trial conducted at 42 U.S. clinical sites in 257 patients who had tried and failed to receive relief from one or more medication trials in their current MDD episode who were treated with an acute course of NeuroStar Advanced Therapy. Response and remission rates at 12 months were 68% and 45% respectively as measured by CGI-S.

Our growth strategy includes expanding our commercialization efforts in the United States, expanding international opportunities and pursuing pipeline development of our therapy for additional indications. Outside the United States, our products have received marketing authorizations in the European Union and Japan. Our initial international commercial focus is Japan, which has the third largest healthcare spend globally. We have entered into an exclusive distribution agreement with Teijin Pharma Limited ("Teijin") a leading Japanese healthcare company, to further expand our commercialization efforts in this market. We are also evaluating the use of enhancements to our NeuroStar Advanced Therapy System to treat additional **indications related to neurological disorders**.

As of **December 31, 2022****December 31, 2023**, we had **1,101****1,145** active sites utilizing our NeuroStar Advanced Therapy Systems in the United States. We currently sell our NeuroStar Advanced Therapy System and recurring treatment sessions in the United States with the collaborative support of our **195****203** employees as of **December 31, 2022****December 31, 2023**. Our sales force targets an estimated 50,000 psychiatrists across 26,000 psychiatric practices in the United

34

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## [Table of Contents](#)

States, based on a 2020 dataset from Symphony Health and our own internal estimates with those practices treating approximately 42% of the total MDD patients in the United States who meet our labeled indication and are insured. Patients are reimbursed by Medicare and commercial payors in the United States for treatment sessions utilizing our NeuroStar Advanced Therapy System.

We generate revenues from initial capital sales of our systems, sales of our recurring treatment sessions and from service and repair and extended warranty contracts. We derive the majority of our revenues from recurring treatment sessions. For the year ended **December 31, 2022****December 31, 2023**, we generated revenues of **\$65.2 million****\$71.3 million** and had a net loss of **\$37.2 million****\$30.2 million**. Our revenues increased **18%****9%** during the year ended **December 31, 2022****December 31, 2023** compared to the year ended **December 31, 2021****December 31, 2022**. For the year ended **December 31, 2022****December 31, 2023**, our U.S. revenues were **\$63.4 million****\$69.3 million**, compared to **\$53.4 million****\$63.4 million** for the year ended **December 31, 2021****December 31, 2022**, which represented an increase of **19%****9%** compared to the prior period. Revenues from treatment sessions represented **71%****73%** of our U.S. revenues for the year ended **December 31, 2022****December 31, 2023** compared to **73%****71%** of our U.S. revenues for the prior year.

## **Our Strategy**

Our goal is to maintain and extend our leadership position in TMS therapy for patients with neurohealth disorders. The key elements of our strategy include:

- **Improve customer targeting and expand our direct sales and customer support team to accelerate growth.** To capture new psychiatrist customers, we plan to expand our specialized, direct sales organization that targets MDD treating psychiatric practices that accept reimbursement from private insurance and Medicare. Symphony Health estimates that there are approximately 26,300 group and solo practice sites in the United States with psychiatrists that prescribe antidepressant medications. Our direct sales force primarily targets 50,000 53,000 psychiatrists at 26,000 psychiatric practices that we treat approximately 13.9 million patients based on data from the *Journal of the American Medical Association*. We estimate, based on a 2020 dataset data from Symphony Health and our own internal estimates, treat approximately 2.5 million patients, representing 42% of the total MDD patients in the United States who meet our labeled indication and are insured. We estimate Sequenced Treatment Alternatives to Relieve Depression study (the "STAR\*D Study") that approximately 1.2 million 6.4 million of these patients have failed to achieve remission of their MDD from their prior antidepressant medication attempts therapy and that approximately 3.8 million of those patients have commercial insurance or federal healthcare programs coverage for NeuroStar Advanced Therapy System. As a result, based on our expected revenues for a standard course of treatment, we believe our total annual addressable market opportunity for treatment sessions in the current MDD episode and are covered by insurance that will provide reimbursement based on this medical status, resulting in a targeted total addressable market of United States is approximately \$2.8 billion. We \$8.9 billion. We intend to continue to expand our team of business development managers that are responsible for driving new customer acquisitions. To reach our target practices, we also plan to expand our advertising efforts, both online and through more traditional approaches, such as targeting leading psychiatric journals, practice outreach and education through monthly webcasts, webinars and in person events, attendance at key psychiatric trade shows and sponsoring clinical symposiums and product theaters.
- **Increase utilization of our new and existing active customer sites of NeuroStar Advanced Therapy Systems.** We plan to expand our sales and customer support team to increase the number of patients treated at new and existing active customer sites using our NeuroStar Advanced Therapy Systems in the United States. We currently have 1,101 1,145 active customer sites in the United States. We currently have 39 47 NeuroStar practice development managers in 2022 2023 ("PDMs"), to focus exclusively on helping increase patient utilization of NeuroStar Advanced Therapy System in a practice. We intend to add to this team to support our revenue growth. Our NeuroStar practice consultants focus their efforts on helping psychiatrist customers implement our Better Me Guarantee Provider pilot program and our 5 Stars Solution for Practice Success. We intend to make further investments in marketing resources, such as our marketing portal, which consists of customizable practice development and advertising materials, and digital patient outreach tools all of which are designed to drive patient awareness and help identify patients who can benefit from NeuroStar TMS within an existing practice and in the local community. We also plan to invest further in our direct to consumer marketing programs, which is comprised of paid search, display advertising, social media, billboards, radio health portals and public relations.

4

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#### [Table of Contents](#)

- **Expand our international market opportunities.** We primarily sell our products within the United States and States. We also sell our products through distributors in countries where we have received regulatory approval, including Japan, Saudi Arabia, The United Arab Emirates, Singapore, and the Republic of Korea. We primarily focus our commercial efforts outside of the United States on Japan. We worked

5

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## [Table of Contents](#)

with Teijin to obtain reimbursement approval for the NeuroStar Advanced Therapy System in June 2019 and will continue to provide sales, marketing and clinical support to ensure our commercial success. We will continue to opportunistically evaluate additional markets outside the United States and Japan for commercial expansion.

- **Pursue enhancements of our NeuroStar Advanced Therapy System and pipeline development for additional indications.** We plan to continue our research and development efforts to enhance the hardware and software components of our NeuroStar Advanced Therapy System for the treatment of MDD and other neurohealth disorders.

### **Research and Development**

We invest in research and development for the use of the NeuroStar Advanced Therapy System in neurohealth disorders. Throughout our history, we have provided material support to more than 65 investigator-initiated trials **of such prospective additional indications. We and** are currently considering a number of **potential** new indications for the use of the NeuroStar Advanced Therapy System related to neurohealth disorders.

### **Sales and Customer Support Team and Customer Training**

As of **December 31, 2022** December 31, 2023, our sales and customer support team consisted of **8491** employees working collaboratively across the following departments: sales, marketing, field service and customer support, and reimbursement. In **2023, 2024**, we plan to continue to expand our sales and customer support teams to have the largest direct sales and customer support team in the industry, including 47 NeuroStar practice development managers, **1918** area sales managers, 7 clinical training managers, 18 field service and technical support specialists, 15 sales leaders, 8 customer service representatives, **34** inside sales managers and 10 reimbursement specialists and managers.

### **Key Customers, Sales and Marketing—marketing—United States**

We primarily market and sell the NeuroStar Advanced Therapy System and recurring treatment sessions to psychiatrists, with primary care physicians and pain management specialists representing a small percentage of our customer base. We are dependent upon a small number of customers, as the market for neurohealth disorder equipment is highly concentrated. In 2022, our largest customer acquired our second-largest customer. The combined entity accounted for **over 17% 15%** of our revenue in **2022, 2023**. We executed a new long-term, exclusive agreement with the customer in **January** 2023, which covers sales to the combined organization on what we believe are mutually beneficial terms.

We target approximately **50,000 53,000** psychiatrists across 26,000 psychiatric practices, **who we estimate, based on a 2020 dataset from Symphony Health and our own internal estimates, treat approximately 42% of MDD patients who meet our labeled indication and are insured.** We target these practices by the number of psychiatrists within their practices, the number of patients they treat and their acceptance of commercial insurance and Medicare. We believe that our psychiatrist targeting strategy makes for a well-defined customer base that is accessible by our direct sales organization.

We have structured our sales and customer support team with specialized roles to sell our NeuroStar Advanced Therapy Systems and recurring treatment sessions, while delivering customer service at each stage of the implementation process. Our area sales managers are responsible for identifying key customer prospects, educating them on the value of NeuroStar Advanced Therapy System, gaining their commitment for capital placement and introducing them to our PDMs. Our PDMs enhance the operational experience for

## [Table of Contents](#)

providers and drive implementation of the NeuroStar Advanced Therapy System into our customers' practices. We created the role of clinical training manager to partner with our customers to conduct initial and ongoing on-site clinical training to ensure clinical and practice success.

## [Table of Contents](#)

### *Practice Management Support and Psychiatrist Training—United States*

Our PDMS play a pivotal role in ensuring the success of our customers as they implement a new service line into their practice. In the early stages of implementation, they help the practice set goals, educate on the types of patients that can benefit from our therapy and train the office staff on how to talk with patients about TMS and how to use patient educational tools such as presentations, videos and starter kits. Once the practice begins treating patients, our PDMS will educate the psychiatrist on how to track clinical outcomes, interpret data and effectively convey results to existing and potential patients and referring physicians. Our PDMS also work with our customers to increase awareness with referring physicians and develop external marketing tactics. Our dedicated reimbursement managers help **each practice practices** navigate **all** issues regarding the reimbursement process including investigation of benefits, prior authorizations and claims documentation. This group has assisted our customers to conduct over **31,000 69,900** benefit investigations.

Psychiatrists and staff training on the NeuroStar Advanced Therapy System is a key to success within each practice. Our clinical training **consultants managers** take the burden of clinical training off our NeuroStar practice consultants and provide a dedicated training resource to each customer. Clinical training **consultants managers** conduct **at least a day**, hands-on training course that is scheduled after system installation at each practice and also provide ongoing advanced on-site clinical training.

**To enhance the work our PDMS do to support customer training and education, our sales training team hosts bi-monthly NeuroStar University courses to educate existing customers on internal best practices that help them improve the patient experience and overall business operations. This group has trained 369 customers during the year 2023.**

### *Field Support—United States*

Our field service engineers are responsible for maintenance, repairs and **installation of upgrades, installation**. We provide a 24/7 support hotline to respond to **medical information** inquiries and technical questions that arise in all time zones. **We pledge to have a field service engineer on-site within 24 hours of a service call. Because of the size and geographical coverage of our field service engineers and our standard 24-hour response time, NeuroStar Advanced Therapy Systems experience over 99% uptime, helping to ensure uninterrupted patient treatments.**

### *International*

We market our products in a few select markets outside the United States through independent distributors. In Japan, we have an exclusive distribution agreement with Teijin for the commercialization of our products. The current term of this distribution agreement expires **March 31, 2025** **March 31, 2027**, subject to automatic renewal unless terminated by either party.

### **Competition**

We have competitors that sell other forms of TMS therapy, including Brainsway, Apollo TMS, Magstim, MagVenture, CloudTMS and Nexstim, that compete directly with the NeuroStar Advanced Therapy System. We also face competition from pharmaceutical and other companies that develop products, such as antidepressant medications, for the treatment of neurohealth disorders.

For a more comprehensive discussion of the risks related to our intellectual property, please see "Risk Factors – Risks Related to Our Business and Industry."

### **Intellectual Property**

Our patent estate includes patents and applications with claims directed to our NeuroStar Advanced Therapy Systems and broader claims for potential future products and developments. On a worldwide basis, as of December 31, 2022 December 31, 2023, our patent estate included over 100 98 issued or allowed patents and 18 pending patent

6

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### Table of Contents

applications for our products and novel design methods, manufacturing processes, novel TMS devices and systems and future combination products that are mainly designed to treat psychiatric conditions or perform diagnostic procedures. In the United States, as of December 31, 2022 December 31, 2023, we owned or licensed 41 38 issued or

7

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### Table of Contents

allowed patents and 7 10 pending patent applications filed that are directed to our TMS technology. Outside the United States, as of December 31, 2022 December 31, 2023, we owned or licensed 58 60 issued or allowed patents, 7 pending patent applications and zero 1 pending Patent Cooperation Treaty applications. application.

These U.S. issued patents are expected to remain in effect until between 2023 2024 and 2035. Our core patents in the United States will not expire before 2024. Our non-U.S. Non-U.S. patents are expected to remain in effect until between 2024 and 2035. In 2024, we expect that five U.S. patents will expire and 14 non -U.S. patents will expire. Our worldwide intellectual property portfolio includes multiple pending patent applications relating to methods and apparatuses for the treatment of psychiatric health conditions in Australia, Canada, the European Union, Japan and the United States. Our patents and patent applications mainly relate to iron core technology, including materials, manufacturing methods, geometries, applications, and open core technologies, TMS design patents, including coil position, motor threshold level determination, contact sensing, and articulation arm designs, patient comfort, TMS support technologies and pulse monitoring, and potential next generation technologies.

We own trade secrets relating to our technology, and we maintain the confidentiality of 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 agreements with third-parties, consultants and employees who have access to such trade secrets and know-how.

For a more comprehensive discussion of the risks related to our intellectual property, please see "Risk Factors—Risks Related to Intellectual Property."

#### **Raw Materials, Manufacturing and Supply**

We manage all aspects of product supply through our operations team based in Malvern, Pennsylvania. We outsource the manufacturing of components and high-level assemblies, which are produced and tested to our specifications. We rely on third parties to acquire the raw materials and provide components used in existing products and we expect to continue to do so for future products.

We establish our relationships with our third-party manufacturers and suppliers through supplier contracts and purchase orders. In most cases, these supplier relationships may be terminated by either party upon short notice. As of December 31, 2022 December 31, 2023, we engaged with Spartronics to supply our console; Gharieni Group GmbH to supply our chair, Molex Incorporated to supply our SenStar Treatment Link; Paragon Micro to supply our computer systems Components, and other companies to supply components of our chairs and treatment packs.

We closely monitor are continuing to transition our console manufacturing to Ascential Technologies (previous D&K), collaborating with them on optimizing the global supply chains in light of the ongoing disruptions caused by the COVID-19 pandemic, shipping challenges and global conflict. We have not experienced material delays in obtaining any of our components, nor has the ready supply of finished products to our customers or clinicians been adversely affected by component supply issues. chain.

#### **Reimbursement, Payor Relations and Customer Support**

Based on our estimates, over 65 major private insurers in the United States, including the top 25 largest private insurers and Medicare, federal healthcare programs, have coverage policies for reimbursement of TMS, including NeuroStar Advanced Therapy System, representing over 300 million covered lives or about 95% of the total payor covered lives in the United States.

#### **Government Regulation**

Our products and our operations are subject to extensive regulation by the FDA and other federal and state authorities in the United States, as well as comparable authorities in foreign jurisdictions.

#### [Table of Contents](#)

#### **FDA**

Our products are subject to regulation as medical devices under the U.S. Federal Food, Drug, and Cosmetic Act, as amended (the "FDCA"), as implemented and enforced by the FDA. The FDA regulates the development, design, non-clinical and clinical research, manufacturing, safety, efficacy, labeling, packaging, storage, installation, servicing, recordkeeping, premarket clearance or approval, import, export, adverse event

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## [Table of Contents](#)

reporting, advertising, promotion, marketing and distribution, and import and export of medical devices to ensure that medical devices distributed domestically are safe and effective for their intended uses and otherwise meet the requirements of the FDCA.

In addition to U.S. regulations, we are subject to a variety of regulations in other jurisdictions governing clinical trials and commercial sales and distribution of our products. Whether or not we obtain FDA clearance or approval for a product, we must obtain authorization before commencing clinical trials or obtain marketing authorization or approval of our products under the comparable regulatory authorities of countries outside of the United States. The marketing authorization process varies from country to country and the time may be longer or shorter than that required for FDA clearance or approval.

### *FDA Premarket Clearance and Approval Requirements*

Unless an exemption applies, each medical device commercially distributed in the United States requires either FDA clearance of a 510(k) premarket notification or premarket approval ("PMA"). 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 ensure its safety and efficacy. Class I includes devices with the lowest risk to the patient and are those for which safety and efficacy can be assured by adherence to the FDA's General Controls for medical devices, which include compliance with the applicable portions of the quality systems regulation ("QSR"), facility registration and product listing, reporting of adverse medical events, and truthful and non-misleading labeling, advertising, and promotional materials. Class II devices are subject to the FDA's General Controls, and special controls as deemed necessary by the FDA to ensure the safety and efficacy of the device. These special controls can include performance standards, post-market surveillance, patient registries, special labeling requirements, premarket data requirements, and FDA guidance documents. While most Class I devices are exempt from the 510(k) premarket notification requirement, manufacturers of most Class II devices are required to submit to the FDA a premarket notification under Section 510(k) of the FDCA requesting permission to commercially distribute the device. The FDA's permission to commercially distribute a device subject to a 510(k) premarket notification is generally known as 510(k) clearance. Devices deemed by the FDA to pose the greatest risks, such as life-sustaining, life-supporting or some implantable devices, or devices that have a new intended use, or use advanced technology that is not substantially equivalent to that of a legally marketed device, are placed in Class III, generally requiring approval of a PMA.

Our NeuroStar Advanced Therapy System is classified as a Class II medical device. We initially received marketing authorization of this device through the *de novo* classification process. Subsequently, we have cleared any changes made to our system through the 510(k) clearance process.

### *510(k) Marketing Clearance Pathway*

To obtain 510(k) clearance, we must submit to the FDA a premarket notification submission demonstrating that the proposed device is "substantially equivalent" to a predicate device already on the market. A predicate device is a legally marketed device that is not subject to premarket approval, i.e., a device that was legally marketed prior to May 28, 1976 (pre-amendments device) and for which a PMA is not required, a device that has been reclassified from Class III to Class II or I, or a device that was found substantially equivalent through the 510(k) process. The FDA's 510(k) clearance process usually takes from 30 to 90 days but may take significantly longer if the FDA requires additional information and places the submission on hold for up to an additional 180 days. 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

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[Table of Contents](#)

to a predicate device currently on the market, it will issue a “substantially equivalent” letter, which serves as the clearance to commercially market the device.

If the FDA determines that the device is “not substantially equivalent” to a previously cleared 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

9

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[Table of Contents](#)

the “de novo” classification 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.

*Pre-Market Approval Process*

A PMA application must be submitted if the medical device is in Class III (although the FDA has the discretion to continue to allow certain pre-amendment Class III devices to use the 510(k) process) or cannot be cleared through the 510(k) process. A PMA application must be supported by, among other things, extensive technical, preclinical, clinical trials, manufacturing and labeling data to demonstrate to the FDA’s satisfaction the safety and effectiveness of the device.

After a PMA application is submitted and filed, the FDA begins an in-depth review of the submitted information, which typically takes 180 days, but may take longer if the FDA requests additional information and places the submission on hold for up to an additional 180 days. During this review period, the FDA may request additional information (e.g., clinical or non-clinical data) or clarification of information already provided. Also, during the review period, an advisory panel of experts from outside the FDA will usually be convened to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. In addition, the FDA will conduct a pre-approval inspection of the manufacturing facility to ensure compliance with the QSR, which imposes elaborate design development, testing, control, documentation and other quality assurance procedures in the design and manufacturing process. The FDA may approve a PMA application with post-approval conditions intended to ensure the safety and effectiveness of the device including, among other things, restrictions on labeling, promotion, sale, distribution and collection of long-term follow-up data from patients in the clinical study that supported approval. Failure to comply with the conditions of approval can result in materially adverse enforcement action, including the loss or withdrawal of the approval. New PMA applications or supplements are required for significant modifications to the manufacturing process, labeling of the product and design of a device that is approved through the PMA process. PMA supplements often require submission of the same type of information as an original PMA application, except that the supplement is limited to information needed to support any changes from the device covered by the original PMA application, and may not require as extensive clinical data or the convening of an advisory panel.

*De Novo Classification Process*

Medical device types that the FDA has not previously classified as Class I, II, or III are automatically classified as Class III regardless of the level of risk they pose. The Food and Drug Administration Modernization Act of 1997 established a new route to market for low to moderate risk medical devices that are automatically placed into Class III due to the absence of a substantially equivalent predicate device, called the “Request for Evaluation of Automatic Class III Designation,” or the *de novo* classification process. This process allows a manufacturer whose novel device is automatically classified as Class III to request down-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. Prior to the enactment of the Food and Drug Administration Safety and Innovation Act, (the “FDASIA”), in July 2012, a medical device could only 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 to a predicate device. The FDASIA streamlined the *de novo* classification pathway by permitting manufacturers to request *de novo* classification directly without first submitting a 510(k) premarket notification to the FDA and receiving a not substantially equivalent determination. We were granted marketing authorization for our system using the *de novo* classification process after receiving a not substantially equivalent determination following the

9

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[Table of Contents](#)

submission of a 510(k) premarket notification. We have subsequently used the 510(k) clearance process to obtain authorization from the FDA for changes to our system, including for our TouchStar® treatment, a three-minute intermittent theta burst protocol delivered by our NeuroStar Advanced Therapy System, which was cleared by the FDA on November 23, 2020.

*Clinical Trials*

A clinical trial is typically required to support a PMA application or *de novo* classification and is sometimes required for a 510(k) pre-market notification, particularly in the case of changes to indications. Clinical trials

10

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[Table of Contents](#)

for significant risk devices generally require submission of an application for an Investigational Device Exemption (“IDE”) to the FDA. The IDE application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the investigational protocol is scientifically sound. The IDE application must be approved in advance by the FDA for a specified number of patients, unless the product study is deemed a non-significant risk device and eligible for more abbreviated IDE requirements. Clinical trials for a significant risk device may begin once the IDE application is approved by the FDA (or abbreviated IDE due to non-significant risk determination) as well as the appropriate institutional review boards at the clinical trial sites, and the informed consent of the patients participating in the clinical trial is obtained. After a trial begins, the FDA may place it on hold or terminate it if, among other reasons, it concludes that the clinical subjects are exposed to an unacceptable health risk. Any trials we conduct must be conducted in accordance with FDA

regulations as well as other federal regulations and state laws concerning human subject protection and privacy. Moreover, the results of a clinical trial may not be sufficient to obtain clearance or approval of the product.

#### *Changes to Marketed Devices*

After a device receives 510(k) marketing clearance, or de novo classification, any modification that could significantly affect its safety or efficacy, or that would constitute a major change or modification in its intended use, will typically require a new 510(k) marketing clearance but may, depending on the modification, require a de novo classification or PMA approval. PMA. Depending on the scope of the change, a traditional, special, or abbreviated 510(k) application may be submitted. Compared to a traditional 510(k), a special 510(k) application may be used in special cases where: 1) the manufacturer makes a change to their own device; 2) performance data is unnecessary or well-established methods are available to evaluate the change; and 3) performance data necessary to demonstrate substantial equivalence can be presented in a summary or risk analysis format. In this case, the review time is shorter (approximately 30 days), compared to the review time of approximately 90 days for the traditional 510(k) pathway. Alternatively, the abbreviated 510(k) pathway may be used when the submission relies on FDA guidance documents, demonstration of compliance with special controls for the device type, and voluntary consensus standards. This pathway has a review time of approximately 90 days. The FDA requires each manufacturer to determine which pathway is most appropriate; however, in the event that the FDA disagrees with a manufacturer's determination, it may ask the manufacturer to convert its application to another type (e.g., if the FDA determines that it requires additional information about the performance testing beyond the summary data, it may ask the manufacturer to convert a special 510(k) to a traditional 510(k)).

Many minor modifications today are accomplished by a manufacturer documenting the change in an internal letter-to-file (a "LTF"). The LTF is documented in lieu of submitting a new 510(k) or PMA to obtain clearance or approval for every change and includes the rationale for why a submission was not filed. The changes contained in the LTFs are then summarized and included within the following 510(k) or PMA submission. The FDA will review these changes during the submission process or during an inspection. If the FDA disagrees with a manufacturer's determination, the FDA can require the manufacturer to cease marketing and/or request the recall of the modified device until 510(k) marketing clearance or PMA approval is obtained. Also, in these circumstances, we may be subject to significant regulatory fines or penalties.

10

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#### Table of Contents

#### *Post-Market Regulation*

After a device is cleared or approved for marketing, numerous and pervasive regulatory requirements continue to apply. These include:

- establishment registration and device listing with the FDA;
- QSR requirements, which require manufacturers, including third-party manufacturers and contract manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the design and, manufacturing, and distribution process;

11

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[Table of Contents](#)

- labeling and marketing regulations, which require that promotion is truthful, not misleading, fairly balanced and provide adequate directions for use and that all claims are substantiated, and also prohibit the promotion of products for unapproved or "off-label" uses and impose other restrictions on labeling; FDA guidance on off-label dissemination of information and responding to unsolicited requests for information;
- clearance or approval of product modifications to 510(k)-cleared devices that could significantly affect safety or efficacy 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 or serious adverse events, if the malfunction were to recur;
- correction, removal and recall reporting regulations, which require that manufacturers report to the FDA field corrections and product recalls or 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;
- complying with regulations requiring Unique Device Identifiers on devices and also requiring the submission of certain information about each device to the FDA's Global Unique Device Identification Database;
- 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 efficacy data for the device.

We may be subject to similar foreign laws that may include applicable post-marketing requirements, such as ongoing safety/ malfunction surveillance and risk management. Our manufacturing processes 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, device history file, and complaint files. As a manufacturer, we are subject to periodic scheduled or unscheduled inspections by the FDA. Our failure to maintain compliance with the QSR requirements could result in the shut-down of, or restrictions on, our manufacturing operations and the recall or seizure of our products. The discovery of previously unknown problems with any of our products, 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 physician in the practice of medicine, could result in restrictions on the device, including voluntary or mandatory device corrections or removals.

11

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[Table of Contents](#)

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:

- warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties;

- recalls, withdrawals, or administrative detention or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;

[Table of Contents](#)

- refusing or delaying requests for 510(k) marketing clearance or **PMA approvals** **PMAs** of new products or modified products;
- withdrawing 510(k) clearances or **PMA approvals** **PMAs** that have already been authorized;
- refusal to authorize export or import approvals for our products; or
- criminal prosecution.

*U.S. and Foreign Healthcare Laws and Compliance Requirements*

Healthcare providers, physicians and third-party payors play a primary role in the recommendation, prescription and payment for medical treatments. A medical device manufacturer's arrangements with third-party payors, providers and patients may expose it to broadly applicable fraud and abuse and other healthcare laws and regulations that may affect its business or the financial arrangements and relationships through which it markets, sells and distributes its products. Even if a medical device manufacturer does not control referrals of healthcare services or bill directly to Medicare, Medicaid, other federal healthcare programs, or other third-party payors, federal and state healthcare laws and regulations are applicable to its business. In addition, a portion of our business is subject to the Health Insurance Portability and Accountability Act of 1996, ("HIPAA"), as a business associate of our covered entity customers. To provide our covered entity customers with services that involve the use or disclosure of protected health information ("PHI"), we are required to enter into business associate agreements. As a business associate, we are also directly liable for compliance with HIPAA. The laws that may affect a medical device manufacturer's ability to operate include, but are not limited to:

- the federal Anti-Kickback Statute, which prohibits any person or entity from, among other things, knowingly and willfully soliciting, receiving, offering or paying any remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, order or recommendation of an item or service reimbursable, in whole or in part, under a federal healthcare program, such as the Medicare and Medicaid programs. The term "remuneration" has been broadly interpreted to include anything of value. The government can establish a violation of the Anti-Kickback Statute without proving that a person or entity had actual knowledge of the law or a specific intent to violate. Moreover, the government may assert that a claim for reimbursement that includes items resulting from a violation of the federal healthcare Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act ("FCA"). Although there are a number of statutory exceptions and regulatory safe harbors to the federal healthcare Anti-Kickback Statute protecting certain common business arrangements and activities from prosecution or regulatory sanctions, the exceptions and safe harbors are drawn narrowly. Practices that involve remuneration to those who prescribe, purchase, or recommend medical device products, including discounts, or engaging individuals as speakers, consultants, or advisors, may be subject to scrutiny if they do not fit squarely within an exception or a safe harbor. Our practices may not in all cases meet all of the criteria for safe harbor protection from anti-kickback liability. Moreover, there are no safe

[Table of Contents](#)

harbors for many common practices, such as reimbursement support programs, educational or research grants, or charitable donations;

- the federal civil and criminal false claims laws and civil monetary penalty laws, such as the FCA, which can be enforced by private citizens through civil qui tam actions, prohibits individuals or entities from, among other things, knowingly presenting, or causing to be presented, false, fictitious or fraudulent claims for payment of federal funds, and knowingly making, using or causing to be made or used a false record or statement material to a false or fraudulent claim to avoid, decrease or conceal an obligation to pay money to the federal government. The Social Security Act also has a provision that provides for the imposition of civil monetary penalties against any person who offers or transfers remuneration to a Medicare or Medicaid beneficiary that such person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier for the

13

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[Table of Contents](#)

order or receipt of any item or service payable by a federal health care program. Private individuals, commonly known as "whistleblowers," can bring FCA qui tam actions on behalf of the government and themselves, and may share in amounts paid by the entity to the government in recovery or settlement. False Claims Act liability is potentially significant in the healthcare industry because the statute provides for treble damages and mandatory penalties of \$13,508 \$13,946 to \$27,018 (as of January 2023) \$27,894 (beginning in 2024) per false or fraudulent claim or statement. Many pharmaceutical and medical device manufacturers have been investigated and have reached substantial settlements under the FCA in connection with alleged off label promotion of their products and allegedly providing free products to customers with the expectation that the customers would bill federal health care programs for the product. In addition, a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the FCA. As a result of a modification made by the Fraud Enforcement and Recovery Act of 2009, a claim includes "any request or demand" for money or property presented to the U.S. government. In addition, manufacturers can be held liable under the FCA even when they do not submit claims directly to government payors if they are deemed to "cause" the submission of false or fraudulent claims. There are also criminal penalties, including imprisonment and criminal fines, for making or presenting false, fictitious or fraudulent claims to the federal government;

- the federal physician self-referral law ("Stark Law") prohibits, subject to exceptions, referring Medicare patients for "designated health services" (including "durable medical equipment and supplies" and "outpatient hospital services") ("DHS") to entities with which a referring physician (or immediate family member) maintains a "financial relationship." States (as required in order to maintain Medicaid funding) have further enacted similar prohibitions that apply to Medicaid, as well as other insurance programs, and which may be more restrictive than the Stark Law. Persons who attempt to circumvent these laws or submit (or cause others to submit) claims to payors in violation of these laws may be subject to significant civil and criminal penalties. As such, we are generally prohibited from billing for any services referred in violation of these laws. Importantly, we do not provide DHS and do not bill payors for DHS (or any other items or services). While we manufacture and sell equipment and supplies to our customers, we are not a Medicare supplier. Additionally, in instances in which we maintain contractual arrangements with physicians or hospitals, we have no reason to believe that we are engaged in assisting any person with circumventing these laws. Further, the services (specifically TMS) furnished (outside of a hospital context) by physician groups with whom we maintain contractual arrangements do not constitute DHS. Notably, however, the Stark Law is a strict liability statute and compliance is difficult to assure;

- HIPAA, among other things, established various criminal health care fraud laws, which impose criminal liability for executing or attempting to execute a scheme to defraud any healthcare benefit program, including private third-party payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense, and creates federal criminal laws that prohibit knowingly and willfully falsifying, concealing or covering up a material fact or making any 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. Similar to the federal healthcare Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the applicable statute or specific intent to violate it or to have committed a violation;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and their implementing regulations, which imposes privacy, security, transmission and breach reporting obligations with respect to individually identifiable health information upon "covered entities" subject to the law, including health plans, healthcare clearinghouses and certain healthcare providers and their respective business associates that perform services on their behalf that involve individually identifiable health information. HITECH also created new tiers of civil monetary penalties, amended HIPAA to make civil and criminal penalties directly applicable to business associates, and

14

---

[Table of Contents](#)

gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce HIPAA laws and seek attorneys' fees and costs associated with pursuing federal civil actions. On December 10, 2020, and later on January 21, 2021, the U.S. Department of Health and Human Services Office for Civil Rights issued a Notice of Proposed Rulemaking, which if

13

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[Table of Contents](#)

finalized, would make changes to some of HIPAA's regulatory requirements, which would apply to business associates; actions;

- the federal physician payment transparency requirements, sometimes referred to as the "Physician Payments Sunshine Act," created under the Patient Protection and Affordable Care Act ("PPACA"), which requires, among other things, certain manufacturers of drugs, devices, biologics and medical supplies reimbursed under Medicare, Medicaid, or the Children's Health Insurance Program (with certain exceptions) to report annually to the United States Department of Health and Human Services, Centers for Medicare and Medicare Services, ("CMS"), information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), other professionals (physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, and certified nurse-midwives) and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. Beginning in 2022, applicable manufacturers are required to report information regarding payments and transfers of value provided to physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, and certified nurse-midwives; members; and

- foreign and state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, that may impose similar or more prohibitive restrictions, and may apply to items or services reimbursed by any non-governmental third-party payors, including private insurers; state laws that require device manufacturers to comply with the industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws that require device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures and pricing information; and other federal and state laws that govern the privacy and security of health information or personally identifiable information in certain circumstances, including state health information privacy and data breach notification laws which govern the collection, use, disclosure, and protection of health-related and other personal information, many of which differ from each other in significant ways and often are not pre-empted by HIPAA, thus requiring additional compliance efforts and data privacy and security laws and regulations in foreign jurisdictions that may be more stringent than those in the United States (such as the European Union, which adopted the General Data Protection Regulation (the "GDPR"), **GDPR**, which became effective in May 2018).

Because of the breadth of these laws and the narrowness of their statutory exceptions and regulatory safe harbors, it is possible that some of a medical device manufacturer's business activities could be subject to challenge under one or more of these laws. The scope and enforcement of each of these laws is uncertain and subject to rapid change in the current environment of healthcare reform, especially in light of the lack of applicable precedent and regulations. Federal and state enforcement bodies have recently increased their scrutiny of interactions between healthcare companies and healthcare providers, which has led to a number of investigations, prosecutions, convictions and settlements in the healthcare industry.

Ensuring that business arrangements with third parties comply with applicable healthcare laws and regulations is costly and time consuming. If a medical device manufacturer's operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to it, it may be subject to penalties, including civil, criminal and administrative penalties, damages, fines, disgorgement, substantial monetary penalties, individual imprisonment, exclusion from governmental funded healthcare programs, such as Medicare and Medicaid, additional reporting obligations and oversight if it becomes subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, reputational harm, diminished profits and future earnings, and the curtailment or restructuring of operations, any of which could adversely affect the ability of a medical device manufacturer to operate its business and the results of its operations.

**14.15**

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[Table of Contents](#)

*United States Healthcare Reform*

In the United States, a number of legislative and regulatory proposals have been considered or enacted to change the healthcare system in ways that could affect a medical device manufacturer's business. Among policy makers and governmental and private insurers in the United States, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality or expanding access. For example, in 2010, the PPACA was enacted, which include measures to significantly change the way health care is financed by both governmental and private insurers, and significantly impacts the medical device industry. Among other ways in which it may impact a medical device manufacturer's business, the PPACA:

- established a Patient-Centered Outcomes Research Institute to oversee and identify priorities in comparative clinical efficacy research in an effort to coordinate and develop such research;
- required manufacturers to report certain payments and other transfers of value pursuant to the Physician Payments Sunshine Act, described above;

- 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; and
- expanded the eligibility criteria for Medicaid ~~program~~ programs and, originally, required certain employers to provide, and all individuals to obtain, health insurance.

Some of the provisions of the PPACA have yet to be implemented, and there were judicial and ~~Congressional~~ congressional challenges to certain aspects of the PPACA, as well as efforts by the Trump administration to repeal or replace certain aspects of the PPACA. Most recently, under President Biden, the Department of Justice dropped its support of two Supreme Court cases challenging PPACA in addition to a case before the U.S. Court of Appeals for the Fifth Circuit. On January 28, 2021, January 28, 2021, President Biden signed an executive order to expand access to PPACA coverage, stating that it is the "policy" of the Biden administration to protect and strengthen the PPACA and directing agencies to consider suspending, revising, or rescinding actions related to President Trump's executive orders that are inconsistent with this policy position. In the past, Congress has considered legislation that would repeal or replace all or part of the PPACA; however, this is not PPACA. For example, in 2017 Congress effectively eliminated the ~~policy~~ individual mandate, which could result in adverse selection and decreased utilization of reimbursable healthcare services, such as those offered by healthcare providers via use of our products. Additionally, in 2019, Congress repealed a (repeatedly delayed) medical device excise tax previously passed under the Biden administration. There is no way to know whether, and to what extent, if any, the PPACA will remain in-effect in the future, and it is unclear how judicial decisions, subsequent appeals, or other efforts to repeal and replace or, possibly, to restore the PPACA will impact the U.S. healthcare industry or our business.

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~~ congressional inquiries and proposed federal legislation designed to, among other things, bring more transparency to product pricing, reduce the cost of certain products under Medicare, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies. At the state level, individual states in the United States are also increasingly passing legislation and implementing regulations designed to control product pricing or manufacturer interactions with healthcare providers, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures.

It is likely that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and

[Table of Contents](#)

services, which could result in reduced demand for a medical device manufacturer's products or additional pricing pressure.

We cannot predict the impact that health care reform under the Biden administration will have on our business, and there is uncertainty as to what healthcare programs and regulations may be implemented or changed at the federal and/or state level in the United States, or the effect of any future legislation or regulation. However, it is possible that such initiatives could have an adverse effect on our ability to obtain approval and/or successfully commercialize products in the United States in the future. For example, U.S. federal government and state legislatures have continued to implement cost containment programs, including

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[Table of Contents](#)

price controls and restrictions on coverage and reimbursement. To contain costs, governmental healthcare programs and third-party payers are increasingly challenging the price, scrutinizing the medical necessity, and reviewing the cost-effectiveness of medical treatments. Any changes that reduce, or impede the ability to obtain, reimbursement for the type of products we intend to commercialize in the United States (or our products more specifically, if approved) or reduce medical procedure volumes could adversely affect our business plan to introduce our products in the United States.

*Japanese Regulation*

In Japan, medical devices are regulated mainly under the Pharmaceutical and Medical Device Act. This act was implemented on November 25, 2014 and served as a revision to the original Pharmaceutical Affairs Law of 2005. Under this regulation, medical devices must be approved prior to importation and commercial sale by the Pharmaceutical Medical Device Agency ("PMDA") and Ministry of Health and Welfare ("MHLW"). The PMDA is the MHLW-created, quasi-independent agency that was established to review and approve pharmaceuticals and medical devices for marketing in Japan. They are also responsible for Japan Good Manufacturing Practices audits, clinical studies oversight, and facility licensing. The approval process identifies a Marketing Authorization Holder ("MAH"), who is designated as the only authorized seller of products. Manufacturers of medical devices outside of Japan who do not operate through a Japanese entity are able to designate a MAH, known as a designated MAH ("D-MAH"), who will apply for product approval and take responsibility for the medical device within Japan. After receiving PMDA's recommendations for marketing approval, the MHLW will ultimately evaluate and approve those pharmaceuticals and medical devices deemed to be safe and effective. As part of its approval process, the MHLW may require that the product be tested in Japanese laboratories. The approval process ranges in length between two and twelve months, depending on the submission type (e.g., Todokede – for Class I devices, Ninsho – for Class II and III devices, or Shonin for Class II through IV devices). Since the NeuroStar Advanced Therapy System is classified as a Class III device by Japan's definition, under Japanese law, Neuronetics has followed the Shonin process for pre-market approval. After approval is received, the MHLW issues a Shonin approval to Neuronetics' D-MAH, thereby permitting such entity to import the device into Japan for sale. The MHLW is also responsible for creating policies, regulations, guidance documents, and laws, and governs safe use of medical products as well as for social insurance, reimbursement policies, and pricing.

After a device is approved for importation and commercial sale in Japan, the MHLW continues to monitor sales of approved products for compliance with labeling regulations, which prohibit promotion of devices for unapproved uses, and reporting regulations, which require reporting of product malfunctions, including serious injury or death caused by any approved device. Failure to comply with applicable regulatory requirements can result in enforcement action by the MHLW, which may include fines, injunctions, and civil penalties, recall or seizure of our products, operating restrictions, partial suspension or total shutdown of sales in Japan, or criminal prosecution.

*European Union Regulation*

Neuronetics has received European Conformity ("CE") certification under the European Union ("EU" or "E.U.") Medical Device Regulation ("MDR") (2017/745). This CE mark provides market authorization within the EU and European Economic Area ("EEA"). In the EU, a single regulatory approval process exists, in which a Notified Body assesses the conformity of the medical device intended to be marketed with the legal

requirements set forth in the EU MDR. To obtain a CE mark, medical devices and their accessories must meet minimum standards of performance, safety, and quality (i.e., the essential requirements), and then, according to their classification, comply with one or more of a selection of conformity assessment routes. After conformity is confirmed, the CE mark is affixed to the medical device itself or on its packaging, thus indicating its conformity status. The competent authorities of the EU countries separately regulate the clinical research for medical devices and the market surveillance of products once they are placed on the market.

#### Other International Regulation

16

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Sales and marketing of medical devices outside of the United States are subject to foreign regulatory requirements that vary widely from country to country. The global regulatory environment is increasingly stringent and unpredictable. Several countries that did not have regulatory requirements for medical devices have established such requirements in recent years, and other countries have expanded, or plan to expand, their existing regulations. While harmonization of global regulations has been pursued, requirements continue to differ significantly among countries. We expect this global regulatory environment will continue to evolve, which could impact the cost, the time needed to approve, and ultimately, our ability to maintain existing approvals or obtain future approvals for our products. The time required to obtain appropriate marketing authorizations from other foreign authorities may be substantially longer or shorter than required for FDA approval. Some countries may not require any special registration process prior to importing and marketing the device. Whether or not we have obtained FDA approval, our NeuroStar Advanced Therapy System may be subject to different regulatory requirements in other jurisdictions. The foreign regulatory approval process includes all the risks associated with FDA regulation, as well as country-specific regulations.

#### Other Regulations

*Import-export.* Our international operations enable us to be subjected to laws regarding sanctioned countries, entities and persons, customs, and import-export. Among other things, these laws restrict, and in some cases can prevent, U.S. companies from directly or indirectly selling goods, technology or services to people or entities in certain countries. In addition, these laws require that we exercise care in our business dealings with entities in and from foreign countries.

*Data Privacy and Cybersecurity Laws and Regulations.* As a business with a significant global footprint, compliance with evolving regulations and standards in data privacy and cybersecurity (relating to the confidentiality and security of our information technology systems, products such as medical devices, and other services provided by us) may result in increased costs, lower revenue, new complexities in compliance, new challenges for competition, and the threat of increased regulatory enforcement activity. Our business relies on the secure electronic transmission, storage and hosting of sensitive information, including personal information, financial information, intellectual property, and other sensitive information related to our customers and workforce.

For example, in the U.S. the collection, maintenance, protection, use, transmission, disclosure and disposal of certain personal information and the security of medical devices are regulated at the U.S. federal and state, and industry levels. U.S. federal and state laws protect the confidentiality of certain patient health information, including patient medical records, and restrict the use

and disclosure of patient health information by health care providers. In addition, the FDA has issued guidance advising manufacturers to take cybersecurity risks into account in product design for connected medical devices and systems, to assure that appropriate safeguards are in place to reduce the risk of unauthorized access or modification to medical devices that contain software and reduce the risk of introducing threats into hospital systems that are connected to such devices. The FDA also issued guidance on the post market management of cybersecurity in medical devices.

Outside the U.S., we are impacted by the privacy and data security requirements at the international, national and regional level, and on an industry specific basis. Legal requirements in these countries relating to the collection, storage, handling and transfer of personal data and, potentially, intellectual property continue to evolve with increasingly strict enforcement regimes.

18

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[Table of Contents](#)

**Human Capital**

***Employees***

As of December 31, 2022 December 31, 2023, we had 194 203 full time employees working collaboratively across our sales and customer support team, in research and development, including clinical, regulatory and certain quality functions, operations and in general and administrative. All of our employees are employed full time. We have

17

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[Table of Contents](#)

never had a work stoppage and none of our employees are covered by collective bargaining agreements or represented by a labor union. We believe that our employee relations are strong.

We recruit employees with the skills and training relevant to functional responsibilities. We believe that cultural fit and energy are important considerations. We assess the likelihood that a particular candidate will contribute to the Company's overall goals, and beyond their specifically assigned tasks. We aim to provide market-based compensation and work to retain our employees for many years. During 2022, 2023, the Company continued to offer a two-day work from home policy to provide personal flexibility and support employees in managing family priorities.

***Development***

Developing employees contributes to growing our business. The Company has leadership development programs which bring a consistent approach to leadership development that all managers and directors are required to attend. The Company also provides learning opportunities for all employees to continue to progress their development and career at the Company.

***Diversity, Equity Inclusion and Inclusion Belonging***

A diverse and inclusive culture that provides fair and equitable opportunities helps the Company remain competitive, advance its innovation culture, and serve customers. The Company focuses on attracting and advancing top talent as well as advancing initiatives that enhance diversity, equity, inclusion and inclusion initiatives, belonging.

#### **Compensation and Benefits**

In addition to a professional work environment that promotes innovation and rewards performance, our total compensation for employees includes a variety of components that support sustainable employment and the ability to build a strong financial future, including competitive market-based pay, share-based compensation awards, and comprehensive benefits. In addition to earning a base salary, eligible employees are compensated for their contributions to the Company's goals with cash incentives and long-term equity-based incentives. The Company is committed to providing fair and equitable pay for employees. Eligible full-time employees also have access to medical, dental, and vision plans; savings and retirement plans; and other benefits.

#### **Corporate Information**

We were incorporated in Delaware in April of 2003. Our principal executive offices are located at 3222 Phoenixville Pike, Malvern, Pennsylvania 19355, and our telephone number is (610) 640-4202. Our website address is [www.neurostar.com](http://www.neurostar.com) <https://neurostar.com/neuronetics/>. We make available, free of charge on our website, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), as soon as reasonably practicable after we electronically file those reports with, or furnish them to, the Securities and Exchange Commission ("SEC"). The SEC maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, which can be found at <http://www.sec.gov>. The information contained on, or accessible through, our website is not incorporated by reference into this Annual Report on Form 10-K, and you should not consider any information contained in, or that can be accessed through, our website as part of this Annual Report on Form 10-K.

18 19

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#### [Table of Contents](#)

#### **Summary Risk Factors**

An investment in shares of our common stock involves significant risks. See the "Risk Factors" section of this Annual Report on Form 10-K. These risks include, among others:

- We have incurred losses in the past and may be unable to achieve or sustain profitability in the future.
- If insurance coverage is unavailable or reimbursement from third-party payors for treatments using our products significantly declines, psychiatrists may be reluctant to use our products.
- Our revenue has been concentrated among a small number of customers, and if we lose any of these customers and fail to replace them, or if any of these customers fail to perform their obligations to us, our revenue may decrease substantially.
- Our success depends upon patient satisfaction with the effectiveness of our NeuroStar Advanced Therapy System.
- We operate in a very competitive environment and if we are unable to compete successfully against our existing or potential competitors, our sales and operating results may be negatively affected.

- The loss of certain members of our senior management or our inability to attract and retain highly skilled executives, salespeople, product development and other personnel could negatively impact our business.
- We rely on single-source suppliers for some components used in our NeuroStar Advanced Therapy System and on a single manufacturer for the assembly of our NeuroStar Advanced Therapy System, and we may be unable to find replacements or immediately transition to alternative parties for these components.
- We rely on a network of third-party distributors to market and distribute our products internationally, and if we are unable to maintain and expand this network, we may be unable to generate anticipated sales.
- If we are not able to obtain and enforce patent protection for our technologies, products, or product candidates, development and commercialization of our products and product candidates may be adversely affected.
- Our products and operations are subject to extensive government regulation and oversight both in the United States and abroad, and our failure to comply with applicable requirements could harm our business.
- Modifications to our products may require new 510(k) clearances, *de novo classification* or *PMA approvals*, *PMAs*, and may require us to cease marketing or recall the modified products until clearances are obtained.
- Our products must be manufactured in accordance with federal and state regulations, and we could be forced to recall our installed systems or terminate production if we fail to comply with these regulations.
- Our products may cause or contribute to adverse medical events that we are required to report to the FDA, and if we fail to do so, we would be subject to sanctions that could harm our reputation, business, financial condition and results of operations. The discovery of serious safety issues with our

19 20

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[Table of Contents](#)

products, or a recall of our products either voluntarily or at the direction of the FDA or another governmental authority, could have a negative impact on us.

- We are subject to certain federal, state and foreign fraud and abuse laws, health information privacy and security laws and transparency laws, which, if violated, could subject us to substantial penalties. Additionally, any challenge to or investigation into our practices under these laws could cause adverse publicity and be costly to respond to, and thus could harm our business.
- Our operating results are directly dependent upon the sales and marketing efforts of our sales and customer support team as well as our field sales personnel in the United States and our independent third-party distributors outside of the United States. If our employees or our independent distributors fail to adequately promote, market and sell our products, our sales could significantly decrease.
- We may need to raise additional capital to fund our existing commercial operations, develop and commercialize new products and expand our operations.
- The terms of our credit facility place restrictions on our operating and financial *flexibility*, *flexibility* and could subject us to *potential default*. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.
- We are an “emerging growth company” and the reduced disclosure requirements applicable to emerging growth companies could make If we experience significant disruptions in our common stock less attractive to investors information technology systems, our business may be adversely affected.

**Item 1A. Risk Factors.**

*Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below and the other information contained in this Annual Report on Form 10-K before deciding whether to invest in our common stock. The occurrence of any of the events or developments described below could harm our business, financial condition, results of operations and prospects. As a result, the market price of our common stock could decline, and you may lose all or part of your investment.*

### **Risks Related to Our Business and Industry**

#### ***We have incurred losses in the past and may be unable to achieve or sustain profitability in the future.***

We have incurred net losses since inception, including net losses of ~~\$37.2 million~~ \$30.2 million and ~~\$31.2 million~~ \$37.2 million for the years ended ~~December 31, 2022~~ December 31, 2023 and ~~2021~~, 2022, respectively. As a result of ongoing losses, as of ~~December 31, 2022~~ December 31, 2023, we had an accumulated deficit of ~~\$345.9 million~~ \$376.1 million. We expect to continue to incur significant sales and marketing, product development, regulatory and other expenses as we continue to expand our marketing efforts to increase adoption of our products and expand existing relationships with our customers, to obtain regulatory clearances or approvals for our products in additional countries and for additional indications, and to develop new products or add new features to our existing products. The net losses we incur may fluctuate significantly from quarter to quarter. We will need to generate significant additional revenues to achieve and sustain profitability, and even if we achieve profitability, we cannot be sure that we will 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 rely on the sale of our NeuroStar Advanced Therapy System and treatment sessions to generate revenues.***

We rely on the sale of our NeuroStar Advanced Therapy System and treatment sessions to generate revenues, and we expect to generate substantially all of our revenues in the foreseeable future from sales of these and any related products and services. Because the market for TMS therapy is still developing and

**2021**

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### **Table of Contents**

contains a limited number of market participants, sales of our products could be negatively impacted by unfavorable market reactions to our or other TMS devices. If the use of our or other TMS therapies results in serious adverse events, or such products malfunction or are misused, patients and psychiatrists may attribute such negative events to TMS therapy generally, which may adversely affect market adoption of our products. Additionally, if patients undergoing treatment with a NeuroStar Advanced Therapy System perceive the benefits to be inadequate or adverse events too numerous or severe compared to the relevant rates of alternative TMS therapies or pharmaceutical options, it will be difficult to demonstrate the value of our NeuroStar Advanced Therapy System to patients and psychiatrists. As a result, demand for and the use of our NeuroStar Advanced Therapy System may decline or may not increase at the pace or to the levels we expect.

Our business and ability to meet obligations to our customers may be disrupted and our results of operations, financial condition, cash flows and liquidity may be adversely affected by a global ~~pandemic~~ pandemic or epidemic diseases.

Our operations and interactions with healthcare systems, providers and patients expose us to risks associated with public health crises, including epidemics and pandemics. The global impact of COVID-19, or other global pandemic including corresponding preventative and precautionary measures that we and other businesses, communities and governments may take to mitigate the

spread of such disease, may lead to restrictions on, disruptions in, and other related impacts on business and personal activities, which may adversely impact our business and liquidity.

In early 2022 and throughout the year ended 2021 and into early 2022, we experienced a material impact to revenue particularly with regard to U.S. treatment session revenues as a result of the COVID-19 pandemic. Capital equipment sales and treatment session revenues may continue to be materially impacted by the pandemic as customers defer capital purchase decisions and delay new patient treatment starts. Further, during the COVID-19 pandemic, several countries placed significant restrictions on travel within their respective borders, leading to extended business closures in some instances.

The significance of the impact of a global pandemic on our operations depends on numerous evolving factors that we may not be able to accurately predict or effectively respond to, including, among others:

- the effect on global economic activity, financial markets and the resulting impact on our customer's businesses, their credit and liquidity, and their demand for our solutions and services, as well as their ability to pay;
- our ability to deliver and implement our solutions in a timely manner, including as a result of supply chain disruptions and related cost increases; and
- actions taken by U.S., foreign, state, and local governments, suppliers, and individuals in response to the outbreak (including the extent of travel restrictions and business closures).

***If insurance coverage is unavailable or reimbursement from third-party payors for treatments using our products significantly declines, psychiatrists may be reluctant to use our products.***

In the United States, sales of our products will depend, in part, on the extent to which the treatment sessions using our products are covered and reimbursed by third-party payors, including private insurers and government healthcare programs. Even if a third-party payor covers a particular treatment that uses our products, the resulting reimbursement rate may not be adequate to cover a provider's cost to purchase our products or ensure such purchase is profitable for the provider. Further, patients who are treated in-office for a medical condition generally rely on third-party payors to reimburse all or part of the costs associated with

22

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[Table of Contents](#)

the treatment and may be unwilling to undergo such treatment in the absence of coverage and adequate reimbursement, or due to large annual deductibles associated with certain health insurance plans.

Reimbursement by a third-party payor may depend upon a number of factors, including the third-party payor's determination that a treatment is neither experimental nor investigational, safe, effective, medically reasonable and medically

21

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[Table necessary \(which may include provision of Contents\)](#)

**necessary, treatment only in the absence of certain alternatives**), appropriate for the specific patient, cost-effective, supported by peer-reviewed medical journals **and/or** included in clinical practice guidelines.

In the United States, there is no uniform policy of coverage and reimbursement among third-party payors. Third-party payors often rely upon Medicare coverage policies and payment limitations in setting their own reimbursement policies, but also have their own methods and approval process apart from Medicare coverage and reimbursement determinations. Therefore, **coverage, reimbursement and reimbursement utilization guidelines** for treatments **can** **may** differ significantly from payor to payor. Decisions regarding the extent of coverage and amount of reimbursement to be provided for an in-office treatment is made on a plan-by-plan basis. One payor's determination to provide coverage for a specific treatment does not assure that other payors will also provide coverage, and adequate reimbursement.

In addition, the federal government and state legislatures have continued to implement cost containment programs, including price controls and restrictions on coverage and reimbursement. To contain costs, governmental healthcare programs and third-party payors are increasingly challenging the price, scrutinizing the medical necessity and reviewing the cost-effectiveness of medical treatments.

Outside of the United States, reimbursement systems vary significantly by country. Many foreign markets, including Japan, have government-managed healthcare systems that govern reimbursement for psychiatric treatments and procedures. Additionally, some foreign reimbursement systems provide for limited payments in a given period and therefore result in extended payment periods. If adequate levels of reimbursement from third-party payors outside of the United States are not obtained, international sales of our products may not materialize or grow significantly.

The marketability of our products may suffer if the government and third-party payors fail to provide adequate coverage and reimbursement. Even if favorable coverage and reimbursement status is attained, less favorable coverage policies and reimbursement rates may be implemented in the future.

***If we are unable to adequately train psychiatrists and other treatment providers on the safe and appropriate use of our products, we may be unable to achieve our expected growth.***

There is a learning process involved for treatment providers to become proficient in the use of our products, which requires us to spend considerable time and resources for training. It is critical to the success of our commercialization efforts to train a sufficient number of psychiatrists and to provide them with adequate, ongoing instruction and training in the use of our products. This training process generally requires psychiatrists to review and study product materials, engage in multi-day, hands-on training sessions for up to four hours **aper** day and participate in a multi-day observational period prior to treating patients independently. This training process may also take longer than expected or be more complicated than the psychiatrists or their personnel are comfortable with and may therefore affect our ability to increase sales. Convincing psychiatrists to dedicate the time and energy necessary for adequate training is challenging, and we may not be successful in these efforts.

***Our revenue has been concentrated among a small number of customers, and if we lose any of these customers and fail to replace them, our revenue may decrease substantially.***

A significant amount of our revenue is derived from a limited number of customers. Any material non-payment or non-performance by one of these customers, a significant downturn or deterioration in the business or financial condition of any of these customers, or any other event significantly negatively impacting a

contractual relationship with one of these customers could adversely affect our financial condition and results of operations.

[Table of Contents](#)

***Customers and their patients may be slow to adopt and use TMS therapies.***

TMS therapy is an emerging treatment option for patients suffering from MDD. As a result, customer and patient awareness of TMS therapy as a treatment option for MDD, and experience with TMS therapies, is limited. Our success depends in large part on our ability to educate and train customers and patients, and successfully demonstrate the safety, tolerability, ease of use, efficacy, cost effectiveness and other merits of our NeuroStar Advanced Therapy System. We have been engaging in an active marketing campaign to raise awareness of our NeuroStar Advanced Therapy System and its benefits among customers, but we cannot assure you that these efforts will be successful or that they will not prove to be cost-prohibitive. Some customers may also find the initial patient set up and the subsequent procedures for future treatment sessions to be difficult or complicated, or could be wary of the initial investment required for the purchase of the NeuroStar Advanced Therapy System, which may impact their decision to purchase or use the NeuroStar Advanced Therapy System as part of their practice. Similarly, customers may find it difficult to hire additional staff, allocate sufficient space or operationalize our NeuroStar Advanced Therapy System, which could slow its adoption.

In addition, customers may not derive sufficient cash flow from using the NeuroStar Advanced Therapy Systems due to their own practice economics or otherwise. Failure to achieve economic benefits from the purchase or use of the NeuroStar Advanced Therapy System would adversely affect our customers' purchase of treatment sessions. These factors could also reduce the number of procedures performed using our NeuroStar Advanced Therapy System, and if we do not facilitate the utilization of our products by our customers, our revenues and results of operations could be harmed.

***Our success depends upon patient satisfaction with the effectiveness of our NeuroStar Advanced Therapy System.***

In order to generate repeat and referral business, patients must be satisfied with the effectiveness of our NeuroStar Advanced Therapy System. Clinical studies demonstrate that, in order to be effective, our products must be used for a period of four to six weeks, and require a patient to return to a psychiatrist's office five days a week during that period in order to receive the recommended course of treatment. Since patients who achieve response or remission using our therapy will obtain these results gradually over this treatment period, their perception of their results may vary depending on their compliance with the prescribed treatment course.

We train our customers to select the appropriate patient candidates for treatment using the NeuroStar Advanced Therapy System, explain to their patients the time-period over which the results from a treatment course can be expected to occur, and measure the success of treatments using medical guidelines. However, our customers may not select appropriate patient candidates for NeuroStar Advanced Therapy System treatment, which may produce results that may not meet patients' expectations. In addition, the efficacy of treatment is dependent on proper patient set up at the initial treatment session and duplication of that set up at future treatment sessions. To the extent customers do not make the proper measurements for a specific patient or use the same procedures at each treatment session, it could result in variability of the treatment efficacy and results for the patient. If patients are not satisfied with the results of our NeuroStar Advanced Therapy System, our reputation and future sales will suffer.

***We operate in a very competitive environment and if we are unable to compete successfully against our existing or potential competitors, our sales and operating results may be negatively affected.***

Our currently marketed products are, and any future products we develop and commercialize will be, subject to intense competition. The industry in which we operate is subject to rapid change and is highly sensitive to the introduction of new products or other market activities of current or new industry participants. Our ability to

24

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[Table of Contents](#)

compete successfully will depend on our ability to develop products that reach the market in a timely manner, to receive adequate coverage and reimbursement from third-party payors, and to successfully demonstrate to psychiatrists and patients the merits of our products compared to those of our competitors. If we are not

23

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[Table of Contents](#)

successful in convincing others of the merits of our products, including in comparison to those of our competitors, or educating them on the use of our products, they may not use our products or use them effectively and we may be unable to increase our sales.

We have competitors that sell other forms of TMS therapy, including Brainsway, Magstim, MagVenture, CloudTMS and Nexstim, that compete directly with the NeuroStar Advanced Therapy System. Competing TMS therapy companies have developed and may develop additional treatments that can be administered for shorter time periods or for indications outside of MDD, or may develop treatments that have improved efficacy when compared to our products or that require a less significant investment of resources from psychiatrists. We also face competition from pharmaceutical and other companies that develop competitive products, such as antidepressant medications. Our commercial opportunity could be reduced or eliminated if these competitors develop and commercialize antidepressant medications or other treatments that are safer, more convenient or more effective than the NeuroStar Advanced Therapy System. At any time, these and other potential market entrants may develop treatment alternatives that may render our products uncompetitive.

In addition, our competitors may have more established distribution networks than we do, or may be acquired by enterprises that have more established distribution networks than we do. Our competitors may also develop and patent processes or products earlier than we can or obtain domestic or international regulatory clearances or approvals for competing products more rapidly than we can, which could impair our ability to develop and commercialize similar products. We also compete with our competitors in acquiring technologies and technology licenses complementary to our products or advantageous to our business. In addition, we compete with our competitors to engage the services of independent distributors outside the United States, both those presently working with us and those with whom we hope to work as we expand.

***We may face difficulties encountered by companies in new and evolving markets.***

In assessing our prospects, you must consider the risks and difficulties frequently encountered by companies in new and evolving markets. These risks include our ability to:

- manage rapidly changing and expanding operations;
- increase awareness of our brand and strengthen customer loyalty;
- successfully execute our business and marketing strategy;
- respond effectively to competitive pressures and developments;
- continue to develop and enhance our products and products in development;
- obtain regulatory clearance or approval to commercialize new products and enhance our existing products;
- refrain from infringing on the intellectual property rights of others, and maintaining appropriate legal policies and procedures;
- expand our presence in existing and commence operations in new international markets; and
- attract, retain and motivate qualified personnel.

24 25

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[Table of Contents](#)

***If we are unable to adequately address our customers' needs, it could negatively impact sales and market acceptance of our products and we may never generate sufficient revenues to achieve or sustain profitability.***

Our operating results are directly dependent upon the sales and marketing efforts of our sales and customer support team as well as our field sales personnel in the United States and our independent third-party distributors outside of the United States. If our employees or our independent distributors fail to adequately promote, market and sell our products, our sales could significantly decrease.

If we launch new products, expand our product offerings to new indications or 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, and distributors with significant technical knowledge in various areas. Further, most of the salespersons we recently hired have technical expertise from other industries but no experience within our specific industry. New hires require training and take time to achieve full productivity. If we fail to train new hires adequately, new hires fail to successfully transition to our industry, or we experience high turnover in our sales force in the future, new hires may not become as productive as may be necessary to maintain or increase our sales. If we are unable to expand our sales and marketing capabilities domestically and internationally, we may be unable to effectively commercialize our products.

***The loss of any member of our senior management or our inability to attract and retain highly skilled executives, salespeople, product development and other personnel could negatively impact our business.***

Our success depends on the skills, experience and performance of the members of our senior management team. The individual and collective efforts of these employees will be important as we continue to develop our products and as we expand our

commercial activities. We believe that it is challenging to identify individuals with the requisite skills to serve in many of our key positions, and the loss or incapacity of existing members of our executive management team could negatively impact our operations. We did not maintain key ~~man~~ person life insurance on any of our employees in ~~2022~~ 2023 (other than our Chief Executive Officer, on whom we maintained a \$1,000,000 key person life insurance policy) and do not expect to in the future. Our Chief Executive Officer's employment agreement does not guarantee our retention of our Chief Executive Officer for any period of time.

Our commercial, supply chain and research and development programs and operations depend on our ability to attract and retain highly skilled managers, salespeople and product development and customer training personnel. We may be unable to attract or retain qualified managers, salespeople or product development and customer training personnel in the future due to the competition for qualified personnel in the medical treatment and device fields, as well as other fields. We also face competition from universities and public and private research institutions in recruiting and retaining highly qualified scientific personnel. Recruiting and retention difficulties can limit our ability to support our commercial, supply chain and research and development programs. The loss of key employees, the failure of any key employee to perform or our inability to attract and retain skilled employees, as needed, or an inability to effectively plan for and implement a succession plan for key employees could harm our business.

***Our long-term growth depends on our ability to commercialize our approved products for current and future indications and to develop and commercialize additional products through our research and development efforts. If we fail to do so we may be unable to compete effectively.***

In order to increase our future revenues, we must successfully enhance our existing product offerings and introduce new products in response to changing customer demands and competitive pressures and technologies. Our industry is characterized by intense competition, including from lower-cost competitors, rapid technological changes, new product introductions and enhancements and evolving industry standards. We also face competition from pharmaceutical companies, including large pharmaceutical companies with

26

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[Table of Contents](#)

greater capital. Our business prospects depend in part on our ability to develop and commercialize new products and applications for our technology, including in new markets that develop as a result of

25

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[Table of Contents](#)

technological, pharmaceutical and scientific advances, while improving the performance and cost-effectiveness of our products. New pharmaceutical products, technologies, techniques or other products could emerge that might offer better combinations of price and performance than our products. It is important that we anticipate changes in technology and market demand, as well as

psychiatrist practices to successfully develop, obtain clearance or approval, if required, and successfully introduce new, enhanced and competitive technologies to meet our prospective customers' needs on a timely and cost-effective basis.

We might be unable to successfully further commercialize or develop or obtain regulatory clearances or approvals to market new products or our existing products for additional indications. Future products, even if cleared, might not be accepted by psychiatrists or the third-party payors who reimburse for the procedures performed with our products. The success of any new product offering or enhancement to an existing product will depend on numerous additional factors, including our ability to:

- properly identify and anticipate clinician and patient needs;
- demonstrate the benefits associated with the use of our products when compared to the products and devices of our competitors;
- develop and introduce new products or product enhancements in a timely manner;
- adequately protect our intellectual property and avoid infringing upon the intellectual property rights of third parties;
- demonstrate the safety and efficacy of new products; and
- obtain the necessary regulatory clearances or approvals for new products or product enhancements.

If we do not develop and obtain regulatory clearances or approvals for new products or indications or product enhancements in time to meet market demand, or if there is insufficient demand for these products or enhancements, our results of operations will suffer. Our research and development efforts may require a substantial investment of time and resources before we are adequately able to determine the commercial viability of a new product, technology, material or other innovation. In addition, even if we are able to develop enhancements or new generations of our products successfully, these enhancements or new generations of products may not produce sales in excess of the costs of development and they may be quickly rendered obsolete by changing customer preferences or the introduction by our competitors of products embodying new technologies or features.

Nevertheless, we must carefully manage our introduction of new products. If potential customers believe such products will offer enhanced features or be sold for a more attractive price, they may delay purchases until such products are available. We may also have excess or obsolete inventory as we transition to new products, and we have limited experience in managing product transitions.

***We rely on single-source suppliers for some components used in our NeuroStar Advanced Therapy System and on a single manufacturer for the assembly of our NeuroStar Advanced Therapy System, and we may be unable to find replacements or immediately transition to alternative parties for these components.***

We rely on single-source suppliers for some components used in our NeuroStar Advanced Therapy System, and we do not have long-term supply contracts with these suppliers. Furthermore, we rely on a single manufacturer for the assembly of the mobile console and patient positioning system used in our NeuroStar Advanced Therapy System. For us to be successful, our suppliers and contract manufacturer must be able to

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[Table of Contents](#)

have generally met our demand requirements on a timely basis in the past, their ability and willingness to continue to do so going forward may be limited for several reasons, including our lack of long-term agreements with those suppliers, our relative importance as a customer of those suppliers, or, as applicable, their ability to produce the components for or provide assembly services to manufacture our NeuroStar Advanced Therapy System. An interruption in our commercial operations could occur if we encounter delays or difficulties in securing these components or manufactured products, if we cannot obtain an acceptable substitute.

Any transition to a new supplier or contract manufacturer could be time-consuming and expensive, may result in interruptions in our operations and product delivery, could affect the performance specifications of our NeuroStar Advanced Therapy System or could require that we modify its design. If we are required to change our contract manufacturer, we will be required to verify that the new manufacturer maintains facilities, procedures and operations that comply with our quality and applicable regulatory requirements, which could further impede our ability to manufacture our products in a timely manner. If the change in manufacturer results in a significant change to any product, a new 510(k) clearance from the FDA or similar non-U.S. regulatory authorization may be necessary before we implement the change, which could cause a substantial delay. We cannot assure you that we will be able to identify and engage alternative suppliers or contract manufacturers on similar terms or without delay. Furthermore, our contract manufacturer could require us to move to a different production facility. The occurrence of any of these events could harm our ability to meet the demand for our NeuroStar Advanced Therapy System in a timely and cost-effective manner. During 2023, we transitioned to a new contract manufacturer for our console in a planned process.

***We may be unable to achieve or manage our anticipated growth effectively, which could make it difficult to execute our business strategy.***

We have a relatively short history of operating as a commercial company and our growth rate may be volatile. For example for 2023, 2022 and 2021 our revenues decreased from \$62.6 million for the year ended December 31, 2019 to \$49.2 million for the year ended December 31, 2020 growth rate was 9%, 18% and our revenues increased from \$55.3 million for the year ended December 31, 2021 to \$65.2 million for the year ended December 31, 2022, 12% respectively. We intend to grow our business operations and may experience periods of rapid growth and expansion. This anticipated growth could create a strain on our organizational, administrative and operational infrastructure, including our supply chain operations, quality control, technical support and customer service, sales force management and general and financial administration. We may be unable to maintain the quality, or delivery timelines, of our products or customer service or satisfy customer demand if our business grows too rapidly. Our ability to manage our growth properly will require us to continue to improve our operational, financial and management controls, and our reporting systems and procedures. We may implement new enterprise software systems in a number of areas affecting a broad range of business processes and functional areas. The time and resources required to implement these new systems is uncertain and failure to complete this in a timely and efficient manner could harm our business.

As our commercial operations and sales volume grow, we will need to continue to increase our workflow capacity for our supply chain, customer service, training and education personnel, billing, accounting reporting and general process improvements and expand our internal quality assurance program, among other things. Because our products require us to devote significant resources to training our customers on the use, and educating our customers on the benefits, of our products, we will be required to expand these personnel as we increase our sales efforts. We may not successfully implement these increases in scale or the expansion of our personnel, which could harm our business.

***We rely on a network of third-party distributors to market and distribute our products internationally, and if we are unable to maintain and expand this network, we may be unable to generate anticipated sales.***

We rely on a network of third-party distributors to market and distribute our products in international markets. We currently sell our products in five countries outside of the United States and plan to market and sell our

28

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[Table of Contents](#)

products through our exclusive distribution agreement in Japan once we attain reimbursement approval. We

27

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[Table of Contents](#)

are assessing the opportunity to continue expanding into other international markets. We may face significant challenges and risks in managing a geographically dispersed distribution network. We have limited ability to control any third-party distributors. Our distributors may be unable to successfully market and sell our products and may not devote sufficient time and resources to support the marketing, sales, education and training efforts that we believe enable the products to develop, achieve or sustain market acceptance. Additionally, in some international jurisdictions, we rely on our distributors to manage the regulatory process, while complying with all applicable rules and regulations, and we are dependent on their ability to do so effectively. In addition, if a dispute arises with a distributor or if a distributor is terminated by us or goes out of business, it may take time to locate an alternative distributor, to seek appropriate regulatory approvals and to train new personnel to market our products, and our ability to sell those systems in the region formerly serviced by such terminated distributor could be harmed. Any of these factors could reduce our revenues from affected markets, increase our costs in those markets or damage our reputation. In addition, if an independent distributor were to depart and be retained by one of our competitors, we may be unable to prevent that distributor from helping competitors solicit business from our existing customers, which could further adversely affect our sales. As a result of our reliance on third-party distributors, we may be subject to disruptions and increased costs due to factors beyond our control, including labor strikes, third-party error and other issues. If the services of any of these third-party distributors become unsatisfactory, we may experience delays in meeting our customers' demands and we may be unable to find a suitable replacement on a timely basis or on commercially reasonable terms. Any failure to deliver products in a timely manner may damage our reputation and could cause us to lose potential customers.

***We face risks associated with our international business.***

We currently market and sell our products outside of the United States, including in Japan, and plan to market and sell our products through our exclusive distribution agreement in Japan. Once we attain satisfactory reimbursement approval, we expect that sales of our NeuroStar Advanced Therapy System in Japan will increase.

The sale and shipment of our products across international borders, as well as the purchase of components and products from international sources, subjects us to extensive U.S. and other foreign governmental trade, import and export and customs regulations and laws. Compliance with these regulations and laws is costly and exposes us to penalties for non-compliance. We expect our international activities will be dynamic over the foreseeable future as we continue to pursue opportunities in international markets. Our international business operations are subject to a variety of risks, including:

- difficulties in staffing and managing foreign and geographically dispersed operations, to the extent we establish non-U.S. operations;
- attaining reimbursement under differing and multiple payor reimbursement regimes, government payors or patient self-pay systems;
- difficulties in determining and creating the proper sales pathway in new, international markets;
- compliance with various U.S. and international laws, including export control laws and the U.S. Foreign Corrupt Practices Act of 1977, (the “FCPA”), and anti-money laundering laws;
- differing regulatory requirements for obtaining clearances or approvals to market our products;
- changes in, or uncertainties relating to, foreign rules and regulations that may impact our ability to sell our products, perform services or repatriate profits to the United States;

29

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[Table of Contents](#)

- tariffs and trade barriers, export regulations, sanctions and other regulatory and contractual limitations on our ability to sell our products in certain foreign markets;

28

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[Table of Contents](#)

- potential adverse tax consequences, including imposition of limitations on or increases of withholding and other taxes on remittances and other payments by foreign subsidiaries or joint ventures;
- imposition of differing labor laws and standards;
- armed conflicts or economic, political, health (including pandemic **diseases such as COVID-19 from coronavirus**) or social instability in foreign countries and regions;
- fluctuations in foreign currency exchange rates;
- an inability, or reduced ability, to protect our intellectual property, including any effect of compulsory licensing imposed by government action;

- availability of government subsidies or other incentives that benefit competitors in their local markets that are not available to us; and
- conducting post-market surveillance on product performance.

We are assessing the opportunity to expand into other international markets. However, our expansion plans may not be realized, or if realized, may not be successful. We expect each market to have particular regulatory hurdles to overcome, and future developments in these markets, including the uncertainty relating to governmental policies and regulations, could harm our business.

***Our employees, consultants, distributors and other commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements.***

We are exposed to the risk that our employees, consultants, distributors and other commercial partners may engage in inappropriate, fraudulent or illegal activity. Misconduct by these parties could include intentional, reckless or negligent conduct or other unauthorized activities that violate the regulations of the FDA and other U.S. healthcare regulators, as well as non-U.S. regulators, including by violating laws requiring the reporting of true, complete and accurate information to such regulators, manufacturing standards, healthcare fraud and abuse laws and regulations in the United States and abroad or laws that require the true, complete and accurate reporting of financial information or data. In particular, sales, marketing and business arrangements in the healthcare industry, including the sale of medical devices, are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. It is not always possible to identify and deter misconduct by our employees, distributors and other third parties, and the precautions we take to detect and prevent this activity 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 comply with these laws or regulations. These risks may be more pronounced, and we may find that the processes and policies we have implemented are not effective at preventing misconduct. If any 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, individual imprisonment, disgorgement, possible exclusion from participation in government healthcare programs, additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, contractual damages, reputational harm, diminished profits and future earnings and the curtailment of our operations. Whether or not we are successful in defending against such

30

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[Table of Contents](#)

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.

29

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[Table of Contents](#)

**We rely in part on third parties to conduct our clinical trials. If these third parties fail to perform their duties on time or as expected, we may not be able to obtain regulatory approval for additional indications that we may seek for the NeuroStar Advanced Therapy System.**

Our clinical trials are managed by our own staff and personnel, but we rely in part upon certain third parties, including clinical trial sites, medical institutions, clinical research organizations, ("CRO"s)CROS"), and private practices, for, among other things, site monitoring, statistical work and electronic data capture in our clinical trials. Nevertheless, we are responsible for ensuring that each of our clinical trials is conducted in accordance with applicable protocols, and legal, regulatory and scientific standards, including current good clinical practices, ("cGCP"s)CGCPs"), which are regulations and guidelines enforced by the FDA and comparable foreign regulatory authorities for clinical trials. If we or any such third parties fail to comply with applicable cGCPs,CGCPs, the clinical data generated in such trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving a marketing application for any particular indication. In addition, if such third parties do not devote sufficient time and resources to our clinical trials or otherwise carry out their contractual duties or obligations or meet expected deadlines, if they need to be replaced or if the quality or accuracy of the clinical data they assist in obtaining is compromised due to the failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates in a specified indication.

**If product liability lawsuits are brought against us, our business may be harmed, and we may be required to pay damages that exceed our insurance coverage.**

Our business exposes us to potential product liability claims that are inherent in the testing, manufacture and sale of medical devices for the treatment of MDD. Our treatments are designed for patients who suffer from significant neurohealth disorders, and these patients are more likely to experience significant adverse health outcomes, which could increase the risk of product liability lawsuits. Furthermore, if psychiatrists are not sufficiently trained in the use of our products, they may misuse or ineffectively use our products, which may result in unsatisfactory patient outcomes. We could become the subject of product liability lawsuits alleging that component failures, malfunctions, manufacturing flaws, design defects or inadequate disclosure of product-related risks or product-related information resulted in an unsafe condition or injury to patients.

Regardless of the merit or eventual outcome, product liability claims may result in:

- decreased demand for our products;
- injury to our reputation;
- significant litigation costs;
- substantial monetary awards to or costly settlements with patients;
- product recalls;
- material defense costs;
- loss of revenues;
- the inability to commercialize new products or product candidates; and

- diversion of management attention from pursuing our business strategy.

[Table of Contents](#)

Our existing product liability insurance coverage may be inadequate to protect us from any liabilities we might incur. If a product liability claim or series of claims is brought against us for uninsured liabilities or in excess of our insurance coverage, our business could suffer. Any product liability claim brought against us, with or without merit, could result in the increase of our product liability insurance rates or the inability to secure coverage in the future. In addition, a recall of some of our products, whether or not the result of a product liability claim, could result in significant costs and loss of customers.

***Our insurance policies protect us only from some business risks, which will leave us exposed to significant uninsured liabilities.***

We do not carry insurance for all categories of risk that our business may encounter. Some of the policies we currently maintain include general liability, cybersecurity liability, employee benefits liability, property, umbrella, workers' compensation, products and clinical trial liability and directors' and officers' insurance. We do not know, however, if these policies will provide us with adequate levels of coverage. Any significant uninsured liability may require us to pay substantial amounts, which would adversely affect our cash position and results of operations.

***We bear the risk of warranty claims on our products.***

We bear the risk of warranty claims on the products we supply for one year from the date of delivery. There can be no assurance that we will not face increased claims in the future. We may not be successful in claiming recovery under any warranty or indemnity provided to us by our suppliers or vendors in the event of a successful warranty claim against us by a customer or that any recovery from such vendor or supplier would be adequate. In addition, warranty claims brought by our customers related to third-party components may arise after our ability to bring corresponding warranty claims against such suppliers expires, which could result in costs to us.

***We could be negatively impacted by violations of applicable anti-corruption laws or violations of our internal policies designed to ensure ethical business practices.***

We operate in a number of countries throughout the world, including in countries that do not have as strong a commitment to anti-corruption and ethical behavior as is required by U.S. laws and by our corporate policies. We are subject to the risk that we, our U.S. employees or any future employees or consultants located in other jurisdictions or any third parties such as our distributors that we engage to do work on our behalf in foreign countries may take action determined to be in violation of anti-corruption laws in any jurisdiction in which we conduct business, including the FCPA. The FCPA generally prohibits covered entities and their intermediaries from engaging in bribery or making other prohibited payments, offers or promises to foreign officials for the purpose of obtaining or retaining business or other advantages. In addition, the FCPA imposes recordkeeping and internal controls requirements on publicly traded corporations and their foreign affiliates, which are intended to, among other things, prevent the diversion of corporate funds to the payment of bribes and other improper payments, and to prevent the establishment of "off books" slush funds from which such improper payments can be made.

We will face significant risks if we fail to comply with the FCPA and other laws that prohibit improper payments, offers or promises of payment to foreign governments and their officials and political parties by us and other business entities for the purpose of obtaining or retaining business or other advantages. In many foreign countries, particularly in countries with developing economies, it may be a local custom that businesses operating in such countries engage in business practices that are prohibited by the FCPA or other laws and regulations. We have implemented company policies relating to compliance with the FCPA and similar laws. However, such policies may not be effective at preventing all potential FCPA or other violations. Although our agreements with our international distributors state our expectations for our distributors' compliance with U.S. laws, including the FCPA, and provide us with various remedies upon any non-compliance, non-

32

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[Table of Contents](#)

compliance, including the ability to terminate the agreement, our distributors may not comply with U.S. laws, including the FCPA.

31

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[Table of Contents](#)

Any violation of the FCPA or any similar anti-corruption law or regulation could result in substantial fines, sanctions, civil and/or criminal penalties and curtailment of operations in certain jurisdictions and might harm our business, financial condition or results of operations.

***If we experience significant disruptions in our information technology systems, our business may be adversely affected.***

We depend on our information technology systems for the efficient functioning of our business, including for our TrakStar system and accounting, data storage, compliance, purchasing and inventory management. We do not have redundant systems at this time. While we will attempt to mitigate interruptions, we may experience difficulties in implementing upgrades to our information technology systems, which would impact our business operations, or experience difficulties in operating our business during the upgrade, either of which could disrupt our operations, including our ability to provide customers with data on patient outcomes, track the usage of our products, timely ship and track product orders, project inventory requirements, manage our supply chain and otherwise adequately service our customers or disrupt our customers' ability to access patient data or use our products for treatments. In the event we experience significant disruptions as a result of the current implementation of our information technology systems, we may be unable to repair our systems in an efficient and timely manner. Accordingly, such events may disrupt or reduce the efficiency of our entire operation and have a material adverse effect on our results of operations and cash flows. Currently we carry business interruption coverage to mitigate any potential losses, but we cannot be certain that such potential losses will not exceed our policy limits.

We are increasingly dependent on sophisticated information technology for our infrastructure. Our information systems require an ongoing commitment of significant resources to maintain, protect and enhance existing systems. Failure to maintain or protect

our information systems and data integrity effectively could have a materially adverse effect on our business.

***Performance issues, service interruptions or price increases by our shipping carriers could adversely affect our business and harm our reputation and ability to provide our services on a timely basis.***

Expedited, reliable shipping is essential to our operations. We rely heavily on providers of transport services for reliable and secure point-to-point transport of our products to our customers and for tracking of these shipments. Should a carrier encounter delivery performance issues such as loss, damage or destruction of any systems, it would be costly to replace such systems in a timely manner and such occurrences may damage our reputation and lead to decreased demand for our products and increased cost and expense to our business. In addition, any significant increase in shipping rates could adversely affect our operating margins and results of operations. Similarly, strikes, severe weather, natural disasters or other service interruptions affecting delivery services we use would adversely affect our ability to process orders for our products on a timely basis.

***Security and privacy breaches may expose us to liability and harm our reputation and business.***

As part of our business we receive and process information about our customers, partners and their patients, including PHI, and we may store or contract with third parties to store our customers' data, including PHI. PHI, a subset of individually identifiable information, is regulated at the federal level by HIPAA, as amended by HITECH, and by various laws at the state level, as more fully described below. We are required to safeguard PHI in accordance with HIPAA and, as a business associate, we are also directly liable for compliance with HIPAA.

The security measures we have implemented relating to our NeuroStar Advanced Therapy System and TrakStar database, specifically, and our operations, generally, may not prevent security breaches that could

33

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[Table of Contents](#)

harm our business. Advances in computer capabilities, inadequate technology or facility security measures or other factors may result in a compromise or breach of our systems and the data and PHI we store and process. Our security measures have been and may in the future be breached as a result of actions by third parties or employee error or

32

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[Table of Contents](#)

malfeasance. A party who is able to circumvent our security measures or exploit inadequacies in our security measures, could, among other things, misappropriate proprietary information, including information about our customers and their patients, cause the loss or disclosure of some or all of this information, cause interruptions in our or our customers' operations or expose our customers to computer viruses or other disruptions or vulnerabilities. Any compromise of our systems or the data we store or process could implicate reporting requirements under HIPAA, result in a loss of confidence in the security of our software, damage our reputation, disrupt our business, lead to legal liability and adversely affect our results of operations. Moreover, a

compromise of our systems could remain undetected for an extended period of time, exacerbating the impact of that compromise. Actual or perceived vulnerabilities may lead to claims against us by our customers, their patients or other third parties, including the federal and state governments. While our customer agreements typically contain provisions that seek to limit our liability, there is no assurance these provisions will be enforceable and effective under applicable law. In addition, the cost and operational consequences of implementing further data protection measures could be significant.

***Employment litigation and unfavorable publicity could negatively affect our future business.***

Employees may, from time to time, bring lawsuits against us or make public claims about us regarding injury, creating a hostile workplace, discrimination, wage and hour, sexual harassment and other employment issues. In recent years there has been an increase in the number of discrimination and harassment claims generally. Coupled with the expansion of social media platforms and similar devices that allow individuals access to a broad audience, these claims have had a significant negative impact on some businesses. Companies that have faced employment or harassment related lawsuits have had to terminate management or other key personnel and have suffered reputational harm that has negatively impacted their sales. If we were to face any employment related claims or allegations, our business could be negatively affected.

***The 2017 comprehensive tax reform law could adversely affect our business and financial condition.***

On December 22, 2017, President Trump signed into law new legislation, (Pub. L. 115-97), commonly referred to as the Tax Cuts and Jobs Act of 2017, (the "TCJA"), which significantly revised the Internal Revenue Code of 1986, as amended. The TCJA, among other things, contained significant changes to corporate taxation, including the reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, limitation of the tax deduction for interest expense to 30% of adjusted earnings (except for certain small businesses), limitation of the deduction for net operating losses to 80% of current year taxable income and elimination of net operating loss carrybacks, one time taxation of offshore earnings at reduced rates regardless of whether they are repatriated, elimination of U.S. tax on foreign earnings (subject to certain important exceptions), immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifying or repealing many business deductions and credits. Notwithstanding the reduction in the corporate income tax rate, the overall impact of the federal tax law is uncertain and our business and financial condition could be adversely affected. In addition, it is uncertain how various states will respond to the TCJA. The impact of this tax reform on holders of our common stock is also uncertain and could be adverse. We urge our stockholders to consult with their legal and tax advisors with respect to this legislation and the potential tax consequences of investing in or holding our common stock.

***Our effective tax rate may fluctuate, and we may incur obligations in tax jurisdictions in excess of accrued amounts.***

We are subject to taxation in numerous U.S. states and territories. As a result, our effective tax rate is derived from a combination of applicable tax rates in the various places that we operate. In preparing our financial statements, we estimate the amount of tax that will become payable in each of such places. Nevertheless, our effective tax rate may be different than experienced in the past due to numerous factors, including passage of the newly enacted federal income tax law, changes in the mix of our profitability from state to

[Table of Contents](#)

state, the results of examinations and audits of our tax filings, our inability to secure or sustain acceptable agreements with tax authorities, changes in accounting for income taxes and changes in tax laws. Any of these factors could cause us to experience an effective tax rate significantly different from previous periods or

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[Table of Contents](#)

our current expectations and may result in tax obligations in excess of amounts accrued in our financial statements.

***Our operations are vulnerable to interruption or loss due to natural or other disasters, power loss, strikes and other events beyond our control.***

A major earthquake, fire or other disaster, such as a major flood, seasonal storms, global pandemic (such as COVID-19), or terrorist attack affecting our facilities, or those of our third-party manufacturers or suppliers, could significantly disrupt our or their operations, and delay or prevent product shipment or installation during the time required to repair, rebuild or replace our third-party manufacturers or suppliers' damaged manufacturing facilities. These delays could be lengthy and costly. If any of our manufacturers', suppliers' or customers' facilities are negatively impacted by a disaster, shipments of our products could be delayed. Additionally, customers may delay purchases of our products until operations return to normal. Even if we are able to quickly respond to a disaster, the ongoing effects of the disaster could create some uncertainty in the operations of our business. In addition, our or their facilities may be subject to a shortage of available electrical power and other energy supplies. Any shortages may increase our costs for power and energy supplies or could result in blackouts, which could disrupt the operations of our affected facilities and harm our business. In addition, concerns about terrorism, the effects of a terrorist attack, political turmoil or an outbreak a pandemic (such as COVID-19) could have a negative effect on our operations.

Our business could be adversely affected by the effects of a widespread outbreak of contagious disease, including the recent outbreak of a respiratory illness known as COVID 19 caused by coronavirus. In an effort to halt the outbreak of COVID 19, the Chinese government and the governments of other impacted countries, such as Italy and the Republic of Korea, have placed significant restrictions on travel within their respective borders, leading to extended business closures in some instances. These travel restrictions and business closures could adversely impact our operations in Japan, including our ability to sell or distribute our products, as well as cause temporary or long-term closures of the offices and facilities of our suppliers and customers. Any disruption of our suppliers in China or customers in Japan could impact our global sales and operating results. We cannot at this time accurately predict what effects these conditions will have on our operations due to uncertainties relating to the ultimate geographic spread of the virus, the incidence and severity of the disease, the duration of the outbreak, and the length of the travel restrictions and business closures imposed by governments of impacted countries. In addition, a significant outbreak of contagious diseases in the human population could result in a widespread health crisis that could adversely affect the economies and financial markets of many countries, resulting in an economic downturn that could affect demand for our products and likely impact our operating results.

***We may seek to grow our business through acquisitions or investments in new or complementary businesses, products or technologies, through the licensing of products or technologies from third parties. The failure to manage acquisitions, investments, licenses or other strategic alliances, or the failure to integrate them with our existing business, could harm our business.***

Our success depends in part on our ability to continually enhance and broaden our product offerings in response to changing customer demands, competitive pressures, technologies and market pressures. Accordingly, from time to time we may consider

opportunities to acquire, make investments in or license other technologies, products and businesses that may enhance our capabilities, complement our current products

[Table of Contents](#)

or expand the breadth of our markets or customer base. Potential and completed acquisitions, strategic investments, licenses and other alliances involve numerous risks, including:

- difficulty assimilating or integrating acquired or licensed technologies, products or business operations;
- issues maintaining uniform standards, procedures, controls and policies;
- unanticipated costs associated with acquisitions or strategic alliances, including the assumption of unknown or contingent liabilities and the incurrence of debt or future write-offs of intangible assets or goodwill;
- diversion of management's attention from our core business and disruption of ongoing operations;
- adverse effects on existing business relationships with suppliers, distributors and customers;
- risks associated with entering new markets in which we have limited or no experience;
- potential losses related to investments in other companies;

[Table of Contents](#)

- potential loss of key employees of the acquired businesses; and
- increased legal and accounting compliance costs.

We do not know if we will be able to identify acquisitions or strategic relationships we deem suitable, whether we will be able to successfully complete any such transactions on favorable terms or at all or whether we will be able to successfully integrate any acquired business, product or technology into our business or retain any key personnel, suppliers or distributors.

Foreign acquisitions involve unique risks in addition to those mentioned above, including those related to integration of operations across different cultures, languages and legal and regulatory environments, currency risks and the particular economic, political and regulatory risks associated with specific countries.

To finance any acquisitions, investments or strategic alliances, we may choose to issue shares of our common stock or other equity-linked securities as consideration, which could dilute the ownership of our stockholders. Additional funds may not be available on terms that are favorable to us, or at all. If the price of our common stock is low or volatile, we may be unable to consummate any acquisitions, investments or strategic alliances using our stock as consideration.

***Our reported financial results may be adversely affected by changes in accounting principles generally accepted in the United States.***

Generally accepted accounting principles in the United States, ("U.S. GAAP"), are subject to interpretation by the Financial Accounting Standards Board, ("FASB"), or SEC, and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results and could affect the reporting of transactions completed before the announcement of a change.

Refer to "Note 4. Recent Accounting Pronouncements" in our audited financial statements and related notes thereto included elsewhere in this Annual Report on Form 10-K.

35

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[Table of Contents](#)

***Our sales volumes and our results of operations may fluctuate over the course of the year.***

We have experienced and may continue to experience meaningful variability in our sales and gross profit among fiscal quarters. In the first quarter, our results can be impacted by the resetting of annual U.S. patient healthcare insurance plan deductibles, which may cause delays in patients seeking NeuroStar Advanced Therapy **System** treatments. Historically, we have seen a sequential decline in third quarter revenues, which we believe is attributable to summer vacation plans of psychiatrists and patients. In addition, the fourth quarter has consistently been a strong revenue quarter on a sequential basis primarily due to U.S. psychiatrists' historical timing for capital expenditures and patients' needs to exhaust remaining balances in flexible spending accounts.

Additional factors that we expect may contribute to variability in our sales and gross profit over the course of the year include:

- the growth or decline of our installed system base;
- the unpredictability of future sales by our international distributors, including through our exclusive distributor in Japan;
- the demand for, and pricing of, our products and the products of our competitors;

36

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[Table of Contents](#)

- the timing of or failure to obtain regulatory clearances or approvals for other products, indications or treatments; or
- the costs, benefits and timing of new product introductions.

**Risks Related to Intellectual Property**

***If we are not able to obtain and enforce patent protection for our technologies, products, or product candidates, development and commercialization of our products and product candidates may be adversely affected.***

Our commercial success will depend in part on our success in obtaining and maintaining issued patents and other intellectual property rights in the United States and elsewhere and protecting our proprietary technology. If we do not adequately protect our intellectual property and proprietary technology, competitors may be able to use our technologies and erode or negate any competitive advantage we may have, which could harm our business and ability to achieve profitability. We have applied, and we intend to continue applying, for patents covering aspects of our technologies that we deem appropriate. However, the patent process is expensive and time consuming, and we may not be able to apply for patents on certain aspects of our current or future products and other technologies in a timely fashion, at a reasonable cost, in all jurisdictions, or at all, and any potential patent coverage we obtain may not be sufficient to prevent substantial competition.

We cannot offer any assurances about which, if any, of our patent applications will issue or whether any of our issued patents will be found invalid and unenforceable or will be threatened by third parties. Any patent applications we file may be challenged and may not result in issued patents or may be invalidated or narrowed in scope after they are issued. We also cannot provide any assurances that any of our patents have, or that any of our pending patent applications that mature into issued patents will include, claims with a scope sufficient to protect and provide exclusivity for our products, any additional features we develop for our products or any new products. Other parties may have designed around our claims or developed technologies that may be related or competitive to our platform, may have filed or may file patent applications and may have received or may receive patents that overlap or conflict with our patent applications, either by claiming the same methods or devices or by claiming subject matter that could dominate our patent position. Any successful opposition to these patents or any other patents owned by or, if applicable in the future,

[Table of Contents](#)

licensed to us could deprive us of rights necessary for the practice of our technologies or the successful commercialization of any products or product candidates that we may develop. Since patent applications in the US and most other countries are confidential for a period of time after filing, we cannot be certain that we or our licensors were the first to file any patent application related to our technologies, products, or product candidates. Furthermore, an interference proceeding can be provoked by a third party or instituted by the United States Patent and Trademark Office, (the “USPTO”), to determine who was the first to invent any of the subject matter covered by the patent claims of our applications for any application with an effective filing date before March 16, 2013.

The patent positions of medical device companies, including our patent position, may involve complex legal and factual questions, and, therefore, the scope, validity and enforceability of any patent claims that we may obtain cannot be predicted with certainty. Patents, if issued, may be challenged, deemed unenforceable, invalidated or circumvented. Once granted, patents may remain open to opposition, interference, re-examination, post-grant review, inter partes review, nullification or derivation action in court or before patent offices or similar proceedings for a given period after allowance or grant, during which time third parties can raise objections against such initial grant. Proceedings challenging our patents, which may continue for a protracted period of time, could result in either loss of the patent or denial of the patent application or loss or reduction in the scope of one or more of the claims of the patent or patent application. In addition, such proceedings may be costly. Thus, any patents that we may own may not provide any protection against competitors. Furthermore, an adverse decision in an interference proceeding can result in a third party receiving the patent right sought by us, which in turn could affect our ability to commercialize our products.

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[Table of Contents](#)

Furthermore, though an issued patent is presumed valid and enforceable, its issuance is not conclusive as to its validity or its enforceability and it may not provide us with adequate proprietary protection or competitive advantages against competitors with similar products. Competitors may also be able to design around our patents. Other parties may develop and obtain patent protection for alternative and possibly more effective technologies, designs or methods. We may be unable to prevent the unauthorized disclosure or use of our technical knowledge or trade secrets by consultants, suppliers, vendors, former employees and current employees. The laws of some foreign countries do not protect our proprietary rights to the same extent as the laws of the United States, and we may encounter significant problems in protecting our proprietary rights in these countries.

Our ability to enforce our patent rights depends on our ability to detect 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, proceedings to enforce or defend our patents could put our patents at risk of being invalidated, held unenforceable or interpreted narrowly. Such proceedings could also provoke third parties to assert claims against us, including that some or all of the claims in one or more of our patents are invalid or otherwise unenforceable. If any of our patents covering our products are invalidated or found unenforceable, or if a court found that valid, enforceable patents held by third parties covered one or more of our products, our competitive position could be harmed or we could be required to incur significant expenses to enforce or defend our rights. If we initiate lawsuits to protect or enforce our patents, or litigate against third party claims, such proceedings would be expensive and would divert the attention of our management and technical personnel.

The degree of future protection for our proprietary rights is uncertain, and we cannot ensure that:

- any of our patents, or any of our pending patent applications, if issued, or those of our licensors, will include claims having a scope sufficient to protect our products;
- any of our pending patent applications or those of our licensors may issue as patents;

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[Table of Contents](#)

- others will not or may not be able to make, use, offer to sell, or sell products that are the same as or similar to our own but that are not covered by the claims of the patents that we own or license;
- we will be able to successfully commercialize our products on a substantial scale, if approved, before the relevant patents that we own or license expire;
- we were the first to make the inventions covered by each of the patents and pending patent applications that we own or license;

- we or our licensors were the first to file patent applications for these inventions;
- others will not develop similar or alternative technologies that do not infringe the patents we own or license;
- any of the patents we own or license will be found to ultimately be valid and enforceable;
- any patents issued to us or our licensors will provide a basis for an exclusive market for our commercially viable products or will provide us with any competitive advantages;

[Table of Contents](#)

- a third party may not challenge the patents we own or license and, if challenged, a court would hold that such patents are valid, enforceable and infringed;
- we may develop or in-license additional proprietary technologies that are patentable;
- the patents of others will not have an adverse effect on our business;
- our competitors do not conduct research and development activities in countries where we do not have enforceable patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we will develop additional proprietary technologies or products that are separately patentable; or
- our commercial activities or products will not infringe upon the patents of others.

Where we obtain licenses from or collaborate with third parties, 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 third parties, or such activities, if controlled by us, may require the input of such third parties. We may also require the cooperation of our licensors and collaborators to enforce any licensed patent rights, and such cooperation may not be provided. Therefore, these patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. Moreover, if we do obtain necessary licenses, we will likely have obligations under those licenses, and any failure to satisfy those obligations could give our licensor the right to terminate the license. Termination of a necessary license, or expiration of licensed patents or patent applications, could have a material adverse impact on our business.

***Our inability to effectively protect our proprietary technologies could harm our competitive position.***

Although our competitors have utilized and are expected to continue utilizing technologies similar to ours, our success will depend upon our ability to protect and continue to develop proprietary technologies and products and to defend any advantages afforded to us relative to our competitors. If we do not protect our intellectual property adequately, competitors may be able to use our technologies and thereby erode any competitive advantages we may have. For example, patents for our core technology will begin to expire in the United States in 2024, and our patents outside of the United States are expected to remain in effect until between

[Table of Contents](#)

2024 and 2035. We will be able to protect our proprietary rights from unauthorized use by third parties only to the extent that our proprietary technologies are covered by valid and enforceable patents or are effectively maintained as trade secrets. We have agreements with our employees and selected consultants that obligate them to assign their inventions to us. If the employees and consultants who are parties to these agreements breach or violate the terms of these agreements, including by refusing or being unavailable to sign assignments, oaths, declarations or other documents, we may not have adequate remedies for any such breach or violation, and we could lose our rights in inventions through such breaches or violations. Furthermore, it is possible that technology relevant to our business will be independently developed by a person that is not a party to such an agreement.

***The lives of our patents may not be sufficient to effectively protect our products and business.***

Patents have a limited lifespan. In the US, the natural expiration of a utility patent is generally 20 years after its first effective non-provisional filing date. The natural expiration of a design patent is generally 14 years after the grant of the design patent for design patent applications filed before May 13, 2014, and the natural expiration of a design patent is generally 15 years after the grant of the design patent for design patent applications that are filed on or after May 13, 2015. Although various extensions may be available, the life of a patent, and the protection it affords, is limited. Even if patents covering our technologies, products, or product candidates are obtained, once the patent life has expired, we may be open to competition. Patents covering some of our core

39

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[Table of Contents](#)

technology have expired or will expire within the next five years. In addition, although upon issuance in the United States a patent's life can be increased based on certain delays caused by the USPTO, this increase can be reduced or eliminated based on certain delays caused by the patent applicant during patent prosecution. If we do not have sufficient patent life to protect our technologies, products, and product candidates, our business and results of operations will be adversely affected.

***Litigation or other proceedings or third-party claims of intellectual property infringement could require us to spend significant time and money and could prevent us from selling our products.***

Our commercial success will depend in part on not infringing the patents or violating the other proprietary rights of others. We cannot assure you that our operations do not, or will not in the future, infringe existing or future patents. Our activities may be subject to claims that we infringe or otherwise violate patents owned or controlled by third parties.

Numerous U.S. and foreign patents and pending patent applications exist in our market that are owned by third parties. Our competitors in both the United States and abroad, many of which have substantially greater resources and have made substantial investments in patent portfolios and competing technologies, may have applied for or obtained or may in the future apply for and obtain, patents that will prevent, limit or otherwise interfere with our ability to make, use and sell our products. We do not always conduct independent reviews of pending patent applications of and patents issued to third parties. Patent applications in the United States and elsewhere are typically published approximately 18 months after the earliest filing for which priority is claimed, with such earliest filing date being commonly referred to as the priority date. Certain U.S. applications that will not be filed outside the U.S. can remain confidential until patents issue. In addition, patent applications in the United States and

elsewhere can be pending for many years before issuance, or unintentionally abandoned patents or applications can be revived. Furthermore, pending patent applications that have been published can, subject to certain limitations, be later amended in a manner that could cover our technologies, our products or the use of our products. As such, there may be applications of others now pending or recently revived patents of which we are unaware. These applications may later result in issued patents, or the revival of previously abandoned patents, that will prevent, limit or otherwise interfere with our ability to make, use or sell our products.

The scope of a patent claim is determined by an interpretation of the law, the written disclosure in a patent and the patent's prosecution history and can involve other factors such as expert opinion. Our interpretation of the relevance or the scope of claims in a patent or a pending application may be incorrect, which may negatively impact our ability to market our products. Further, we may incorrectly determine that our technologies, products, or product candidates are not covered by a third-party patent or may incorrectly predict whether a third party's pending patent application will issue with claims of relevant scope. Our determination of the expiration date of any patent in the United States or abroad that we consider relevant

39

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[Table of Contents](#)

may be incorrect, which may negatively impact our ability to develop and market our products or product candidates.

Significant litigation regarding patent rights occurs in our industry. Third parties may, in the future, assert claims that we are employing their proprietary technology without authorization, including claims from competitors or from non-practicing entities that have no relevant product revenue and against whom our own patent portfolio may have no deterrent effect. As we continue to commercialize our products in their current or updated forms, launch new products and enter new markets, we expect competitors may claim that one or more of our products infringe their intellectual property rights as part of business strategies designed to impede our successful commercialization and entry into new markets. The large number of patents, the rapid rate of new patent applications and issuances, the complexities of the technology involved, and the uncertainty of litigation may increase the risk of business resources and management's attention being diverted to patent litigation.

We may become party to future adversarial proceedings regarding our patent portfolio or the patents of third parties. Such proceedings could include supplemental examination or contested post-grant proceedings such

40

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[Table of Contents](#)

as review, reexamination, interference or derivation proceedings before the U.S. Patent and Trademark Office USPTO and challenges in U.S. District Court. Patents may be subjected to opposition, post-grant review or comparable proceedings lodged in various foreign, both national and regional, patent offices. The legal threshold for initiating litigation or contested proceedings may be low, so that even lawsuits or proceedings with a low probability of success might be initiated. Litigation and contested

proceedings can also be expensive and time-consuming, regardless of the merit of the claims, and our adversaries in these proceedings may have the ability to dedicate substantially greater resources to prosecuting these legal actions than we can.

Any lawsuits resulting from such allegations could subject us to significant liability for damages and invalidate our proprietary rights. Any potential intellectual property litigation also could force us to do one or more of the following:

- stop making, selling or using products or technologies that allegedly infringe the asserted intellectual property;
- lose the opportunity to license our technology to others or to collect royalty payments based upon successful protection and assertion of our intellectual property rights against others;
- incur significant legal expenses;
- pay substantial damages or royalties to the party whose intellectual property rights we may be found to be infringing, including enhanced damages if we are found to have willfully infringed or misappropriated such rights;
- pay the attorney's fees and costs of litigation to the party whose intellectual property rights we may be found to be infringing;
- redesign those products that contain the allegedly infringing intellectual property, which could be costly, disruptive and infeasible; and
- attempt to obtain a license to the relevant intellectual property from third parties, which may not be available on reasonable terms or at all, or from third parties who may attempt to license rights that they do not have.

Any litigation or claim against us, even those without merit, may cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core

40

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#### [Table of Contents](#)

business and harm our reputation. If we are found to infringe the intellectual property rights of third parties, we could be required to pay substantial damages (which may be increased up to three times of awarded damages) and/or substantial royalties and could be prevented from selling our products unless we obtain a license or are able to redesign our products to avoid infringement. Any such license may not be available on reasonable terms, if at all, and there can be no assurance that we would be able to redesign our products in a way that would not infringe the intellectual property rights of others. Even if such licenses are available, we could incur substantial costs related to royalty payments for licenses obtained from third parties, which could negatively affect our gross margins, and the rights may be non-exclusive, which could give our competitors access to the same technology or intellectual property rights licensed to us. We could encounter delays in product introductions while we attempt to develop alternative methods or products. If we fail to obtain any required licenses or make any necessary changes to our products or technologies, we may have to withdraw existing products from the market or may be unable to commercialize one or more of our products.

If we collaborate with third parties in the development of technology in the future, our collaborators may not properly maintain or defend our intellectual property rights or may use our proprietary information in such a way as to invite litigation that could jeopardize or invalidate our intellectual property or proprietary information or expose us to litigation or potential liability. Further, collaborators may infringe the intellectual property rights

41

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[Table of Contents](#)

of third parties, which may expose us to litigation and potential liability. Also, we may be obligated under our agreements with our collaborators, licensors, suppliers and others to indemnify and hold them harmless for damages arising from intellectual property infringement by us.

In addition, we generally indemnify our customers and international distributors with respect to infringement by our products of the proprietary rights of third parties. Third parties may assert infringement claims against our customers or distributors. These claims may require us to initiate or defend protracted and costly litigation on behalf of our customers or distributors, regardless of the merits of these claims. If any of these claims succeed or settle, we may be forced to pay damages or settlement payments on behalf of our customers or distributors or may be required to obtain licenses for the products they use. If we cannot obtain all necessary licenses on commercially reasonable terms, our customers may be forced to stop using our products.

***If we are unable to protect the confidentiality of our trade secrets, our business and competitive position could be harmed.***

In addition to patent protection, we also rely upon copyright and trade secret protection, unpatented know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect through non-disclosure agreements and invention assignment agreements with our employees, consultants and third parties, to protect our confidential and proprietary information. In addition to contractual measures, we try to protect the confidential nature of our proprietary information using commonly accepted physical and technological security measures. Such measures may not provide adequate protection for our proprietary information, for example, in the case of misappropriation of a trade secret by an employee, consultant, customer or third party with authorized access. Our security measures may not prevent an employee, consultant or customer from misappropriating our trade secrets and providing them to a competitor, and recourse we take against such misconduct may not provide an adequate remedy to protect our interests fully. Monitoring unauthorized uses and disclosures is difficult, and we do not know whether the steps we have taken to protect our proprietary technologies will be effective. Unauthorized parties may also attempt to copy or reverse engineer certain aspects of our products that we consider proprietary. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret can be difficult, expensive and time-consuming, and the outcome is unpredictable. Even though we use commonly accepted security measures, the criteria for protection of trade secrets can vary among different jurisdictions.

In addition, trade secrets may be independently developed by others in a manner that could prevent legal recourse by us. Trade secrets will over time be disseminated within the industry through independent development, the publication of journal articles and the movement of personnel skilled in the art from company to company or academic to industry scientific positions. Though our agreements with third parties typically restrict the ability of our advisors, employees, collaborators, licensors, suppliers, third-party

[Table of Contents](#)

contractors and consultants to publish data potentially relating to our trade secrets, our agreements may contain certain limited publication rights. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent such competitor from using that technology or information to compete with us, which could harm our competitive position. Because from time to time we expect to rely on third parties in the development, manufacture, and distribution of our products and provision of our services, we must, at times, share trade secrets with them. Despite employing the contractual and other security precautions described above, the need to share trade secrets increases the risk that such trade secrets become known by our competitors, are inadvertently incorporated into the technology of others, or are disclosed or used in violation of these agreements. If any of our confidential or proprietary information, such as our trade secrets, were to be disclosed or misappropriated, or if any such information was independently developed by a competitor, our business and competitive position could be harmed.

***We may be unable to enforce our intellectual property rights throughout the world.***

The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in protecting and defending

42

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[\*\*Table of Contents\*\*](#)

intellectual property rights in certain foreign jurisdictions. These challenges can be caused by the absence or inconsistency of the application of rules and methods for the establishment and enforcement of intellectual property rights outside of the United States. In addition, the legal systems of some countries, particularly developing countries, do not favor the enforcement of patents and other intellectual property protection, especially those relating to healthcare. This could make it difficult for us to stop infringement of our foreign patents, or the misappropriation of our other intellectual property rights. For example, some foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third parties. In addition, some countries limit the enforceability of patents against third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit. 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.

Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate. In addition, changes in the law and legal decisions by courts in the United States and foreign countries may affect our ability to obtain adequate protection for our technology and the enforcement of our intellectual property.

Further, the standards applied by the USPTO and foreign patent offices in granting patents are not always applied uniformly or predictably. As such, we do not know the degree of future protection that we will have on our technologies, products, and product candidates. While we will endeavor to try to protect our technologies, products, and product candidates with intellectual property rights such as patents, as appropriate, the process of obtaining patents is time-consuming, expensive and sometimes unpredictable.

***Third parties may assert ownership or commercial rights to inventions we develop.***

Third parties may in the future make claims challenging the inventorship or ownership of our intellectual property, including studies we commission or reports on the efficacy of our products. In addition, we may face claims by third parties that our agreements with employees, contractors or consultants obligating them to assign intellectual property to us are ineffective or in

conflict with prior or competing contractual obligations of assignment, which could result in ownership disputes regarding intellectual property we have developed or will develop and interfere with our ability to capture the commercial value of such intellectual property. Litigation may be necessary to resolve an ownership dispute, and if we are not successful, we may be precluded from using certain intellectual property or may lose our exclusive rights in that intellectual property. Either outcome could harm our business and competitive position.

42

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[Table of Contents](#)

***Third parties may assert that our employees or consultants have wrongfully used or disclosed confidential information or misappropriated trade secrets.***

We employ individuals who previously worked with other companies, including our competitors or potential competitors. Although we try to ensure that our employees 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 our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed intellectual property, including trade secrets or other proprietary information, of a former employer or other third party. Litigation may be necessary to defend against these claims. If we fail in defending any such claims or settling those claims, in addition to paying monetary damages or a settlement payment, we may lose valuable intellectual property rights or personnel. 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.

43

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[Table of Contents](#)

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

Our patent rights may be affected by developments or uncertainty in the patent statute, patent case law or USPTO rules and regulations. There are a number of recent changes to the patent laws that may have a significant impact on our ability to protect our technology and enforce our intellectual property rights. For example, the United States has enacted and is currently implementing the America Invents Act of 2011, a wide-ranging patent reform legislation. These changes include provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. As an example, the first to file provisions, which became effective March 2013, mean that the party that is first to file in the United States generally is awarded the patent rights, regardless of who invented first. This could have a negative impact on some of our IP and could increase uncertainties surrounding obtaining and enforcement or defense of our issued patents. Further, the U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain future patents, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on decisions by the U.S. Congress, the federal courts and the U.S. Patent and Trademark Office, USPTO, the laws

and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents or future patents.

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

The USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent process. Periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and/or applications will be due to be paid to the USPTO and various governmental patent agencies outside of the US in several stages over the lifetime of the patents and/or applications. We employ reputable professionals and rely on such third parties to help us comply with these requirements and effect payment of these fees with respect to the patents and patent applications that we own, and if we in-license intellectual property we may have to rely upon our licensors to comply with these requirements and effect payment of these fees with respect to any patents and patent applications that we license. In many cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. However, there are situations in which noncompliance can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case.

43

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[Table of Contents](#)

***If we fail to comply with our obligations under license or technology agreements with third parties, we may be required to pay damages and we could lose license rights that are critical to our business.***

We license certain intellectual property, and in the future, we may enter into additional agreements that provide us with licenses to valuable intellectual property or technology. These licenses impose various payment obligations on us. If we fail to comply with any of these obligations, we may be required to pay damages and the licensor may have the right to terminate the license. Termination by the licensor could cause us to lose valuable rights, and could prevent us from distributing our products, or inhibit our ability to commercialize future products. Our business could suffer if any current or future licenses terminate, if the licensors fail to abide by the terms of the license, if the licensors fail to enforce licensed patents against infringing third parties, if the licensed patents or other rights are found to be invalid or unenforceable, or if we are unable to enter into necessary licenses on acceptable terms.

44

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[Table of Contents](#)

***Any collaboration arrangements that we may enter into in the future may not be successful, which could adversely affect our ability to develop and commercialize our products.***

Any future collaborations that we enter into may not be successful. The success of our collaboration arrangements will depend heavily on the efforts and activities of our collaborators. Collaborations are subject to numerous risks, which may include that:

- collaborators have significant discretion in determining the efforts and resources that they will apply to collaborations;
- collaborators may not pursue development and commercialization of our products or may elect not to continue or renew development or commercialization programs based on trial or test results, changes in their strategic focus due to the acquisition of competitive products, availability of funding or other external factors, such as a business combination that diverts resources or creates competing priorities;
- collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our products or product candidates;
- a collaborator with marketing, manufacturing and distribution rights to one or more products may not commit sufficient resources to or otherwise not perform satisfactorily in carrying out these activities;
- we could grant exclusive rights to our collaborators that would prevent us from collaborating with others;
- collaborators may not properly maintain or defend our intellectual property rights or may use our intellectual property or proprietary information in a way that gives rise to actual or threatened litigation that could jeopardize or invalidate our intellectual property or proprietary information or expose us to potential liability;
- disputes may arise between us and a collaborator that causes the delay or termination of the research, development or commercialization of our current or future products or that results in costly litigation or arbitration that diverts management attention and resources;
- collaborations may be terminated, and, if terminated, may result in a need for additional capital to pursue further development or commercialization of the applicable current or future products;
- collaborators may own or co-own intellectual property covering our products that results from our collaborating with them, and in such cases, we would not have the exclusive right to develop or commercialize such intellectual property; and

44

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#### [Table of Contents](#)

- a collaborator's sales and marketing activities or other operations may not be in compliance with applicable laws resulting in civil or criminal proceedings.

***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 adversely affected.***

Our trademarks or trade names may be challenged, infringed, circumvented or declared generic or descriptive. Our trademarks or trade names may be determined to be infringing on other marks. We may not be able to protect our rights to these trademarks and trade names or may be forced to stop using these names, which we need for name recognition by potential partners or customers in our markets of interest. During trademark registration proceedings, we may receive rejections. Although we would be given an opportunity to respond to those rejections, we may be unable to overcome such rejections. In addition, in the

45

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USPTO and in comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel registered trademarks. Opposition or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. If we are unable to establish name recognition based on our trademarks and trade names, we may not be able to compete effectively and our business may be adversely affected. We may license our trademarks and trade names to third parties, such as distributors. Though these license agreements may provide guidelines for how our trademarks and trade names may be used, a breach of these agreements or misuse of our trademarks and tradenames by our licensees may jeopardize our rights in or diminish the goodwill associated with our trademarks and trade names.

#### **Risks Related to Government Regulation**

***Our products and operations are subject to extensive government regulation and oversight both in the United States and abroad, and our failure to comply with applicable requirements could harm our business.***

We and our products are subject to extensive regulation in the United States and elsewhere, including by the FDA, FTC, and their foreign counterparts. The FDA and foreign regulatory agencies regulate, among other things, with respect to medical devices: design, development and manufacturing; testing, labeling, content and language of instructions for use and storage; clinical trials; product safety; marketing, sales and distribution; premarket clearance and approval; record keeping procedures; advertising and promotion; recalls and field safety corrective actions; post-market surveillance, including reporting of deaths or serious injuries and malfunctions that, if they were to recur, could lead to death or serious injury; post-market approval studies; and product import and export.

The regulations to which we are subject are complex and have tended to become more stringent over time. Regulatory changes could result in restrictions on our ability to carry on or expand our operations, higher than anticipated costs or lower than anticipated sales. The FDA enforces these regulatory requirements through, among other means, periodic unannounced inspections. We do not know whether we will pass any future FDA inspections. Failure to comply with applicable regulations could jeopardize our ability to sell our products and result in enforcement actions such as: warning letters; fines; injunctions; civil penalties; termination of distribution; recalls or seizures of products; delays in the introduction of products into the market; total or partial suspension of production; refusal to grant future clearances or approvals; withdrawals or suspensions of current clearances or approvals, resulting in prohibitions on sales of our products; and in the most serious cases, criminal penalties.

***We may not receive the necessary regulatory clearances or approvals to market our future products or other proposed indications for our products in the future, and failure to timely obtain necessary clearances or approvals for such future products or indications would adversely affect our ability to grow our business.***

An element of our strategy is to continue to upgrade our products, add new enhancements and features and expand clearance or approval of our current products to include new indications. In the United States, before we can market a new medical device, or a new use of, new claim for or significant modification to an existing product, we must first receive either clearance under Section 510(k) of the Federal Food, Drug and Cosmetic Act or approval of a premarket approval application (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. To be “substantially equivalent,” the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data are sometimes required to support substantial

[Table of Contents](#)

equivalence. In the PMA process, 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, pre-clinical, clinical trial, manufacturing and labeling data. Our ability to successfully obtain clearance for any new indications will be dependent on us submitting data as to the successful completion of clinical trials evidencing safety and efficacy. The PMA process is typically required for devices that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices. However, some devices are automatically subject to the PMA pathway regardless of the level of risk they pose because they have not previously been classified into a lower risk class by the FDA. Manufacturers of these devices may request that FDA review such devices in accordance with the *de novo* classification procedure, which allows a manufacturer whose novel device would otherwise require the submission and approval of a PMA prior to marketing to request down-classification of the device on the basis that the device presents low or moderate risk. If the FDA agrees with the down-classification request, the applicant will then receive authorization to market the device. This device type can then be used as a predicate device for future 510(k) submissions. We initially received marketing authorization of our device through the *de novo* classification process, and we have made changes to our system through subsequent 510(k) clearances. Competitors may seek 510(k) clearance of similar products with similar indications and use our *de novo* classification as a predicate device in their submission. The process of obtaining regulatory clearances or approvals, or completing the *de novo* classification process, to market a medical device can be costly and time consuming, and we may not be able to successfully obtain pre-market reviews on a timely basis, if at all.

The FDA can delay, limit or deny clearance or approval of a device for many reasons, including: we may be unable to demonstrate to the FDA's satisfaction that the product or modification is substantially equivalent to the proposed predicate device or safe and effective for its intended use; the data from our pre-clinical studies and clinical trials may be insufficient to support clearance or approval, where required; and the manufacturing process or facilities we use may not meet applicable requirements. The FDA may also, instead of accepting a 510(k) submission, require us to submit a PMA, which is typically a much more complex, lengthy, and burdensome application than a 510(k) submission. To support a PMA, the FDA would likely require that we conduct one or more clinical studies to demonstrate that the device is safe and effective. In some cases, such studies may be requested for a 510(k) as well. We may not be able to meet the requirements to obtain 510(k) clearance or PMA **approval** (or a *de novo* classification request), in which case the FDA may not grant any necessary clearances or approvals. In addition, the FDA may place significant limitations upon the intended uses of our products as a condition to a 510(k) clearance or **PMA approval**. Product applications can also be denied or withdrawn due to failure to comply with regulatory requirements or the occurrence of unforeseen problems following clearance or approval. Any delays or failure to obtain FDA clearance or approval of new products we develop, any limitations imposed by the FDA on new product use or the costs of obtaining FDA

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[Table of Contents](#)

clearance or approvals could have a material adverse effect on our business, financial condition, and results of operations.

Even if granted, a 510(k) clearance, *de novo* classification, or PMA **approval** imposes substantial restrictions on how our devices may be marketed or sold, and the FDA continues to place considerable restrictions on our products and operations. For example, the manufacture of medical devices must comply with the FDA's Quality System Regulation (QSR). In addition, manufacturers must register their manufacturing facilities, list the products with the FDA, and comply with requirements relating to labeling, marketing, complaint handling, adverse event and medical device reporting, reporting of corrections and removals, and import and export restrictions. The FDA monitors compliance with the QSR and these other requirements through periodic inspections. If our facilities or those of our manufacturers or suppliers are found to be in violation of applicable laws and regulations, or if we or our manufacturers or suppliers fail to take satisfactory corrective action in response to an adverse inspection, the regulatory authority could take enforcement action, including any of the following sanctions: untitled letters, warning letters, fines, injunctions, consent decrees and civil penalties; customer notifications or repair, replacement, refunds, recalls, detention or seizure of our products; operating restrictions or partial suspension or total shutdown of production; refusing or delaying requests for 510(k) marketing clearance or PMA **approvals** of new products or modified products; withdrawing 510(k) marketing clearances or **PMA approvals** **PMAs** that have already been granted; refusing to provide Certificates for Foreign Government; refusing to grant export approval for our products; or pursuing criminal prosecution. Any of these sanctions could impair our ability to produce or commercialize our products in a cost-effective and timely manner in

47

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[Table of Contents](#)

order to meet our customers' demands and could have a material adverse effect on our reputation, business, results of operations and financial condition. We may also be required to bear other regulatory compliance costs or take other actions that may have a negative impact on our sales and our ability to generate profits.

In addition, the FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions, which may prevent or delay approval or clearance of our future products under development or impact our ability to modify our currently marketed products on a timely basis. Such policy or regulatory changes could impose additional requirements upon us that could delay our ability to obtain new 510(k) clearances, increase the costs of compliance or restrict our ability to maintain our current clearances. We also cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States or abroad, especially with a new administration that may have different policy priorities than the previous one.

In order to sell our products in member countries of the European Economic Area, or (EEA) or in countries that also rely on the CE Mark outside the EEA, our products must comply with the essential requirements of the EU Medical Devices Directive (Council Directive 93/42/EEC), and with the Medical Device Regulation (Regulation 2017/745). Compliance with these requirements is a prerequisite to be able to affix the CE Mark to our products, without which they cannot be sold or marketed in the EEA. To demonstrate compliance with the essential requirements we must undergo a conformity assessment procedure, which varies according to the type of medical device and its classification. Except for low-risk medical devices (Class I non-

sterile, non-measuring devices), where the manufacturer can issue an EC Declaration of Conformity based on a self-assessment of the conformity of its products with the essential requirements of the EU Medical Devices Directive, a conformity assessment procedure requires the intervention of an organization accredited by a Member State of the EEA to conduct conformity assessments, or a Notified Body. Depending on the relevant conformity assessment procedure, the Notified Body would typically audit and examine the technical file and the quality system for the manufacturer, design and final inspection of our devices. The Notified Body issues a certificate of conformity following successful completion of a conformity assessment procedure conducted in relation to the medical device and its manufacturer and their conformity with the essential requirements. This certificate entitles the manufacturer to affix the CE Mark to its medical devices after having prepared and signed a related EC Declaration of Conformity.

As a general rule, demonstration of conformity of medical devices and their manufacturers with the essential requirements must be based, among other things, on the evaluation of clinical data supporting the safety and

47

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[Table of Contents](#)

performance of the products during normal conditions of use. Specifically, a manufacturer must demonstrate that the device achieves its intended performance during normal conditions of use, that the known and foreseeable risks, and any adverse events, are minimized and acceptable when weighed against the benefits of its intended performance, and that any claims made about the performance and safety of the device are supported by suitable evidence. If we fail to remain in compliance with applicable European laws and directives, we would be unable to continue to affix the CE Mark to our surgical systems, which would prevent us from selling them within the EEA and may have an impact on our marketing authorization in other countries.

We or our distributors will also need to obtain or retain regulatory approval in other foreign jurisdictions in which we plan to or currently do market and sell our products, and we or they may not obtain such approvals as necessary to commercialize our products in those territories. Regulatory marketing authorizations in these foreign jurisdictions typically require device testing, conformance to classification requirements, pre-market requests to authorize commercialization, and in some cases inspections.

***Modifications to our products may require new 510(k) clearances, de novo classification, or PMA approvals, PMAs, and may require us to cease marketing or recall the modified products until clearances or approvals are obtained.***

Any modification to a 510(k)-cleared product that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design or manufacture, requires a new 510(k) clearance

48

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[Table of Contents](#)

or de novo classification, or, possibly, approval of a PMA. Modifications to products that have been approved through the PMA process generally require premarket FDA approval. Similarly, certain modifications made to products cleared through a 510(k) or

authorized through the de novo classification process may require a new 510(k) clearance. Each of the PMA, de novo classification, and the 510(k) clearance processes can be expensive, lengthy, and uncertain. The FDA's 510(k) clearance process usually takes from three to 12 months, but can last longer. The process of obtaining a PMA is much more costly and uncertain than the 510(k) clearance process and generally takes from one to three years, or even longer, from the time the application is filed with the FDA. In addition, a PMA generally requires the performance of one or more clinical trials.

Despite the time, effort, and cost, a device may not be approved or cleared by the FDA. Any delay or failure to obtain necessary regulatory authorizations could harm our business. Furthermore, even if we are granted regulatory authorizations, they may include significant limitations on the indicated uses for the device, which may limit the market for the device.

Any modifications to our existing products may require new 510(k) clearance; however, future modifications may be subject to the substantially more costly, time-consuming, and uncertain PMA process. If the FDA requires us to go through a lengthier, more rigorous examination for future products or modifications to existing products than we had expected, product introductions or modifications could be delayed or canceled, which could cause our sales to decline.

The FDA requires every manufacturer to make this modification 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 clearances or approvals are necessary. We have made modifications to our products in the past and have determined based on our review of the applicable FDA regulations and guidance that in certain instances new 510(k) clearances were not required. We may make similar modifications or add additional enhancements or features in the future that we believe do not require a new 510(k) clearance or approval of a PMA. If the FDA disagrees with our determination and requires us to submit new 510(k) notifications, *de novo* classifications, or PMAs for modifications to our previously authorized products for which we have concluded that new clearances or 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. In addition, the FDA may not approve or clear our products for the indications that are necessary or desirable for successful commercialization or could require clinical trials to support any modifications. Any

#### [Table of Contents](#)

delay or failure in obtaining required 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.

***Our products must be manufactured in accordance with federal and state regulations, and we could be forced to recall our installed systems or terminate production if we fail to comply with these regulations.***

The methods used in, and the facilities used for, the manufacture of our products must comply with the FDA's Quality System Regulation (QSR) which is a complex regulatory scheme that covers the procedures and documentation of the design, testing, production, process controls, quality assurance, labeling, packaging, handling, storage, distribution, installation, servicing and shipping of medical devices. Furthermore, we are required to verify that our suppliers maintain facilities, procedures and operations that comply with our quality standards and applicable regulatory requirements. Compliance with the QSR is necessary to receive FDA clearance or approval to market new products and is necessary for a manufacturer to be able to continue to market cleared or approved devices in the United States. The FDA enforces the QSR through periodic announced or unannounced inspections of medical device manufacturing facilities, which may include the facilities of subcontractors. Our products are also subject to similar state regulations and various laws and regulations of foreign countries governing

manufacturing. Foreign regulatory authorities also impose manufacturing quality requirements, which may differ from the FDA requirements, with which we must comply.

[Table of Contents](#)

We or our third-party suppliers and manufacturers may not take the necessary steps to comply with applicable regulations, which could cause delays in the delivery of our products. In addition, failure to comply with applicable FDA or foreign jurisdiction requirements or later discovery of previously unknown problems with our products or manufacturing processes could result in, among other things: warning letters or untitled letters; fines, injunctions or civil penalties; suspension or withdrawal of approvals or clearances; seizures or recalls of our products; total or partial suspension of production or distribution; administrative or judicially imposed sanctions; the FDA's refusal to grant pending or future clearances or approvals for our products; clinical holds; refusal to permit the import or export of our products; and criminal prosecution of us or our employees.

Any of these actions could significantly and negatively impact supply of our products. If any of these events occurs, our reputation could be harmed, we could be exposed to product liability claims and we could lose customers and suffer reduced revenues and increased costs.

***If treatment guidelines for the clinical conditions we are targeting change or the standard of care evolves, we may need to redesign and seek new marketing authorization from the FDA for one or more of our products.***

If treatment guidelines for the clinical conditions we are targeting or the standard of care for such conditions evolves, we may need to redesign the applicable product and seek new clearances or approvals from the FDA. Our existing 510(k) and *de novo* clearances from the FDA are based on current treatment guidelines. If treatment guidelines change so that different treatments become desirable, the clinical utility of one or more of our products could be diminished and our business could suffer.

***The misuse or off-label use of our products may harm our reputation in the marketplace, result in injuries that lead to product liability suits or result in costly investigations, fines or sanctions by regulatory bodies, particularly if we are deemed to have engaged in the promotion of these uses, any of which could be costly to our business.***

Our product has been authorized for marketing by the FDA for a specific indication. We train our commercial organization and distributors inside and outside the United States to not promote our products for uses outside of the FDA-cleared indications for use, known as "off-label uses." However, we cannot guarantee that all of our employees, representatives, and agents will abide by our marketing policies.

[Table of Contents](#)

If the FDA or any foreign regulatory body determines that our promotional materials, training, or other marketing activities constitute promotion of an off-label or unapproved use, it could request that we modify our training or promotional materials or

subject us to regulatory or enforcement actions, including the issuance or imposition of an untitled letter, which is used for violations that do not necessitate a warning letter, injunction, seizure, civil fine or criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action under other regulatory authority, such as laws prohibiting false claims for reimbursement.

Moreover, even if we, and all our employees, contractors, and agents, market our products in compliance with applicable FDA regulations, such regulations do not apply to the practice of medicine, and we cannot prevent a physician from prescribing and/or using our products off-label when, in the physician's independent professional medical judgment, he or she deems it appropriate. Similarly, we cannot prevent patients from using our products off-label. There may be increased risk of injury to patients if physicians attempt to prescribe, or patients attempt to use, our products off-label. Furthermore, the use of our products for indications other than those authorized by the FDA may not effectively treat such conditions, which could harm our reputation in the marketplace among physicians and patients. There are similar risks if our products are used off-label with respect to non-U.S. regulatory approvals.

[Table of Contents](#)

***Our products may cause or contribute to adverse medical events that we are required to report to the FDA, and if we fail to do so, we would be subject to sanctions that could harm our reputation, business, financial condition and results of operations. The discovery of serious safety issues with our products, or a recall of our products either voluntarily or at the direction of the FDA or another governmental authority, could have a negative impact on us.***

We are subject to the FDA's medical device reporting regulations and similar foreign regulations, which require us to report to the FDA when we receive or become aware of information that reasonably suggests that one or more of our products may have caused or contributed to a death or serious injury or malfunctioned in a way that, if the malfunction were to recur, it could cause or contribute to a death or serious injury. The timing of our obligation to report is triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events of which we become aware within the prescribed timeframe. We may also fail to recognize that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of the product. If we fail to comply with our reporting obligations, the FDA could take action, including warning letters, untitled letters, administrative actions, criminal prosecution, imposition of civil monetary penalties, revocation of our device clearance, seizure of our products or delay in clearance of future products.

The FDA and foreign regulatory bodies have the authority to require the recall of commercialized products in the event of material deficiencies or defects in design or manufacture of a product or in the event that a product poses an unacceptable risk to health. The FDA's authority to require a recall must be based on a finding that there is reasonable probability that the device could cause serious injury or death. We may also choose to voluntarily recall a product if any material deficiency is found. A government-mandated or voluntary recall by us could occur as a result of an unacceptable risk to health, component failures, malfunctions, manufacturing defects, labeling or design deficiencies, packaging defects or other deficiencies or failures to comply with applicable regulations. Product defects or other errors may occur in the future. If we initiate a correction or removal for one of our devices to reduce a risk to health posed by the device, we would be required to submit a publicly available Correction and Removal report or Safety Alert 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, other international regulatory agencies, and our customers regarding the quality and safety of our devices. Furthermore, the submission of these reports could

be used by competitors against us in competitive situations and cause customers to delay purchase decisions or cancel orders and would harm our reputation.

[Table of Contents](#)

Depending on the corrective action we take to redress a product's deficiencies or defects, the FDA may require, or we may decide, that we will need to obtain new approvals or clearances for the device before we may market or distribute the corrected device. Seeking such approvals or clearances may delay our ability to replace the recalled devices in a timely manner. Moreover, if we do not adequately address problems associated with our devices, we may face additional regulatory enforcement action, including FDA warning letters, product seizure, injunctions, administrative penalties or civil or criminal fines.

Companies are required to maintain certain records of recalls and corrections, even if they are not reportable to the FDA. We may initiate voluntary withdrawals or corrections for our products in the future that we determine do not require notification to the FDA. If the FDA disagrees with our determinations, it could require us to report those actions as recalls and we may be subject to enforcement action. A future recall announcement could harm our reputation with customers, potentially lead to product liability claims against us and negatively affect our sales.

Any adverse event involving our products could result in voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection, mandatory recall or other enforcement action. Any corrective action, whether voluntary or involuntary, as well as exposing us to private litigation, would require the dedication of our time and capital, distract management from operating our business and may harm our reputation and financial results.

[Table of Contents](#)

***If we or our distributors do not obtain and maintain international regulatory registrations or approvals for our products, we will be unable to market and sell our products outside of the United States.***

Sales of our products outside of the United States are subject to foreign regulatory requirements that vary widely from country to country. In addition, the FDA regulates exports of medical devices from the United States. While the regulations of some countries may not impose barriers to marketing and selling our products or only require notification, others require that we or our distributors obtain the approval of a specified regulatory body. Complying with foreign regulatory requirements, including obtaining registrations or approvals, can be expensive and time-consuming, and we or our distributors may not receive regulatory approvals in each country in which we plan to market our products or we may be unable to do so on a timely basis. The time required to obtain registrations or approvals, if required by other countries, may be longer than that required for FDA clearance or approval, and requirements for such registrations, clearances or approvals may significantly differ from FDA requirements. If we modify our products, we or our distributors may need to apply for additional regulatory approvals before we are permitted to sell the modified product. In addition, we may not continue to meet the quality and safety standards required to maintain the

authorizations that we or our distributors have received. If we or our distributors are unable to maintain our authorizations in a particular country, we will no longer be able to sell the applicable product in that country.

Regulatory clearance or approval by the FDA and/or the permission to affix the CE Mark does not ensure clearance or approval by regulatory authorities in other countries, and clearance or approval by one or more foreign regulatory authorities does not ensure clearance or approval by regulatory authorities in other foreign countries or by the FDA. However, a failure or delay in obtaining regulatory clearance or approval in one country may have a negative effect on the regulatory process in others.

***We are subject to certain federal, state and foreign fraud and abuse laws, health information privacy and security laws and transparency laws, which, if violated, could subject us to substantial penalties. Additionally, any challenge to or investigation into our practices under these laws could cause adverse publicity and be costly to respond to, and thus could harm our business.***

There are numerous U.S. federal and state, as well as foreign, laws pertaining to healthcare fraud and abuse, including anti-kickback, false claims and physician transparency laws. Our business practices and relationships with providers, patients and third-party payors are subject to scrutiny under these laws. We may also be subject to patient information privacy and security regulation by both the federal government in

51

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[Table of Contents](#)

addition to the states and foreign jurisdictions in which we conduct our business. The healthcare laws and regulations that may affect our ability to operate include:

- the federal Anti-Kickback Statute, which prohibits any person or entity from, among other things, knowingly and willfully soliciting, receiving, offering or paying any remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, order or recommendation of an item or service reimbursable, in whole or in part, under a federal healthcare program, such as the Medicare and Medicaid programs. The term "remuneration" has been broadly interpreted to include anything of value. The government can establish a violation of the Anti-Kickback Statute without proving that a person or entity had actual knowledge of the law or a specific intent to violate. Moreover, the government may assert that a claim for reimbursement that includes items resulting from a violation of the federal healthcare Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act ("FCA"), as described in more detail below. Although there are a number of statutory exceptions and regulatory safe harbors to the federal healthcare Anti-Kickback Statute protecting certain common business arrangements and activities from prosecution or regulatory sanctions, the exceptions and safe harbors are drawn narrowly and in order to obtain protection from a safe harbor the entities involved must meet every element. Accordingly, industry practices narrowly. Practices that involve providing remuneration to those who prescribe, purchase, or recommend medical device products, including discounts, or engaging individuals as speakers, consultants, or advisors, may be subject to scrutiny if they do not fit squarely within an exception or a safe harbor. It is possible that not all our Our practices may not in all cases meet all of the criteria for safe harbor protection from anti-kickback liability. Moreover, there are no safe

52

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[Table of Contents](#)

harbors for many common practices, such as reimbursement support programs, educational or research grants, or charitable donations;

- the federal civil and criminal false claims laws and civil monetary penalty laws, such as the FCA, which can be enforced by private citizens through civil qui tam actions, prohibits individuals or entities from, among other things, knowingly presenting, or causing to be presented, false, fictitious or fraudulent claims for payment of federal funds, and knowingly making, using or causing to be made or used a false record or statement material to a false or fraudulent claim to avoid, decrease or conceal an obligation to pay money to the federal government. The Social Security Act also has a provision that provides for the imposition of civil monetary penalties against any person who offers or transfers remuneration to a Medicare or Medicaid beneficiary that such person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier for the order or receipt of any item or service payable by a federal health care program, program. Private individuals commonly known as **beneficiary inducement**.

Whistleblowers "whistleblowers," can bring FCA qui tam actions on behalf of the government and themselves, and may share in amounts paid by the entity to the government in recovery or settlement. FCA False Claims Act liability can be is potentially significant in the healthcare industry because the statute provides for treble damages and mandatory penalties of \$11,803 \$13,946 to \$23,607 \$27,894 (beginning in 2024) per false or fraudulent claim or statement. Many pharmaceutical and medical device manufacturers have been investigated and have reached substantial settlements under the FCA in connection with alleged off label promotion of their products, providing improper renumeration to healthcare providers or other personnel involved in recommending products, and allegedly providing free products to customers with the expectation that the customers would bill federal health care programs for the product. In addition, a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the FCA. As a result of a modification made by the Fraud Enforcement and Recovery Act of 2009, a claim includes "any request or demand" for money or property presented to the U.S. government. Thus, medical device In addition, manufacturers can be held liable under the FCA even when they do not submit claims directly to government payors if they are deemed to "cause" the submission of false or fraudulent claims. There are also criminal penalties, including imprisonment and criminal fines, for making or presenting false, fictitious or fraudulent claims to the federal government;

52

## [Table of Contents](#)

- The Health Insurance Portability the federal physician self-referral law ("Stark Law") prohibits, subject to exceptions, referring Medicare patients for "designated health services" (including "durable medical equipment and Accountability Act supplies" and "outpatient hospital services") ("DHS") to entities with which a referring physician (or immediate family member) maintains a "financial relationship." States (as required in order to maintain Medicaid funding) have further enacted similar prohibitions that apply to Medicaid, as well as other insurance programs, and which may be more restrictive than the Stark Law. Persons who attempt to circumvent these laws or submit (or cause others to submit) claims to payors in violation of 1996 ("HIPAA"), these laws may be subject to significant civil and criminal penalties. As such, we are generally prohibited from billing for any services referred in violation of these laws. Importantly, we do not provide DHS and do not bill payors for DHS (or any other items or services). While we manufacture and sell equipment and supplies to our customers, we are not a Medicare supplier. Additionally, in instances in which we maintain contractual arrangements with physicians or hospitals, we have no reason to believe that we are engaged in assisting any person with circumventing these laws. Further, the services (specifically TMS) furnished (outside of a hospital context) by physician groups with whom we maintain contractual arrangements do not constitute DHS. Notably, however, the Stark Law is a strict liability statute and compliance is difficult to assure;
- HIPAA among other regulatory requirements described below, also imposes things established various criminal health care fraud laws, which impose criminal liability for executing or attempting to execute a scheme to defraud any healthcare benefit program, including private third-party payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense, and creates federal criminal laws that prohibit knowingly and willfully falsifying, concealing or covering up a material fact or making any 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,

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[Table of Contents](#)

fictitious or fraudulent statement or entry in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the federal healthcare Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the applicable statute or specific intent to violate it or to have committed a violation;

- HIPAA, as amended by HITECH, and their implementing regulations, which imposes privacy, security, transmission and breach reporting obligations with respect to individually identifiable health information upon "covered entities" subject to the law, including health plans, healthcare clearinghouses and certain healthcare providers and their respective business associates that perform services on their behalf that involve individually identifiable health information. HITECH also created new tiers of civil monetary penalties, amended HIPAA to make civil and criminal penalties directly applicable to business associates, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce HIPAA laws and seek attorneys' fees and costs associated with pursuing federal civil actions.   
On December 10, 2020, the U.S. Department of Health and Human Services Office for Civil Rights issued a Notice of Proposed Rulemaking, which if finalized, would make changes to some of HIPAA's regulatory requirements, which would apply to business associates; actions;
- the federal Physician physician payment transparency requirements, sometimes referred to as the "Physician Payments Sunshine Act" created under the PPACA, which requires, among other things, certain manufacturers of drugs, devices, biologics and medical supplies reimbursed under Medicare, Medicaid, or the Children's Health Insurance Program (with certain exceptions) to report annually to the United States Department of Health and Human Services, Centers for Medicare and Medicare Services or CMS, ("CMS"), information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists chiropractors, physician and chiropractors) other professionals (physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, and certified nurse-midwives) and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members; and
- foreign and state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, that may impose similar or more prohibitive restrictions, and may apply to items or services reimbursed by any non-governmental third-party payors, including private insurers; state laws that require device manufacturers to comply with the industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws that require device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures and pricing information; and other federal and state laws that govern the privacy and security of health information or personally identifiable information in certain circumstances, including state health information privacy and data breach notification laws which govern the collection, use, disclosure, and protection of health-related and other personal information, many of which differ from each other in significant ways and often are not pre-empted by HIPAA, thus requiring additional compliance efforts and data privacy and security laws and regulations in foreign jurisdictions that may be more stringent than those in the United States (such as the European Union, which adopted the General Data Protection Regulation, GDPR, which became effective in May 2018).

These laws and regulations, among other impacts, constrain our business, marketing and other promotional activities by limiting the kinds of financial arrangements, including sales programs, we may have with

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[Table of Contents](#)

psychiatrists, other healthcare providers, or other potential purchasers of our products. We have also entered into consulting agreements with physicians, which are subject to these laws. Further, while we do not submit claims to any payor and our customers make the ultimate decision on how to submit claims, we may provide reimbursement guidance and support regarding our products. Due to the breadth of these laws, the narrowness of statutory exceptions and regulatory safe harbors available, and the range of interpretations to which they are subject, it is possible that some of our current or future practices might be challenged under one or more of these laws.

[Table of Contents](#)

To enforce compliance with healthcare regulatory laws, certain enforcement bodies have recently increased their scrutiny of interactions between healthcare companies and healthcare providers, which has led to a number of investigations, prosecutions, convictions and settlements in the healthcare industry. Responding to investigations can be time-and resource-consuming and can divert management's attention from the business. Any such investigation or settlement could increase our costs or otherwise have an adverse effect on our business. Even an unsuccessful challenge or investigation into our practices could cause adverse publicity and be costly to respond to.

If our operations are found to be in violation of any of the healthcare laws or regulations described above or any other healthcare regulations that apply to us, we may be subject to penalties, including administrative, civil and criminal penalties, damages, fines, disgorgement, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, imprisonment, additional reporting obligations and oversight if we becomes subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, reputational harm, 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 pursue our strategy.

***Healthcare policy changes, including recently enacted legislation reforming the U.S. healthcare system, could harm our cash flows, financial condition and results of operations.***

From time to time, Congress drafts legislation that could significantly change the statutory provisions governing the regulation of medical devices. In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new statutes, regulations, revisions, or reinterpretations of existing regulations may impose additional costs, lengthen review times of any future products, or make it more difficult to manufacture, market or distribute our products. We cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on our business in the future.

For example, in March 2010, the PPACA was enacted in the United States, which made a number of substantial changes in the way healthcare is financed by both governmental and private insurers. Among other ways in which it may impact our business, the PPACA:

- establishes a new Patient-Centered Outcomes Research Institute to oversee and identify priorities in comparative clinical effectiveness research in an effort to coordinate and develop such research;
- required manufacturers to report certain payments and other transfers of value pursuant to the Physician Payments Sunshine Act, described above;

- implements payment system reforms including a national pilot program on payment bundling to encourage hospitals, psychiatrists and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models; and
- expands the eligibility criteria for Medicaid programs, programs and, originally, required certain employers to provide, and all individuals to obtain, health insurance.

We expect additional state and federal healthcare reform measures to be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, which could result in reduced demand for our products or additional pricing pressure.

54

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[Table of Contents](#)

***Our employees, distributors, and other third parties may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.***

We are exposed to the risk that our employees, distributors, and other third parties may engage in inappropriate, fraudulent or illegal activity. Misconduct by these parties could include intentional, reckless or

55

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[Table of Contents](#)

negligent conduct or other unauthorized activities that violate, the regardless of intent, regulations of the FDA and other U.S. healthcare regulators, as well as non-U.S. regulators, including by violating laws requiring the reporting of true, complete and accurate information to such regulators, manufacturing standards, healthcare fraud and abuse laws and regulations in the United States and abroad or laws that require the true, complete, and accurate reporting of financial information or data. In particular, sales, marketing, and business arrangements in the healthcare industry, including the sale, promotion and labeling of medical devices or arrangements with healthcare providers, are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing, patient steering and other abusive practices, as described herein. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer or patient incentive programs, and other business, investment or compensation arrangements. It is not always possible to identify and deter misconduct by our employees, distributors, and other third parties, and the precautions we take to detect and prevent this activity 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 comply with these laws or regulations. Efforts to ensure that the activities of these parties will comply with applicable healthcare laws and regulations involve substantial costs. These risks may be more pronounced, exceed those which we have identified, and we may find that the processes and policies we have implemented are may not effective at preventing be sufficient to prevent misconduct. If any actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could Noncompliance may result in the imposition of significant fines or other sanctions, including the imposition of civil, criminal and administrative penalties, monetary

damages, **monetary** fines, individual imprisonment, disgorgement, possible exclusion from participation in government healthcare programs, additional reporting obligations and oversight if we becomes subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, contractual damages, reputational harm, diminished profits and future earnings and the curtailment of our operations. Whether or not we are successful in defending against 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.

#### Risks Related to Our Capital Structure

***We may need to raise additional capital to fund our existing commercial operations, develop and commercialize new products and expand our operations.***

If our available cash balances, potential future borrowing capacity, and anticipated cash flow from operations are insufficient to satisfy our liquidity requirements, including because of lower demand for our products as a result of the risks described in this Annual Report on Form 10-K, we may seek to sell common or preferred equity or debt securities, enter into an additional credit facility or another form of third-party funding or seek other debt financing. Our present and future funding requirements will depend on many other factors, including:

- our ability to achieve revenue growth and improve operating margins;
- **our ability to comply with financial and other restrictive covenants in our credit facility, which, among other things, requires us to maintain specified financial covenants;**
- our ability to improve or maintain coverage and reimbursement arrangements with domestic third-party and government payors;
- our rate of progress in establishing coverage and reimbursement arrangements from international commercial third-party and government payors, particularly in Japan;
- the cost of expanding our operations and offerings, including our sales and marketing efforts;

55

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#### [Table of Contents](#)

- our rate of progress in, and cost of the sales and marketing activities associated with, establishing adoption of our products and maintaining or improving our sales to our current customers;

56

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#### [Table of Contents](#)

- the cost of research and development activities, including research and development relating to additional indications;
- the effect of competing technological and market developments;

- costs related to international expansion; and
- the potential cost of and delays in product development as a result of any regulatory oversight applicable to our products.

We may also consider raising additional capital in the future to expand our business, to pursue strategic investments, to take advantage of financing opportunities or for other reasons, including to:

- expand our sales and marketing efforts to increase market adoption of our products and address competitive developments;
- fund development and marketing efforts of any future products or additional features to then-current products;
- acquire, license or invest in new technologies;
- provide for supply and inventory costs associated with plans to accommodate potential increases in demand for our products
- acquire or invest in complementary businesses or assets; and
- finance capital expenditures and general and administrative expenses.

Additional capital may not be available to us at such times or in the amounts we need. Even if capital is available, it might be available only on unfavorable terms. Any issuance of additional equity or equity-linked securities could be dilutive to our existing stockholders, and any new equity securities could have rights, preferences and privileges superior to those of holders of our common stock, including the shares of common stock sold in this offering. Debt financing, if available, may involve covenants further restricting our operations or our ability to incur additional debt, pay dividends, repurchase our stock, make investments and engage in merger, consolidation or asset sale transactions. If we raise additional funds through collaboration and licensing arrangements with third parties, it may be necessary to relinquish or license some rights to our technologies or products, on terms that are not favorable to us. If access to sufficient capital is not available as and when needed, our business will be materially impaired and we may be required to cease operations, curtail one or more product development or commercialization programs, significantly reduce expenses, sell assets, seek a merger or joint venture partner, file for protection from creditors or liquidate all our assets.

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

As of December 31, 2022, we had federal and state net operating loss carryforwards of \$312.7 million and \$197.2 million, respectively. The federal and state net operating loss carryforwards will begin to expire, if not utilized, beginning in 2023, respectively. These net operating loss carryforwards could expire unused and be unavailable to offset future income tax liabilities. Under the newly enacted federal income tax law, federal net operating losses incurred in 2018 and in future years may be carried forward indefinitely, but the deductibility of such federal net operating losses is limited. It is uncertain how various states will respond to the newly enacted federal tax law. In addition, under Section 382 of the Internal Revenue Code of 1986, as amended,

[Table of Contents](#)

and corresponding provisions of state law, if a corporation undergoes an “ownership change,” which is generally defined as a greater than 50% change, by value, in its equity ownership over a three-year period, the corporation’s ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income or taxes may be limited. We have not done an analysis to determine whether or not ownership changes have occurred since inception and we

may experience ownership changes in the future as a result of subsequent shifts in our stock ownership, some of which may be outside of our control. If an ownership change occurs and our ability to use our net operating loss carryforwards is materially limited, it would harm our future operating results by effectively increasing our future tax obligations.

***The terms of our credit facility place restrictions on our operating and financial flexibility, flexibility and could subject us to potential default. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.***

In March 2020, we On September 29, 2023, the Company entered into a \$50.0 million credit facility fifth amendment (the "Solar Fifth Amendment") to the Loan and Security Agreement dated March 2, 2020 with SLR Investment Corp. (formerly known as Solar Capital Ltd.) or ("Solar"), as collateral agent, and the lenders as defined in the agreement, that is secured by a lien covering substantially all of our assets. (as amended, the "Solar Facility"). The credit facility contains customary covenants and events of default applicable to us. The affirmative covenants include, among others, a covenant that requires us to achieve agreed amounts of trailing twelve month net product revenue ("net product revenue covenant"), measured monthly through the term of the credit facility. The negative covenants include, among others, restrictions on us transferring collateral, changing businesses, engaging in

[Table of Contents](#)

mergers or acquisitions, incurring additional indebtedness and encumbering collateral. If we default under the credit facility, Solar may accelerate all of our repayment obligations and take control of our pledged assets, potentially requiring us to renegotiate our agreement on terms less favorable to us or to immediately cease operations. Further, if we are liquidated, Solar's right to repayment would be senior to the rights of the holders of our common stock to receive any proceeds from the liquidation. Solar could declare a default upon the occurrence of any event that it interprets as a material adverse effect as defined under the credit facility, thereby requiring us to repay the loan immediately or to attempt to reverse the declaration of default through negotiation or litigation. Any declaration by Solar of an event of default could significantly harm our business and prospects and could cause the price of our common stock to decline. If we raise any additional debt financing, the terms of such additional debt could further restrict our operating and financial flexibility.

In 2020 certain months of 2023 and 2021, we did not achieve the required revenue under the net product revenue covenant but and we obtained waivers from Solar to cure the breach non-compliance of the net product revenue covenant. In 2022 We cannot provide any assurance that our lender would provide us with a waiver should we achieved not be in compliance in the required revenue under future. A failure to maintain compliance along with our lender not agreeing to a waiver for the net product revenue covenant non-compliance would cause the outstanding borrowings to be in default and payable on demand which would have a material adverse effect on us and our ability to continue as a going concern.

Our ability to comply with financial covenant tests can be affected by events beyond our control, including economic, financial and industry conditions. If market or other economic conditions deteriorate, our ability to comply with these covenants may be impaired. We cannot be certain that our earnings will be sufficient to allow us to pay the principal and interest on our existing or future debt and meet our other obligations. If we fail do not have enough money to achieve service our existing or future debt, we may be required to refinance all or part of our existing or future debt, sell assets, borrow more money or raise equity. We may not be able to refinance our existing or future debt, sell assets, borrow more money or raise equity on terms acceptable to us, if at all.

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

As of December 31, 2023, we had federal and state net operating loss carryforwards of \$338.0 million and \$217.1 million, respectively. The federal and state net operating loss carryforwards will begin to expire, if not utilized, beginning in 2024. These net operating loss carryforwards could expire unused and be unavailable to offset future income tax liabilities. Under the specified level newly enacted federal income tax law, federal net operating losses incurred in 2018 and in future years may be carried forward indefinitely, but the deductibility of product such federal net revenue operating losses is limited. It is uncertain how various states will respond to the newly enacted federal tax law. In addition, under Section 382 of the Internal Revenue Code of 1986, as amended, and corresponding provisions of state law, if a corporation undergoes an "ownership change," which is generally defined as a greater than 50% change, by value, in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income or taxes may be limited. We have not done an analysis to determine whether or not ownership changes have occurred since inception and we may experience ownership changes in the future Solar as a result of subsequent shifts in our stock ownership, some of which may be outside of our control. If an ownership change occurs and our ability to use our net operating loss carryforwards is under no obligation to provide us with relief for materially limited, it would harm our future specified defaults, operating results by effectively increasing our future tax obligations.

#### Risks Related to Ownership of Our Common Stock

##### ***The price of our common stock has been and may continue to be volatile.***

The trading price of our common stock may be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. Factors that could cause volatility in the market price of our common stock include, but are not limited to:

- the actual or anticipated fluctuations in our financial condition and operating results;

58

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#### [Table of Contents](#)

- the actual or anticipated changes in our growth rate;
- the commercial success and market acceptance of our products;
- the success of our competitors in developing or commercializing products;

57

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#### [Table of Contents](#)

- media exposure of our products or of those of others in our industry;
- our ability to commercialize or obtain regulatory approvals for our products, or delays in commercializing or obtaining regulatory approvals;

- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, collaborations or capital commitments;
- the addition or departure of key personnel;
- product liability claims;
- general prevailing economic, industry and market conditions, including factors unrelated to our operating performance or the operating performance of our competitors;
- business disruptions caused by earthquakes, fires, pandemic diseases (such as from coronavirus), or other natural disasters;
- disputes or other developments concerning our intellectual property or other proprietary rights, including litigation;
- the FDA or other U.S. or foreign regulatory actions affecting us or the healthcare or medical device industry;
- healthcare reform measures in the United States;
- third-party payor developments in the United States and other countries;
- sales of our common stock by our directors, officers, or stockholders;
- the timing and amount of our investments in the growth of our business;
- inability to obtain additional funding;
- future sales or issuances of equity or debt securities by us;
- failure to meet or exceed financial estimates and projections of the investment community or that we provide to the public; and
- the issuance of new or changed securities analysts' reports or recommendations regarding us.

In addition, the stock markets in general, and the markets for companies like ours in particular, have from time to time experienced extreme volatility that has been often unrelated to the operating performance of the company. These broad market and industry fluctuations may negatively impact the price or liquidity of our common stock, regardless of our operating performance.

59

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[Table of Contents](#)

Moreover, because of these fluctuations, comparing our operating results on a period-to-period basis may not be meaningful. You 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 revenues or operating results fall below the expectations of analysts or investors or below any forecasts we may provide to the market, or if the forecasts we provide to the market are below the expectations of analysts or investors, the price of our common stock could decline

58

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[Table of Contents](#)

substantially. Such a stock price decline could occur even when we have met any previously publicly stated revenues or earnings forecasts that we may provide.

***Future sales of our common stock or securities convertible or exchangeable for our common stock may cause our stock price to decline.***

If our stockholders or option holders sell, or indicate an intention to sell, substantial amounts of our common stock in the public market, the price of our common stock could decline. The perception in the market that these sales may occur could also cause the price of our common stock to decline.

Shares of common stock that are either subject to outstanding options, or are outstanding but subject to vesting or reserved for future issuance under our 2018 Equity Incentive Plan or the 2018 Plan, (the "2018 Plan"), will become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules, Rule 144 and Rule 701 under the Securities Act. We have also filed a registration statement permitting certain shares of common stock issued under our 2003 Stock Incentive Plan, or the 2003 Plan, and shares of common stock issued pursuant to the 2018 Plan or our 2018 Employee Stock Purchase Plan or the 2018 ESPP, (the "2018 ESPP"), to be freely resold by plan participants in the public market, subject to applicable vesting schedules and, for shares held by directors, executive officers and other affiliates, volume limitations under Rule 144 under the Securities Act. Both the 2018 Plan and the 2018 ESPP contain provisions for the annual increase of the number of shares reserved for issuance under such plans, which shares we also intend to register. If the shares we may issue from time to time under the 2003 Plan, the 2018 Plan or the 2018 ESPP are sold, or if it is perceived that they will be sold, by the award recipients in the public market, the price of our common stock could decline.

Certain shares of common stock are entitled to rights with respect to registration under the Securities Act. Such registration would result in these shares becoming fully tradable without restriction under the Securities Act when the applicable registration statement is declared effective. Sales of such shares could cause the price of our common stock to decline.

***Our principal stockholders and management own a significant percentage of our stock and are able to exert control over matters subject to stockholder approval.***

As of February 27, 2023 February 29, 2024, our officers and directors, together with holders of 5% or more of our outstanding common stock and their respective affiliates, beneficially owned approximately 20.7% 10% of our outstanding common stock. Accordingly, these stockholders have a material influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, mergers, consolidation or sale of all or substantially all of our assets or any other significant corporate transaction. The interests of these stockholders may not be the same as or may even conflict with your interests. For example, these stockholders could attempt to delay or prevent a change in control of the company, even if such a change in control would benefit our other stockholders, which could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of the company or our assets and might affect the prevailing price of our common stock. The significant concentration of stock ownership may negatively impact the price of our common stock due to investors' perception that conflicts of interest may exist or arise.

***Provisions of our amended and restated charter documents or Delaware law could delay or prevent an acquisition of the company, even if the acquisition would be beneficial to our stockholders, which could make it more difficult for you to change management.***

Provisions in our amended and restated certificate of incorporation and our amended and restated bylaws may discourage, delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. In addition, these provisions may frustrate or prevent any attempt by our stockholders to replace or

[Table of Contents](#)

remove our current management by making it more difficult to replace or remove our board of directors. These provisions include:

- a prohibition on stockholder action through written consent;
- no cumulative voting in the election of directors;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director;
- a requirement that special meetings of stockholders be called only by the board of directors, the chairman of the board of directors, the chief executive officer or, in the absence of a chief executive officer, the president;
- an advance notice requirement for stockholder proposals and nominations;
- the authority of our board of directors to issue blank-check preferred stock with such terms as our board of directors may determine; and
- a requirement of approval of not less than 66 2/3% of all outstanding shares of our capital stock entitled to vote to amend any bylaws by stockholder action, or to amend specific provisions of our amended and restated certificate of incorporation.

In addition, Delaware law prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person who, together with its affiliates, owns, or within the last three years has owned, 15% or more of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. Accordingly, Delaware law may discourage, delay or prevent a change in control of our company.

Provisions in our charter documents and other provisions of Delaware law could limit the price that investors are willing to pay in the future for shares of our common stock.

***Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware and the federal district courts of the United States of America will be the exclusive forums for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.***

Our amended and restated certificate of incorporation provides that, to the fullest extent permitted by law, the Court of Chancery of the State of Delaware is the exclusive forum for (i) any derivative action or proceeding brought on our behalf, other than an

action or suit to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction, (ii) any action asserting a claim of breach of a fiduciary duty or other wrongdoing by any of our directors, officers, employees or agents to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the **DGCL** **Delaware General**

61

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[Table of Contents](#)

**Corporation Law** or our amended and restated certificate of incorporation or amended and restated bylaws, (iv) any action to interpret, apply, enforce or determine the validity of our amended and restated certificate of incorporation or amended and restated bylaws or (v) any action asserting a claim governed by the internal affairs doctrine. Our amended and restated certificate of incorporation further provides that the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. 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 such lawsuits against us and our directors, officers and other employees.

60

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[Table of Contents](#)

Some companies that adopted a similar federal district court forum selection provision are currently subject to a suit in the Chancery Court of Delaware by stockholders who assert that the provision is not enforceable. If a court were to find either choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business.

***We do not anticipate paying any cash dividends on our common stock in the foreseeable future; therefore, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.***

We have never declared or paid any cash dividends on our common stock and do not intend to do so in the foreseeable future. We currently intend to retain all available funds and any future earnings to finance the growth and development of our business. In addition, the terms of our credit agreements contain, and the terms of any future credit agreements we may enter into may contain, terms prohibiting or limiting the amount of dividends that may be declared or paid on our common stock. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

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

The trading market for our common stock depends, to some extent, on the research and reports that securities or industry analysts publish about us and our business. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our common stock or change their opinion of our common stock, our stock price would likely decline. If one

or more of these analysts cease to cover us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our stock price or trading volume to decline.

#### General Risk Factors

***We may be subject to securities litigation, which is expensive and could divert our management's attention.***

In the past, companies that have experienced volatility in the market price of their securities have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Regardless of the merits or the ultimate results of such litigation, securities litigation brought against us could result in substantial costs and divert our management's attention from other business concerns.

We are an "emerging growth company" and ***While we currently qualify as a smaller reporting company under SEC regulations, we cannot be certain whether taking advantage of the reduced disclosure requirements applicable to emerging growth these companies could will not make our common stock less attractive to investors. Once we lose smaller reporting company status, the costs and demands placed upon our management are expected to increase.***

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012, or JOBS Act. We may remain an emerging growth company until as late as December 31, 2023, though we may cease ***The SEC's rules permit smaller reporting companies to be an emerging growth company earlier under certain circumstances, including (i) if the market value of our common stock that is held by non-affiliates exceeds \$700 million as of any June 30, in which case we would cease to be an emerging growth company as of the following December 31, or (ii) if our gross revenues exceeds \$1.07 billion in any fiscal year.*** "Emerging growth companies" may take advantage of certain exemptions from various reporting requirements ***that are*** applicable to other public companies, including not being ***companies.*** As long as we qualify as a smaller reporting

62

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#### [Table of Contents](#)

company, based on our public float, and report less than \$100 million in annual revenues in a fiscal year we are permitted, and we intend to, omit the auditor's attestation on internal control over financial reporting that would otherwise be required ***to comply with the auditor attestation requirements of Section 404 of*** by the Sarbanes-Oxley Act, reduced Act.

Our status as an emerging growth company expired as of December 31, 2023. While we expect to remain a smaller reporting company and non-accelerated filer, we now face increased disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding as a nonbinding non-emerging growth company, such as stockholder advisory ***vote*** ***votes*** on executive compensation and stockholder approval of any golden parachute payments not previously approved. Investors could ("say-on-pay"). Until such time that we lose smaller reporting company status, it is unclear if investors will find our common stock less attractive because we may rely on ***these*** certain disclosure exemptions. If

61

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#### [Table of Contents](#)

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~~ volatile and could cause our stock price to decline.

In addition, Section 102 As a result of the JOBS Act also provides that an loss of our emerging growth company can take advantage status, we expect the costs and demands placed upon our management to increase, as we now have to comply with additional disclosure and accounting requirements. In addition, even if we remain a smaller reporting company, if our public float exceeds \$75 million and we report \$100 million or more in annual revenues in a fiscal year, we will become subject to the provisions of Section 404(b) of the extended transition period provided in Section 7(a)(2)(B) of the Securities Sarbanes-Oxley Act of 1933, as amended, or the Securities Act, for complying with new or revised requiring an independent registered public accounting standards. An emerging growth company can therefore delay the adoption of certain accounting standards until those standards would otherwise apply firm to private companies. We are choosing not to "opt out" of such extended transition period, and as a result, we will not comply with new or revised accounting standards provide an attestation report on the relevant dates on which adoption effectiveness of such standards is required for non-emerging growth companies. our internal control over financial reporting, making the public reporting process more costly.

***We are obligated to develop and maintain proper and effective internal controls over financial reporting and any failure to maintain the adequacy of these internal controls may adversely affect investor confidence in our company and the value of our common stock.***

As a public company, we are required under the Sarbanes-Oxley Act requires that we to maintain effective disclosure controls and procedures and internal control over financial reporting. We have developed disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and regulations, and that information required to be disclosed in reports under the Exchange Act, is communicated to our principal executive and financial officers. Our current controls and any new controls that we develop may become inadequate and weaknesses in our internal control over financial reporting may be discovered in the future. We believe that any disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. These inherent limitations reflect the reality that judgments can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected.

Any failure to maintain effective controls could negatively impact the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we will be required to include in periodic reports we file with the SEC under Section 404 of the Sarbanes-Oxley Act, harm our operating results, cause us to fail to meet our reporting obligations or result in a restatement of our prior period financial statements. In the event that we are not able to demonstrate compliance with the Sarbanes-Oxley Act, that our internal control over financial reporting is perceived as inadequate or that we are unable to produce timely or accurate financial statements, investors may lose confidence in our operating results and the price of our common stock could decline. In addition, if we are unable to continue to meet these requirements, we may be unable to remain listed on the Nasdaq Global Market.

Our independent registered public accounting firm is not required to formally attest to the effectiveness of our internal control over financial reporting due to our status as a smaller reporting company ("SRC").

Pursuant to the Exchange Act Continuous Disclosure Accommodations, the auditor attestation requirement of section 404(b) of the Sarbanes Oxley Act of 2002 is not required by SRCs, with public common equity float between \$75 million and \$700 million and annual revenues of less than \$100 million.

**Item 1B.Unresolved Staff Comments.**

None.

**Item 1C.Cybersecurity.**

*Risk Management and Strategy*

We regularly assess risks from cybersecurity threats; monitor our information systems for potential vulnerabilities; and test those systems pursuant to our cybersecurity policies, processes, and practices, which are integrated into our overall risk management program. To protect our information systems from cybersecurity threats, we use various industry standard security tools that are designed to help identify, escalate, investigate, resolve, and recover from security incidents in a timely manner. Given the prevalence of social engineering attacks, we have implemented a two-pronged approach of training and security mitigations: educating users about how to detect a potential attack (phishing, malware, etc.) and security tools, which can decrease the likelihood of occurrence through multi-factor authentication, endpoint detection and response and other tools focused on locking down cyber threats. A team of industry experts comprised of representatives from our Information Technology department and support functions, along with outside experts assesses risks based on probability and potential impact to key business systems and processes. Risks that are considered high are incorporated into our overall risk management program. A mitigation plan is developed for each identified high risk, with progress reported to the Executive Leadership Team and Audit Committee and tracked as part of our overall risk management program overseen by the Audit Committee of our board of directors. These mitigations target implementing automated tools for detection and prevention wherever possible, supplemented by training and process controls as needed. Recurring maintenance, reporting and awareness tasks are conducted and documented within our Service Management Software and Security tools for record keeping and trending.

We collaborate with third parties to assess the effectiveness of our cybersecurity prevention and response systems and processes through various penetration testing and best practice reviews. These include cybersecurity assessors, consultants, and other external cybersecurity experts to assist in the identification, verification, and validation of cybersecurity risks, as well as to support associated mitigation plans when necessary. We are aware that cybersecurity is a continually changing landscape and as a result, the engagement with these experts helps us evaluate our risk-based processes with respect to the trends.

Cybersecurity threats, including those resulting from any previous cybersecurity incidents, have not materially affected our Company, including our business strategy, results of operations, or financial condition. We do not believe that cybersecurity threats resulting from any previous cybersecurity incidents of which we are aware are reasonably likely to materially affect our Company. Refer to the risk factor captioned "Security and privacy breaches may expose us to liability and harm our reputation and business " in Part I, Item 1A. "Risk Factors" for additional description of cybersecurity risks and potential related impacts on our Company.

*Governance*

Our board of directors oversees our risk management process, including as it pertains to cybersecurity risks, directly and through its committees. The Audit Committee of the board oversees our risk management program, which focuses on the most significant risks we face in the short-, intermediate-, and long-term timeframe. Audit Committee meetings include discussions of emerging industry-wide trends in cybersecurity risks along with specific risk areas our company has greater risks throughout the year, including, among

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[Table of Contents](#)

**Item 1B. Unresolved Staff Comments.** others, those relating to cybersecurity threats. These reports come from the Head of IT to include our enterprise risk profile on a quarterly basis. The Audit Committee reviews our cybersecurity risk profile with management on a periodic basis using key performance and/or risk indicators. These key performance indicators are industry-standard metrics and measurements designed to assess the effectiveness of our cybersecurity program in the prevention, detection, mitigation, and remediation of cybersecurity incidents.

**None.** We take a risk-based approach to cybersecurity and have implemented cybersecurity policies throughout our operations that are designed to address cybersecurity threats and incidents. The Company's Head of IT is responsible for the establishment and maintenance of our cybersecurity program, as well as the assessment and management of cybersecurity risks. The current Head of IT has over 20 years of experience in information security and possesses the requisite education, skills and experience expected of an individual assigned to these duties. In addition to individual skills, the Head of IT has partnered with several third-party Cybersecurity experts to identify new areas of risk and the latest trends in security tools and methods.

**Item 2. Properties.**

We occupy an approximately 42,500 square foot facility in Malvern, Pennsylvania, under a lease that ends in February 2028, for our corporate headquarters, which includes office and warehouse space. We have an option to extend the lease for an additional five-year term. We also occupy an approximately 9,600 square foot facility in Charlotte, North Carolina, under a lease that ends in 2027, **to be which is being** used as a training facility for our NeuroStar Advanced Therapy Systems. We have an option to extend the lease for an additional one-year term. We believe that our existing facilities are adequate to meet our needs for the foreseeable future.

**Item 3. Legal Proceedings.**

The Company is subject from time to time to various claims and legal actions arising during the ordinary course of its business. Management believes that there are currently no claims or legal actions that would reasonably be expected to have a material adverse effect on the Company's results of operations, financial condition, or cash flows.

**Item 4. Mine Safety Disclosures.**

Not applicable.

63 65

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[Table of Contents](#)

**PART II**

**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

**Market Information**

Our common stock has been publicly traded on the Nasdaq Global Market under the symbol "STIM" since June 28, 2018. Prior to that time, there was no public market for our common stock. The shares of our common stock sold in our IPO on June 27, 2018 were priced at \$17.00 per share. The shares of our common stock sold in our secondary public offering and sale of our common stock on February 2, 2021 were priced at \$15.50 per share.

**Holders of Record**

As of **February 27, 2023** **February 29, 2024**, there were approximately 54 holders of record of our common stock, solely based upon the count our transfer agent provided to us as of that date.

**Sales of Unregistered Securities**

None.

**Equity Compensation Plans**

The following table details information regarding our existing equity compensation plans as of **December 31, 2022** **December 31, 2023**:

Plan Category	Number of Securities			Number of Securities		
	Remaining	Available for	Future	Remaining	Available for	Future
	Number of Securities to be Issued	Weighted Average	Under Equity Compensation	Number of Securities to be Issued	Weighted Average	Under Equity Compensation
	Upon Exercise of Outstanding Options, Warrants and Rights	Exercise Price of Outstanding Options, Options, and Rights	Plans (Excluding Securities reflected in Column (a))	Upon Exercise of Outstanding Options, Warrants and Rights	Exercise Price of Outstanding Options, Options, and Rights	Plans (Excluding Securities reflected in Column (a))
	(in thousands)	and Rights	(in thousands)	(in thousands)	and Rights	(in thousands)
	(a)	(b)	(c)	(a)	(b)	(c)
Equity compensation plans approved by security holders	1,301	\$ 4.07	2,203	1,270	\$ 3.90	2,028
Equity compensation plans not approved by security holders	—	—	(1) 435	—	—	(1) 285
<b>Total</b>	<b>1,301</b>	<b>\$ 4.07</b>	<b>2,637</b>	<b>1,270</b>	<b>\$ 3.90</b>	<b>2,313</b>

(1) This number includes **426.8** **284.9** thousand shares available for issuance under the 2020 Inducement Incentive Plan as of **December 31, 2022** **December 31, 2023**.

See "Item 15. Exhibits and Financial Statement Schedules — Notes to Financial Statements — Note 13. Stockholders' Equity, Note 15. Share-Based Compensation and Note 16. Employee Benefit Plans" for additional information on compensation plans under which equity securities of the registrant are authorized for issuance without the approval of stockholders.

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[Table of Contents](#)
**Issuer Purchases of Equity Securities**

None

**Item 6. [Reserved]**
**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our audited financial statements and related notes thereto and other financial information included elsewhere in this Annual Report on Form 10-K. In addition to historical financial information, some of the information contained in the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. You should review the "Risk Factors" section of this Annual Report on Form 10-K for a discussion of important factors that could cause our actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.*

**Overview**

We are a commercial stage medical technology company focused on designing, developing and marketing products that improve the quality of life for patients who suffer from neurohealth disorders. Our first commercial product, the NeuroStar Advanced Therapy System, is a non-invasive and non-systemic office-based treatment that uses transcranial magnetic stimulation, ("TMS"), TMS to create a pulsed, MRI-strength magnetic field that induces electrical currents designed to stimulate specific areas of the brain associated with mood. The system is cleared by the United States Food and Drug Administration, ("FDA"), FDA to treat adult patients with major depressive disorder, ("MDD"), MDD that have failed to achieve satisfactory improvement from prior antidepressant medication in the current MDD episode. NeuroStar Advanced Therapy System is safe, clinically effective, reproducible and precise and we believe is supported by the largest clinical data set of any competing TMS system. We believe we are the market leader in TMS therapy based on the estimated 147,431 169,068 global patients treated with over 5.3 million 6.1 million of our treatment sessions through December 31, 2022 December 31, 2023. We generated revenues of \$65.2 million \$71.3 million and \$55.3 million \$65.2 million for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively.

We designed the NeuroStar Advanced Therapy System as a non-invasive therapeutic alternative to treat patients who suffer from MDD and to address many of the key limitations of existing treatment options. We generate revenues from initial capital sales of our systems, sales of our recurring treatment sessions and from service and repair and extended warranty contracts. We derive the majority of our revenues from recurring treatment sessions. For the year ended December 31, 2023, revenues from sales of

our treatment sessions and NeuroStar Advanced Therapy Systems represented 73% and 24% of our U.S. revenues, respectively. For the year ended December 31, 2022, revenues from sales of our treatment sessions and NeuroStar Advanced Therapy Systems represented 71% and 26% of our U.S. revenues, respectively. For the year ended December 31, 2021, revenues from sales of our treatment sessions and NeuroStar Advanced Therapy Systems represented 78% and 18% of our U.S. revenues, respectively.

We currently sell our NeuroStar Advanced Therapy System and recurring treatment sessions in the United States through our sales and customer support team. Our sales force targets an estimated 50,000 53,000 psychiatrists across 26,000 practices that we estimate, based on a 2020 dataset from Symphony Health and our own internal estimates, treat approximately 42% of the total MDD patients in the United States who meet our labeled indication and are insured. We expect to continue to expand our direct sales and customer support team to further penetrate the market by demonstrating the benefits of our NeuroStar Advanced Therapy System to psychiatrists and their MDD patients. Some of our customers have and may purchase more than one NeuroStar Advanced Therapy System. Based on our commercial data, we believe psychiatrists can

65

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[Table of Contents](#)

recoup their initial capital investment in our system by providing a standard course of treatment to approximately 12 patients. We believe psychiatrists can generate approximately \$8,500 of average revenue per patient for a standard course of treatment, which may provide meaningful incremental income to their

67

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[Table of Contents](#)

practices. We have a diverse customer base of psychiatrists in group psychiatric practices in the United States. One For the years ended December 31, 2023, 2022 and 2021 one customer accounted for more than 10% 15%, 17% and 20% respectively, of our revenues for the years ended December 31, 2022 and 2021. Company's revenue. Patients are reimbursed by Medicare federal healthcare programs and the vast majority of commercial payors in the United States for treatment sessions utilizing our NeuroStar Advanced Therapy System.

We market our products in a few select markets outside the United States through independent distributors. International revenues represented 3% and 3% of our total revenues for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively. In October 2017, we entered into an exclusive distribution agreement with Teijin, Pharma Limited, ("Teijin"), for the distribution of our NeuroStar Advanced Therapy Systems and treatment sessions to customers who will treat patients with MDD in Japan. We received regulatory approval for our system in Japan in September 2017. We obtained reimbursement coverage for NeuroStar Advanced Therapy System in Japan, which went into effect on June 1, 2019 and covers patients who are treated in the largest inpatient and outpatient psychiatric facilities in Japan. We expect our international revenues to increase be consistent as a percentage of our total revenues as we grow our presence in Japan. revenue.

Our research and development efforts are focused on the following: hardware and software product developments and enhancements of our NeuroStar Advanced Therapy System and clinical development relating to additional indications. We outsource the manufacture of components of our NeuroStar Advanced Therapy Systems that are produced to our specifications, and individual components are either shipped directly from our third-party contract manufacturers to our customers or consolidated into pallets at our Malvern, Pennsylvania facility prior to shipment. Final installation of these systems occurs at the customer site.

Our total revenues increased by \$9.9 million \$6.1 million, or 18% 9%, from \$55.3 million for the year ended December 31, 2021 to \$65.2 million for the year ended December 31, 2022 to \$71.3 million for the year ended December 31, 2023. For the year ended December 31, 2022 December 31, 2023, our U.S. revenues were \$63.4 million \$69.3 million, compared to \$53.4 million \$63.4 million for the year ended December 31, 2021 December 31, 2022, which represented an increase of 19% 9% period over period. We expect to continue to incur losses for the next several years as we expand our commercial organization to support our planned sales growth and while continuing to invest in our pipeline indications. As of December 31, 2022 December 31, 2023, we had an accumulated deficit of \$345.9 million \$376.1 million.

### **Recent Developments**

#### **COVID-19**

We have monitored the impact of the COVID-19 pandemic on all aspects of our business and geographies, including how it has and will continue to impact the Company's customers, supply chain, employees and other business partners. We experienced significant disruptions, in the first quarter of 2022 and in the years ended 2021 and 2020 from the COVID-19 pandemic. Although business conditions during the rest of 2022 were largely not impacted by the COVID-19 pandemic, we are unable to predict whether the COVID-19 pandemic may have a material impact on our financial condition, results of operations and cash flows in the future due to numerous uncertainties. These uncertainties include the potential resurgence of COVID-19 due to new variants or otherwise, the actions taken to contain the pandemic or mitigate its impact and the direct and indirect economic effects of the pandemic, vaccination rates and containment measures, among others. The outbreak of COVID-19 in many countries, including the United States, has significantly adversely impacted global economic activity.

The situation surrounding the COVID-19 pandemic remains fluid, and we are actively managing our response in collaboration with business partners and assessing potential impacts to our financial position and operating results, as well as potential adverse developments in our business. For further information, refer to "Risk Factors" in "Item 1A" of this Annual Report on Form 10-K.

#### [Table of Contents](#)

### **Components of Our Results of Operations**

#### **Revenues**

To date, we have generated revenues primarily from the capital portion of our business and related sales and rentals of the NeuroStar Advanced Therapy System and the recurring revenues from our sale of treatment sessions in the United States.

**NeuroStar Advanced Therapy System Revenues**. NeuroStar Advanced Therapy System revenues consist primarily of sales or rentals of a capital component, including upgrades to the equipment attributable upgrades to the initial sale of the system. NeuroStar Advanced Therapy Systems can be purchased outright or on a rent-to-own basis by certain customers.

**Treatment Session Revenues.** Treatment session revenues primarily include sales of NeuroStar Treatment Sessions and SenStar treatment links. The NeuroStar Treatment Sessions are access codes that are delivered electronically in the United States. The SenStar treatment links are disposable units containing single-use access codes that are sold and used outside the United States. Access codes are purchased separately by our customers, primarily on an as-needed basis, and are required by the NeuroStar Advanced Therapy System in order to deliver treatment sessions.

**Other Revenues.** Other revenues are derived primarily from service and repair extended warranty contracts with our existing customers.

[Table of Contents](#)

We refer you to the section titled "Critical Accounting Policies and Use of Estimates—Revenue Recognition" appearing elsewhere in this Annual Report on Form 10-K for additional information regarding how we account for revenues.

Sales in the United States represented 97% of our total revenues for the years ending **December 31, 2022** December 31, 2023 and **2021** 2022, respectively, and have been generated by our direct sales force. Outside the United States, our sales are made through local third-party distributors. International revenues were 3% for the years ended **December 31, 2022** December 31, 2023 and **2021, 2022**, respectively. We expect that both our United States and international revenues will increase in the near term as we continue to expand active customer sites utilizing our NeuroStar Advanced Therapy Systems and increase the related patient utilization in the United States, as well as grow our presence in Japan. We expect our revenues to be positively impacted to the extent our direct sales force is successful in increasing the rate of adoption and utilization of treatment with TMS Therapy as an alternative to other MDD treatments.

*Cost of Revenues and Gross Margin*

Cost of revenues primarily consists of the costs of components and products purchased from our third-party contract manufacturers of our NeuroStar Advanced Therapy Systems as well as the cost of treatment packs for individual treatment sessions. We use third-party contract manufacturing partners to produce the components for and assemble the completed NeuroStar Advanced Therapy Systems. Cost of revenues also includes costs related to personnel, royalties, warranty, shipping, **amortization of capitalized software** and our operations and field service departments. We expect our cost of revenues to **increase to the extent** **decrease as our revenues grow**, **product mix changes and we realize efficiencies with our new contract manufacturer.**

Our gross profit is calculated by subtracting our cost of revenues from our revenues. We calculate our gross margin as our gross profit divided by our revenues. Our gross margin has been and will continue to be affected by a variety of factors, primarily product sales mix, pricing and third-party contract manufacturing costs. Our gross margins on revenues from sales of NeuroStar Advanced Therapy Systems are lower than our gross margins on revenues from sales of treatment sessions and, as a result, the sales mix between NeuroStar Advanced Therapy Systems and treatment sessions can affect the gross margin in any reporting period.

## [Table of Contents](#)

### *Sales and ~~Marketing~~ marketing Expenses*

Sales and marketing expenses consist of market research and commercial activities related to the sale of our NeuroStar Advanced Therapy Systems and treatment sessions and salaries and related benefits, sales commissions and share-based compensation for employees focused on these efforts. Other significant sales and marketing costs include conferences and trade shows, promotional and marketing activities, including direct and online marketing, practice support programs, ~~television and radio~~ primarily digital media campaigns, travel and training expenses.

We anticipate that our sales and marketing expenses will ~~decrease in 2023~~ remain materially consistent during 2024 compared to ~~2022~~ 2023 expenses, due in part to ~~with~~ the ~~termination~~ exception of the ~~one-time 2022 sales equity match incentive~~, ~~planned~~ growth in our co-op marketing program.

### *General and Administrative Expenses*

General and administrative expenses consist primarily of personnel expenses, including salaries and related benefits, share-based compensation and travel expenses, for employees in executive, finance, information technology, legal and human resource functions. General and administrative expenses also include the cost of insurance, outside legal fees, accounting and other consulting services, audit fees from our independent registered public accounting firm, board of directors' fees and other administrative costs, such as corporate facility costs, including rent, utilities, depreciation and maintenance not otherwise included in cost of revenues.

69

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## [Table of Contents](#)

We anticipate that our general and administrative expenses will remain ~~materially~~ relatively consistent during 2023 2024 compared to our ~~2022~~ 2023 expenses.

### *Research and Development Expenses*

Research and development expenses consist primarily of personnel expenses, including salaries and related benefits and share-based compensation for employees in clinical development, product development, regulatory and quality assurance functions, as well as expenses associated with outsourced professional scientific development services and costs of investigative sites and consultants that conduct our preclinical and clinical development programs. We typically use our employee, consultant and infrastructure resources across our research and development programs.

We plan to incur research and development expenses for the near future as we expect to continue our development of TMS Therapy for the treatment of additional patient populations and new indications related to neurohealth disorders, as well as for various hardware and software development projects. As a result, we expect our research and development expenses to increase during 2023 2024 compared to our ~~2022~~ 2023 expenses.

### *Interest Expense*

Interest expense consists of cash interest payable under our credit facility and non-cash interest attributable to the accrual of final payment fees and the amortization of deferred financing costs related to our indebtedness.

#### Other Income, Net

Other income, net consists primarily of interest income earned on our money market account balances and **note receivables**, **notes receivable**.

#### Results of Operations

##### Comparison of the Years ended December 31, 2023 and 2022

	Years ended December 31,		Increase / (Decrease)	
			Dollars	Percentage
	(in thousands, except percentages)			
Revenues	\$ 71,348	\$ 65,206	\$ 6,142	9 %
Cost of revenues	19,643	15,483	4,160	27 %
Gross Profit	51,705	49,723	1,982	4 %
Gross Margin	72.5 %	76.3 %		
Operating expenses:				
Sales and marketing	47,318	49,982	(2,664)	(5)%
General and administrative	25,426	25,516	(90)	(0)%
Research and development	9,515	9,336	179	2 %
Total operating expenses	82,259	84,834	(2,575)	(3)%
Loss from Operations	(30,554)	(35,111)	4,557	13 %
Other (income) expense:				
Interest expense	5,424	4,251	1,173	28 %
Other income, net	(5,789)	(2,203)	(3,586)	(163)%
Net Loss	\$ (30,189)	\$ (37,159)	\$ 6,970	19 %

68 70

#### Table of Contents

#### Results of Operations

##### Comparison of the Years ended December 31, 2022 and 2021

	Revenues by Geography			
	Years ended December 31,			
	2023		2022	
	Amount	% of Revenues	Amount	% of Revenues
(in thousands, except percentages)				

United States	\$ 69,336	97 %	\$ 63,406	97 %
International	2,012	3 %	1,800	3 %
Total revenues	\$ 71,348	100 %	\$ 65,206	100 %

	Years ended December 31,		Increase / (Decrease)	
	2022	2021	Dollars	Percentage
	(in thousands, except percentages)			
Revenues	\$ 65,206	\$ 55,312	\$ 9,894	18 %
Cost of revenues	15,483	11,653	3,830	33 %
Gross Profit	49,723	43,659	6,064	14 %
Gross Margin	76.3 %	78.9 %		
Operating expenses:				
Sales and marketing	49,982	37,746	12,236	32 %
General and administrative	25,516	25,554	(38)	(0)%
Research and development	9,336	7,923	1,413	18 %
Total operating expenses	84,834	71,223	13,611	19 %
Loss from Operations	(35,111)	(27,564)	(7,547)	(27)%
Other (income) expense:				
Interest expense	4,251	4,019	232	6 %
Other income, net	(2,203)	(390)	(1,813)	(465)%
Net Loss	\$ (37,159)	\$ (31,193)	\$ (5,966)	(19)%

	U.S. Revenues by Product Category			
	Years ended December 31,			
	2023		2022	
	Amount	% of Revenues	Amount	% of Revenues
(in thousands, except percentages)				
NeuroStar Advanced Therapy System	\$ 16,460	24 %	\$ 16,575	26 %
Treatment sessions	50,896	73 %	45,077	71 %
Other	1,980	3 %	1,754	4 %
Total U.S. revenues	\$ 69,336	100 %	\$ 63,406	100 %

	Revenues by Geography			
	Years ended December 31,			
	2022		2021	
	Amount	% of Revenues	Amount	% of Revenues
(in thousands, except percentages)				
United States	\$ 63,406	97 %	\$ 53,447	97 %
International	1,800	3 %	1,865	3 %
Total revenues	\$ 65,206	100 %	\$ 55,312	100 %

	U.S. Revenues by Product Category			
	Years ended December 31,			
	2022		2021	
Amount	Revenues	Amount	Revenues	
(in thousands, except percentages)				

	2022		2021	
	% of		% of	
	Amount	Revenues	Amount	Revenues
(in thousands, except percentages)				
NeuroStar Advanced Therapy System	\$ 16,575	26 %	\$ 9,760	18 %
Treatment sessions	45,077	71 %	41,933	78 %
Other	1,754	3 %	1,754	4 %
Total U.S. revenues	\$ 63,406	100 %	\$ 53,447	100 %

69

[Table of Contents](#)

	United States NeuroStar Advanced Therapy System				United States NeuroStar Advanced Therapy System			
	Revenues by Type				Revenues by Type			
	Years ended December 31,				Years ended December 31,			
	2022	2021			2023	2022		
	Amount	% of			Amount	% of		
	Amount	Revenues	Amount	Revenues	Amount	Revenues	Amount	Revenues
(in thousands, except percentages)								
NeuroStar Capital	\$ 15,792	95 %	\$ 8,820	90 %	\$ 15,805	96 %	\$ 15,792	95 %
NeuroStar capital								
Operating lease	222	2 %	279	3 %	162	1 %	222	1 %
Other	561	3 %	661	7 %	493	3 %	561	3 %
Total United States NeuroStar Advanced Therapy System revenues	16,575	100 %	\$ 9,760	100 %	16,460	100 %	\$ 16,575	100 %

*Revenues*

Total revenues increased by \$9.9 million \$6.1 million, or 18% 9%, from \$55.3 million for the year ended December 31, 2021 to \$65.2 million for the year ended December 31, 2022, to \$71.3 million for the year ended December 31, 2023. For the period ended December 31, 2022 December 31, 2023, U.S. revenue increased by 19% 9% and international revenue marginally

decreased increased by 3% 12% over the comparative prior year period. The U.S. revenue growth was primarily due to an increase in NeuroStar Advanced Therapy System revenues. Treatment sessions revenues in connection with the growth of active customer sites and utilization.

Revenues in the United States increased by \$10.0 million \$5.9 million, or 19% 9%, from \$53.4 million for the year ended December 31, 2021 to \$63.4 million for the year ended December 31, 2022 to \$69.3 million for the year ended December 31, 2023. NeuroStar Advanced Therapy System revenue in the United States increased by \$6.8 million, or 70%, for the year ended December 31, 2023 was \$16.5 million which was in line with revenue at December 31, 2022 compared to the year ended December 31, 2021 at \$16.6 million. The increase was primarily driven by a 79% increase in NeuroStar Advanced Therapy System capital revenue, which includes capital sales and sales-type leases. The increase in NeuroStar capital revenue was primarily driven by an increase consisted of 84,204 units in NeuroStar Advanced Therapy Systems sold from 129 units for the year ended December 31, 2021 December 31, 2023 compared to 213 units for the year ended December 31, 2022. The Company expects to recognize future recurring treatment session revenue related to the sale of 213,204 NeuroStar Advanced Therapy systems for the year ended December 31, 2022 compared to 147 units including 18 units recognized as operating leases for the December 31, 2021 period. December 31, 2023.

Treatment sessions revenues represented 71% 73% and 78% 71% of total revenues in the United States for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively, and increased by 7% 13% from \$41.9 million for the year ended December 31, 2021 to \$45.1 million for the year ended December 31, 2022 to \$50.9 million for the year ended December 31, 2023. The increase in U.S. treatment session revenue was primarily the result of an increase in 50,608 of 218,244 treatment sessions sold from 521,979 572,587 units for the year ended December 31, 2021 December 31, 2022 to 572,587 791,023 for the year ended December 31, 2022 December 31, 2023. We

## [Table of Contents](#)

believe the increase in overall volume of treatment session revenue between these two periods was primarily due to the growth in active customer sites of 142,44 from 959 as of December 31, 2021 to 1,101 as of December 31, 2022, to 1,145 as of December 31, 2023 and increase in overall utilization. Due to the time it takes for the customer sites to become fully operational, treatment session revenue will lag in the growth of our active customer sites.

### *Cost of Revenues and Gross Margin*

#### **Future Issuance**

Cost of revenues increased by \$3.8 million \$4.2 million, or 33% 27%, from \$11.7 million for the year ended December 31, 2021 to \$15.5 million for the year ended December 31, 2022 to \$19.6 million for the year ended December 31, 2023. This increase was primarily due to the recording of a \$1.9 million inventory impairment for specialized component parts secured for discontinued NeuroStar Advanced Therapy Systems for which costs exceed net realizable value. Also capitalized software and the corresponding amortization expense increased by \$1.3 million associated with the latest product release. One-time expense relating to our transition to a new contract manufacturer amounted to \$0.7 million. Gross margin was 72.5% for the year ended December 31, 2023 compared to 76.3% for the year ended December 31, 2022 compared to 78.9% for the year ended December 31, 2021. The decrease in gross margin was driven by the result of one-time inventory impairment, the higher operational costs related to our transition to a change in new third-party contract manufacturing partner and software amortization expense from the latest product mix of revenue versus the prior year release.

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[Table of Contents](#)

#### *Sales and Marketing* marketing Expenses

Sales and marketing expenses increased decreased by \$12.2 million \$2.7 million, or 32% 5%, from \$37.7 million for the year ended December 31, 2021 to \$50.0 million for the year ended December 31, 2022 to \$47.3 million for the year ended December 31, 2023. The change decrease was primarily due driven by the discontinuation of a sales compensation program in 2023. Neuronetics offered a retention program to sales personnel in 2022 and did not continue the program in 2023, resulting in a decrease in sales personnel expense. The decrease was partially offset by an increase of \$9.4 million in personnel costs related to salary, share-based compensation, bonus, commissions (this includes a one-time commission retention benefit of \$3.7 million), and payroll taxes. \$0.7 million in marketing related to a new campaign launch and focus on program spend, specifically the growth in person customer sales summits, and \$0.9 million related to the opening of Charlotte facility for NeuroStar University and other sales training programs. Travel expense increased by \$0.9 million driven by inflation and additional head count. co-op marketing initiative.

#### *General and Administrative* Expenses

General and administrative expenses remained relatively consistent at \$25.4 million for the year ended December 31, 2023 compared with \$25.5 million for the year ended December 31, 2022 compared with \$25.6 million for the year ended December 31, 2021.

#### *Research and Development* Expenses

Research and development expenses increased by \$1.4 million, or 18%, from \$7.9 million remained relatively consistent at \$9.5 million for the year ended December 31, 2021 to December 31, 2023 compared with \$9.3 million for the year ended December 31, 2022. The change was primarily due to an increase of \$0.9 million in personnel costs related to salary and share-based compensation expense due to an increase in headcount, \$0.3 million increase in professional fees related to consulting expense as the Company continued to incur research and development costs to pursue additional indications and NeuroStar Advanced Therapy System upgrades.

#### *Interest Expense*

Interest expense increased by \$0.2 million \$1.2 million, or 6% 28%, from \$4.0 million for the year ended December 31, 2021 to \$4.2 million for the year ended December 31, 2022, to \$5.4 million for the year ended December 31, 2023 due to interest rates and debt balance increases.

#### *Other Income, Net*

Other income, net increased by \$1.8 million \$3.5 million from \$0.4 million for the year ended December 31, 2021 to \$2.2 million for the year ended December 31, 2022 to \$5.8 million for the year ended December 31, 2023, primarily as a result of the Employee Retention Credit (the "ERC") of \$2.9 million, increased interest income earned on the Company's money market accounts and note receivables, increase in notes receivable interest.

#### *Comparison of the Years ended December 31, 2021 December 31, 2022 and 2020*

The information required within this section is incorporated by reference to the information set forth in the section titled "Comparison of the Years ended December 31, 2021 December 31, 2022 and 2020" in "Management's Discussion

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[Table of Contents](#)

and Analysis of our Financial Condition and Results of Operations" in our **2021** **2022** Annual Report on Form 10-K filed on **March 8, 2022** **March 7, 2023**.

### **Liquidity and Capital Resources**

#### *Overview*

As of **December 31, 2022** **December 31, 2023**, we had **cash and cash equivalents of \$59.7 million** and an accumulated deficit of **\$376.1 million**, compared to **cash and cash equivalents of \$70.3 million** and an accumulated deficit of **\$345.9 million**, compared to **cash and cash equivalents of \$94.1 million** and an accumulated deficit of **\$308.7 million** as of **December 31, 2021** **December 31, 2022**. We incurred negative cash flows from operating activities of **\$30.7 million** **\$32.0 million** and **\$28.0 million** **\$30.7 million** for the years ended **December 31, 2022** **December 31, 2023** and **2021** **2022**, respectively. We have incurred operating losses since our inception, and we anticipate that our operating losses will continue in the near term as we seek to expand our sales and marketing initiatives to support our growth in existing and new markets, invest funds in additional research and development activities and utilize cash for other corporate purposes.

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[Table of Contents](#)

Our primary sources of capital to date have been from our IPO, private placements of our convertible preferred securities, borrowings under our credit facility, sales of our products and a secondary public offering of our common stock. As of **December 31, 2022** **December 31, 2023**, we had **\$35.0 million** **\$60.0 million** of borrowings outstanding under our credit facility, which has a final maturity in **February 2025** **March 2028**. Management believes that the Company's cash and cash equivalents as of **December 31, 2022** **December 31, 2023** and anticipated revenues from sales of its products are sufficient to fund the Company's operations for at least 12 months from the issuance of these financial statements.

If our cash and cash equivalents and anticipated revenues from sales of our products are insufficient to satisfy our liquidity requirements, we may seek to sell additional common or preferred equity or debt securities or enter into a new credit facility or another form of third-party funding or seek other debt financing. If we raise additional funds by issuing equity or equity-linked securities, our stockholders would experience dilution and any new equity securities could have rights, preferences and privileges superior to those of holders of our common stock. Debt financing, if available, may involve covenants restricting our operations or our ability to incur additional debt. We cannot be assured that additional equity, equity-linked or debt financing will be available on terms favorable to us or our stockholders, or at all. It is also possible that we may allocate significant amounts of capital towards products or technologies for which market demand is lower than expected and, as a result, abandon such efforts. If we are unable to maintain our current financing or obtain adequate additional financing when we require it, or if we obtain

financing on terms which are not favorable to us, or if we expend capital on products or technologies that are unsuccessful, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, or we may be required to delay the development, commercialization and marketing of our products.

Our current and future funding requirements will depend on many factors, including:

- the impact of COVID-19 and related governmental responses;
- our ability to achieve revenue growth and improve operating margins;
- compliance with the terms and conditions, including covenants, set forth in our credit facility;
- the cost of expanding our operations and offerings, including our sales and marketing efforts;
- our ability to improve or maintain coverage and reimbursement arrangements with domestic third-party and government payors, particularly in Japan;
- our rate of progress in establishing coverage and reimbursement arrangements from international commercial third-party and government payors;
- our rate of progress in, and cost of the sales and marketing activities associated with, establishing adoption of our products and maintaining or improving our sales to our current customers;

73

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[Table of Contents](#)

- the cost of research and development activities, including research and development relating to additional indications of neurohealth disorders;
- the effect of competing technological and market developments;
- costs related to international expansion; and
- the potential cost of and delays in product development as a result of any regulatory oversight applicable to our products.

The Company's material cash requirements include the following contractual and other obligations.

72

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[Table of Contents](#)

*Debt*

In March 2020, the Company entered into the Solar Facility. As of December 31, 2022 December 31, 2023, the Company had \$35.0 million \$60.0 million of borrowings outstanding under the Solar credit facility, Facility, which has a final maturity in February

2025 ("maturity"). March 2028. The interest rate on borrowings under the credit facility is variable and resets monthly. Prior to the The Company commencing will commence principal payments on the facility in March 2023 starting April 2026 with total borrowings of \$35.0 million coming \$60.0 million due in monthly installments, at maturity. In addition, the Company and Solar agreed to delay the first principal payment while negotiating a refinanced credit facility. Under the current facility, the Company will be required to make a final payment fee of \$1.9 million at maturity. Future interest payments related to the current facility total \$5.4 million \$22.0 million, including \$3.7 million \$6.7 million due within the next twelve months as of December 31, 2022 December 31, 2023.

On March 7, 2024, the Company entered into a sixth amendment (the "Solar Sixth Amendment") to the Solar Facility.

Under the Solar Sixth Amendment, Solar (i) waived the specified events with respect to the Company's non-compliance with the required revenue under the net product revenue covenant and (ii) amended the financial covenants to reflect current projections.

The foregoing summary of the Solar Sixth Amendment does not purport to be complete and is qualified in its entirety by reference to the Solar Sixth Amendment, a copy of which is filed as Exhibit 10.9 hereto and incorporated herein by reference.

#### Leases

The Company has lease arrangements for equipment and certain facilities, including corporate headquarters and our warehouse in Malvern, Pennsylvania and a training facility in Charlotte, North Carolina. As of December 31, 2022 December 31, 2023, the Company had fixed lease payment obligations of \$4.5 million \$3.7 million, including \$0.9 million due within the next twelve months.

#### Cash Flows

The following table sets forth a summary of our cash flows for the years ended December 31, 2022 December 31, 2023, 2021, 2022, and 2020: 2021:

	December 31,			December 31,		
	2022	2021	2020	2023	2022	2021
Net Cash Used in Operating Activities	\$ (30,739)	\$ (27,983)	\$ (28,390)	\$ (32,038)	\$ (30,739)	\$ (27,983)
Net Cash Provided by (Used in) Investing Activities	6,731	(9,839)	(730)			
Net Cash (Used in) Provided by Investing Activities				(1,322)	6,731	(9,839)
Net Cash Provided by Financing Activities	207	83,006	2,369	22,697	207	83,006
Net (Decrease) Increase in Cash and Cash Equivalents	\$ (23,801)	\$ 45,184	\$ (26,751)			
Net (Decrease) in Cash and Cash Equivalents				\$ (10,663)	\$ (23,801)	\$ 45,184

#### [Table of Contents](#)

#### *Net Cash Used in Operating Activities*

Net cash used in operating activities for 2023 was \$32.0 million, consisting primarily of a net loss of \$30.2 million and an increase in net operating assets of \$14.1 million, partially offset by non-cash charges of \$12.3 million. The increase in net operating assets was primarily due to increases in accounts receivable and prepaid commission expense, and decreases in accrued compensation. Non-cash charges consisted of depreciation and amortization, inventory impairment, non-cash interest expense, share-based compensation, and the cost of rental units purchased by customers.

Net cash used in operating activities for 2022 was \$30.7 million, consisting primarily of a net loss of \$37.2 million and an increase in net operating assets of \$4.8 million, partially offset by non-cash charges of \$11.2 million. The increase in net operating assets was primarily due to increases in accounts receivable, inventory and prepaid commission expense, which were offset by increases in accounts payable and accrued expenses as a result of timing and accrued 2022 compensation and commissions as of December 31, 2022. Non-cash charges consisted of depreciation and amortization, non-cash interest expense, share-based compensation, and the cost of rental units purchased by customers.

Net cash used in operating activities for 2021 was \$28.0 million, consisting primarily of a net loss of \$31.2 million and an increase in net operating assets of \$6.6 million, partially offset by non-cash charges of \$9.8 million. The increase in net operating assets was primarily due to increases in accounts receivable, inventory and prepaid commission expense, which were offset by increases in accounts payable and accrued expenses as a result of timing and accrued 2021 compensation and commissions as of December 31, 2021. Non-cash charges consisted of depreciation and amortization, non-cash interest expense, share-based compensation, and the cost of rental units purchased by customers.

#### *Net Cash (Used in) Provided by Investing Activities*

Net cash (used in) provided by investing activities for the years ended December 31, 2023, 2022 and 2021 was \$(1.3) million, \$6.7 million and \$(9.8) million, respectively. Net cash used in operating activities for 2020 was \$28.4 million, consisting primarily of a net loss of \$27.5 million and an increase in net operating assets of \$8.3 million, partially offset by non-cash charges of \$7.3 million. The increase in net operating assets was primarily due to an increase in net investment in sales-type leases and prepaid commission expense, which were offset by a decrease in accrued expense due to timing and the 2020 payments of 2019 incentive compensation and commission accrued as of December 31, 2019.

#### Table of Contents

Non-cash charges consisted of depreciation and amortization, non-cash interest expense, share-based compensation, and the cost of rental units purchased by customers, and the loss on debt extinguishment.

#### *Net Cash Provided by (Used in) Investing Activities*

Net cash provided by (used in) investing activities for the year ended December 31, 2022, 2021 December 31, 2023 was due to payments received on our promissory notes offset partially by purchases of property and 2020 was \$6.7 million, \$(9.8) million equipment and \$(0.7) million, respectively, capitalized software costs. Net cash provided by investing activities for the year ended December 31, 2022 was due attributable to the repayment of our a promissory note offset partially by and purchases of property and equipment and capitalized software costs. Net cash used in investing activities for the year ended December 31, 2021 was attributable to issuance of our promissory note and purchases purchase of property and equipment and capitalized software costs. Net cash used in investing activities for the year ended December 31, 2020 was attributable to purchases of property and equipment and capitalized software costs.

#### *Net Cash Provided by Financing Activities*

Net cash provided by financing activities for the year ended December 31 2022 December 31, 2023 was \$22.7 million attributable primarily to additional debt net of final payment and amendment fee paid in connection with the two amendments of the Solar Facility in 2023.

Net cash provided by financing activities for the year ended December 31, 2022 was \$0.2 million attributable primarily to proceeds related to stock option exercises.

Net cash provided by financing activities for the year ended December 31, 2021 was \$83.0 million and primarily consisted of additional proceeds from our secondary public offering and sale of our common stock on February 2, 2021 and cash proceeds related to stock option exercises.

Net cash provided by financing activities for the year ended December 31, 2020 was \$2.4 million and attributable primarily to proceeds from the exercise of stock options.

74 75

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#### [Table of Contents](#)

#### ***Indebtedness***

Refer to "Note 12. Debt" in our audited financial statements and related notes thereto appearing elsewhere in this Annual Report on Form 10-K for information regarding our current Solar credit facility and extinguished Oxford credit facility. Facility.

#### ***Solar Credit Facility***

The following table sets forth by year our required future principal payments under the term loan portion of the Solar Facility (as discussed in "Note 12. Debt") (in thousands):

Year:	Principal Payments	Principal Payments
2023	\$ 13,125	
2024	17,500	\$ —
2025	4,375	—
2026	—	22,500
2027	—	30,000
2028		7,500
Total principal payments	\$ 35,000	\$60,000

#### ***Common Stock Offering***

On February 2, 2021, we closed a secondary public offering of our common stock in which we issued and sold 5,566,000 shares of our common stock, which included shares pursuant to an option granted to underwriters to purchase additional shares, at a public offering price of \$15.50 per share. We received net proceeds of approximately \$80.6 million after deducting underwriting

discounts, commissions and estimated offering expenses. The Company intends to use the net proceeds of the offering for general corporate purposes, including working capital, research and development, marketing and evaluating new clinical indications.

#### **Critical Accounting Policies and Use of Estimates**

The preparation of our financial statements in accordance with **accounting principles generally accepted in the United States, or U.S. GAAP** and the rules and regulations of the SEC requires us to make estimates and assumptions, based on judgments considered reasonable, which affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. We base our estimates and assumptions on historical experience, known trends and events and various other factors that we believe to be 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. Although we believe our estimates and assumptions are reasonable when made, they are based upon information available to us at the time they are made. We evaluate our estimates and assumptions on an ongoing basis and, if necessary, make adjustments. Due to the risks and uncertainties involved in our business and evolving market conditions and given the subjective element of the estimates and assumptions made, actual results may differ from estimated results.

We define our critical accounting policies as those accounting policies that are most important to the portrayal of our financial condition and results of operations and require our most difficult and subjective judgments. While our significant accounting policies are more fully described in "Note 3. Summary of Significant Accounting Policies" in our audited financial statements and related notes thereto appearing elsewhere in this Annual Report on Form 10-K, we believe the following discussion addresses our most critical accounting policies.

75 76

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#### [Table of Contents](#)

#### *Revenue Recognition*

We account for revenue in accordance with Accounting Standards Codification (ASC) 606, *Revenue from Contracts with Customers*. Under ASC 606, we recognize revenue when control of the promised good or service is transferred to our customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those good or services. Accordingly, we determine revenue recognition by applying the following steps:

- identification of the contract, or contracts, with a customer;
- identification of the performance obligations in the contract;
- determination of the transaction price;
- allocation of the transaction price to the performance obligations in the contract; and
- recognition of revenue when, or as, we satisfy a performance obligation.

We primarily earn revenues from the sale of NeuroStar Advanced Therapy Systems, consumable use treatment sessions, and accessory products. A contract's transaction price is allocated to each performance obligation and recognized as revenue when, or as, the performance obligation is satisfied, which generally is the point in time when the product is shipped or control is

transferred. We sell to end users in the United States and to third-party distributors outside the United States and do not provide return rights. Sales to distributors outside the United States are made in U.S. dollars.

Revenue attributable to the NeuroStar Advanced Therapy Systems purchased on a rent-to-own basis are accounted for either (1) as operating leases and revenue is recognized on a straight-line basis over the term of the lease; or (2) as a sales-type lease and revenue is recognized upon installation.

Our NeuroStar Advanced Therapy System sales in the United States typically have a post-sale training obligation. This obligation is fulfilled after product shipment, and we defer recognizing revenue until training occurs. We defer the fair value attributable to the post shipment training and recognize such revenue when the obligation is fulfilled. We base the fair value of the training using stand-alone service rates. Our sales to our third-party distributors outside the United States do not have these post-sale obligations.

In addition, we provide a **one year** warranty for systems sold in the United States. Terms of product warranty differ amongst our third-party distributors outside the United States, but are generally one year. We provide for the estimated cost to repair or replace products under any warranty at the time of sale. We also offer our customers in the United States annual service contracts. Revenue from the sale of annual service contracts is recognized on a straight-line basis over the period of the applicable contract. We also earn revenue from customers from services outside of their warranty term or annual service contracts. Such service revenue is recognized as the services are provided.

#### **JOBS Act Accounting Election**

We are an "emerging growth company," as defined in the JOBS Act, and are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, (the "Securities Act"), for complying with new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. Section 107 of the JOBS Act provides that we can elect to opt out of the extended transition period at any time, which election is irrevocable. We have elected to avail ourselves of this exemption from complying with new or revised

#### [Table of Contents](#)

accounting standards and, therefore, will not be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

Subject to certain conditions, as an emerging growth company, we may rely on certain other exemptions and reduced reporting requirements under the JOBS Act, including without limitation (i) providing an auditor's attestation report on our system of internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act and (ii) complying with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements, known as the auditor discussion and analysis. We will remain an emerging growth company until the earlier of (a) the last day of the fiscal year in which we have total annual gross revenue of \$1.07 billion or more; (b) the last day of the fiscal year following the fifth anniversary of the date of the completion of our IPO; (c) the date on which we have issued more than \$1.0 billion in nonconvertible debt during the previous six years; or (d) the date on which we are deemed to be a large accelerated filer under the rules of the SEC.

## Recent Accounting Pronouncements

We refer you to "Note 4. Recent Accounting Pronouncements" in our audited financial statements and related notes thereto included elsewhere in this Annual Report on Form 10-K.

### Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Our cash is held ~~on deposit in demand accounts~~ an insured cash sweep account at a large financial institution, which manages our risk by limiting the amount of cash ~~in amounts in excess of any one financial institution up to \$250,000~~. These balances are insured by the Federal Deposit Insurance Corporation ("FDIC"), which provides an insurance coverage limit of \$250,000 per

### [Table of Contents](#)

depositor, per FDIC-insured bank, per ownership category. We have reviewed the financial statements of this institution and believe it has sufficient assets and liquidity to conduct its operations in the ordinary course of business with ~~little or no~~ limited credit risk to us.

Financial instruments that potentially subject us to concentrations of credit risk principally consist of cash equivalents and accounts receivable. We limit our credit risk associated with cash equivalents by placing investments in highly-rated money market funds. We limit our credit risk with respect to accounts receivable by performing credit evaluations when deemed necessary, but we do not require collateral to secure amounts owed to us by our customers.

As discussed in "Note 12. Debt" in our audited financial statements and related notes thereto appearing elsewhere in of this Annual Report on Form 10-K, our credit facility bears interest at 7.65% plus which resets monthly and is equal to the greater of (a) ~~1.66%~~ 3.95% or (b) ~~the rate per annum rate published by the Intercontinental Exchange Benchmark Administration Ltd. Daily Simple Secured Overnight Financing Rate ("SOFR") for a term of one month, plus 5.65%~~. As a result, we are exposed to risks from changes in interest rates. We believe that a one-point 1% increase in interest rates would result in an approximate \$0.4 million increase to our approximately \$0.6 million in additional interest expense for the year ended December 31, 2022, expense.

Inflationary factors, such as increases in our cost of revenues and operating expenses, may adversely affect our operating results. Although we do not believe inflation has had a material impact on our financial condition, results of operations or cash flows to date, a high rate of inflation in the future may have an adverse effect on our ability to maintain and increase our gross margin or decrease our operating expenses as a percentage of our revenues if our selling prices of our products do not increase as much or more than our costs increase.

We do not currently have any exposure to foreign currency fluctuations and do not engage in any hedging activities as part of our normal course of business.

### [Table of Contents](#)

**Item 8. Financial Statements and Supplementary Data.**

The financial statements listed in the Index to Financial Statements beginning on page F-1 are filed as part of this Annual Report on Form 10-K and incorporated by reference herein.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

**Item 9A. Controls and Procedures.**

**Evaluation of Disclosure Controls and Procedures**

The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act, refers to controls and procedures that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure. As required by Rules 13a-15(b) and 15d-15(b) of the Exchange Act, our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective as of **December 31, 2022** **December 31, 2023** at the reasonable assurance level.

[Table of Contents](#)

**Management’s Report on Internal Control Over Financial Reporting**

Internal control over financial reporting refers to the process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer, and effected by our board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, and includes those policies and procedures that: (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company’s assets that could have a material effect on the financial statements.

Internal control over financial reporting may not prevent or detect all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are achieved. Further, the design of a control system must be balanced against resource constraints, and therefore the benefits of

controls must be considered relative to their costs. Given the inherent limitations in all systems of controls, no evaluation of controls can provide absolute assurance all control issues and instances of fraud, if any, within a company have been detected. These inherent limitations include the realities that judgments in decision making can be faulty and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions or the degree of compliance with policies or procedures may deteriorate. Accordingly, given the inherent

78

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[Table of Contents](#)

limitations in a cost-effective system of internal control, financial statement misstatements due to error or fraud may occur and may not be detected. Our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance of achieving their objectives. We conduct periodic evaluations of our systems of controls to enhance, where necessary, our control policies and procedures.

Management is responsible for establishing and maintaining adequate internal control over our financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting. Management has used the framework set forth in the report entitled "Internal Control—Integrated Framework (2013)" published by the Committee of Sponsoring Organizations of the Treadway Commission to evaluate the effectiveness of our internal control over financial reporting. Based on its evaluation, management has concluded that our internal control over financial reporting was effective as of **December 31, 2022** December 31, 2023 at the reasonable assurance level.

This Annual Report on Form 10-K does not include an attestation report of internal control over financial reporting from our independent registered public accounting firm due to our status as **an emerging growth company under the JOBS Act** **a smaller reporting company**.

**Changes in Internal Control over Financial Reporting**

During the fourth quarter ended **December 31, 2022** December 31, 2023, there were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) which materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

79

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[Table of Contents](#)

**Item 9B. Other Information.**

None.

**Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections**

Not applicable.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance.**

The information required by this item will be included in the information set forth in the sections titled "Proposal 1 - Election of Directors," "Information Regarding the Board of Directors and Corporate Governance" and "Executive Officers of the Company" contained in "Delinquent Section 16(a) Reports" in our **2023 2024** Proxy Statement.

**Item 11. Executive Compensation.**

The information required by this item will be included in information set forth in the section titled "Executive Compensation" in our **2023 2024** Proxy Statement.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

The information required by this item will be included in information set forth in the section titled "Security Ownership of Certain Beneficial Owners and Management" and "Executive Compensation" in our **2023 2024** Proxy Statement.

79

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[Table of Contents](#)

**Item 13. Certain Relationships and Related Transactions, and Director Independence.**

The information required by this item will be included in information set forth in the section titled "Transactions with Related Persons" and "Information regarding the Board of Directors and Corporate Governance" in our **2023 2024** Proxy Statement.

**Item 14. Principal Accounting Fees and Services.**

The information required by this item will be included in information set forth in the section titled "Principal Accountant Fees and Services" contained in "Proposal 2 – Ratification of Selection of Independent Registered Public Accounting Firm" in our **2023 2024** Proxy Statement.

**PART IV**

**Item 15. Exhibits, Financial Statement Schedules.**

**(a)(1) Financial Statements**

The financial statements listed in the Index to Financial Statements beginning on page F-1 are filed as part of this Annual Report on Form 10-K.

[Table of Contents](#)

*(a)(2) Financial Statement Schedules*

All schedules have been omitted because they are not required or because the required information is given in the Financial Statements or Notes listed in the Index to Financial Statements beginning on page F-1.

*(b) Exhibits*

The exhibits listed in the Exhibit Index below are filed or incorporated by reference as part of this Annual Report.

**Exhibit Index**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
3.1	<a href="#">Ninth Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Form 8-K filed July 6, 2018)</a>
3.2	<a href="#">Certificate of Amendment to the Registrant's Ninth Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Form 8-K filed May 30, 2019)</a>
3.3	<a href="#">Fourth Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.1 to the Form 8-K filed December 29, 2022)</a>
3.4	<a href="#">Certificate of Designations of Series A Junior Participating Preferred Stock of Neuronetics, Inc. (incorporated by reference to Exhibit 3.1 to the Form 8-K filed April 8, 2020)</a>
3.5	<a href="#">Certificate of Elimination of Series A Junior Participating Preferred Stock of the Registrant (incorporated by reference to Exhibit 3.1 to the Form 8-K filed April 9, 2021)</a>
4.1	<a href="#">Specimen Stock Certificate evidencing shares of common stock of the Registrant (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1 (File No. 333-225307))</a>
4.2	<a href="#">Form of Warrant to Purchase Stock, by and between the Registrant and Oxford Finance LLC (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-1 (File No. 333- 225307))</a>

[Table of Contents](#)

4.3 [Warrant to Purchase Stock, by and between the Registrant and Comerica Bank, dated December 20, 2012 \(incorporated by reference to Exhibit 4.3 to the Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

4.4 [Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934 \(incorporated by reference to Exhibit 4.4 to the Registrant's Annual Report on Form 10-K filed on March 3, 2020\)](#)

10.10◊ [Distribution Agreement, by and between the Registrant and Teijin Pharma Limited, dated October 12, 2017 \(incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.20◊ [Amendment No. 1 to Distribution Agreement, by and between the Registrant and Teijin Pharma Limited, dated May 31, 2019 \(incorporated by reference to Exhibit 10.2 to the Form 10-Q filed August 6, 2019\)](#)

10.3 [Sixth Amended and Restated Investors' Rights Agreement by and among the Registrant and certain of its stockholders, dated June 1, 2017 \(incorporated by reference to Exhibit 10.2 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.4 [Sixth Amended and Restated Stockholders' Agreement by and among the Registrant and certain of its stockholders, dated June 1, 2017 \(incorporated by reference to Exhibit 10.3 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.5 [Form of Indemnification Agreement between the Registrant and its non-employee directors and officers \(incorporated by reference to Exhibit 10.7 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.6 10.4 [Loan and Security Agreement by and between Solar Capital Ltd., the lenders identified therein and the Registrant, dated March 2, 2020 \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on March 3, 2020\)](#)

10.7 10.5 [Second Amendment to Loan and Security Agreement, by and among Solar Capital Ltd., as collateral agent, the lenders listed on the signature pages thereto, and the Registrant, dated December 2, 2020 \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on December 8, 2020\)](#)

10.8 10.6 [Third Amendment to Loan and Security Agreement, by and among SLR Investment Corp. \(formerly known as Solar Capital Ltd.\), as collateral agent, the lenders listed on the signature pages thereto, and the Registrant, dated February 15, 2022 \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on February 22, 2022\)](#)

[Table of Contents](#)

10.9+ 10.7 [Fourth Amendment to Loan and Security Agreement, dated March 29, 2023, by and among SLR Investment Corp. \(formerly known as Solar Capital Ltd.\), as collateral agent, the lenders listed on the signature pages thereto, and Neuronetics, Inc. \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on April 4, 2023\)](#)

10.8 [Fifth Amendment to Loan and Security Agreement, dated September 29, 2023, by and among SLR Investment Corp. \(formerly known as Solar Capital Ltd.\), as collateral agent, the lenders listed on the signature pages thereto, and Neuronetics, Inc. \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on October 3, 2023\)](#)

10.9\*◊ [Sixth Amendment to Loan and Security Agreement, dated March 7, 2024, by and among SLR Investment Corp. \(formerly known as Solar Capital Ltd.\), as collateral agent, the lenders listed on the signature pages thereto, and Neuronetics, Inc.](#)

10.10+ [Amended and Restated 2003 Stock Incentive Plan of the Registrant, as amended \(incorporated by reference to Exhibit 10.9 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.10+ 10.11+ [2018 Equity Incentive Plan \(incorporated by reference to Exhibit 10.10 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-38546\) filed on November 6, 2018\)](#)

10.11+ 10.12+ [2018 Employee Stock Purchase Plan \(incorporated by reference to Exhibit 10.11 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-38546\) filed on November 6, 2018\)](#)

10.12 10.13 [Neuronetics, Inc. 2020 Inducement Incentive Plan \(incorporated by reference to Exhibit 10.5 to the Registration Statement on Form S-8 \(File No. 333-252233\) filed January 19, 2021\)](#)

10.14 [Lease Agreement by and between Exeter 3222 Phoenixville, L.P., and the Registrant, dated January 3, 2013 \(incorporated by reference to Exhibit 10.12 to the Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.13+ 10.15 [First Amendment dated March 22, 2019 to Lease Agreement by and between Exeter 3222 Phoenixville, L.P., and the Registrant, dated January 3, 2013 \(incorporated by reference to Exhibit 10.12 to the Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.16+ [Form of Non-Qualified Stock Option Agreement for the Amended and Restated 2003 Stock Incentive Plan, as amended, of the Registrant \(incorporated by reference to Exhibit 10.13 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.14+ 10.17+ [Form of Incentive Stock Option Agreement for the Amended and Restated 2003 Stock Incentive Plan, as amended, of the Registrant \(incorporated by reference to Exhibit 10.14 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.15+ 10.18+ [Forms of Grant Notice, Stock Option Agreement and Notice of Exercise under the 2018 Equity Incentive Plan \(incorporated by reference to Exhibit 10.15 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.16+ 10.19+ [Forms of Restricted Stock Unit Grant Notice and Award Agreement under the 2018 Equity Incentive Plan \(incorporated by reference to Exhibit 10.16 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

[Table of Contents](#)

10.17+ 10.20+ [Form of Severance Agreement \(incorporated by reference to Exhibit 10.17 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.18+ 10.21+ [Form of Restrictive Covenant and Invention Assignment Agreement \(incorporated by reference to Exhibit 10.18 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.19 10.22\*+ [Form of Restrictive Covenant and Severance Agreement](#)

10.23 [Non-Employee\\_Director\\_Compensation\\_Policy\(incorporated by reference to Exhibit 10.21 to the Registrant's Registration Statement on Form S-1 \(File No. 333-225307\)\)](#)

10.20+ 10.24+ [Employment Offer Letter Agreement between the Registrant and Stephen Furlong dated July 1, 2019 \(incorporated by reference to Exhibit 10.1 to the Form 8-K filed July 2, 2019\)](#)

10.21+ 10.25+ [Employment Agreement, dated July 14, 2020, by and between the Registrant and Keith J. Sullivan, dated July 14, 2020, \(incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on July 17, 2020\)](#)

10.22+ 10.26\*+ [Amended and Restated Employment Agreement, dated November 2, 2023 by and between the Registrant and Keith J. Sullivan](#)

10.27\*+ [Amended and Restated Restrictive Covenant and Severance Agreement dated November 2, 2023 by and between the Registrant and Keith J. Sullivan](#)

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[Table of Contents](#)

10.28\*+◊ [Employment Offer Letter Agreement dated November 25, 2019 by and between the Registrant and Andrew Macan](#)

10.29+ [Form of Neuronetics, Inc. Performance Restricted Stock Unit Grant Notice and Award Agreement under Nasdaq Listing Rule 5635\(c\)\(4\) \(incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-38546\) filed on August 4, 2020\)](#)

10.23+ 10.30+ [Form of Neuronetics, Inc. Performance Restricted Stock Unit Grant Notice and Award Agreement under the 2018 Equity Incentive Plan \(incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-38546\) filed on August 4, 2020\)](#)

10.24+ 10.31+ [Form of Neuronetics, Inc. Restricted Stock Unit Grant Notice and Award Agreement under Nasdaq Listing Rule 5635\(c\)\(4\) \(incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-38546\) filed on August 4, 2020\)](#)

10.25+ 10.32+ [Form of Neuronetics, Inc. Stock Option Grant Notice and Agreement \(Nonstatutory Stock Option\) under Nasdaq Listing Rule 5635\(c\)\(4\) \(incorporated by reference to Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-38546\) filed on August 4, 2020\)](#)

10.26+ 10.33+ [Performance Restricted Stock Unit Grant Notice and Award Agreement, dated July 14, 2020, by and between the Registrant and Keith J. Sullivan \(incorporated by reference to Exhibit 10.6 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-38546\) filed on August 4, 2020\)](#)

10.34+ [Restricted Stock Unit Grant Notice and Award Agreement, dated July 14, 2020, by and between the Registrant and Keith J. Sullivan \(incorporated by reference to Exhibit 10.7 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-38546\) filed on August 4, 2020\)](#)

10.27+ 10.35+ [Stock Option Grant Notice and Agreement \(Nonstatutory Stock Option\), dated July 14, 2020, by and between the Registrant and Keith J. Sullivan \(incorporated by reference to Exhibit 10.8 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-38546\) filed on August 4, 2020\)](#)

10.28+ [Restricted Stock Unit Grant Notice and Award Agreement, dated October 5, 2020, by and between the Registrant and Sara Grubbs \(incorporated by reference to Exhibit 10.4 to the Registration Statement on Form S-8 \(File No. 333-252233\) filed January 19, 2020\)](#)

10.29+ 10.36+ [Neuronetics, Inc. 2020 Inducement Incentive Plan \(incorporated by reference to Exhibit 10.5 to the Registration Statement on Form S-8 \(File No. 333-252233\) filed January 19, 2020\)](#)

10.30+ 10.37+ [Form of Neuronetics, Inc. Performance Restricted Stock Unit Grant Notice and Award Agreement under the 2020 Inducement Incentive Plan \(incorporated by reference to Exhibit 10.6 to the Registration Statement on Form S-8 \(File No. 333-252233\) filed January 19, 2020\)](#)

10.31+ 10.38+ [Form of Neuronetics, Inc. Restricted Stock Unit Grant Notice and Award Agreement under the 2020 Inducement Incentive Plan \(incorporated by reference to Exhibit 10.7 to the Registration Statement on Form S-8 \(File No. 333-252233\) filed January 19, 2020\)](#)

10.32+ 10.39+ [Form of Neuronetics, Inc. Stock Option Grant Notice and Agreement \(Nonstatutory Stock Option\) under the 2020 Inducement Incentive Plan \(incorporated by reference to Exhibit 10.8 to the Registration Statement on Form S-8 \(File No. 333-252233\) filed January 19, 2020\)](#)

10.33+ 10.40+ [Secured Promissory Note, by and between Check Five LLC d/b/a Success TMS and the Registrant, dated September 29, 2021 \(incorporated by reference to Exhibit 10.1 to the Form 8-K filed October 5, 2021\)](#)

10.34 10.41 [Secured Promissory Note, by and between Check Five LLC d/b/a Success TMS and the Registrant, dated September 29, 2021 \(incorporated by reference to Exhibit 10.1 to the Form 8-K filed October 5, 2021\)](#)

10.35 10.42 [Subordination Agreement, by and between ZW Partners, LLC and the Registrant, dated April 29, 2022 \(incorporated by reference to Exhibit 10.1 to the Form 8-K filed May 5, 2022\)](#)

23.1\* [Consent of KPMG LLP, independent registered public accounting firm](#)

[Table of Contents](#)

31.1\* [Certification of the Principal Executive Officer pursuant to Rule 13a-14\(a\) or 15d-14\(a\) of the Securities Exchange Act of 1934](#)

31.2\* [Certification of the Principal Financial Officer pursuant to Rule 13a-14\(a\) or 15d-14\(a\) of the Securities Exchange Act of 1934](#)

32.1\* [Certification of the Principal Executive Officer and Principal Financial Officer pursuant to Rule 13a-14\(b\) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. section 1350.](#)

97.1\* [Clawback Policy](#)

101\* The following materials from the Company's Annual Report on Form 10-K for the year ended December 31, 2021, were formatted in Inline XBRL (Extensible Business Reporting Language): (i) Balance Sheets, (ii) Statements of Operations, (iii) Statements of Changes in Stockholders' Equity, (iv) Statements of Cash Flows, and (v) Notes to Financial Statements. The instance document does

[Table of Contents](#)

not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document

104\* Cover Page Interactive Data File (embedded within the Inline XBRL document)

Graphic

\* Filed herewith

+ Indicates management contract or compensatory plan.

◊ Portions of this exhibit (indicated by asterisks) have been omitted pursuant to a request for confidential treatment and have been separately filed with treatment. The Company will furnish copies of any such information to the Securities and Exchange Commission upon request.

**Item 16. Form 10-K Summary**

Not applicable.

[Table of Contents](#)

**NEURONETICS, INC.**  
**Index to Financial Statements**

	<b>Page</b>
<a href="#">Report of Independent Registered Public Accounting Firm</a> (PCAOB ID: 185)	F-2
<a href="#">Balance Sheets</a>	F-
<a href="#">Statements of Operations</a>	3 F-
<a href="#">Statements of Changes in Stockholders' Equity</a>	4
<a href="#">Statements of Cash Flows</a>	F-
<a href="#">Notes to Financial Statements</a>	4 F-
	5
	F-
	5 F-
	6
	F-
	6 F-
	7
	F-
	7 F-
	8

F-1

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[Table of Contents](#)

**Report of Independent Registered Public Accounting Firm**

To the Stockholders and Board of Directors

Neuronetics, Inc.:

*Opinion on the Financial Statements*

We have audited the accompanying balance sheets of Neuronetics, Inc. (the Company) as of **December 31, 2022** **December 31, 2023** and **2021**, 2022, the related statements of operations, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended **December 31, 2022** **December 31, 2023**, and the related notes (collectively, 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, 2022** **December 31, 2023** and **2021**, 2022, and the results of its operations and its cash flows for each of the years in the three-year period ended **December 31, 2022** **December 31, 2023**, in conformity with U.S. generally accepted accounting principles.

#### *Basis for Opinion*

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. 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 audits in accordance with the standards of the PCAOB. 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. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits 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 audits 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 audits provide a reasonable basis for our opinion.

#### *Critical Audit Matter*

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### *Sufficiency of audit evidence obtained over revenue*

As discussed in Note 3 to the financial statements, the Company recorded \$71.3 million of revenue for the year ended December 31, 2023. The majority of the Company's revenue contracts are comprised of the following performance obligations: (1) NeuroStar Advanced Therapy Systems (the System), (2) NeuroStar Treatment Sessions, (3) separately priced extended warranties and when-and-if-available upgrade rights, and

F-2

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#### Table of Contents

(4) system clinical and reimbursement training. The Company also offers certain customers the option to lease the System. Additionally, the Company has an exclusive distribution agreement with a foreign entity. We identified the evaluation of the sufficiency of audit evidence obtained over revenue as a critical audit matter. Evaluating the sufficiency of audit evidence obtained required subjective auditor judgment due to the number of revenue streams involved in the process. This included determining the revenue streams over which procedures were performed and evaluating the nature and extent of evidence obtained over each revenue stream.

The following are the primary procedures we performed to address this critical audit matter. We applied auditor judgment to determine the nature and extent of procedures to be performed over revenue, including the determination of the revenue streams over which procedures were to be performed. For certain revenue streams, we evaluated the design and implementation of certain internal controls over the Company's revenue process. For each revenue stream for which procedures were performed, we assessed the recorded revenue by selecting a sample of revenue transactions and comparing the amounts recognized for consistency with relevant underlying documentation, including payment received, delivery confirmation, and/or external confirmation. We evaluated the sufficiency of audit evidence obtained over revenue by assessing the results of the procedures performed, including the appropriateness of the nature and extent of such evidence.

/s/ KPMG LLP

We have served as the Company's auditor since 2003.

Philadelphia, Pennsylvania

March 7, 2023

F-2 F-3

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[Table of Contents](#)

**NEURONETICS, INC.**

**Balance Sheets**

(In thousands, except per share data)

	December 31,		December 31,	
	2022	2021	2023	2022
<b>Assets</b>				
Current assets:				
Cash and cash equivalents	\$ 70,340	\$ 94,141	\$ 59,677	\$ 70,340
Accounts receivable, net	13,591	7,706	15,782	13,591
Inventory	8,899	6,563	8,093	8,899
Current portion of net investments in sales-type leases	1,538	2,198	905	1,538
Current portion of prepaid commission expense	1,997	1,559	2,514	1,997
Current portion of note receivables	230	74		
Current portion of notes receivable			2,056	230
Prepaid expenses and other current assets	2,174	3,090	4,766	2,174
Total current assets	98,769	115,331	93,793	98,769
Property and equipment, net	1,991	1,220	2,009	1,991
Operating lease right-of-use assets	3,327	3,884	2,773	3,327
Net investments in sales-type leases	1,222	1,697	661	1,222
Prepaid commission expense	7,568	6,763	8,370	7,568
Long-term note receivable	362	10,110		
Long-term notes receivable			3,795	362

Other assets	3,645	2,218	4,430	3,645
<b>Total Assets</b>	<b>\$ 116,884</b>	<b>\$ 141,223</b>		
<b>Total assets</b>			<b>\$ 115,831</b>	<b>\$ 116,884</b>
<b><u>Liabilities and Stockholders' Equity</u></b>				
Current liabilities:				
Accounts payable	\$ 2,433	\$ 4,299	\$ 4,752	\$ 2,433
Accrued expenses	14,837	8,233	12,595	14,837
Deferred revenue	1,980	2,501	1,620	1,980
Current portion of operating lease liabilities	824	670	845	824
Current portion of long-term debt, net	13,125	—	—	13,125
<b>Total current liabilities</b>	<b>33,199</b>	<b>15,703</b>	<b>19,812</b>	<b>33,199</b>
Long-term debt, net	22,829	35,335	59,283	22,829
Deferred revenue	829	1,471	200	829
Operating lease liabilities	2,967	3,539	2,346	2,967
<b>Total Liabilities</b>	<b>59,824</b>	<b>56,048</b>		
<b>Total liabilities</b>			<b>81,641</b>	<b>59,824</b>
Commitments and contingencies (Note 18)	—	—	—	—
Stockholders' Equity:				
Preferred stock, \$0.01 par value: 10,000 shares authorized; no shares issued or outstanding on December 31, 2022, and December 31, 2021	—	—		
Common stock, \$0.01 par value: 200,000 shares authorized; 27,268 and 26,395 shares issued and outstanding on December 31, 2022, and December 31, 2021, respectively	273	264		
Stockholders' equity:				
Preferred stock, \$0.01 par value: 10,000 shares authorized; no shares issued or outstanding on December 31, 2023 and December 31, 2022	—	—		
Common stock, \$0.01 par value: 200,000 shares authorized; 29,092 and 27,268 shares issued and outstanding on December 31, 2023 and December 31, 2022, respectively	291	273		
Additional paid-in capital	402,679	393,644	409,980	402,679
Accumulated deficit	(345,892)	(308,733)	(376,081)	(345,892)
<b>Total Stockholders' Equity</b>	<b>57,060</b>	<b>85,175</b>		
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$ 116,884</b>	<b>\$ 141,223</b>		
<b>Total Stockholders' equity</b>			<b>34,190</b>	<b>57,060</b>
<b>Total liabilities and Stockholders' equity</b>			<b>\$ 115,831</b>	<b>\$ 116,884</b>

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

F-3 F-4

[Table of Contents](#)

NEURONETICS, INC.

**Statements of Operations**  
(In thousands, except per share data)

	Years ended December 31,			Years ended December 31,		
	2022	2021	2020	2023	2022	2021
	\$ 65,206	\$ 55,312	\$ 49,244	\$ 71,348	\$ 65,206	\$ 55,312
Revenues						
Cost of revenues	15,483	11,653	11,554	19,643	15,483	11,653
<b>Gross Profit</b>	<b>49,723</b>	<b>43,659</b>	<b>37,690</b>			
<b>Gross profit</b>				<b>51,705</b>	<b>49,723</b>	<b>43,659</b>
Operating expenses:						
Sales and marketing	49,982	37,746	32,562	47,318	49,982	37,746
General and administrative	25,516	25,554	18,236	25,426	25,516	25,554
Research and development	9,336	7,923	9,201	9,515	9,336	7,923
Total operating expenses	84,834	71,223	59,999	82,259	84,834	71,223
Loss from operations	(35,111)	(27,564)	(22,309)	(30,554)	(35,111)	(27,564)
Other (income) expense:						
Interest expense	4,251	4,019	4,522	5,424	4,251	4,019
Loss on extinguishment of debt	—	—	924			
Other income, net	(2,203)	(390)	(302)	(5,789)	(2,203)	(390)
<b>Net Loss</b>	<b>\$ (37,159)</b>	<b>\$ (31,193)</b>	<b>\$ (27,453)</b>			
<b>Net loss</b>				<b>\$ (30,189)</b>	<b>\$ (37,159)</b>	<b>\$ (31,193)</b>
Net loss per share of common stock outstanding, basic and diluted	\$ (1.38)	\$ (1.22)	\$ (1.46)	\$ (1.05)	\$ (1.38)	\$ (1.22)
Weighted-average common shares outstanding, basic and diluted	<b>26,900</b>	<b>25,479</b>	<b>18,835</b>	<b>28,658</b>	<b>26,900</b>	<b>25,479</b>

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

F-4 F-5

[Table of Contents](#)

**NEURONETICS, INC.**  
**Statements of Changes in Stockholders' Equity**  
(In thousands)

	Additional					Total
	Common Stock		Paid-in	Accumulated	Stockholders'	
	Shares	Amount	Capital	Deficit	Equity	
Balance at December 31, 2019	18,645	\$ 186	\$ 297,753	\$ (250,087)	\$ 47,852	

Share-based awards and options exercises	469	5	685	—	690
Share-based compensation expense	—	—	4,404	—	4,404
Net loss	—	—	—	(27,453)	(27,453)
Balance at December 31, 2020	19,114	191	302,842	(277,540)	25,493
Share-based awards and options exercises	1,715	17	2,418	—	2,435
Issuance of common stock, net of issuance costs of \$401	5,566	56	80,515	—	80,571
Share-based compensation expense	—	—	7,869	—	7,869
Net loss	—	—	—	(31,193)	(31,193)
Balance at December 31, 2021	26,395	264	393,644	(308,733)	85,175
Share-based awards and options exercises	873	9	289	—	298
Share-based compensation expense	—	—	8,746	—	8,746
Net loss	—	—	—	(37,159)	(37,159)
Balance at December 31, 2022	27,268	\$ 273	\$ 402,679	\$ (345,892)	\$ 57,060
			Additional		Total
		Common Stock	Paid-in	Accumulated	Stockholders' Equity
		Shares	Amount	Capital	Deficit
Balance at December 31, 2020	19,114	\$ 191	\$ 302,842	\$ (277,540)	\$ 25,493
Share-based awards and options exercises	1,715	17	2,418	—	2,435
Issuance of common stock, net of issuance costs of \$401	5,566	56	80,515	—	80,571
Share-based compensation expense	—	—	7,869	—	7,869
Net loss	—	—	—	(31,193)	(31,193)
Balance at December 31, 2021	26,395	264	393,644	(308,733)	85,175
Share-based awards and options exercises	873	9	289	—	298
Share-based compensation expense	—	—	8,746	—	8,746
Net loss	—	—	—	(37,159)	(37,159)
Balance at December 31, 2022	27,268	273	402,679	(345,892)	57,060
Share-based awards and options exercises	1,824	18	(18)	—	—
Share-based compensation expense	—	—	7,319	—	7,319
Net loss	—	—	—	(30,189)	(30,189)
Balance at December 31, 2023	29,092	\$ 291	\$ 409,980	\$ (376,081)	\$ 34,190

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

F-5 F-6

[Table of Contents](#)

**NEURONETICS, INC.**  
**Statements of Cash Flows**  
 (in thousands)

	Years ended December 31,		
	2022	2021	2020
<b>Cash Flows from Operating Activities:</b>			
Net loss	\$ (37,159)	\$ (31,193)	\$ (27,453)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>			
Depreciation and amortization	1,648	1,060	941
Share-based compensation	8,746	7,869	4,404
Non-cash interest expense	709	715	1,192
Cost of rental units purchased by customers	92	203	179
Loss on extinguishment of debt	—	—	622
<b>Changes in certain assets and liabilities:</b>			
Accounts receivable, net	(6,317)	(3,054)	(597)
Inventory	(2,587)	(3,444)	(945)
Net investments in sales-type leases	1,114	324	(1,609)
Leasehold reimbursement	—	—	836
Prepaid commission expense	(1,243)	(1,926)	(1,928)
Prepaid expenses and other assets	786	62	(641)
Accounts payable	(1,968)	276	(1,085)
Accrued expenses	6,604	910	(1,733)
Deferred revenue	(1,164)	215	(573)
<b>Net Cash Used in Operating Activities</b>	<b>(30,739)</b>	<b>(27,983)</b>	<b>(28,390)</b>
<b>Cash Flows from Investing Activities:</b>			
Purchases of property and equipment and capitalized software	(3,269)	(2,353)	(730)
Repayment (Issuance) of promissory note	10,000	(7,486)	—
<b>Net Cash provided by (used in) Investing Activities</b>	<b>6,731</b>	<b>(9,839)</b>	<b>(730)</b>
<b>Cash Flows from Financing Activities:</b>			
Payments of debt issuance costs	(91)	—	(821)
Proceeds from issuance of long-term debt	—	—	41,360
Repayment of long-term debt	—	—	(38,860)
Proceeds from exercises of stock options	298	2,435	690
Proceeds from the issuance of common stock	—	80,972	—
Payments of common stock offering issuance costs	—	(401)	—
<b>Net Cash Provided by Financing Activities</b>	<b>207</b>	<b>83,006</b>	<b>2,369</b>
<b>Net (Decrease) Increase in Cash and Cash Equivalents</b>	<b>(23,801)</b>	<b>45,184</b>	<b>(26,751)</b>
<b>Cash and Cash Equivalents, Beginning of Period</b>	<b>94,141</b>	<b>48,957</b>	<b>75,708</b>
<b>Cash and Cash Equivalents, End of Period</b>	<b>\$ 70,340</b>	<b>\$ 94,141</b>	<b>\$ 48,957</b>
<b>Supplemental disclosure of cash flow information:</b>			
Cash paid for interest	\$ 3,543	\$ 3,304	\$ 3,892
Transfer of inventory to property and equipment	250	601	—
<b>Supplemental disclosure of non-cash investing and financing activities:</b>			
Purchases of property and equipment and capitalized software in accounts payable and accrued expenses	\$ 103	\$ 273	\$ 208
Reduction of accounts receivable in current and long-term note receivable	432	2,514	—
Years ended December 31,			
	2023	2022	2021
<b>Cash flows from Operating activities:</b>			

Net loss	\$ (30,189)	\$ (37,159)	\$ (31,193)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	2,006	1,648	1,060
Allowance for credit losses	390	341	763
Inventory impairment	1,905	—	—
Share-based compensation	7,319	8,746	7,869
Non-cash interest expense	634	709	715
Cost of rental units purchased by customers	—	92	203
Changes in certain assets and liabilities:			
Accounts receivable, net	(8,831)	(6,658)	(3,817)
Inventory	(1,098)	(2,587)	(3,444)
Net investments in sales-type leases	1,193	1,114	324
Prepaid commission expense	(1,319)	(1,243)	(1,926)
Prepaid expenses and other assets	(2,845)	786	62
Accounts payable	2,029	(1,968)	276
Accrued expenses	(2,243)	6,604	910
Deferred revenue	(989)	(1,164)	215
Net Cash used in Operating activities	<u>(32,038)</u>	<u>(30,739)</u>	<u>(27,983)</u>
Cash flows from Investing activities:			
Purchases of property and equipment and capitalized software	(2,369)	(3,269)	(2,353)
Repayment (issuance) of notes receivable	1,047	10,000	(7,486)
Net Cash (used in) provided by Investing activities	<u>(1,322)</u>	<u>6,731</u>	<u>(9,839)</u>
Cash flows from Financing activities:			
Payments of debt issuance costs	(1,104)	(91)	—
Proceeds from issuance of long-term debt	25,000	—	—
Repayment of long-term debt	(1,200)	—	—
Proceeds from the issuance of common stock	—	—	80,972
Payments of common stock offering issuance cost	—	—	(401)
Proceeds from exercises of stock options	1	298	2,435
Net Cash provided by Financing activities	<u>22,697</u>	<u>207</u>	<u>83,006</u>
Net (decrease) increase in Cash and Cash equivalents	<u>(10,663)</u>	<u>(23,801)</u>	<u>45,184</u>
Cash and Cash equivalents, Beginning of Period	70,340	94,141	48,957
Cash and Cash equivalents, End of Period	<u>\$ 59,677</u>	<u>\$ 70,340</u>	<u>\$ 94,141</u>
Supplemental disclosure of cash flow information:			
Cash paid for interest	\$ 4,790	\$ 3,543	\$ 3,304
Transfer of inventory to property and equipment	\$ 210	\$ 250	\$ 601
Supplemental disclosure of non-cash investing and financing activities:			
Purchases of property and equipment and capitalized software in accounts payable and accrued expenses	\$ 239	\$ 103	\$ 273
Reduction of accounts receivable in current and long-term notes receivable	\$ 6,468	\$ 432	\$ 2,514

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

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## [Table of Contents](#)

### **1. DESCRIPTION OF BUSINESS**

Neuronetics, Inc., or the Company, (the "Company") is a commercial stage medical technology company focused on designing, developing and marketing products that improve the quality of life for patients who suffer from neurohealth disorders. The Company's first commercial product, the NeuroStar Advanced Therapy System, is a non-invasive and non-systemic office-based treatment that uses transcranial magnetic stimulation, ("TMS"), to create a pulsed, MRI-strength magnetic field that induces electrical currents designed to stimulate specific areas of the brain associated with mood. The system was cleared in 2008 by the United States Food and Drug Administration, (the "FDA"), FDA to treat adult patients with major depressive disorder, ("MDD"), MDD who have failed to achieve satisfactory improvement from prior antidepressant medication in the current MDD episode. The NeuroStar Advanced Therapy System is also available in other parts of the world, including Japan, where it is listed under Japan's national health insurance. The Company intends to continue to pursue development of its NeuroStar Advanced Therapy System for additional indications.

#### **COVID-19**

The Company is monitoring the impact of the COVID-19 pandemic on all aspects of its business and geographies, including how it will impact the Company's customers, supply chain, employees and other business partners. While the Company experienced significant disruptions in the first quarter of 2022 and through the end of December 2021, from the COVID-19 pandemic, it is unable to predict the full impact that the COVID-19 pandemic may have on its financial condition, results of operations and cash flows due to numerous uncertainties. These uncertainties include the scope, severity and duration of the pandemic, the actions taken to contain the pandemic or mitigate its impact and the direct and indirect economic effects of the pandemic and containment measures, among others. The outbreak of COVID-19 in many countries, including the United States, has significantly adversely impacted global economic activity and has contributed to significant volatility and negative pressure in financial markets.

The Company applied for and received a \$6.4 million loan in April 2020 under the Paycheck Protection Program (the "PPP") established by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") on March 27, 2020. Due to questions concerning the eligibility of public companies similarly situated to the Company, on May 7, 2020, the Company repaid the loan in full, including interest accrued to date.

#### **Liquidity**

As of December 31, 2022 December 31, 2023, the Company had cash and cash equivalents of \$70.3 million \$59.7 million and an accumulated deficit of \$345.9 million \$376.1 million. The Company incurred negative cash flows from operating activities of \$30.7 million \$32.0 million, \$28.0 million \$30.7 million and \$28.4 million \$28.0 million for the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020, 2021, respectively. The Company has incurred operating losses since its inception, and management anticipates that its operating losses will continue in the near term as the Company seeks continues to expand its invest in sales and marketing initiatives to support its growth into existing and new markets and invest in additional research and product development activities. The Company's primary sources of capital to date have been from its initial public offering ("IPO"), private placements of its convertible preferred securities, borrowings under its credit facility, proceeds from its secondary public offering of common stock, and revenues from sales of its products. As of December 31, 2022 December 31, 2023, the Company had \$35.0 million \$60.0 million of borrowings outstanding under its credit facility, which matures in February 2025 March 2028. Management believes that the Company's cash and cash equivalents as of December 31, 2022 December 31, 2023 and anticipated revenues from sales of our products are sufficient to fund the Company's operations for at least the next 12 months from the issuance of these financial statements.

### **2. BASIS OF PRESENTATION**

The accompanying financial statements have been prepared in accordance with **United States generally accepted accounting principles ("GAAP")**, **U.S. GAAP**. Any reference in these notes to applicable guidance is meant to refer to **U.S. GAAP** as found in the Accounting Standards Codification ("ASC"), and Accounting Standards Updates ("ASUs"), promulgated by the Financial Accounting Standards Board ("FASB").

F-7

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[Table of Contents](#)

#### **Use of Estimates**

The preparation of financial statements in accordance with **U.S. GAAP** and the rules and regulations of the **United States Securities and Exchange Commission ("SEC")**, **SEC**, requires the use of estimates and assumptions, based on judgments considered reasonable, which affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company bases its estimates and assumptions on historical experience, known trends and events and various other factors that management believes to be 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. Although management believes its estimates and assumptions are reasonable when made, they are based upon information available at the time they are made. Management evaluates the estimates and assumptions on an ongoing basis and, if necessary, makes adjustments. Due to the risks and uncertainties involved in the Company's business and evolving market conditions and given the subjective element of the estimates and assumptions made, actual results may differ from estimated results.

F-8

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[Table of Contents](#)

### **3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

#### **Cash and Cash Equivalents**

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. As of **December 31, 2022** **December 31, 2023** and **2021, 2022**, cash equivalents consisted of money market funds.

#### **Concentrations of Credit Risk**

The Company's cash is held on deposit in demand accounts at **a large financial institution** **institutions** in amounts in excess of the **Federal Deposit Insurance Corporation ("FDIC")**, **FDIC** insurance coverage limit of \$250,000 per depositor, per FDIC-insured bank, per ownership category.

Financial instruments that potentially subject the Company to concentrations of credit risk principally consist of cash equivalents and accounts receivable. The Company limits its credit risk associated with cash equivalents by placing investments in highly-rated money market funds. The Company limits its credit risk with respect to accounts receivable by performing credit evaluations when deemed necessary, but it does not require collateral to secure amounts owed by its customers.

#### **Allowance for Doubtful Accounts Credit Losses**

The Company ~~maintains allowances~~ adopted ASC Topic 326, *Financial Instruments-Credit losses* on January 1, 2023, see note 6 ~~Accounts Receivable for doubtful~~ further discussion. The Company monitors accounts receivable and long-term notes receivable and estimates the allowance for ~~estimated~~ lifetime expected credit losses. Estimates of expected credit losses ~~resulting from amounts deemed to be uncollectible from its customers. These allowances are for specific amounts on certain customer accounts based on facts historical collection experience and circumstances determined on a case-by-case basis, other factors, including those related to current market conditions and events.~~

#### **Leases**

The Company accounts for leases in accordance with ASC Topic 842, *Leases*, ("Topic 842"). The Company determines if an arrangement is a lease at contract inception. A lease exists when a contract conveys to the customer the right to control the use of identified property, plant, or equipment for a period of time in exchange for consideration. The definition of a lease embodies two conditions: (1) there is an identified asset in the contract that is land or a depreciable asset (i.e., property, plant, and equipment), and (2) the customer has the right to control the use of the identified asset.

The Company leases warehouse, office space, a training facility and office equipment pursuant to net operating leases. Operating leases where the Company is the lessor are included in revenue on the Statements of Operations.

**F-8**

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#### [Table of Contents](#)

From time to time the Company enters into sales-type lease arrangements that include a lessee obligation to purchase the leased equipment at the end of the lease term, automatic transfer of ownership of the leased equipment at the end of the lease, a lessee purchase option reasonably certain to be exercised, or provides for minimum lease payments with a present value equal to or exceeding substantially all of the fair value of the underlying leased equipment at the date of lease inception. Sales-type leases where the Company is the lessor are included in revenue on the Statements of Operations.

Operating leases where the Company is the lessee are included in operating lease right-of-use assets and operating lease liabilities on the Balance Sheets. The lease liabilities are initially measured at the present value of the unpaid lease payments at the lease commencement date.

**F-9**

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#### [Table of Contents](#)

The Company uses the following inputs in its lease calculations under Topic 842: (1) the discount rate the Company uses to discount the unpaid lease payments to present value, (2) lease term, and (3) lease payments.

- (1) Topic 842 requires a lessor to discount its unpaid lease payments using the interest rate implicit in the lease and a lessee to discount its unpaid lease payments using the interest rate implicit in the lease or, if that rate cannot be readily determined, its incremental borrowing rate. As most leases where the Company rate implicit in the Company's lease is the lessee do not provide an implicit rate, readily determinable, the Company uses the incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The incremental borrowing rate for a lease is the rate of interest the Company would have to pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms. The Company uses the implicit rate when readily determinable.
- (2) The lease term for all leases includes the noncancelable period of the lease plus any additional periods covered by either a lessee option to extend (or not to terminate) the lease that the lessee is reasonably certain to exercise, or an option to extend (or not to terminate) the lease controlled by the lessor.
- (3) Lease payments included in the measurement of the lease asset or liability comprise the following: fixed payments (including in-substance fixed payments), and the exercise price of a lessee option to purchase the underlying asset if the lessee is reasonably certain to exercise.

For operating leases where the Company is the lessor, the Company continues recognizing the underlying asset and depreciating it over its estimated useful life. Lease income from lessees is recognized on a straight-line basis over the terms of the relevant lease agreement in revenue. Operating leases for equipment with fixed rentals and step rentals are recognized on a straight-line basis over the term of the lease, assuming no renewals, in revenue. Revenue is not recognized when collection is not reasonably assured. When collectability is not reasonably assured, the customer is placed on non-accrual status and revenue is recognized when cash payments are received.

The lease asset for sales-type leases is initially measured as the total net investment in the lease, which comprises the initial amount of the lease receivable plus the deferred initial direct costs.

The lease asset for sales-type leases is subsequently measured throughout the lease term at the carrying amount of the net investment in the lease which is increased by interest income and reduced by lease payments collected. The lease payments are segregated into principal and interest components similar to a loan. Equipment leasing revenues are recognized on an effective interest method over the lease term. The principal component of the lease payment is reflected as a reduction to the net investment in the lease.

For operating leases where the Company is the lessee, the right-of-use ("ROU"), asset is initially measured at cost, which comprises the initial amount of the lease liability adjusted for lease payments made at or before the lease commencement date, plus any initial direct costs incurred less any lease incentives received. The ROU asset is subsequently measured throughout the lease term at the carrying amount of the lease liability.

F-9

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[Table of Contents](#)

plus initial direct costs, plus (minus) any prepaid (accrued) lease payments, less the unamortized balance of lease incentives received. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

Lease assets for sales-type leases where the Company is the lessor and ROU assets for operating leases where the Company is the lessee are periodically reduced by impairment losses. The Company uses the loans impairment guidance in ASC Subtopic

330-10, Receivables, and the long-lived assets impairment guidance in ASC Subtopic 360-10, Property, Plant, and Equipment – Overall, to determine whether a lease asset or a ROU asset, respectively, is impaired, and if so, the amount of the impairment loss to recognize. For the years ended December 31, 2022, December 31, 2023 and 2020 2022 the Company did not recognize any impairment losses. The

F-10

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## [Table of Contents](#)

Company recognized \$0.1 million in impairment losses which is included within Sales sales and marketing expense on the statement Statement of operations Operations for the year ended December 31, 2021.

The Company monitors for events or changes in circumstances that require a reassessment of its leases. When a reassessment results in the remeasurement of a lease liability, a corresponding adjustment is made to the carrying amount of the corresponding ROU asset unless doing so would reduce the carrying amount of the ROU asset to an amount less than zero. In that case, the amount of the adjustment that would result in a negative ROU asset balance is recorded in profit or loss.

The Company has elected not to recognize ROU assets and lease liabilities for all short-term leases that have a lease term of 12 months or less. The Company recognizes the lease payments associated with the short-term leases as an expense on a straight-line basis over the lease term. Variable lease payments associated with these leases are recognized and presented in the same manner as for all other leases. The Company has elected to exclude sales and other similar taxes from lease payments in arrangements where the Company is a lessor.

### **Inventory**

Inventory is stated at the lower of cost and net realizable value, with cost being determined on a first in, first out basis. The Company's inventory is primarily comprised of finished goods, goods and work-in-process. For the year ended December 31, 2023, the Company recorded a \$1.9 million inventory impairment within cost of revenue on the Statements of Operations for a specialized component part secured for discontinued NeuroStar Advanced Therapy Systems to which such cost exceeds net realizable value.

### **Property and Equipment and Capitalized Software**

Property and equipment are recorded at cost. Maintenance and repairs are charged to expense as incurred and costs of improvements and renewals are capitalized. Depreciation and amortization are recognized using the straight-line method based on the estimated useful lives of the related assets. The Company uses an estimated useful life of three years for computers and software, five years for laboratory, auto and office equipment, six years for devices in the rental agreement program and the lesser of five years or the remaining life of the underlying facility lease for leasehold improvements.

Software development costs relating to assets to be sold in the normal course of business are included in research and development and are expensed as incurred until technological feasibility is established. After technological feasibility is established, software development costs are capitalized. The Company uses an estimated useful life of two years for capitalized software and amortizes these costs beginning at the product release.

### **Impairment of Long-Lived Assets**

Long-lived assets, such as property and equipment, are tested for impairment when events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Impairment testing requires management to estimate the future net

undiscounted cash flows of an asset using assumptions believed to be reasonable. Actual cash flows may differ from the estimates used in the impairment testing. If such assets are considered to be impaired, the Company recognizes an impairment loss when and to the

F-10

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[Table of Contents](#)

extent that the estimated fair value of an asset is less than its carrying value. The Company has not recorded any impairment of its long-lived assets for the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020, 2021.

**Note Receivables Notes Receivable**

Note receivables Notes receivable are reported on the Company's balance sheet Balance Sheet at amortized cost basis. The Company recognizes interest income within other income, net within the statements Statements of operations. Operations.

Note F-11

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[Table of Contents](#)

Notes receivables are periodically reviewed to determine whether a note receivable is impaired, and if so, the amount of the impairment loss to recognize. For the years ended December 31, 2023 and 2022, there were no impairment charges. For the year ended December 31, 2021, the Company recognized \$0.1 million in impairment charges which is included within "Sales sales and marketing expense" expense on the statements Statements of operations. For the year ended December 31, 2022 there were no impairment charges. Operations.

**Deferred Debt Issuance Costs**

The Company capitalizes direct costs incurred to obtain debt financing and amortizes these costs to interest expense over the term of the debt using the effective interest method. These costs are recorded as a debt discount and are netted against the related debt on the Company's balance sheets. Balance Sheets.

**Revenue Recognition**

ASC Topic 606, *Revenue from Contracts with Customers* ("Topic 606") is principles-based and provides a five-step model to determine when and how revenue is recognized. The core principle is that an entity should recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

Sales and usage-based taxes are excluded from revenues.

*Contract Formation*

The Company accounts for a contract with a customer when there is a legally enforceable contract between the Company and the customer, the rights of the parties are identified, the contract has commercial substance, and collectability of the contract consideration is probable. For all sales, the Company uses either a signed agreement or a binding purchase order as evidence of an arrangement.

#### *Performance Obligations*

The unit of account for Topic 606 is the performance obligation. A performance obligation is a promise in a contract to transfer a distinct good or service to the customer or a series of distinct goods or services that are substantially the same and have the same pattern of transfer. A contract's transaction price is allocated to each performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. The majority of the Company's contracts are comprised of the following performance obligations:

- (1) The NeuroStar TMS Therapy System (the "System") which includes a chair, an electromagnet coil, a monitoring console and accessories. The various components are inputs that function together to deliver a combined output and together form one performance obligation (a NeuroStar Advanced Therapy System). Revenues from the sale of the System are satisfied at the point-in-time when shipped from our premises.
- (2) NeuroStar Treatment Session (the "Treatment Session") is a single use consumable that is delivered via an encrypted activation code and is required in order for a clinician to perform TMS therapy. Revenues from the sale of the Treatment Sessions are satisfied at the point-in-time when delivered to the customer. The Company determined that sales of Treatment Sessions are not part of the enforceable rights and obligations of the System sales, except when sold with System sales.

F-11

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#### [Table of Contents](#)

- (3) Separately priced extended warranties and when-and-if-available upgrade rights are considered service-type warranties. Warranty services are considered stand-ready obligations satisfied over-time and recognized using a straight-line time-based measurement toward completion.
- (4) The System clinical and reimbursement training enable the clinician to provide patient treatment. The trainings are not required in order to operate the System but are required in order to receive a certification from the Company and accordingly are not essential to the functionality of other

F-12

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#### [Table of Contents](#)

performance obligations. Training services are recognized at a point-in-time when training is complete, typically simultaneous to or near the time of delivery of the System.

In addition, the Company has determined that there are various perfunctory deliverables such as installation of the System, the technical support hotline and marketing materials which the Company does not separately recognize as revenue nor does the

Company accrue the estimated cost of providing these goods and services because they are not material. The Company provides a one-year warranty on all new System sales which were determined to be assurance-type warranties and thus not considered a separate performance obligation. The Company accrues the cost of providing these warranties.

There is no right of return or refund for any of the Company's products or services and the Company has elected to treat shipping and handling as a fulfillment activity and expenses the costs as incurred.

#### Rent-to-Own Sales Type Lease

The System is typically purchased but the Company does offer certain customers the option to lease instead. The Company accounts for these leases under Topic 842, *Leases*. Under Topic 842 the leases are typically accounted for as a sales-type lease which results in the derecognition of the underlying asset, the recognition of profit or loss on the sale, and the recognition of an investment in sales-type lease. The investment is periodically increased for interest earned and reduced as lease payments are received.

#### *Distribution Agreement*

The Company has an exclusive distribution agreement that began in October 2017 with a foreign entity for a period of 7 ½ years with two 2 year renewal options. As consideration for the right to be the sole distributor of the Company's products and use of the Company's intellectual property in the foreign territory, the distributor is required to make certain fixed milestone payments upon contract execution and regulatory approval. In addition, the distributor is required to make variable milestone payments depending upon regulatory reimbursement rates. Furthermore, the distributor is required to make certain minimum purchases based upon sales history and forecasts subject to a ceiling and floor. The Company assessed the potential performance obligations in this contract and concluded that the contract contained the following performance obligations:

- Exclusive distribution and intellectual property license
- NeuroStar TMS Therapy System
- NeuroStar Treatment Session

The distribution agreement contains pricing for the Company's products and services. The contractual purchase prices were determined to be at the standalone selling prices based on the expected sales volumes of this customer type and thus the Company concluded that this agreement did not contain a separate performance obligation for the material right to discounted Systems and Treatments Sessions. The Company allocated the transaction price through a combination of the cost plus a margin approach and the residual method. For the System and Treatment Sessions the Company maximized the use of observable inputs by beginning with average historical contractual selling prices and adjusting on a consistent and rational basis for pricing trends, the customer type and expected sales volumes and the Company's changing cost and

F-12

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#### Table of Contents

margins. Since it was determined that the contractual selling prices for the Company's products and services in the distribution agreement were at the standalone selling prices, the residual consideration which is made up of the fixed and variable milestone payments was allocated to the exclusive distribution and intellectual property license. The exclusive distribution and intellectual property rights were determined to be symbolic IP and thus recognized over time. The System and Treatment Sessions were determined to be performance obligations recognized at a point-in-time when delivered to the distributor.

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[Table of Contents](#)

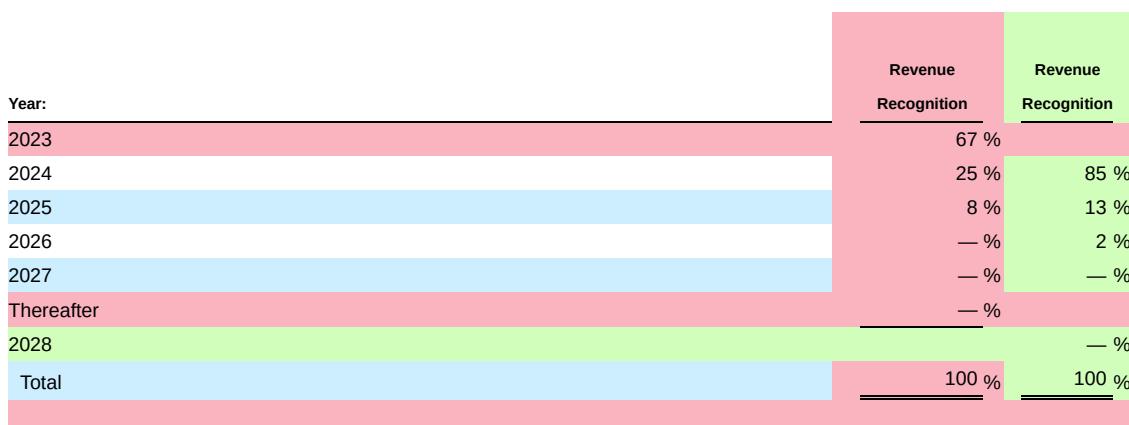
#### *Contract Estimates*

Accounting for the Company's contracts involves the use of significant judgments and estimates including determining the separate performance obligations, allocating the transaction price to the different performance obligations and determining the method to measure the entity's performance toward satisfaction of performance obligations that most faithfully depicts when control is transferred to the customer. The Company allocates the contract's transaction price to each performance obligation using the Company's best estimate of the standalone selling price for each distinct good or service in the contract. The Company maximizes the use of observable inputs by beginning with average historical contractual selling prices and adjusting as necessary and on a consistent and rational basis for other inputs such as pricing trends, customer types, volumes and changing cost and margins.

#### *Contract Balances*

Payment terms typically require payment upon shipment of the System and additional payments as access codes are delivered, which can span several years after the System is first delivered and installed. The timing of revenue recognition compared to billings and cash collections typically results in accounts receivable. However, sometimes customer advances and deposits might be required for certain customers and are recorded as contract liabilities. Changes in the contract asset and liability balances during the years ended **December 31, 2022** **December 31, 2023** and **2021** **2022** were not materially impacted by any other factors.

As of **December 31, 2022** **December 31, 2023**, the Company expects to recognize approximately the following percentages of deferred revenue by year:



Revenue recognized for the years ended **December 31, 2022** **December 31, 2023** and **2021** **2022** that was included in the contract liability balance at the beginning of the year was **\$2.5 million** **\$2.0 million** and **\$1.9 million** **\$2.5 million**, respectively, and

primarily represented revenue earned from separately priced extended warranties, rent-to-own revenue, milestone revenue, and clinical training.

#### *Customers*

Significant customers are those which represent more than 10% of the Company's total revenue. For the years ended December 31, 2023, 2022 and 2021, one customer accounted for 15%, 17% and 20%, respectively, of the Company's revenue.

Accounts receivable outstanding related to the customer was \$1.9 million and \$5.2 million as of December 31, 2023 and 2022, respectively.

Notes receivable outstanding related to the customer was \$5.2 million and \$0 million as of December 31, 2023 and 2022, respectively.

F-13 F-14

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#### Table of Contents

#### *Customers*

Significant customers are those which represent more than 10% of the Company's total revenue. For the years ended December 31, 2022, 2021 and 2020, one customer accounted for 17%, 20% and 22% respectively, of the Company's revenue.

Accounts receivable outstanding related to the customer was \$5.2 million and \$2.5 million as of December 31, 2022 and 2021, respectively.

#### *Geographical Information*

The following geographic data includes revenue generated from the Company's third-party distributors. The Company's revenue was generated in the following geographic regions and by product line for the periods indicated (in thousands):

	Revenues by Geography				Revenues by Geography			
	Year Ended December 31,				Year ended December 31,			
	2022		2021		2023		2022	
	Amount	% of Revenues	Amount	% of Revenues	Amount	% of Revenues	Amount	% of Revenues
	(in thousands, except percentages)							
United States	\$ 63,406	97 %	\$ 53,447	97 %				

(in thousands, except percentages)							
U.S.					\$69,336	97 %	\$63,406
International	1,800	3 %	1,865	3 %	2,012	3 %	1,800
Total revenues	<u>\$ 65,206</u>	<u>100 %</u>	<u>\$ 55,312</u>	<u>100 %</u>	<u>\$71,348</u>	<u>100 %</u>	<u>\$65,206</u>

U.S. Revenues by Product Category				U.S. Revenues by Product Category			
Year Ended December 31,				Year ended December 31,			
2022		2021		2023		2022	
Amount	% of Revenues	Amount	% of Revenues	Amount	% of Revenues	Amount	% of Revenues
(in thousands, except percentages)							

(in thousands, except percentages)							
NeuroStar Advanced Therapy System	\$ 16,575	26 %	\$ 9,760	18 %	\$16,460	24 %	\$16,575
Treatment sessions	45,077	71 %	41,933	78 %	50,896	73 %	45,077
Other	1,754	3 %	1,754	4 %	1,980	3 %	1,754
Total U.S. revenues	<u>\$ 63,406</u>	<u>100 %</u>	<u>\$ 53,447</u>	<u>100 %</u>	<u>\$69,336</u>	<u>100 %</u>	<u>\$63,406</u>

International Revenues by Product Category				International Revenues by Product Category			
Year Ended December 31,				Year ended December 31,			
2022		2021		2023		2022	
Amount	% of Revenues	Amount	% of Revenues	Amount	% of Revenues	Amount	% of Revenues
(in thousands, except percentages)							

(in thousands, except percentages)							
NeuroStar Advanced Therapy System	\$ 811	45 %	\$ 1,108	59 %	\$ 629	31 %	\$ 811
Treatment sessions	354	20 %	264	14 %	754	38 %	354
Other	635	35 %	493	27 %	629	31 %	635
Total International revenues	<u>\$ 1,800</u>	<u>100 %</u>	<u>\$ 1,865</u>	<u>100 %</u>	<u>\$2,012</u>	<u>100 %</u>	<u>\$1,800</u>

Revenues by Geography				Revenues by Geography			
Year ended December 31,				Year ended December 31,			
2021		2020		2022		2021	
Amount	% of Revenues	Amount	% of Revenues	Amount	% of Revenues	Amount	% of Revenues
(in thousands, except percentages)							
United States	\$ 53,447	97 %	\$ 47,519	96 %	\$63,406	97 %	\$53,447
International	1,865	3 %	1,725	4 %	1,800	3 %	1,865
Total revenues	<u>\$ 55,312</u>	<u>100 %</u>	<u>\$ 49,244</u>	<u>100 %</u>	<u>\$65,206</u>	<u>100 %</u>	<u>\$55,312</u>

F-14 F-15

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[Table of Contents](#)

U.S. Revenues by Product Category			
Year ended December 31,			
2022		2021	
Amount	% of Revenues	Amount	% of Revenues
(in thousands, except percentages)			
NeuroStar Advanced Therapy System	\$ 16,575	26 %	\$ 9,760
Treatment sessions	45,077	71 %	41,933
Other	1,754	3 %	1,754
Total U.S. revenues	<u>\$ 63,406</u>	<u>100 %</u>	<u>\$ 53,447</u>

U.S. Revenues by Product Category				
	Year ended December 31,			
	2021		2020	
	Amount	% of Revenues	Amount	% of Revenues
(in thousands, except percentages)				
NeuroStar Advanced Therapy System	\$ 9,760	18 %	\$ 11,094	23 %
Treatment sessions	41,933	78 %	34,852	73 %
Other	1,754	4 %	1,573	4 %
Total U.S. revenues	\$ 53,447	100 %	\$ 47,519	100 %

International Revenues by Product Category				International Revenues by Product Category				
	Year ended December 31,				Year ended December 31,			
	2021		2020		2022		2021	
	Amount	% of Revenues	Amount	Amount	% of Revenues	Amount	% of Revenues	
(in thousands, except percentages)								
NeuroStar Advanced Therapy System	\$ 1,108	59 %	\$ 856	50 %	\$ 811	45 %	\$ 1,108	59 %
Treatment sessions	264	14 %	449	26 %	354	20 %	264	14 %
Other	493	27 %	420	24 %	635	35 %	493	27 %
Total International revenues	\$ 1,865	100 %	\$ 1,725	100 %	\$ 1,800	100 %	\$ 1,865	100 %

### Research and Development Expenses

Research and development activities are expensed as incurred. Costs incurred in obtaining technology licenses are charged immediately to research and development expense if the technology licensed has not reached technological feasibility and has no alternative future uses.

### Share-based Compensation

The Company recognizes the grant-date fair value of share-based awards issued as compensation as expense on a straight-line basis over the requisite service period, which is generally the vesting period of the award. The fair value of restricted stock awards and restricted stock units is estimated at the time of grant, based on the grant date fair value of the Company's common stock. The fair value of performance restricted stock units ("PRSUs") is estimated at the time of grant and is determined using a risk neutral Monte Carlo simulation valuation model, which requires the use of inputs and assumptions such as the fair value of the underlying common stock, risk free interest rate, and expected volatility. The performance restricted stock units PRSUs generally vest based on appreciation of the Company's common stock to a certain price as determined by the Company's board of directors measured using a trailing 30-day volume weighted "volume-weighted" average price of a share of the Company's common stock. The fair value of stock options is estimated at the time of grant using the Black-Scholes option pricing model, which requires the use of inputs and assumptions such as the fair value of the underlying common stock, exercise price of the option, expected term, risk-free interest rate, expected volatility and dividend yield.

#### **Income Taxes**

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in

F-15

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#### [Table of Contents](#)

the period that includes the enactment date. A valuation allowance is recorded to the extent it is more likely than not that some portion or all of the deferred tax assets will not be realized.

F-16

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#### [Table of Contents](#)

Unrecognized income tax benefits represent income tax positions taken on income tax returns that have not been recognized in the financial statements. The Company recognizes the benefit of an income tax position only if it is more likely than not (greater than 50%) that the tax position will be sustained upon tax examination, based solely on the technical merits of the tax position. Otherwise, no benefit is recognized. The tax benefits recognized are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Company accrues interest and related penalties are classified as income tax expense in the statements of operations. The Company does not anticipate significant changes in the amount of unrecognized income tax benefits over the next year.

#### **4. RECENT ACCOUNTING PRONOUNCEMENTS**

#### **New Accounting Standards Not Yet Adopted by the Company**

In June 2016, November 2023, the FASB issued Accounting Standards Update ("ASU") 2023-07, *Improvements to Reportable Segment Disclosures* ("ASU 2023-07"), which requires public companies to disclose for each reportable segment the significant expense categories and amounts for such expenses. ASU 2023-07 is effective for annual periods beginning December 15, 2023, and for interim periods within fiscal years beginning after December 15, 2024. This ASU will be effective for our annual period ended December 31, 2024. The Company is currently evaluating the guidance to determine the impact on its disclosures.

In December 2023, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* 2023-09, *Improvements to Income Tax Disclosures* ("ASU 2023-09") ("Topic 326"), which requires public business entities to disclose specific categories in the rate reconciliation and provide additional information for reconciling items that meet a quantitative threshold. ASU 2023-09 is effective for annual periods beginning after December 15, 2023. This ASU provides guidance for recognizing credit losses on financial instruments based on an estimate of current expected credit losses model. The FASB subsequently issued ASU 2019-04, *Codification Improvements to Topic 326, Financial Instruments - Credit Losses, Topic 815, Derivatives and Hedging (Topic 815)*, and *Topic 825, Financial Instruments and ASU 2019-11, Codification Improvements to Topic 326, Financial Instruments - Credit Losses* to clarify and address certain items related to the amendments in Topic 326.

ASU 2019-05, *Financial Instruments - Credit Losses (Topic 326): Targeted Transition Relief*, was issued to provide entities that have certain instruments within the scope of ASC 326 with an option to irrevocably elect the fair value option under ASC 825-10, *Financial Instruments - Overall*, applied on an instrument-by-instrument basis for eligible instruments. ASU 2019-10, Topic 326, Topic 815, and Topic 842 amends the mandatory effective date for Topic 326.

The ASUs are will be effective for fiscal years beginning after December 15, 2022 for entities that are eligible to be defined by the SEC as a smaller reporting company. Our annual period ended December 31, 2024. The Company is a smaller reporting company. The Company does not anticipate a material impact currently evaluating the impacts of ASU 2023-09 on its financial statements based on the instruments currently held and its historical trend of bad debt expense relating to trade accounts receivable.

disclosures.

Other than the items noted above, there have been no new accounting pronouncements not yet effective or adopted in the current year that we believe have a material impact, or potential material impact, to our financial statements.

#### **5. FAIR VALUE MEASUREMENT AND FINANCIAL INSTRUMENTS**

The carrying values of cash equivalents, accounts receivable, ~~prepaid~~ prepaid and other current assets, and accounts payable on the Company's ~~balance sheets~~ Balance Sheets approximated their fair values as of December 31, 2022 December 31, 2023 and 2021 2022 due to their short-term nature. The carrying values of the Company's current credit facility approximated its fair value as of December 31, 2022 December 31, 2023 and 2021 2022 due to its variable interest rate. The carrying value of the Company's ~~note notes~~ receivable approximated its fair value as of December 31, 2022 December 31, 2023 and 2021 2022 due to its variable interest rate.

Certain of the Company's financial instruments are measured at fair value using a three-level hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable inputs and minimizes the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

Level 1: Inputs are quoted prices for identical instruments in active markets.

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

Level 3: Inputs are unobservable and reflect the Company's own assumptions, based on the best information available, including the Company's own data.

F-17

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[Table of Contents](#)

The following tables set forth the carrying amounts and fair values of the Company's financial instruments as **December 31, 2022**, **December 31, 2023** and **2021** (in thousands):

	December 31, 2022						December 31, 2023					
	Fair Value Measurement Based on						Fair Value Measurement Based on					
	Quoted		Significant			Quoted		Significant				
	Prices In	other	Prices In	other	Significant	Significant	Prices In	other	Prices In	other	Significant	Significant
	Active	Observable	Unobservable	Active	Observable	Unobservable	Active	Observable	Unobservable	Active	Observable	Unobservable
	Carrying	Markets	Inputs	Inputs	Inputs	Carrying	Markets	Inputs	Inputs	Inputs	Inputs	Inputs
<b>Assets</b>	Amount	Fair Value	(Level 1)	(Level 2)	(Level 3)	Amount	Fair Value	(Level 1)	(Level 2)	(Level 3)	Amount	Fair Value
	Money market funds (cash equivalents)	\$68,002	\$68,002	\$68,002	\$ —	\$ —	\$27,507	\$27,507	\$27,507	\$ —	\$ —	\$ —

	December 31, 2021						December 31, 2022					
	Fair Value Measurement Based on						Fair Value Measurement Based on					
	Quoted		Significant			Quoted		Significant				
	Prices In	other	Prices In	other	Significant	Significant	Prices In	other	Prices In	other	Significant	Significant
	Active	Observable	Unobservable	Active	Observable	Unobservable	Active	Observable	Unobservable	Active	Observable	Unobservable
	Carrying	Markets	Inputs	Inputs	Inputs	Carrying	Markets	Inputs	Inputs	Inputs	Inputs	Inputs
<b>Assets</b>	Amount	Fair Value	(Level 1)	(Level 2)	(Level 3)	Amount	Fair Value	(Level 1)	(Level 2)	(Level 3)	Amount	Fair Value
	Money market funds (cash equivalents)	\$91,236	\$91,236	\$91,236	\$ —	\$ —	\$68,002	\$68,002	\$68,002	\$ —	\$ —	\$ —

## 6. ACCOUNTS RECEIVABLE

The following table presents the composition of accounts receivable, net as of December 31, 2022 December 31, 2023 and 2021 2022 (in thousands):

	December 31,		December 31,	
	2022		2023	
	2022	2021	2023	2022
Gross accounts receivable - trade	\$ 15,239	\$ 9,168	\$ 16,577	\$ 15,239
Less: Allowances for doubtful accounts	(1,648)	(1,462)		
Less: Allowances for credit losses			(795)	(1,648)
Accounts receivable, net	\$ 13,591	\$ 7,706	\$ 15,782	\$ 13,591

The following table presents a rollforward of the allowance for doubtful accounts credit losses (in thousands):

	Balance at	Bad Debt	Write-offs of	Balance at	Balance at	Bad Debt	Write-offs of	Balance at
	Beginning of	Expense	Uncollectible	End of	Beginning of	Expense	Uncollectible	End of
	Period	Recognized	Balances	Period	Period	Recognized	Balances	Period
Year ended December 31, 2020	\$ (548)	(897)	433	\$ (1,012)				
Year ended December 31, 2021	\$ (1,012)	(763)	313	\$ (1,462)	\$ (1,012)	(763)	313	\$ (1,462)
Year ended December 31, 2022	\$ (1,462)	(341)	155	\$ (1,648)	\$ (1,462)	(341)	155	\$ (1,648)
Year ended December 31, 2023				\$ (1,648)	(390)	1,243	\$ (795)	

F-17 F-18

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## Table of Contents

## 7. PROPERTY AND EQUIPMENT AND CAPITALIZED SOFTWARE

The following table presents the composition of property and equipment, net as of December 31, 2022 December 31, 2023 and 2021 2022 (in thousands):

	December 31,		December 31,	
	2022		2023	
	2022	2021	2023	2022
Laboratory equipment	\$ 462	\$ 249	\$ 702	\$ 462
Office equipment	508	497	495	508
Auto			23	—
Computer equipment and software	1,758	1,598	1,082	1,758

Manufacturing equipment	343	341	551	343
Leasehold improvements	1,435	471	1,436	1,435
Rental equipment	542	601	542	542
Property and equipment, gross	5,048	3,757	4,831	5,048
Less: Accumulated depreciation	(3,057)	(2,537)	(2,822)	(3,057)
Property and equipment, net	\$ 1,991	\$ 1,220	\$ 2,009	\$ 1,991

As of December 31, 2022 December 31, 2023 and 2021, 2022, the Company had capitalized software costs, net of \$3.6 million \$4.2 million and \$2.5 million \$3.6 million, respectively, which are included in "Other assets" other assets on the balance sheet. Balance Sheets. During the year ended December 31, 2023, the Company disposed of \$0.9 million of fully depreciated property and equipment.

Depreciation and amortization expense was \$1.6 million \$2.0 million, \$1.1 million \$1.6 million, and \$0.9 million \$1.1 million for the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020, 2021, respectively.

## 8. NOTE RECEIVABLES NOTES RECEIVABLE

### Greenbrook TMS Inc.

On March 31, 2023, the Company entered into a Secured Promissory Note and Guaranty Agreement (the "Promissory Note") with TMS Neurohealth Centers Inc. (the "Maker") and Greenbrook TMS Inc. and its subsidiaries, excluding the Maker (the "Guarantors"), in the principal amount of \$6.0 million for a period of four years.

The Promissory Note will bear interest at a rate equal to the sum of (a) the floating interest rate of daily secured overnight financing rate as administered by the Federal Reserve Bank of New York on its website ("SOFR") plus (b) 7.65%.

Pursuant to the terms of the Promissory Note, in the event of an event of default thereunder, the Maker will be required to issue common share purchase warrants to the Company equal to (i) 200% of the unpaid amount of any delinquent amount or payment due and payable under the Promissory Note, together with all outstanding and unpaid accrued interest, fees, charges and costs, divided by (ii) the exercise price of the warrants, which will represent a 20% discount to the 30-day volume-weighted average closing price of Greenbrook TMS Inc.'s common shares traded on the Nasdaq Stock Market ("Nasdaq") prior to the date of issuance (subject to any limitations that may be required by Nasdaq).

Under the Promissory Note and related loan documents, the Maker and the Guarantors have granted to the Company a security interest in substantially all of the Maker's and the Guarantors' assets and the Guarantors have guaranteed the Maker's obligations under the Promissory Note. The Company's security interest pursuant to the Promissory Note and related loan documents ranks pari passu with the Maker's senior lender, Madryn Fund Administration, LLC, and is subject to an intercreditor agreement.

F-19

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### Table of Contents

Success TMS

On September 29, 2021, the Company entered into an exclusive, five-year master sales agreement with Check Five, LLC d/b/a Success TMS ("Success TMS"). In connection with the Commercial Agreement, the Company agreed to loan Success TMS the principal amount of \$10.0 million for a period of five years pursuant to a secured promissory note (the "Note"). The Note included interest at a floating rate equal to the prime rate plus 6.00% per annum and interest-only period through October 1, 2022, after which time Success TMS was required to make monthly payments of principal and interest.

On July 14, 2022, Success TMS repaid in full the Note with a cash payment of \$10.5 million, which included all outstanding principal, prepayment premium and accrued but unpaid interest. The repayment extinguished the Note in its entirety and terminated the Subordination Agreement entered into by the Company.

Interest income recognized by the Company related to notes receivable was \$0.6 million, \$1.0 million and \$0.2 million for the years ended December 31, 2022 December 31, 2023, 2022 and 2021, respectively, and is included within other income, net on the statement Statements of operations. Operations.

## 9. LEASES

Lessee:

The Company has operating leases for its corporate headquarters, a training facility and office equipment, including copiers. The Company leases an approximately 32,000 square foot facility in Malvern, Pennsylvania for its corporate headquarters, which includes office and warehouse space. In the first quarter of 2019, the Company signed a lease modification for its Malvern facility that extended the lease through February 2028 and included approximately 10,000 square foot of additional premises. The Company has an option to extend the lease on its combined 42,000 square foot facility for an additional five-year term; however, the Company has determined it is not reasonably certain to exercise the option at this time after assessing contract, asset, entity and market conditions present upon lease commencement.

F-18

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## [Table of Contents](#)

The Company leases an approximately 9,600 square foot facility in Charlotte, North Carolina as a training facility for its NeuroStar Advanced Therapy Systems. The lease ends in September 2027. The Company has an option to extend the lease on its training facility for an additional one-year term; however, the Company has determined it is not reasonably certain to exercise the option at this time after assessing contract, asset, entity and market conditions present upon lease commencement.

Operating lease rent expense was \$0.8 million, \$0.7 million \$0.8 million, and \$0.6 million \$0.7 million for the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020, 2021, respectively. As of December 31, 2022 December 31, 2023, the weighted-average remaining lease term of operating leases was 5.0 4.1 years and the weighted-average discount rate was 7.2%.

The following table presents the supplemental cash flow information as a lessee related to leases for the years ended December 31, 2022 December 31, 2023 and 2021 2022 (in thousands):

	Year ended December 31, 2022	Year ended December 31, 2021	Year ended December 31, 2023	Year ended December 31, 2022
Cash paid for amounts included in the measurement of lease liabilities:				

Operating cash flows from operating leases	\$ 892	\$ 822	\$ 1,077	\$ 892
Right-of-use assets obtained in exchange for lease obligations:				
Operating leases	\$ —	\$ 866	\$ —	\$ —

F-20

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[Table of Contents](#)

The following table sets forth by year the required future payments of operating lease liabilities as of **December 31, 2022** **December 31, 2023** (in thousands):

	Year ended December	
	31, 2022	Year ended December 31, 2023
2023	\$ 853	
2024	875	\$ 876
2025	898	898
2026	921	921
2027	882	882
Thereafter	116	
2028	116	
Total lease payments	4,545	3,693
Less imputed interest	(754)	(503)
Present value of operating lease liabilities	\$ 3,791	\$ 3,190

*Lessor sales-type leases:*

Certain customers have purchased NeuroStar Advanced Therapy Systems on a rent-to-own basis. The lease term is three or four years with a customer option to purchase the NeuroStar Advanced Therapy System at the end of the lease or automatic transfer of ownership of the NeuroStar Advanced Therapy System at the end of the lease.

The following table sets forth the profit recognized on sales-type leases (in thousands):

	Year ended December 31,		Year ended December 31,	
	2022	2021	2023	2022
Profit recognized at commencement, net	\$ 478	\$ 807	\$ 129	\$ 478
Interest income	—	—	—	—
Total sales-type lease income	\$ 478	\$ 807	\$ 129	\$ 478

F-19

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[Table of Contents](#)

The following table sets forth a maturity analysis of the undiscounted lease receivables related to sales-type leases as of December 31, 2022 December 31, 2023 (in thousands):

	December 31, 2022	December 31, 2023
2023	\$ 1,538	
2024	824	\$ 915
2025	358	442
2026	40	118
2027	—	91
Total sales-type lease receivables	\$ 2,760	\$ 1,566

As of December 31, 2022 December 31, 2023 and 2021, 2022, the carrying amount of the lease receivables is \$2.8 million \$1.6 million and \$3.9 million \$2.8 million, respectively. The Company does not have any unguaranteed residual assets.

*Lessor operating leases:*

NeuroStar Advanced Therapy Systems sold on a rent-to-own basis prior to January 1, 2019 are accounted for as operating leases. NeuroStar Advanced Therapy Systems sold subsequent to January 1, 2019 for which collection is not probable are also accounted for as operating leases. For the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020, 2021, the Company recognized operating lease income of \$0.2 million, \$0.3 million \$0.2 million and \$0.4 million \$0.3 million, respectively.

The Company maintained Rental Equipment, rental equipment, net of \$0.5 million \$0.3 million and \$0.6 million \$0.5 million, as of December 31, 2022 December 31, 2023 and 2021, 2022, respectively, which are included in "Property Property and equipment, net" net on the balance sheet, Balance Sheets. Rental

F-21

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[Table of Contents](#)

equipment depreciation expense was \$0.10 million \$0.09 million, \$0.05 million \$0.10 million and \$0.1 million \$0.05 million for the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020, 2021, respectively.

**10. PREPAID COMMISSION EXPENSE**

The Company pays a commission on both NeuroStar Advanced Therapy System sales and Treatment Session sales. Since the commission paid for NeuroStar Advanced Therapy System sales is not commensurate with the commission paid for Treatment Sessions, the Company capitalizes commission expense associated with NeuroStar Advanced Therapy System commissions paid that is incremental to specifically anticipated future Treatment Session orders. In developing this estimate, the Company considered its historical Treatment Session sales and customer retention rates, as well as technology development life cycles and other industry factors. These costs are periodically reviewed for impairment.

NeuroStar Advanced Therapy System commissions are deferred and amortized on a straight-line basis over a seven year period equal to the average customer term, which the Company deems to be the expected period of benefit for these costs.

On the Company's **balance sheets, Balance Sheets**, the current portion of capitalized contract costs is represented by the current portion of prepaid commission expense, while the long-term portion is included in prepaid commission expense. Amortization expense was **\$1.8 million** **\$2.3 million** and **\$1.3 million** **\$1.8 million** for the years ended **December 31, 2022** **December 31, 2023** and **December 31, 2021** **December 31, 2022**, respectively, and presented within sales and marketing in the **statements** **Statements** of operations. **Operations**.

F-20

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[Table of Contents](#)

## 11. ACCRUED EXPENSES

The following table presents the composition of accrued expenses as of **December 31, 2022** **December 31, 2023** and **2021** **2022** (in thousands):

	December 31,	December 31,	December 31,	December 31,
	2022	2021	2023	2022
Compensation and related benefits	\$ 11,201	\$ 5,090	\$ 8,003	\$ 11,201
Consulting and professional fees	761	537	488	761
Research and development expenses	678	388	260	678
Sales and marketing expenses	410	268	1,760	410
Warranty	328	306	213	328
Sales and other taxes payable	659	664	818	659
Other	800	980	1,053	800
Accrued expenses	<u>\$ 14,837</u>	<u>\$ 8,233</u>	<u>\$ 12,595</u>	<u>\$ 14,837</u>

## 12. DEBT

The following table presents the composition of debt as of **December 31, 2022** **December 31, 2023** and **2021** **2022** (in thousands):

	December 31,	December 31,	December 31,	December 31,
	2022	2021	2023	2022
Outstanding principal	\$ 35,000	\$ 35,000	\$ 60,000	\$ 35,000
Accrued final payment fees	1,925	1,925	1,856	1,925
Less debt discounts	(971)	(1,590)	(2,573)	(971)
Total debt, net	35,954	35,335	59,283	35,954
Less current portion	<u>(13,125)</u>	<u>—</u>	<u>—</u>	<u>(13,125)</u>

Long-term debt, net	\$ 22,829	\$ 35,335	\$ 59,283	\$ 22,829
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F-22

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[Table of Contents](#)

For the year ended December 31, 2023, the Company recognized interest expense of \$5.4 million, of which \$4.8 million was cash and \$0.6 million was non-cash interest expense related to the amortization of deferred debt issuance costs and accrual of final payment fees.

For the year ended December 31, 2022, the Company recognized interest expense of \$4.3 million, of which \$3.6 million was cash and \$0.7 million was non-cash interest expense related to the amortization of deferred debt issuance costs and accrual of final payment fees.

For the year ended December 31, 2021, the Company recognized interest expense of \$4.0 million, of which \$3.3 million was cash and \$0.7 million was non-cash interest expense related to the amortization of deferred debt issuance costs and accrual of final payment fees.

**For the year ended December 31, 2020, the Company recognized interest expense of \$4.5 million, of which \$3.9 million was cash and \$0.6 million was non-cash interest expense related to the amortization of deferred debt issuance costs and accrual of final payment fees.**

The following table sets forth by year our required future principal payments under the term loan portion of the Solar Facility:

Year:	Principal Payments
2023	\$ 13,125
2024	17,500
2025	4,375
2026	—
2027	—
Total principal payments	<u>\$ 35,000</u>

F-21

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[Table of Contents](#)

**Solar Credit Facility**

#### **Solar Facility Fourth and Fifth Amendments**

On **March 2, 2020** September 29, 2023, the Company entered into a loan and security agreement with SLR Investment Corp. (formerly known as the Solar Capital Ltd.), or ("Solar"), as collateral agent, and other lenders defined in Fifth Amendment. The Solar Fifth Amendment allowed the agreement, for a credit facility, or Company to draw on the \$22.5 million Term C Loan portion of the Solar Facility that replaced and revise the Company's previous \$35.0 million credit facility with Oxford Finance LLC, or Oxford, required testing levels of the net product revenue and such facility, the Oxford Facility.

minimum liquidity covenants for certain testing periods. On **March 2, 2020** October 3, 2023, the Company borrowed an aggregate amount of \$35.0 million, which was the aggregate amount available \$22.5 million under the term loan Term C Loan portion of the Solar Facility.

On March 29, 2023, the Company entered into a fourth amendment (the "Solar Fourth Amendment") to Solar Facility.

The Solar Fourth Amendment increased the borrowings by \$2.5 million, extended the interest only period from March 2023 to March 2026 and extended the maturity date from February 2025 to March 2028. In addition the amendment changed the basis of the interest expense from LIBOR to SOFR.

The Solar Facility is \$60.0 million and consists of three tranches of term loan portion loans, a "Term A Loan" in an aggregate amount of \$35.0 million, a "Term B Loan" in an aggregate amount of \$2.5 million, and a "Term C Facility" (collectively with the Term A Loan and Term B Loan, the "Loans") in an aggregate principal amount equal to \$22.5 million. The Term A Loan was fully drawn prior to the effectiveness of the Solar Fourth Amendment. On March 29, 2023, the Company borrowed an amount of \$2.5 million under the Term B Loan.

On October 3, 2023, the Company borrowed an amount of \$22.5 million under the Term C Facility matures, and all amounts borrowed thereunder are due, on (the "Term C Funding Date"). The maturity date of the Loans is March 29, 2028. Prior to the effectiveness of the Solar Fourth Amendment, the maturity date of the Term A Loan was February 28, 2025.

The term loan accrues Loans accrue interest from the date of borrowing through the date of repayment at a floating per annum rate of interest, which resets monthly and is equal to 7.65% plus the greater of 5.65% plus (a) 1.66% 3.95% or (b) the rate per annum rate published by the Intercontinental Exchange Benchmark Administration Ltd but was amended on February 15, 2022. The 2022 Solar Amendment (i) waived any default under the Solar Facility and Solar Amendment that resulted from the Company's failure to comply with the minimum monthly trailing twelve months net product revenue financial covenant, beginning with the testing period daily simple SOFR for the calendar month ending December 31, 2021 and continuing to the execution date a term of the 2022 Solar Amendment; (ii) decreased the amount of trailing twelve months net product revenue that the Company one month. Only interest is required to achieve for testing periods be paid on and from the calendar month ending January 31, 2022 and (iii) modified Loans until March 1, 2026. Prior to the definition effectiveness of the Solar Fourth Amendment, the interest only extension conditions period with respect to allow commencement the Term A Loan expired on March 1, 2023. Commencing April 1, 2026, the Company will be required to make monthly payments of loan principal amortization under and interest on the Solar Facility to be extended to March 1, 2023. Loans.

In addition to the principal and interest payments due under the Solar Facility, the Company is required to pay a final payment fee to Solar due upon the earlier of prepayment, acceleration or the maturity date of the loan portion of the Solar Facility Loans equal to 5.50% 4.95% of the principal amount of the term loan loans actually funded. The Company is accruing the final payment fees using the effective interest rate, with a charge to non-cash interest expense, over the term of borrowing. If the Company prepays the loan Loans prior to its their respective scheduled maturity, the Company will also be required to pay prepayment fees to Solar equal to 3% of the principal amount of such term loan then-prepaid if prepaid on or before the first anniversary of the Term C Funding Date, 2% of the principal amount of such term loan then-prepaid if prepaid

[Table of Contents](#)

after the first anniversary and on or before the second anniversary of the Term C Funding Date, or 1% of the principal amount of such term loan then-prepaid if prepaid after the second anniversary of funding of the principal amounts borrowed. Term C Funding Date.

The Company is also required to pay Solar an exit fee upon the occurrence prior to March 2, 2030, of (a) any liquidation, dissolution or winding up of the Company, (b) any transaction that results in a person obtaining control over the Company, (c) the Company achieving \$100 million in trailing twelve month twelve-month net product revenue or (d) the Company achieving \$125 million in trailing twelve month twelve-month net product revenue. The exit fee for liquidation, dissolution, winding up or change of control of the Company is equal to 4.50% 2% of the principal amount of the term loans actually funded. The exit fee for achieving either \$100 million or \$125 million in trailing twelve-month net product revenue is equal to 2.25% 1% of the principal amount of the term loans actually funded or, if both net product revenue milestones are achieved, 4.50% 2% of the principal amount of the term loans actually funded. The exit fee is capped at 4.50% 2% of the principal amount of the term loans actually funded.

The Company's obligations On December 31, 2023, January 31, 2024 and February 29, 2024, the Company was not in compliance with its minimum net product revenue covenant under the Solar Facility are secured by a first priority security interest in substantially all of its assets, including its intellectual property. The loan and security agreement requires Facility. Subsequently, the Company to comply with certain financial covenants as well as customary affirmative and negative covenants, was granted a waiver from Solar for the covenant violations that occurred. The amount of borrowings affected by this non compliance was \$60 million, see "Note 22. Subsequent Event" for further discussion on the waiver.

The Solar Facility contains events of default, including, without limitation, events of default upon: (i) failure to make payment pursuant to following table sets forth by year our required future principal payments under the term loan portion of the agreement; (ii) violation of covenants; (iii) material adverse changes to the Company's business; (iv) attachment or levy on the Company's assets or judicial restraint on its business; (v) insolvency; (vi) material cross-defaults; (vii) significant judgments, orders or decrees for payments by the Company not covered by insurance; (viii) incorrectness of representations and warranties; (ix) incurrence of subordinated debt; (x) a termination or breach of a guaranty; (xi) revocation of governmental

F-22

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[Table of Contents](#)

approvals necessary for the Company to conduct its business; and (xii) failure by the Company to maintain a valid and perfected lien on the collateral securing the borrowing.

As of December 31, 2022, the Company is in compliance with all covenants in the Solar Facility.

**Oxford Credit Facility**

Prior to March 2020, the Company had a \$35.0 million credit facility in place with Oxford, which it entered into in March 2017 and that allowed it to borrow up to \$35.0 million in three tranches of term loans: a Term A Loan in the amount of \$25 million, which was drawn immediately upon closing in March 2017, a Term B Loan in the amount of \$5.0 million, which was drawn down in December 2017, and a Term C Loan in the amount of \$5.0 million which was never drawn down. Each term loan accrued interest from the date of borrowing through the date of repayment at a floating per annum rate of interest, which reset monthly and was

equal to the greater of (a) 8.15% or (b) the 30 day U.S. LIBOR on the last business day of the month plus 7.38%. This facility featured an interest-only period on all tranches through March 2019.

The Company evaluated whether the Solar Facility entered into in March 2020 represented a debt modification or extinguishment in accordance with ASC 470-50, Debt—Modifications and Extinguishments and determined that the existing debt was extinguished as a result of the full repayment of the existing facility and concurrent issuance of a new credit facility with a new lender. The unamortized balance of the Company's combined debt discount and deferred issuance costs of \$0.6 million related to the Oxford facility were accounted for as a loss on extinguishment of debt in March 2020. Facility:

Year:	Principal Payments
2024	\$ —
2025	—
2026	22,500
2027	30,000
2028	7,500
Total principal payments	<u>\$ 60,000</u>

### 13. STOCKHOLDERS' EQUITY

#### Common Stock Offering

On February 2, 2021, the Company closed on their secondary public offering and sale (the "Offering") "Offering") of their common stock in which the Company issued and sold 5,566,000 shares of our common stock, which included shares pursuant to an option granted to underwriters to purchase additional shares, at a public offering price of \$15.50 per share. The Company received net proceeds of \$80.6 million after deducting underwriting discounts, commissions and offering expenses.

#### Common Stock

The Company's amended and restated certificate of incorporation as of December 31, 2020 authorized the issuance of 200.0 million shares of common stock, \$0.01 par value per share, of which **27.3 million** **29.1 million** were issued and outstanding as of **December 31, 2022** **December 31, 2023**.

F-24

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#### [Table of Contents](#)

The following table summarizes the total number of shares of the Company's common stock issued and reserved for issuance as of **December 31, 2022** **December 31, 2023** and **2021** **2022** (in thousands):

	December 31, 2022	December 31, 2021	December 31, 2023	December 31, 2022
Shares of common stock issued	27,268	26,395	29,092	27,268
Shares of common stock reserved for issuance for:				

Common stock warrants outstanding	61	75	41	61
Stock options outstanding	1,301	1,499	1,270	1,301
Restricted stock units outstanding	3,901	2,124	3,360	3,901
Shares available for grant under stock incentive plan	1,140	2,037		
Shares available for grant under stock incentive plans			978	1,140
Shares available for sale under employee stock purchase plan	1,063	799	1,335	1,063
Total shares of common stock issued and reserved for issuance	<u>34,734</u>	<u>32,929</u>	<u>36,076</u>	<u>34,734</u>

Each share of common stock entitles the holder to one vote on all matters submitted to a vote of the Company's stockholders. Holders of common stock are entitled to receive any dividends that the Company's

F-23

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[Table of Contents](#)

board of directors may declare out of funds legally available for that purpose on a non-cumulative basis. The Company has never paid, and for the foreseeable future does not expect to pay, a dividend on its common stock.

**Common Stock Warrants**

The following table summarizes the Company's outstanding common stock warrants as of **December 31, 2022** **December 31, 2023** and **2021** (in thousands):

December 31, 2022		December 31, 2023			
Warrants	Outstanding	(in thousands)	Exercise Price	Expiration Date	Exercise Price
	20	\$ 9.73	Aug-2023	\$ 9.73	Mar-2024
	20	\$ 9.73	Mar-2024		
	21	\$ 9.73	Dec-2024	\$ 9.73	Dec-2024
	61				
	41				

December 31, 2021		December 31, 2022			
Warrants Outstanding (in thousands)		Exercise Price	Expiration Date	Exercise Price	Expiration Date
14	\$ 19.55	Dec-2022			
20	\$ 9.73	Aug-2023	\$ 9.73	Aug-2023	
20	\$ 9.73	Mar-2024	\$ 9.73	Mar-2024	
21	\$ 9.73	Dec-2024	\$ 9.73	Dec-2024	
75					
61					

#### 14. LOSS PER SHARE

The Company's basic loss per common share is computed by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period. The Company's restricted stock awards (non-vested shares) are issued and outstanding at the time of grant but are excluded from the Company's computation of weighted-average shares outstanding in the determination of basic loss per share until vesting occurs.

F-25

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#### [Table of Contents](#)

A net loss cannot be diluted, so when the Company is in a net loss position, basic and diluted loss per common share are the same. If in the future the Company achieves profitability, the denominator of a diluted earnings per common share calculation will include both the weighted-average number of shares outstanding and the number of common stock equivalents, if the inclusion of such common stock equivalents would be dilutive. Dilutive common stock equivalents potentially include warrants, stock options, non-vested restricted stock awards and non-vested performance restricted stock units using the treasury stock method, along with the effect, if any, from the potential conversion of outstanding securities, such as convertible preferred stock.

F-24

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#### [Table of Contents](#)

The following potentially dilutive securities outstanding as of December 31, 2022 December 31, 2023, 2021 2022 and 2020 2021 have been excluded from the denominator of the diluted loss per share of common stock outstanding calculation (in thousands):

	December 31,			December 31,		
	2022	2021	2020	2023	2022	2021
Stock options	1,301	1,499	2,365	1,270	1,301	1,499
Non-vested performance restricted stock units	395	395	—	—	—	—
Non-vested PRSUs	—	—	—	395	395	395
Non-vested restricted stock units	3,506	1,729	1,860	2,965	3,506	1,729
Common stock warrants	61	75	105	41	61	75

## 15. SHARE-BASED COMPENSATION

The amount of share-based compensation expense recognized by the Company by location in its statements Statements of operations Operations for the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020 2021 is as follows (in thousands):

	Years ended December 31,			Years ended December 31,		
	2022	2021	2020	2023	2022	2021
Cost of revenues	\$ 130	\$ 79	\$ 66	\$ 140	\$ 130	\$ 79
Sales and marketing	4,286	2,096	1,813	2,330	4,286	2,096
General and administrative	3,868	5,496	2,076	4,172	3,868	5,496
Research and development	462	198	449	677	462	198
Total	\$ 8,746	\$ 7,869	\$ 4,404	\$ 7,319	\$ 8,746	\$ 7,869

### 2018 Equity Incentive Plan

In June 2018, the Company adopted the 2018 Equity Incentive Plan, or 2018 Plan, which authorized the issuance of up to 1.4 million shares, subject to an annual 4% increase based on the number of shares of common stock outstanding, in the form of restricted stock, stock appreciation rights and stock options to the Company's directors, employees and consultants. The amount and terms of grants are determined by the Company's board of directors. All stock options granted to date have had exercise prices equal to the fair value, as determined by the closing price as reported by the Nasdaq Global Market, of the underlying common stock on the date of grant. The contractual term of stock options is up to 10 years, and stock options are exercisable in cash or as otherwise determined by the board of directors. Generally, stock options vest 25% upon the first anniversary of the date of grant and the remainder ratably monthly thereafter for 36 months. Restricted stock units generally vest ratably in three equal installments on the first, second and third anniversaries of the grant date. Performance restricted stock units ("PRSUs") PRSUs generally vest based on appreciation of the Company's common stock to a certain price as determined by the Company's board of directors measured using a trailing 30-day volume weighted average price of a share of the Company's common stock. The fair value of the PRSU awards are determined using a risk neutral Monte Carlo simulation valuation model. As of December 31, 2022 December 31, 2023, there were 0.7 million shares available for future issuance under the 2018 Plan.

### 2020 Inducement Incentive Plan

In December 2020, the Company adopted the 2020 Inducement Incentive Plan, which authorized the issuance of up to 0.4 million shares in the form of stock options, stock appreciation rights, restricted stock

awards, restricted stock unit awards, performance stock awards and other stock awards to eligible employees who satisfy the standards for inducement grants under Nasdaq global market rules. In March 2022, the Company's board of directors approved an additional 0.5 million shares for issuance under the plan. An individual who previously served as an employee or director of the Company is not eligible to receive awards under this plan. The amount and terms of grants are determined by the Company's board of directors. As of December 31, 2022 December 31, 2023, there were 0.4 million 0.3 million shares available for future issuance under the 2020 Inducement Incentive Plan.

F-25

### Stock Options

The following table summarizes the Company's stock option activity for the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020: 2021:

	Number of Shares under Option (in thousands)	Aggregate				Number of Options (in thousands)	Weighted-average				Aggregate
		Weighted-average per Option	Weighted-average Remaining Life (in years)	average Intrinsic Value (in thousands)	Weighted-average per Option		Weighted-average per Option	Weighted-average Remaining Life (in years)	average Intrinsic Value (in thousands)		
		Exercise Price	Contractual Life (in years)	Value (in thousands)	Exercise Price		Exercise Price	Contractual Life (in years)	Value (in thousands)		
		(in thousands)		(in thousands)	(in thousands)		(in thousands)		(in thousands)		
Outstanding at December											
31, 2019	2,415	\$ 7.11									
Granted	1,028	2.01									
Exercised	(371)	1.86									
Forfeited	(707)	10.76									
Outstanding at December											
31, 2020	2,365	4.62				2,365	\$ 4.62				
Granted	—	—				—	\$ —				
Exercised	(698)	4.01				(698)	\$ 4.01				
Forfeited	(168)	14.32				(168)	\$ 14.32				
Outstanding at December											
31, 2021	1,499	\$ 4.01				1,499	\$ 4.01				
Granted	—	\$ —				—	\$ —				
Exercised	(168)	\$ 1.77				(168)	\$ 1.77				

Forfeited	(30)	\$ 13.81	(30)	\$ 13.81
Outstanding at December 31, 2022	<u>1,301</u>	\$ 4.07	7.0	\$ 5,001
Exercisable at December 31, 2022	<u>869</u>	\$ 4.82	6.7	\$ 3,022
Vested and expected to vest at December 31, 2022	<u>1,301</u>	\$ 4.07	7.0	\$ 5,001
Granted	—	\$ —	—	
Exercised	(1)	\$ 1.63	—	
Forfeited	(30)	\$ 11.67	—	
Outstanding at December 31, 2023	<u>1,270</u>	\$ 3.90	6.0	\$ 862
Exercisable at December 31, 2023	<u>1,123</u>	\$ 4.15	6.0	\$ 728
Vested and expected to vest at December 31, 2023	<u>1,270</u>	\$ 3.90	6.0	\$ 862

The Company recognized share-based compensation expense related to stock options of \$0.7 million \$0.4 million, \$0.8 million \$0.7 million and \$1.7 million \$0.8 million for the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020, 2021, respectively. As of December 31, 2022 December 31, 2023, there was \$0.6 million \$0.1 million of total unrecognized compensation cost related to non-vested stock options which the Company expects to recognize over a weighted-average period of 1.3 0.5 years. The weighted-average grant-date fair value of stock options granted during the year ended December 31, 2020 was estimated at \$1.09 per option. The Company did not grant stock options during the years ended December 31, 2022 and 2021. The total intrinsic value of stock options exercised during the years ended December 31, 2022 December 31, 2023, 2022 and 2021 and 2020 was \$0.0 million, \$0.2 million, \$8.2 million, and \$1.4 million \$8.2 million, respectively.

For the year ended December 31, 2020 the grant-date fair value of stock options was estimated at the time of grant using the following weighted-average inputs and assumptions in the Black-Scholes option pricing model:

	2020
Estimated fair value of common stock	\$ 2.01
Exercise price	\$ 2.01
Expected term (in years)	6.1
Risk-free interest rate	0.4 %
Expected volatility	59.5 %
Dividend yield	— %

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[Table of Contents](#)
**Restricted Stock Awards and Restricted Stock Units**

The following table summarizes the Company's restricted stock award, restricted stock unit and performance restricted stock unit activity for the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020: 2021:

	Non-vested Stock Units (in thousands)	Non-vested	Weighted-	Non-vested	Weighted-	Non-vested	Weighted-	Non-vested	Weighted-
		Restricted	average	Performance Restricted	average	Restricted	average	PRSU	average
		Grant-date	Fair Value	Stock Units (in thousands)	Grant-date	Stock Units (in thousands)	Fair Value	Grant-date (in thousands)	Fair Value
Non-vested at December 31,									
2019	245	\$ 15.23	—	\$ —	—				
Granted	2,307	3.18	500	1.71					
Vested	(98)	13.24	—	—					
Forfeited	(594)	5.24	—						
Non-vested at December 31,									
2020	1,860	3.58	500	1.71	1,860	\$ 3.58	500	\$ 1.71	
Granted	1,008	11.51	145	15.59	1,008	\$ 11.51	145	\$ 15.59	
Vested	(780)	3.63	(250)	1.77	(780)	\$ 3.63	(250)	\$ 1.77	
Forfeited	(359)	7.86	—	—	(359)	\$ 7.86	—	\$ —	
Non-vested at December 31,									
2021	1,729	\$ 7.29	395	\$ 6.77	1,729	\$ 7.29	395	\$ 6.77	
Granted	2,902	\$ 3.36	—	\$ —	2,902	\$ 3.36	—	\$ —	
Vested	(705)	\$ 7.32	—	\$ —	(705)	\$ 7.32	—	\$ —	
Forfeited	(420)	\$ 5.35	—	\$ —	(420)	\$ 5.35	—	\$ —	
Non-vested at December 31,									
2022	3,506	\$ 4.29	395	\$ 6.77	3,506	\$ 4.29	395	\$ 6.77	
Granted					1,674	\$ 4.68	—	\$ —	
Vested					(1,823)	\$ 4.32	—	\$ —	
Forfeited					(392)	\$ 5.50	—	\$ —	
Non-vested at December 31,									
2023					2,965	\$ 4.37	395	\$ 6.77	

The Company recognized share-based compensation expense related to restricted stock awards, restricted stock units and performance restricted stock units of \$8.1 million \$6.9 million, \$7.1 million \$8.1 million, and \$2.7 million \$7.1 million during the years ended December 31, 2022 December 31, 2023, 2021 2022 and 2020 2021, respectively. As of December 31, 2022 December 31, 2023, there was \$8.7 million \$7.7 million of unrecognized compensation cost related to non-vested restricted stock units and performance restricted stock units that the Company expects to recognize over a weighted-average period of 1.8 1.7 years. The total fair value at the vesting date of restricted stock awards, restricted stock units and performance restricted stock units vested during the years ended December 31, 2022 December 31, 2023, 2022 and 2021 and 2020 was \$8.6 million, \$2.5 million, \$14.1 million, and \$0.3 million \$14.1 million, respectively.

The Company did not grant performance restricted stock units during the years ended December 31, 2023 and 2022. For the year ended December 31, 2022. For the years ended December 31, 2021 and 2020, the grant-date fair value of the performance restricted stock units was estimated at the time of grant using the following inputs and assumptions in the Monte Carlo simulation valuation model:

	2021	2020	2021
Closing price of common stock	\$ 15.92	\$ 1.98	\$ 15.92
Risk-free interest rate	1.15 %	0.63 %	1.15 %
Expected volatility	99.7 %	87.4 %	99.7 %

## 16. EMPLOYEE BENEFIT PLANS

### Defined Contribution Plan

The Company maintains a 401(k) defined contribution retirement plan which covers all of its employees. Employees are eligible to participate on the first of the month following their date of hire. Under the 401(k) plan, participating employees may defer up to 100% of their pre-tax salary but not more than statutory

F-27

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### [Table of Contents](#)

limits. As of December 31, 2022 December 31, 2023, the Company contributes 3% of employee salary to the participant's defined contribution plan, which vests immediately. Employee contributions also vest immediately.

F-28

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### [Table of Contents](#)

## 2018 Employee Stock Purchase Plan

In July 2018, the Company adopted the 2018 Employee Stock Purchase Plan or ("2018 ESPP, ESPP") with an initial 0.2 million share reserve, subject to automatic annual increases on January 1st of each year for a period of up to ten years, as defined in the plan document. The purpose of the 2018 ESPP is to enhance employee interest in the success and progress of the Company by encouraging employee ownership of common stock of the Company. The 2018 ESPP provides the opportunity to purchase the Company's common stock at a 15% discount to the market price through payroll deductions or lump sum cash investments. As of December 31, 2022 December 31, 2023, the Company had not yet approved any offering under the plan and 1.1 million 1.3 million shares were reserved for issuance.

## 17. INCOME TAXES

The Company's loss before income taxes was \$30.2 million, \$37.2 million, \$31.2 million, \$27.5 \$31.2 million for the years ended December 31, 2022 December 31, 2023, 2021, 2022, and 2020, 2021, respectively, and was generated entirely in the United States. The Company did not record current or deferred income tax expense or benefit during the years ended December 31, 2022 December 31, 2023, 2021, 2022, and 2020, 2021.

A reconciliation of the statutory United States federal income tax rate to the Company's effective tax rate is as follows:

	Tax Year ended December 31,			Tax Year ended December 31,		
	2022	2021	2020	2023	2022	2021
U.S. federal statutory income tax rate	21.0 %	21.0 %	21.0 %	21.0 %	21.0 %	21.0 %
State and local taxes, net of federal benefit	(0.9)%	5.5 %	3.5 %	4.2 %	(0.9)%	5.5 %
Nondeductible expenses	(2.3)%	10.6 %	(0.8)%	0.5 %	(2.3)%	10.6 %
Research and development credits	- %	— %	— %	(0.3)%	— %	— %
Tax rate change and true-up	(1.5)%	0.8 %	(1.6)%	0.8 %	(1.5)%	0.8 %
Net operating loss				(0.6)%	—	—
Change in valuation allowance	(16.3)%	(37.9)%	(22.1)%	(25.6)%	(16.3)%	(37.9)%
Effective income tax rate	— %	— %	— %	— %	— %	— %

F-28 F-29

## Table of Contents

The tax effects of temporary differences that gave rise to significant portions of the deferred tax assets were as follows (in thousands):

	December 31,		December 31,	
	2022	2021	2023	2022
Deferred tax assets:				
Net operating loss carryforwards	\$ 76,013	\$ 72,620	\$ 82,179	\$ 76,013

Research and development credits	3,008	3,008	2,923	3,008
Share-based compensation	2,273	2,111	2,538	2,273
Accruals	1,379	786	1,161	1,379
Interest expense	3,807	3,308	4,451	3,807
<b>Lease Liability</b>	<b>929</b>	<b>1,024</b>		
<b>Lease liability</b>			<b>782</b>	<b>929</b>
Capitalized start-up costs	215	479	—	215
Capitalized R&D costs	2,165	—	3,790	2,165
Other temporary differences	1,000	1,050	1,032	1,000
Gross deferred tax assets	90,789	84,386	98,856	90,789
Less: Valuation allowance	(86,733)	(80,663)	(94,473)	(86,733)
<b>Total deferred tax assets</b>	<b>\$ 4,056</b>	<b>\$ 3,723</b>	<b>\$ 4,383</b>	<b>\$ 4,056</b>
 <b>Deferred tax liabilities:</b>				
Capitalized software	\$ (894)	\$ (753)	\$ (1,038)	\$ (894)
Right-of-use asset	(816)	(945)	(679)	(816)
Prepaid commission	(2,346)	(2,025)	(2,666)	(2,346)
<b>Gross deferred tax liabilities</b>	<b>\$ (4,056)</b>	<b>\$ (3,723)</b>	<b>\$ (4,383)</b>	<b>\$ (4,056)</b>
<b>Net deferred taxes</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>

In assessing the realizability of the net deferred tax asset, the Company considers all relevant positive and negative evidence in determining whether it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The realization of the gross deferred tax assets is dependent on several factors, including the generation of sufficient taxable income prior to the expiration of the net operating loss carryforwards. The Company believes that it is more likely than not that the Company's deferred income tax asset associated with its net operating losses will not be realized in the immediate future. As such, there is a full valuation allowance against the net deferred tax assets as of December 31, 2022 December 31, 2023 and 2021. The valuation allowance increased by \$6.1 million \$7.7 million and \$11.8 million \$6.1 million during the years ended December 31, 2022 December 31, 2023 and 2021, respectively, due primarily to the generation of net operating losses and the federal tax rate reduction during the periods. The changes in the valuation allowance were as follows (in thousands):

	Year ended December 31,		Year ended December 31,	
	2022	2021	2023	2022
Balance at the beginning of the year	\$ 80,663	\$ 68,856	\$ 86,733	\$ 80,663
Amounts charged to expense	6,070	11,807	7,739	6,070
<b>Balance at the end of the year</b>	<b>\$ 86,733</b>	<b>\$ 80,663</b>	<b>\$ 94,472</b>	<b>\$ 86,733</b>

The following table summarizes carryforwards of federal net operating losses and tax credits as of December 31, 2022 December 31, 2023 (in thousands):

	Expiration		Expiration	
	Amount	Beginning in	Amount	Beginning in
Federal net operating losses	\$ 312,721	2023	\$ 338,027	2024
State net operating losses	\$ 197,281	2023	\$ 217,071	2024
Research and development credits	\$ 3,008	2023	\$ 2,923	2024

Under the Tax Reform Act of 1986 (the "Act"), the net operating loss and tax credit carryforwards are subject to review and possible adjustment by the Internal Revenue Service and state tax authorities. Net operating

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## [Table of Contents](#)

loss and tax credit carryforwards may become subject to an annual limitation in the event of certain cumulative changes in the ownership interest of significant shareholders over a three-year period in excess of 50 percent, as defined under Sections 382 and 383 of the Internal Revenue Code, respectively, as well as similar state provisions. This could limit the amount of tax attributes that can be utilized annually to offset future taxable income or tax liabilities. The amount of the annual limitation is determined based on the value of the Company immediately prior to the ownership change. Subsequent ownership changes may further affect the limitation in future years. The Company has not done an analysis to determine whether or not ownership changes, as defined by the Act, have occurred since inception.

The Company will recognize interest and penalties related to uncertain tax positions in income tax expense. As of **December 31, 2022**, December 31, 2023, the Company had no accrued interest or penalties related to uncertain tax positions and no amounts have been recognized in the Company's **statements** **Statements** of **operations**. **Operations**. Due to net operating loss and tax credit carry forwards that remain unutilized, income tax returns for tax years from inception through **2021** **2022** remain subject to examination by the taxing jurisdictions.

## **18. COMMITMENTS AND CONTINGENCIES**

### **Executive Employment Agreements**

The Company has entered into an employment agreement and offer letters with certain key executives, providing for compensation and severance in certain circumstances, as defined in the agreements.

On November 2, 2023, the Company's board of directors directed the Company to: (A) amend its employment agreement with Keith J. Sullivan, the Company's President and Chief Executive Officer, to: (i) extend, from 18 months to 24 months, the duration of Mr. Sullivan's severance benefits if the Company terminates Mr. Sullivan's employment without cause, or if Mr. Sullivan resigns for good reason, within 12 months of a change in control; and (ii) reflect Mr. Sullivan's current annual base salary, as approved by the Company's board of directors via unanimous written consent on February 8, 2023, in lieu of the outdated annual base salary as reflected in such employment agreement prior to such amendment; and (B) take any other actions necessary to effectuate such amendments, which may include an amendment to any ancillary agreements by and between Mr. Sullivan and the Company regarding any such severance benefits.

### **Legal Matters**

The Company is subject from time to time to various claims and legal actions arising during the ordinary course of its business. Management believes that there are currently no claims or legal actions that would reasonably be expected to have a material adverse effect on the Company's results of operations, financial condition or cash flows.

## **19. DISTRIBUTION AGREEMENT WITH TEIJIN PHARMA LIMITED**

In October 2017, the Company entered into a **seven-and-a-half-year** distribution agreement with **Teijin Pharma Limited**, or Teijin for the exclusive distribution of its NeuroStar Advanced Therapy System to customers who will treat patients with MDD in Japan. Under the distribution agreement, Teijin is generally restricted from selling competing products in Japan. The distribution agreement provides that the Company will have primary responsibility for obtaining reimbursement approval for use of NeuroStar Advanced Therapy System for the treatment of MDD in Japan, and Teijin will promote the sales of NeuroStar Advanced Therapy System for treatment of MDD in Japan. The Company has agreed to provide sales and technical support training to Teijin for its NeuroStar Advanced Therapy Systems. Teijin is required to purchase minimum dollar values of NeuroStar Advanced Therapy Systems and treatment sessions from the Company.

In 2017, under the distribution agreement with Teijin, the Company received an upfront payment of \$0.75 million and a milestone payment of \$2.0 million following the Japanese Ministry of Health, Labour and Welfare's, or JMHLW, approval of marketing the NeuroStar Advanced Therapy System for the treatment of

F-31

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[Table of Contents](#)

MDD in Japan. In the second quarter of 2019, under the distribution agreement with Teijin, the Company earned a second milestone payment of \$0.7 million, following Japan's Central Social Insurance Medical Council (Chuikyo) approval of the recommendation by JMHLW's expert review panel to provide reimbursement for NeuroStar Advanced Therapy for the treatment of MDD in adults. The reimbursement went into effect on June 1, 2019 and covers patients who are treated in the largest inpatient and outpatient psychiatric facilities in Japan at the rate of JPY12,000 per treatment session. These upfront and subsequent milestone payments have been deferred and are being recognized as revenue over ~~the seven-and one-half year~~ term of the agreement.

F-30

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[Table of Contents](#)

In May 2019, the Company and Teijin entered into an amendment to the distribution agreement, which among other things finalized transfer prices, forecasting and minimum purchases, and made certain clarifications to the agreement.

The distribution agreement is scheduled to expire on ~~March 31, 2025~~ March 31, 2027, subject to earlier termination if the Company or Teijin breach the agreement, Teijin fails to maintain distributor-level permits and approvals, Teijin fails to purchase from the Company specified dollar values of its sales forecasts, reimbursement for treatment of MDD using the NeuroStar Advanced Therapy System is not obtained from JMHLW by specified dates or such reimbursement is below specified minimums, Teijin reasonably believes that it is not commercially reasonable to continue distributing the NeuroStar Advanced Therapy System in Japan or bankruptcy related events occur. The term of the distribution agreement will be automatically extended for two years unless either party gives the other party at least two years' prior written notice of non-renewal, except that the Company cannot decline to renew the agreement if Teijin has purchased 100% of its sales forecasts over the term of the agreement.

## 20. SEGMENT INFORMATION

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company currently operates in one business segment as it is managed and operated as one business. A single management team that reports to the chief operating decision maker comprehensively manages the entire business. The Company does not operate any material separate lines of business or separate business entities with respect to its products or product development.

## 21. SEVERANCE GOVERNMENT ASSISTANCE

On April 8, 2020 *Employee Retention Credit*

The Coronavirus Aid, Relief and Economic Security Act provided an Employee Retention Credit (the "ERC"), which was a refundable tax credit related to certain payroll taxes. The Company applied the Company took action to reduce expenses through a reduction in force ("RIF"). As part of this action grant model and determined that the Company terminated 95 employees who received separation benefits upon their termination. During the second quarter of 2020, the Company recorded a separation-related charge criteria for the RIF equal to the fair value recognition of the terminated employees benefits as of the communication date in the amount of \$2.1 million. This amount ERC was paid out met during the quarter with the final payoff occurring on June 15, 2020.

The Company entered into transition agreements outlining the separation with its former chief executive officer in March 2020, the vice president of medical operations in September 2020, and the chief commercial officer, vice president of commercial access and director of medical operations in December 2020, the VP of sales and five business development managers in January 2021, the director of strategic clinical development in February 2021, and the vice president of marketing in August 2021 and vice president of marketing in December 2022. In connection with these agreements, the Company recorded \$0.6 million and \$0.5 million of charges in salary, payroll tax and bonus expenses for the years ended December 31, 2022 and 2021, respectively. For the year ended December 31, 2022 December 31, 2023 based on the Company's determination of eligibility and 2021, \$0.5 million and \$1.3 million of termination benefits were paid associated with the termination filing of the employees and charged against this liability ERC claim. As of December 31, 2022 December 31, 2023, the \$2.9 million ERC receivable is reported within prepaid expenses and December 31, 2021, \$0.3 million and \$0.1 million, respectively, remain other current assets on the Company's Balance Sheet. The credit is reported within other income, net in accrued liabilities the Company's Statement of Operation for the unpaid portion of the separation benefits year ended December 31, 2023.

## 22. SUBSEQUENT EVENTS

As disclosed in "Note 12. Debt", the Company was not in compliance with its minimum net product revenue covenant for certain periods, including January 31, 2024 and February 29, 2024 under the Solar Facility. On March 7, 2024, the Company entered into the Solar Sixth Amendment.

F-31 F-32

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[Table of Contents](#)

Under the Solar Sixth Amendment, Solar (i) waived the specified events with respect to the Company's non-compliance with the required revenue under the net product revenue covenant and (ii) revised the required testing levels of the net product revenue and minimum liquidity covenants for certain future testing periods.

F-33

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[Table of Contents](#)

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### NEURONETICS, INC.

By: /s/ Keith J. Sullivan

**Keith J. Sullivan**

**President, Chief Executive Officer and Director**

Date: March 7, 2023 2024

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Keith J. Sullivan</u>	President, Chief Executive Officer and Director (Principal Executive Officer)	March 7, 2023 2024
<u>Keith J. Sullivan</u>		
<u>/s/ Stephen Furlong</u>	Executive VP, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	March 7, 2023 2024
<u>Stephen Furlong</u>		
<u>/s/ Robert Cascella</u>	Director	March 7, 2023 2024
<u>Robert Cascella</u>		
<u>/s/ John Bakewell</u>	Director	March 7, 2023 2024
<u>John Bakewell</u>		
<u>/s/ Sheryl Conley</u>	Director	March 7, 2023 2024
<u>Sheryl Conley</u>		
<u>/s/ Megan Rosengarten</u>	Director	March 7, 2023 2024
<u>Megan Rosengarten</u>		
<u>/s/ Wilfred Jaeger, M.D.</u>	Director	March 7, 2023 2024
<u>Wilfred Jaeger, M.D.</u>		
<u>/s/ Glenn Muir</u>	Director	March 7, 2023 2024
<u>Glenn Muir</u>		
<u>/s/ Joseph H. Capper</u>	Director	March 7, 2023 2024
<u>Joseph H. Capper</u>		

**CERTAIN INFORMATION IDENTIFIED WITH THE MARK “[\*\*]” HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE SUCH INFORMATION IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.**

#### SIXTH AMENDMENT TO THE LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (as the same may be amended, restated, modified, or supplemented from time to time, this “**Agreement**”) dated as of March 2, 2020 (the “**Effective Date**”) among Solar Capital Ltd., a Maryland corporation with an office located at 500 Park Avenue, 3rd Floor, New York, NY 10022 (“**Solar**”), as collateral agent (in such capacity, together with its successors and assigns in such capacity, “**Collateral Agent**”), and the lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including Solar in its capacity as a Lender (each a “**Lender**” and collectively, the “**Lenders**”), and Neuronetics, Inc., a Delaware corporation with offices located at 3222 Phoenixville Pike, Malvern, Pennsylvania (individually and collectively, jointly and severally, “**Borrower**”), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

#### **1. DEFINITIONS AND OTHER TERMS**

**1.1 Terms.** Capitalized terms used herein shall have the meanings set forth in Section 1.4 to the extent defined therein. All other capitalized terms used but not defined herein shall have the meaning given to such terms in the Code. Any accounting term used but not defined herein shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. If at any time any change in GAAP would affect the computation of any financial requirement set forth in any Loan Document, and either Borrower or the Collateral Agent shall so request, the Collateral Agent and Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP; provided, that, until so amended, such requirement shall continue to be computed in accordance with GAAP prior to such change therein. For the avoidance of doubt, leases shall be classified and accounted for on a basis consistent with GAAP as in effect on the Effective Date (which shall include FASB ASC 842) for all purposes of this agreement. The term “financial statements” shall include the accompanying notes and schedules.

**1.2 Section References.** Any section, subsection, schedule or exhibit references are to this Agreement unless otherwise specified.

**1.3 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.

**1.4 Definitions.** The following terms are defined in the Sections or subsections referenced opposite such terms:

“ <b>Agreement</b> ”	Preamble
“ <b>Approved Lender</b> ”	Section 12.1
“ <b>Borrower</b> ”	Preamble
“ <b>Claims</b> ”	Section 12.2
“ <b>Collateral Agent</b> ”	Preamble

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<b>"Collateral Agent Report"</b>	Exhibit B, Section 5
<b>"Communications"</b>	Section 10
<b>"Connection Income Taxes"</b>	Exhibit C, Section 1
<b>"Default Rate"</b>	Section 2.3(b)
<b>"Effective Date"</b>	Preamble
<b>"Event of Default"</b>	Section 8
<b>"Excluded Taxes"</b>	Exhibit C, Section 1
<b>"FATCA"</b>	Exhibit C, Section 1
<b>"Indemnified Person"</b>	Section 12.2
<b>"Indemnified Taxes"</b>	Exhibit C, Section 1
<b>"Lender" and "Lenders"</b>	Preamble
<b>"Lender Transfer"</b>	Section 12.1
<b>"New Subsidiary"</b>	Section 6.10
<b>"Non-Funding Lender"</b>	Exhibit B, Section 10(c)(ii)
<b>"Open Source Licenses"</b>	Section 5.2(f)
<b>"Other Connection Taxes"</b>	Exhibit C, Section 1
<b>"Other Lender"</b>	Exhibit B, Section 10(c)(ii)
<b>"Other Taxes"</b>	Exhibit C, Section 1
<b>"Perfection Certificate"</b> and <b>"Perfection Certificates"</b>	Section 5.1
<b>"Participant Register"</b>	Section 12.1
<b>"Recipient"</b>	Exhibit C, Section 1
<b>"Register"</b>	Section 12.1
<b>"Solar"</b>	Preamble
<b>"Term A Loan"</b>	Section 2.2(a)(i)
<b>"Term B Loan"</b>	Section 2.2(a)(ii)
<b>"Term C Loan"</b>	Section 2.2(a)(iii)
<b>"Term C Loan Funding Date"</b>	Section 3.4(a)
<b>"Termination Date"</b>	Exhibit B, Section 8
<b>"Term Loan"</b>	Section 2.2(a)(iii)
<b>"Transfer"</b>	Section 7.1
<b>"U.S. Tax Compliance Certificate"</b>	Exhibit C, Section 7(b)(ii)(C)
<b>"Withholding Agent"</b>	Exhibit C, Section 1

In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

**"Account"** is any "account" as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

**"Account Debtor"** is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made under the Code.

**"ACH Letter"** is ACH debit authorization in the form of [Exhibit I](#) hereto.

**"Affiliate"** of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

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**"Amortization Date"** is March 1, 2026.

**"Anti-Terrorism Laws"** are any laws, rules, regulations or orders relating to terrorism or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

**"Applicable Rate"** means the greater of (a) 3.95% and (b) SOFR for a term of one month, which determination by Collateral Agent shall be conclusive in the absence of manifest error.

**"Approved Fund"** is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

**"Blocked Person"** is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) a Person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

**"Borrower's Books"** are Borrower's or any of its Subsidiaries' books and records including ledgers, federal, state, local and foreign tax returns, records regarding Borrower's or its Subsidiaries' assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

**"Business Day"** is any day that is not a Saturday, Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

**"Cash Equivalents"** are (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 one (1) year from the date of acquisition and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (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) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent, and (d) any money market or similar funds that exclusively hold any of the foregoing.

**"Cash Reserve Account"** shall have the meaning given to it in the HCA Agreement.

**"Capital Lease"** means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a finance lease on the balance sheet of that Person.

**"Code"** is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code,

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the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**"Collateral"** is any and all properties, rights and assets of Borrower described on Exhibit A.

**"Collateral Account"** is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Subsidiary at any time.

**"Collateral Agent"** is Solar, not in its individual capacity, but solely in its capacity as collateral agent on behalf of and for the ratable benefit of the Secured Parties.

**"Commitment Percentage"** is, as to a Lender, the percentage set forth opposite such Lender's name in Schedule 1.1, as amended from time to time.

**"Commodity Account"** is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made under the Code.

**"Compliance Certificate"** is that certain certificate in substantially the form attached hereto as Exhibit E.

**"Contingent Obligation"** is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith in accordance with GAAP; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

**"Control Agreement"** is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower or such Subsidiary, as applicable, and Collateral Agent pursuant to which Collateral Agent, for the ratable benefit of the Secured Parties, obtains "control" (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

**"Copyrights"** are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

**"Deposit Account"** is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made under the Code.

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**“Designated Deposit Account”** is Borrower’s Deposit Account, account number **XXXXXX[\*\*\*]**, maintained at PNC Bank, National Association.

**“Dollars,” “dollars” and “\$”** each mean lawful money of the United States.

**“Eligible Assignee”** is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor’s Rating Group and a rating of Baa2 or higher from Moody’s Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of One Billion Dollars (\$1,000,000,000.00); provided that notwithstanding the foregoing, “Eligible Assignee” shall not include, unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower’s Affiliates or Subsidiaries, (ii) a then-current direct competitor of Borrower, as determined by Collateral Agent in its reasonable discretion, (iii) vulture funds or distressed debt funds, as determined by Collateral Agent in its reasonable discretion, and (iv) natural persons. Notwithstanding the foregoing, (x) in connection with any assignment by a Lender as a result of a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender’s own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; 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 Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

**“Equipment”** is all “equipment” as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

**“Equity Interests”** means, with respect to any Person, collectively, any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in such Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire (by purchase, conversion, dividend, distribution or otherwise) any of the foregoing (and all other rights, powers, privileges, interests, claims and other property in any manner arising therefrom or relating thereto).

**“ERISA”** is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

**“Excluded Accounts”** means (i) Deposit Accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of Borrower’s, or any Guarantor’s, employees and identified to Collateral Agent by Borrower as such in the Perfection Certificate, provided that the amount deposited therein shall not exceed the amount reasonably expected to be due and payable for the next two (2) succeeding pay periods and (ii) the Cash Reserve Account.

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**"Exigent Circumstance"** means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

**"Exit Fee Agreement"** is that certain Exit Fee Agreement, dated as of the Effective Date, as amended by the First Amendment to Exit Fee Agreement, dated as of the Fourth Amendment Effective Date, by and among Collateral Agent, as agent, Borrower and the Lenders, as amended, amended and restated, supplemented or otherwise modified from time to time.

**"FDA"** means the U.S. Food and Drug Administration or any successor thereto.

**"Fee Letter"** means that certain Fee Letter dated as of the Effective Date, between Borrower and Solar, as amended and restated as of the Fourth Amendment Effective Date and as may be further amended as amended, amended and restated, supplemented or otherwise modified from time to time.

**"Fifth Amendment"** means that certain Fifth Amendment to Loan and Security Agreement, dated as of the Fifth Amendment Effective Date, by and among Borrower, Collateral Agent and Lender.

**"Fifth Amendment Effective Date"** means September 29, 2023.

**"First Amendment"** means that certain First Amendment to Loan and Security Agreement, dated as of the First Amendment Effective Date, by and among Borrower, Collateral Agent and Lender.

**"First Amendment Effective Date"** means April 21, 2020.

**"Foreign Currency"** means lawful money of a country other than the United States.

**"Fourth Amendment"** means that certain Fourth Amendment to Loan and Security Agreement, dated as of the Fourth Amendment Effective Date, by and among Borrower, Collateral Agent and Lender.

**"Fourth Amendment Effective Date"** means March 29, 2023.

**"Fourth Amendment Exit Fee Agreement"** is that certain Fourth Amendment Exit Fee Agreement, dated as of the Fourth Amendment Effective Date, by and among Collateral Agent, as agent, Borrower and the Lenders, as amended, amended and restated, supplemented or otherwise modified from time to time.

**"Funding Date"** is any date on which a Term Loan is made to or on account of Borrower which shall be a Business Day.

**"GAAP"** is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination, applied consistently with Borrower's publicly filed financial statements.

**"General Intangibles"** are all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without

limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

**"Governmental Approval"** is 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"** is any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof (including the FDA) or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state or locality of the United States, the United States, or a foreign government.

**"Guarantor"** is any Person providing a Guaranty in favor of Collateral Agent for the benefit of the Secured Parties (including without limitation pursuant to Section 6.10).

**"Guaranty"** is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

**"HCA"** means Hitachi Capital America Corp., a Delaware corporation.

**"HCA Agreement"** means that certain that certain Vendor Program Agreement, dated as of March 27, 2020, by and between Borrower and HCA, as in effect on the First Amendment Effective Date.

**"Indebtedness"** is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, where such deferred purchase price becomes due and payable solely upon the passage of time or that has become due and payable and is not satisfied within 60 days thereafter; (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) Capital Lease obligations, (d) non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (e) equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (f) obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (g) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (h) all Indebtedness of others guaranteed by such Person, (i) off-balance sheet liabilities and/or pension plan or multiemployer plan liabilities of such Person, (j) obligations arising under non-compete agreements, and (k) Contingent Obligations. For the avoidance of doubt, "Indebtedness" shall not include leases supporting obligations related to the rental of real property and improvements thereon.

**"Insolvency Proceeding"** is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions or proceedings seeking reorganization, arrangement, or other relief.

**"Insolvent"** means not Solvent.

**"Intellectual Property"** means all of Borrower's or any of its Subsidiaries' right, title and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to Borrower;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**"Intellectual Property Security Agreement"** means that certain Intellectual Property Security Agreement dated as of the Effective Date between Borrower and Collateral Agent, as the same may from time to time be amended, restated, modified or otherwise supplemented.

**"Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended.

**"Inventory"** is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**"Investment"** is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

**"IRS"** means the United States Internal Revenue Service.

**"Key Person"** is each of Borrower's (i) President and Chief Executive Officer, who is Keith Sullivan as of the Fourth Amendment Effective Date and (ii) Chief Financial Officer, who is Steve Furlong as of the Fourth Amendment Effective Date.

**"Knowledge"** means the actual knowledge, after reasonable investigation, of the Responsible Officers.

**"Lender"** is any one of the Lenders.

**"Lenders"** are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

**"Lenders' Expenses"** are (a) all reasonable audit fees and expenses, costs, and expenses (including reasonable and invoiced out-of-pocket attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating and administering the Loan Documents, and (b) all fees and expenses (including reasonable and invoiced out-

of-pocket attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

**"Lien"** is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

**"Loan Documents"** are, collectively, this Agreement, the Fee Letter, the Fourth Amendment Exit Fee Agreement, each Control Agreement, the Exit Fee Agreement, the Intellectual Property Security Agreement, the Perfection Certificates, each Compliance Certificate, the ACH Letter, each Loan Payment Request Form, any Guarantees, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, any agreements creating or perfecting rights in the Collateral (including all insurance certificates and endorsements, landlord consents and bailee consents) and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent, as applicable, in connection with this Agreement; all as amended, restated, or otherwise modified.

**"Loan Payment Request Form"** is that certain form attached hereto as Exhibit D.

**"Loan Party"** means, individually, and **"Loan Parties"** means, collectively, Borrower and any Guarantors.

**"Loss Reserve"** shall have the meaning given to it in the HCA Agreement.

**"Material Adverse Change"** is (a) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower and its Subsidiaries, when taken as a whole; or (b) a material impairment of (i) the prospect of repayment of any portion of the Obligations, (ii) the legality, validity or enforceability of any Loan Document, (iii) the rights and remedies of Collateral Agent or Lenders under any Loan Document except as the result of the action or inaction of the Collateral Agent or Lenders or (iv) the validity, perfection or priority of any Lien in favor of Collateral Agent for the benefit of the Secured Parties on any of the Collateral except as the result of the action or inaction of the Collateral Agent or Lenders.

**"Material Agreement"** is any license, agreement or other contractual arrangement whereby Borrower or any of its Subsidiaries is reasonably likely to be required to transfer, either in-kind or in cash, prior to the Maturity Date, assets or property valued (book or market) at more than One Million Dollars (\$1,000,000.00) in the aggregate per year.

**"Maturity Date"** is, for each Term Loan, March 29, 2028.

**"Net Product Revenue"** means, with respect to Borrower and its Subsidiaries who are Guarantors (including Subsidiaries acquired by Borrower who become Guarantors in connection with a Permitted Investment), product revenue (determined under GAAP) of Borrower's and such Subsidiaries' sale (either directly or through a lease or distribution arrangement and solely to the extent reported as revenue on Borrower's consolidated financial statements) to non-Affiliates in the ordinary course of business of its products and related services directly sold in connection with such products, including, for the avoidance of doubt revenue in connection with NeuroStar® Advanced Therapy Systems and upgrades thereto, NeuroStar Treatment Sessions (whether on a "per click" or capitated basis), TrakStar Cloud and service contracts, but excluding, in each case, revenue (a) in connection with any one time or extraordinary transactions, (b) attributable to licensing, collaboration or similar arrangements (including for the avoidance

9

US-DOCS\149068676.3

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of doubt Permitted Licenses), (c) related to the sale of assets other than products in the ordinary course of business, (d) any revenue related to the leasing or distribution of products and services other than in each case

the sale of inventory and related services through leasing or distribution arrangements that would otherwise constitute ordinary course of business sales of such products and services, (e) from any royalty, collaboration, commission or similar arrangement, and (f) without duplication, any other transaction (unless specifically specified in this proviso) that would not be an arms-length sales transaction entered into in the ordinary course of business. For the avoidance of doubts, Transfers of products and services to HCA under the HCA Agreement are deemed to be a sale to a Non-Affiliate in the ordinary course of business.

**"Obligations"** are all of Borrower's obligations to pay when due any debts, principal, interest, Lenders' Expenses, the Prepayment Premium, all fees under the Fee Letter, the Exit Fee Agreement, and the Fourth Amendment Exit Fee Agreement, and any other amounts Borrower owes the Collateral Agent or the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents, or otherwise, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent in connection with this Agreement and the other Loan Documents, and the performance of Borrower's duties under the Loan Documents.

**"OFAC"** is the U.S. Department of Treasury Office of Foreign Assets Control.

**"OFAC Lists"** are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

**"Operating Documents"** are, for any Person, such Person's formation documents, as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Sixth Amendment Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

**"Patents"** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

**"Paycheck Protection Program"** means the Paycheck Protection Program established pursuant to Title I (Keeping American Workers Paid and Employed Act) of the Coronavirus Aid, Relief, and Economic Security Act enacted on March 27, 2020, as amended.

**"Payment Date"** is the first (1<sup>st</sup>) calendar day of each calendar month, commencing on April 1, 2020.

**"Permitted Indebtedness"** is:

- (a) Borrower's Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate;
- (c) Subordinated Debt;

10

US-DOCS\149068676.3

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- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness consisting of Capital Lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed One Hundred Thousand Dollars (\$100,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness by any Loan Party to any other Loan Party.

(g) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower's business;

(h) unsecured Indebtedness in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) at any time incurred under insurance premium financing in the ordinary course of business;

(i) Indebtedness in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) incurred under a standby letter of credit issued on Borrower's behalf in favor of Borrower's landlord;

(j) Indebtedness in connection with corporate credit cards, purchasing cards or bank card products in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) at any time; and

(k) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be.

(l) to the extent constituting Indebtedness, obligations to fund the Loss Reserve pursuant to the terms of the HCA Agreement;

(m) to the extent constituting Indebtedness, the indemnification and repurchase obligations of Borrower in favor of HCA pursuant to Section 11(a) of the HCA Agreement; and

(n) loans under Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) under the Paycheck Protection Program; provided that (i) such loans shall be unsecured and shall not contain any terms or conditions that are adverse to Collateral Agent's and the Lenders' rights hereunder, including with respect to collateral, priority, preference and repayment terms and (ii) any material modification to such loans adverse to the Collateral Agent or the Lenders shall be subject to Collateral Agent's written approval.

**"Permitted Investments"** are:

(a) Investments disclosed on the Perfection Certificate and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

11

US-DOCS\149068676.3

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(d) Investments consisting of Deposit Accounts in which Collateral Agent has a perfected Lien (subject to the terms of this Agreement) for the ratable benefit of the Secured Parties;

- (e) Investments in connection with Transfers permitted by Section 7.1;
- (f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's board of directors; not to exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate for (i) and (ii) in any fiscal year;
- (g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;
- (h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (h) shall not apply to Investments of Borrower in any Subsidiary;
- (i) non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support; provided that any cash Investments by Borrower do not exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any fiscal year;
- (j) Investments by any Loan Party in any other Loan Party;
- (k) repurchases of capital stock of former employees, directors, officers or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of any such repurchase and would not exist after giving effect to any such repurchase; provided that the aggregate amount of all such repurchases does not exceed Two Hundred Fifty Thousand Dollars (\$250,000) in any fiscal year;
- (l) Investments consisting of loans pursuant to one or more promissory notes to Greenbrook TMS Inc., an Ontario corporation (or a wholly-owned subsidiary thereof) in an aggregate original principal amount not to exceed Six Million Dollars (\$6,000,000); provided, that in connection with any such Investment, Collateral Agent shall have received possession of all original notes or other instruments evidencing such Investment, together with all allonges and any other documents reasonably requested by Collateral Agent; and
- (m) other Investments in an aggregate amount at any time not to exceed One Hundred Fifty Thousand Dollars (\$150,000).

**"Permitted Licenses"** are (A) licenses of over-the-counter software that is commercially available to the public, and (B) non-exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (B), the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property, and (C) exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in this clause (C), the license (i) constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any

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Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property, (ii) is limited in territory with respect to a specific geographic country or region (i.e. Japan, Germany, northern China) outside of

the United States, and (iii) if requested by Collateral Agent, Borrower has used commercially reasonable efforts to obtain the consent and acknowledgement of the counterparty to such license for the collateral assignment of such license to the Collateral Agent for the benefit of the Lenders.

**"Permitted Liens"** are:

- (a) Liens existing on the Effective Date and disclosed on the Perfection Certificate or arising under this Agreement and the other Loan Documents;
- (b) Liens for Taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith by appropriate proceedings diligently conducted and for which Borrower maintains adequate reserves on Borrower's Books in accordance with GAAP, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code and the Treasury Regulations adopted thereunder;
- (c) Liens securing Indebtedness permitted under clause (e) of the definition of "Permitted Indebtedness," provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;
- (d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;
- (e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);
- (f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;
- (g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;
- (h) banker's liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6(a) hereof;

13

US-DOCS149068676.3

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- (i) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(j) deposits with landlords to secure performance of lease obligations, or to secure letters of credit in favor of landlords, not exceeding Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate at any given time; and

(k) Permitted Licenses.

(l) to the extent constituting a Lien, the interests granted by Borrower to HCA in the Cash Reserve Account pursuant to HCA Agreement.

**"Permitted Transfers"** means:

(a) Transfers of Inventory in the ordinary course of business;

(b) Transfers of surplus, damaged, worn out or obsolete equipment that is, in the reasonable judgment of Borrower exercised in good faith, no longer economically practicable to maintain or useful in the ordinary course of business consistent with past practice, and Transfers of other properties or assets in lieu of any pending or threatened institution of any proceedings for the condemnation or seizure of such properties or assets or for the exercise of any right of eminent domain;

(c) to the extent constituting Transfers Permitted Liens, Permitted Indebtedness or Permitted Investments;

(d) Transfers of cash and Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;

(e) Transfers between or among Loan Parties, provided that, with respect to any properties or assets constituting Collateral under the Loan Documents, any and all steps as may be required to be taken in order to create and maintain a first priority security interest in and Lien upon such properties and assets in favor and for the benefit of Collateral Agent and the other Secured Parties are taken contemporaneously with the completion of any such transfer;

(f) the sale or issuance of Equity Interests of any Subsidiary of Borrower to any Loan Party or Subsidiary that does not violate Section 7.2 or any other term herein or in any Loan Document, provided, that any such sale or issuance by a Loan Party shall be to another Loan Party;

(g) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Intellectual Property that Borrower reasonably determines in good faith (i) is no longer economically practicable to maintain or useful in the ordinary course of business consistent with past practice and that (ii) would not reasonably be expected to be adverse to the rights, remedies and benefits available to, or conferred upon, Collateral Agent and Lenders under any Loan Document in any material respect; and

(h) other Transfers of assets (other than Intellectual Property) not to exceed One Hundred Fifty Thousand Dollars (\$150,000) in the aggregate.

(i) Transfers of Inventory to HCA pursuant to the HCA Agreement; and

(j) Transfers of Cash to fund the Cash Reserve Account pursuant to the terms of the HCA Agreement.

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**"Person"** is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

**"Prepayment Premium"** is, with respect to any Term Loan subject to prepayment, refinancing, substitution or replacement prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise (including, but not limited to, upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), an additional fee payable to the Lenders in amount equal to:

- (a) for a prepayment, refinancing, substitution or replacement made on or after the Term C Loan Funding Date through and including the first anniversary of the Term C Loan Funding Date, three percent (3.00%) of the principal amount of such Term Loan prepaid;
- (b) for a prepayment, refinancing, substitution or replacement made after the date which is after the first anniversary of the Term C Loan Funding Date through and including the second anniversary of the Term C Loan Funding Date, two percent (2.00%) of the principal amount of the Term Loans prepaid; and
- (c) for a prepayment, refinancing, substitution or replacement made after the date which is after the second anniversary of the Term C Loan Funding Date and prior to the Maturity Date, one percent (1.00%) of the principal amount of the Term Loans prepaid.

Notwithstanding the foregoing, Solar agrees to waive the Prepayment Premium if Solar or any Affiliate of Solar (in their sole and absolute discretion) agree in writing to refinance the Term Loans prior to the Maturity Date.

**"Product Revenue Milestone"** is the achievement, on or prior to May 20, 2021, of Net Product Revenue greater than or equal to [\*\*\*], calculated on a trailing twelve-month basis, subject to verification (including supporting documents) reasonably satisfactory to Collateral Agent.

**"Property"** means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

**"Pro Rata Share"** is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

**"Qualified Cash"** means the amount of Borrower's cash and Cash Equivalents held in accounts subject to a Control Agreement in favor of Collateral Agent.

**"Qualified Cash A/P Amount"** means the amount of Borrower's accounts payable that have not been paid within ninety (90) days from the invoice date of the relevant account payable (other than accounts that are subject to good faith disputes as permitted herein and for which Borrower maintains adequate reserves in accordance with GAAP).

**"Registered Organization"** is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made under the Code.

**"Registration"** means any registration, authorization, approval, license, permit, clearance, certificate, and exemption issued or allowed by the FDA or state pharmacy licensing authorities (including,

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without limitation, new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, device pre-market approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals, registrations and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, and wholesale distributor permits).

**"Regulatory Action"** means an administrative, regulatory, or judicial enforcement action, proceeding, investigation or inspection, FDA Form 483 notice of inspectional observation, warning letter, untitled letter, other notice of violation letter, recall, seizure, Section 305 notice or other similar written communication, injunction or consent decree, issued by the FDA or a federal or state court.

**"Related Persons"** means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

**"Relevant Governmental Body"** means the Federal Reserve Board, the Federal Reserve Bank of New York, and/or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York, or any successor thereto.

**"Required Lenders"** means (i) for so long as all of the Persons that are Lenders on the Sixth Amendment Effective Date (each an **"Original Lender"**) have not assigned or transferred any of their interests in their Term Loan other than to an Affiliate of such Lender, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding at least sixty six percent (66%) of the aggregate outstanding principal balance of the Term Loan and, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its Term Loan, (B) each assignee or transferee of an Original Lender's interest in the Term Loan, but only to the extent that such assignee or transferee is an Affiliate or Approved Fund of such Original Lender, and (C) any Person providing financing to any Person described in clauses (A) and (B) above; provided, however, that this clause (C) shall only apply upon the occurrence of a default, event of default or similar occurrence with respect to such financing.

**"Requirement of Law"** is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**"Responsible Officer"** is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

**"Second Amendment Effective Date"** shall mean December 2, 2020

**"Second Draw Conditions"** are satisfaction of each of the following: (a) no Event of Default has occurred and (b) Borrower has achieved the Product Revenue Milestone.

**"Second Draw Period"** is the period commencing on the date occurring on or after the Second Amendment Effective Date in which Borrower satisfies the Second Draw Conditions and ending on the earlier of (a) June 20, 2021, and (b) the occurrence of an Event of Default.

**"Secured Parties"** means the Collateral Agent and the Lenders.

16

US-DOCS\149068676.3

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**"Securities Account"** is any "securities account" as defined in the Code with such additions to such term as may hereafter be made under the Code.

**"Sixth Amendment"** means that certain Sixth Amendment and Waiver to Loan and Security Agreement, dated as of the Sixth Amendment Effective Date, by and among Borrower, Collateral Agent and Lender.

**"Sixth Amendment Effective Date"** means March 7, 2024.

**"SOFR"** means the daily Secured Overnight Financing Rate provided by the Federal Reserve Bank of New York as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's Website.

**"Solvent"** means, with respect to any Person, that (a) the fair salable value of such Person's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person's liabilities, (b) such Person is not left with unreasonably small capital giving effect to the transactions contemplated by this Agreement and the other Loan Documents, and (c) such Person is able to pay its debts (including trade debts) as they mature in the ordinary course (without taking into account any forbearance and extensions related thereto).

**"Subordinated Debt"** is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent and the Required Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Required Lenders.

**"Subsidiary"** is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other Equity Interests is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

**"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.

**"Term Loan Commitment"** is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown opposite such Lender's name on Schedule 1.1.

**"Third Amendment"** means that certain Third Amendment to Loan and Security Agreement, dated as of the Third Amendment Effective Date, by and among the Borrower, Collateral Agent and Lender.

**"Third Amendment Effective Date"** means February 15, 2022.

**"Third Amendment Specified Default"** means the Specified Default (as defined in the Third Amendment).

**"Trademarks"** means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower and each of its Subsidiaries connected with and symbolized by such trademarks.

**"Unqualified Opinion"** means an opinion on financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion which opinion shall not include any qualifications or any going concern limitations.

17

US-DOCS\149068676.3

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## 2. LOANS AND TERMS OF PAYMENT

**2.1 Promise to Pay.** Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

**2.2 Term Loans.**

(a) **Availability.** (i) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Effective Date in an aggregate principal amount of Thirty Five Million Dollars (\$35,000,000.00) according to each Lender's Term A Loan Commitment as set forth opposite such Lender's name on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "Term A Loan", and collectively as the "Term A Loans"). After repayment, no Term A Loan may be re-borrowed.

(ii) Subject to the terms and conditions of this Agreement and the Fourth Amendment, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Fourth Amendment Effective Date in an aggregate principal amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) according to each Lender's Term B Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "Term B Loan" and collectively as the "Term B Loans"). After repayment, no Term B Loan may be re-borrowed.

(iii) Subject to the terms and conditions of this Agreement and the Fifth Amendment, the Lenders agree, severally and not jointly, after the Fifth Amendment Effective Date, so long as requested by the Borrower to be funded on or prior to October 6, 2023, to make term loans to Borrower in an aggregate principal amount of up to Twenty Two Million Five Hundred Thousand Dollars (\$22,500,000) (such term loans are hereinafter referred to singly as a "Term C Loan" and collectively as the "Term C Loans"; each of the Term A Loans, the Term B Loans and the Term C Loans are hereinafter referred to collectively as the "Term Loans"). After repayment, no Term C Loan may be re-borrowed.

(b) **Repayment.** Borrower shall make monthly payments of interest only commencing on the first (1<sup>st</sup>) Payment Date following the Funding Date of each Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of each Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of such Term Loan and the first Payment Date after such Funding Date. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall (i) make monthly payments of interest, to each Lender in accordance with its Pro Rata Share, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon the effective rate of interest applicable to the Term Loan, as determined in Section 2.3(a) plus (ii) make consecutive equal monthly payments of principal to each Lender in accordance with its Pro Rata Share, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (A) the respective principal amounts of such Lender's Term Loans outstanding, and (B) a repayment schedule equal to the number of months remaining from the Amortization Date until the Maturity Date. All unpaid principal and accrued and unpaid interest with respect to each such Term Loan is due and payable in full on the Maturity Date. The Term Loans may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) **Mandatory Prepayments.** If the Term Loans are accelerated (including, but not limited to, upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term

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Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) any fees payable under the Fee Letter by reason of such prepayment, (iii) the Prepayment Premium, plus (iv) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if any fees payable under the Fee Letter by reason of such prepayments had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to each Lender in accordance with the terms of the Fee

Letter. The Prepayment Premium shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. EACH BORROWER AND GUARANTOR EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION.

(d) **Permitted Prepayment of Term Loans.** Borrower shall have the option to prepay all, but not less than all of the outstanding principal balance of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least five (5) Business Days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) the outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) any fees payable under the Fourth Amendment Exit Fee Letter or under Section 2.4 hereof by reason of such prepayment, (C) the Prepayment Premium, plus (D) all other Obligations that are due and payable on such prepayment date, including any Lenders' Expenses and interest at the Default Rate (if any) with respect to any past due amounts.

### 2.3 **Payment of Interest on the Term Loans.**

(a) **Interest Rate.** Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a floating per annum rate equal to the Applicable Rate in effect from time to time plus 5.65%, which aggregate interest rate shall be determined by Collateral Agent on the third Business Day prior to the Funding Date of the applicable Term Loan and on the date occurring on the first Business Day of the month prior to each Payment Date occurring thereafter, which interest shall be payable monthly in arrears in accordance with Sections 2.2(b) and 2.3(e). Except as set forth in Section 2.2(b), such interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full (or any payment is made hereunder).

(b) **Default Rate.** Immediately upon the occurrence and during the continuance of an Event of Default, all Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the "Default Rate"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) **360-Day Year.** Interest shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

(d) **Debit of Accounts.** Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off.

19  
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(e) **Payments.** Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Person's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 2:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a

payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. Collateral Agent may at its discretion and with prior notice of at least one (1) Business Day, initiate debit entries to the Borrower's account as authorized on the ACH Letter (i) on each payment date of all Obligations then due and owing, (ii) at any time any payment due and owing with respect to Lender Expenses, and (iii) upon an Event of Default, any other Obligations outstanding.

**2.4 Fees.** Borrower shall pay to Collateral Agent and/or Lenders (as applicable) the following fees, which shall be deemed fully earned and non-refundable upon payment:

(a) **Fee Letter.** When due and payable under the terms of the Fee Letter, to Collateral Agent and each Lender, as applicable, the fees set forth in the Fee Letter.

(b) **Prepayment Premium.** The Prepayment Premium, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares. Borrower expressly agrees (to the fullest extent that each may lawfully do so) that: (i) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (ii) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (iii) there has been a course of conduct between Collateral Agent, Lenders and Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Premium and (iv) Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph. Borrower expressly acknowledges that its agreement to pay the Prepayment Premium to Lenders as herein described is a material inducement to Lenders to provide the Term Loan Commitments and make the Term Loans.

(c) **Lenders' Expenses.** All Lenders' Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

**2.5 Taxes; Increased Costs.** Borrower, Collateral Agent and the Lenders each hereby agree to the terms and conditions set forth on Exhibit C attached hereto.

### 3. CONDITIONS OF LOANS

**3.1 Conditions Precedent to Initial Term Loan.** Each Lender's obligation to make a Term A Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

(a) copies of the Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable, with originals to promptly follow;

(b) a completed Perfection Certificate for Borrower and each of its Subsidiaries;

20

US-DOCS\149068676.3

(c) a duly executed Fee Letter;

(d) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of

organization or formation and each jurisdiction in which Borrower and each Subsidiary is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;

(e) a certificate of Borrower and each Guarantor in form and substance reasonably satisfactory to the Collateral Agent executed by the Secretary (or similar officer) of Borrower with appropriate insertions and attachments, including with respect to (i) the Operating Documents of Borrower and each Guarantor (which Certificate of Incorporation of Borrower and each Guarantor shall be certified by the Secretary of State of the State of such entity's jurisdiction of formation) and (ii) the resolutions adopted by Borrower's and each Guarantor's board of directors or a committee thereof for the purpose of approving the transactions contemplated by the Loan Documents;

(f) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Term Loan, will be terminated or released;

(g) a duly executed legal opinion of counsel to Borrower and each Guarantor dated as of the Effective Date;

(h) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect;

(i) a payoff letter in form and substance satisfactory to Agent and the Lenders evidencing the repayment in full and release of liens with respect to Borrower's existing Indebtedness;

(j) no later than five (5) days prior to the Effective Date, projections of Borrower's Net Product Revenue for 2020, 2021 and 2022 in form and substance acceptable to Collateral Agent; and

(k) payment of the fees payable under the terms of the Fee Letter and Lenders' Expenses then due as specified in Section 2.4 hereof.

**3.2 Conditions Precedent to all Term Loans.** The obligation of each Lender to extend each Term Loan, including the initial Term Loan, is subject to the following conditions precedent:

(a) receipt by Collateral Agent of an executed Loan Payment Request Form in the form of Exhibit D attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the Funding Date of each Term Loan; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the funding of such Term Loan;

(c) there has not been any Material Adverse Change;

21

US-DOCSI149068676.3

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(d) no Event of Default or an event that with the passage of time could result in an Event of Default, shall exist; and

(e) payment of the fees and Lenders' Expenses then due as specified in Section 2.4 hereof.

**3.3 Conditions Precedent to Term B Loans.** The obligation of each Lender to extend the Term B Loan is subject to the following conditions precedent:

- (a) a duly executed Fourth Amendment by Borrower and each Subsidiary, with original signature pages thereto to promptly follow;
- (b) a duly executed Amended and Restated Fee Letter;
- (c) an updated Perfection Certificate for Borrower and each of its Subsidiaries;
- (d) a duly executed Fourth Amendment Exit Fee Agreement;
- (e) a duly executed First Amendment to Exit Fee Agreement;
- (f) a duly executed, updated Intellectual Property Security Agreement by Borrower and each applicable Guarantor;
- (g) [reserved];
- (h) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of organization or formation and each jurisdiction in which Borrower and each Subsidiary is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Fourth Amendment Effective Date;
- (i) a certificate of Borrower and each Guarantor in form and substance reasonably satisfactory to the Collateral Agent executed by the Secretary (or similar officer) of Borrower with appropriate insertions and attachments, including with respect to (i) the Operating Documents of Borrower and each Guarantor (which Certificate of Incorporation of Borrower and each Guarantor shall be certified by the Secretary of State of the State of such entity's jurisdiction of formation) and (ii) the resolutions adopted by Borrower's and each Guarantor's board of directors or a committee thereof for the purpose of approving the transactions contemplated by the Fourth Amendment;
- (j) certified copies, dated as of date no earlier than thirty (30) days prior to the Fourth Amendment Effective Date, of financing statement searches, as Collateral Agent shall request;
- (k) a duly executed legal opinion of counsel to Borrower and each Guarantor dated as of the Fourth Amendment Effective Date; and
- (l) payment of the fees and Lenders' Expenses then due as specified in Section 3 of the Fourth Amendment.

**3.4 Conditions Precedent to Term C Loans.** The obligation of each Lender to extend the Term C Loan is subject to the following conditions precedent:

22

US-DOCS\149068676.3

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- (a) receipt by Collateral Agent of an executed Loan Payment Request Form in the form of Exhibit D attached hereto, at least two (2) Business Days prior to the requested funding date of Term C Loans (such date, the "Term C Loan Funding Date");
- (b) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of organization or formation and each jurisdiction in which Borrower and each Subsidiary is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Term C Loan Funding Date; and

(c) payment of the fees and Lenders' Expenses then due in accordance with Section 2.4 hereof.

**3.5 Covenant to Deliver.** Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to funding any Term Loan. Borrower expressly agrees that a Term Loan made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Term Loan in the absence of a required item shall be made in each Lender's sole discretion.

**3.6 Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan (other than the Term Loan funded on the Effective Date), Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon New York City time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to Collateral Agent by electronic mail or facsimile a completed Loan Payment Request Form executed by a Responsible Officer or his or her designee. The Collateral Agent may rely on any telephone notice given by a person whom Collateral Agent reasonably believes is a Responsible Officer or designee. On the Funding Date related to any Term Loan, each Lender shall credit and/or transfer (as applicable) to the Designated Deposit Account, an amount equal to its Term Loan Commitment in respect of such Term Loan.

**3.7 Post-Closing Obligations.** Notwithstanding any provision herein or in any other Loan Document to the contrary, to the extent not actually delivered on or prior to the Effective Date, Borrower will, and will cause of its applicable Subsidiaries to:

(a) deliver to Collateral Agent duly executed Control Agreements with respect to any Collateral Accounts maintained by Borrower or any of its Subsidiaries no later than two (2) Business Days after the Effective Date;

(b) deliver to Collateral Agent a landlord's consent executed in favor of Collateral Agent in respect of all of Borrower's and each Subsidiaries' leased locations no later than thirty (30) days after the Effective Date (or such later date as Collateral Agent may agree, in each case, not to exceed sixty (60) days thereafter);

(c) deliver a bailee waiver executed in favor of Collateral Agent in respect of each third party bailee where Borrower or any Subsidiary maintains Collateral having a book value in excess of One Hundred Thousand Dollars (\$100,000.00) no later than thirty (30) days after the Effective Date (or such later date as Collateral Agent may agree, in each case, not to exceed sixty (60) days thereafter); and

23  
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(d) with respect to the insurance policies required by Section 6.5 hereof, deliver to Collateral Agent appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Secured Parties.

(e) deliver to Collateral Agent (i) duly executed Control Agreements with respect to any Collateral Accounts maintained by Borrower or any of its Subsidiaries, (ii) an ACH Letter, each by no later than ten (10) Business Days after the Fourth Amendment Effective Date, and (iii) duly executed Control Agreement with respect to any Collateral Accounts maintained by Borrower or any of its Subsidiaries as disclosed on the Perfection Certificate delivered to Collateral Agent on the Fifth Amendment Effective Date, no later than five (5) Business Days after the Fifth Amendment Effective Date.

#### 4. CREATION OF SECURITY INTEREST

**4.1     Grant of Security Interest.** Borrower hereby grants Collateral Agent, for the ratable benefit of the Secured Parties, to secure the payment and performance in full of all of the Obligations, a continuing first priority security interest in, and pledges to Collateral Agent, for the ratable benefit of the Secured Parties, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products and supporting obligations (as defined in the Code) in respect thereof. If Borrower shall acquire any commercial tort claim (as defined in the Code), Borrower shall grant to Collateral Agent, for the ratable benefit of the Secured Parties, a first priority security interest therein and in the proceeds and products and supporting obligations (as defined in the Code) thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to extend Term Loans has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower.

**4.2     Authorization to File Financing Statements.** Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral (held for the ratable benefit of the Secured Parties), without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents.

## 5.     REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

**5.1     Due Organization, Authorization: Power and Authority.** Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be so qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate and any updates or supplements thereto on, before or after the Effective Date (each a "Perfection Certificate" and collectively, the "Perfection Certificates"). Borrower represents and warrants that all the information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries is accurate and complete.

24

US-DOCS\149068676.3

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The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is, or they are, a party have been duly authorized, and do not (i) conflict with any of Borrower's or such Subsidiaries' organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any material agreement by which Borrower, any of its Subsidiaries or any of their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any agreement to

which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

**5.2 Collateral.**

(a) Borrower and each of its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith in respect of which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein as required under this Agreement. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) The security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that, under applicable law, have priority over Collateral Agent's Lien.

(c) On the Fourth Amendment Effective Date, and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee, and (ii) no such third party bailee possesses components of the Collateral in excess of One Hundred Thousand Dollars (\$100,000.00).

(d) All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects.

(e) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens. Except as noted on the Perfection Certificate (which, upon the consummation of a transaction not prohibited by this Agreement, may be updated to reflect such transaction), neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any Material Agreement.

(f) None of Borrower or any of its Subsidiaries has used any software or other materials that are subject to an open-source or similar license (including the General Public License, Lesser General Public License, Mozilla Public License, or Afferro License) (collectively, "Open Source Licenses") in a manner that would cause any software or other materials owned by any Borrower or used in any Borrower products to have to be (i) distributed to third parties at no charge or a minimal charge, (ii) licensed to third parties for the purpose of creating modifications or derivative works, or (iii) subject to the terms of such Open Source License.

25

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**5.3 Litigation.** Except as disclosed on the Perfection Certificate, there are no actions, suits, investigations, or proceedings pending or, to the Borrower's Knowledge, threatened in writing by or against Borrower or any of its Subsidiaries involving more than One Hundred Fifty Thousand Dollars (\$150,000.00).

**5.4 No Material Adverse Change; Financial Statements.** All consolidated financial statements for Borrower and its consolidated Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, and in all material respects the consolidated financial condition of Borrower and its consolidated Subsidiaries, and the consolidated results of operations of Borrower and its consolidated Subsidiaries. Since December 31, 2018, there has not been a Material Adverse Change.

**5.5 Solvency.** Borrower is Solvent. Borrower and each of its Subsidiaries, when taken as a whole, are Solvent.

**5.6 Regulatory Compliance.** Neither Borrower nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower's nor any of its Subsidiaries' properties or assets has been used by Borrower or such Subsidiary or, to Borrower's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or any of Borrower's or its Subsidiaries' Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the Knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

**5.7 Investments.** Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions.** Borrower and each of its Subsidiaries have timely filed all required tax returns and reports, and Borrower and each of its Subsidiaries have timely paid all foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries in an amount greater than Ten Thousand Dollars (\$10,000), in all jurisdictions in which Borrower or any such Subsidiary is subject to Taxes, including the United States, unless such Taxes are being contested in accordance with the next sentence. Borrower and each of its Subsidiaries may defer payment of any contested Taxes, provided that Borrower or such Subsidiary, (a) in

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good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted; (b) notifies Collateral Agent of the commencement of, and any material development in, the proceeding; and (c) maintains adequate reserves or other appropriate provisions on its books in accordance with GAAP, provided, further, that such action would not involve, in the reasonable judgment of Collateral Agent, any risk of the sale, forfeiture or loss of any material portion of the Collateral. Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower's or such Subsidiary's prior Tax years which could result in additional Taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries

has withdrawn from participation in, has permitted partial or complete termination of, or has permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**5.9 Use of Proceeds.** Borrower shall use the proceeds of the Term Loans to repay all outstanding obligations under Borrower's existing debt facility with Oxford Finance LLC, as working capital and to fund its general business requirements and other general corporate purposes and to pay any fees and expenses relating to this Agreement and the transactions contemplated hereby, and not for personal, family, household or agricultural purposes.

**5.10 Full Disclosure.** No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement, when taken as a whole, given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

## 6. AFFIRMATIVE COVENANTS

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

### 6.1 Government Compliance.

(a) Other than specifically permitted hereunder, maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Secured Parties, in all of the Collateral.

### 6.2 Financial Statements, Reports, Certificates; Notices.

(a) Deliver to Collateral Agent:

27

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(i) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and, if prepared by Borrower or if reasonably requested by the Lenders, consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its consolidated Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to the Collateral Agent;

(ii) as soon as available, but no later than forty-five (45) days after the last day of each of the first three (3) of Borrower's fiscal quarters, a company prepared consolidated and, if prepared by Borrower or if reasonably requested by the Lenders, consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its consolidated Subsidiaries for such fiscal quarter

certified by a Responsible Officer (provided, however, that such certification by a Responsible Officer of Borrower shall be deemed to have made if a similar certification is required under the Sarbanes-Oxley Act of 2002 and such certification shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC) and in a form reasonably acceptable to the Collateral Agent).

(iii) as soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year or within five (5) days of filing of the same with the SEC, audited consolidated financial statements covering the consolidated operations of Borrower and its consolidated Subsidiaries for such fiscal year, prepared under GAAP, consistently applied, together with an Unqualified Opinion on the financial statements;

(iv) as soon as available after approval thereof by Borrower's board of directors, but no later than the earlier of (x) ten (10) days' after such approval and (y) sixty days after the start of the then-current calendar year, Borrower's annual financial projections for the entire then-next or current, as applicable, fiscal year as approved by Borrower's board of directors; provided that, any revisions to such projections approved by Borrower's board of directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) days after such approval;

(v) within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission;

(vi) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by Borrower or its Subsidiaries, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s);

(vii) prompt delivery of (and in any event within five (5) days after the same are sent or received) copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to result in a Material Adverse Change;

(viii) prompt notice of any event that (A) could reasonably be expected to materially and adversely affect the value of the Intellectual Property or (B) could reasonably be expected to result in a Material Adverse Change;

(ix) written notice delivered at least ten (10) days' prior to Borrower's creation of a New Subsidiary in accordance with the terms of Section 6.10;

(x) written notice delivered at least ten (10) days' prior to Borrower's (A) adding any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Thousand Dollars (\$200,000.00) in assets or property of Borrower or any of its Subsidiaries) (it being understood that this clause shall not apply to assets or property in transit), (B)

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changing its respective jurisdiction of organization, (C) changing its organizational structure or type, (D) changing its respective legal name, or (E) changing any organizational number(s) (if any) assigned by its respective jurisdiction of organization;

(xi) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, prompt (and in any event within three (3) Business Days) written notice of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of

time, or both, would constitute an Event of Default, and Borrower's proposal regarding how to cure such Event of Default or event;

(xii) immediate notice if Borrower or such Subsidiary has Knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering;

(xiii) notice of any commercial tort claim (as defined in the Code) or letter of credit rights (as defined in the Code) held by Borrower or any Guarantor, in each case in an amount greater than One Hundred Thousand Dollars (\$100,000.00) and of the general details thereof;

(xiv) if Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, written notice of such occurrence and information regarding such Person's organizational identification number within ten (10) days of receiving such organizational identification number;

(xv) prompt notice of the execution of any Material Agreement or any amendment to, modification of, termination of or waiver under any Material Agreement; and

(xvi) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, the financial statements or other reports required to be delivered pursuant to clauses (ii), (iii) and (iv) above may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a) (i) above for each March, June, September and December, but no later than thirty (30) days after the last day of each such month, deliver to each Lender (x) an updated Perfection Certificate to reflect any amendments, modifications and updates, if any, to certain information in the Perfection Certificate after the Effective Date to the extent such amendments, modifications and updates are permitted by one or more specific provisions in this agreement or (y) a certificate of a Responsible Officer certifying that there has been no change in such information from the most recent Perfection Certificate delivered to Collateral Agent.

(c) Concurrently with the delivery of the financial statements specified in Section 6.2(a) (i) above but no later than thirty (30) days after the last day of each month, deliver to each Lender:

(i) a duly completed Compliance Certificate signed by a Responsible Officer;

(ii) copies of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries;

29

US-DOCS\149068676.3

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(iii) written notice of the commencement of, and any material development in, the proceedings contemplated by Section 5.8 hereof;

(iv) prompt written notice of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of One Hundred Fifty Thousand Dollars (\$150,000.00); and

(v) written notice of all returns, recoveries, disputes and claims regarding Inventory that involve more than One Hundred Thousand Dollars (\$100,000.00) individually or in the aggregate in any calendar year.

(d) Keep proper, complete and true books of record and account in accordance with GAAP in all material respects. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than once every year unless (and more frequently if) an Event of Default has occurred and is continuing.

**6.3 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, as applicable, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as they exist as of the Effective Date.

**6.4 Taxes; Pensions.** Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports, and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except as otherwise permitted pursuant to the terms of Section 5.8 hereof; deliver to Lenders, on demand, appropriate certificates attesting to such payments; and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

**6.5 Insurance.** Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and shall waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent (for the ratable benefit of the Secured Parties), as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent thirty (30) days prior written notice (or ten (10) days prior written notice for non-payment) before any such policy or policies shall be cancelled. At Collateral Agent's request, Borrower shall deliver to the Collateral Agent certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Secured Parties, on account of the then-outstanding Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy within one hundred eighty (180) days of receipt thereof up to Five Hundred Thousand Dollars (\$500,000.00) with respect to any loss, but not exceeding Five Hundred Thousand Dollars (\$500,000.00), in the aggregate for

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all losses under all casualty policies in any one year, toward the replacement promptly or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make (but has no obligation to do so), at

Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

#### **6.6      Operating Accounts.**

(a) From and after the date that is two (2) Business Days after the Effective Date, maintain Borrower's and Guarantors' Collateral Accounts with depository institutions that have agreed to execute Control Agreements in favor of Collateral Agent with respect to such Collateral Accounts; provided, that with respect to Borrower's Collateral Accounts maintained with PNC Bank, National Association, the aggregate amount of all cash or Cash Equivalents in all such Collateral Accounts, in the aggregate, shall not exceed Five Million Dollars (\$5,000,000) until the date on which Borrower has delivered such Control Agreements in favor of Collateral Agent with respect to such Collateral Accounts. The provisions of the previous sentence shall not apply to Deposit Accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any Guarantor's, employees, in an aggregate amount not to exceed One Hundred Thousand Dollars \$100,000 and as identified to Collateral Agent by Borrower as such in the Perfection Certificate.

(b) Borrower shall provide Collateral Agent ten (10) days' prior written notice before Borrower or any Guarantor establishes any Collateral Account. In addition, for each Collateral Account that Borrower or any Guarantor, at any time maintains, Borrower or such Guarantor shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account (held for the ratable benefit of the Secured Parties) in accordance with the terms hereunder prior to the establishment of such Collateral Account. The provisions of the previous sentence shall not apply to any Excluded Accounts.

(c) Neither Borrower nor any Guarantor shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with this Section 6.6.

**6.7      Protection of Intellectual Property Rights.** Borrower and each of its Subsidiaries shall: (a) protect, defend and maintain the validity and enforceability of its respective Intellectual Property that is material to its business; (b) promptly advise Collateral Agent in writing of infringement by a third party of its respective material Intellectual Property; and (c) not allow any of its respective Intellectual Property material to its respective business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent.

**6.8      Litigation Cooperation.** Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower.

31

US-DOCS\149068676.3

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**6.9      Landlord Waivers; Bailee Waivers.** In the event that Borrower or any of its Subsidiaries, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then, in the event that the Collateral at any new location is valued (based on book value) in excess of One Hundred Thousand Dollars (\$100,000.00) in the aggregate, at Collateral Agent's election, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

**6.10 Creation/Acquisition of Subsidiaries.** In the event any Borrower or any Subsidiary of any Borrower creates or acquires any Subsidiary after the Effective Date, Borrower or such Subsidiary shall promptly notify the Collateral Agent and the Lenders of such creation or acquisition, and Borrower or such Subsidiary shall, within sixty (60) days of the creation or acquisition of such Subsidiary, take all actions reasonably requested by the Collateral Agent or the Lenders to achieve any of the following with respect to such "New Subsidiary" (defined as a Subsidiary formed after the date hereof during the term of this Agreement): (i) to cause such New Subsidiary to become either a co-Borrower hereunder, or a secured guarantor with respect to the Obligations; and (ii) to grant and pledge to Collateral Agent a perfected security interest in 100% of the stock, units or other evidence of ownership held by Borrower or its Subsidiaries of any such New Subsidiary.

**6.11 Further Assurances.** Execute any further instruments and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

## 7. NEGATIVE COVENANTS

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, dispose of, license (collectively, "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Permitted Transfers.

**7.2 Changes in Business, Management, Ownership, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower or such Subsidiary, as applicable, as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) terminate the employment of any Key Person unless written notice thereof is provided to each Lender within ten (10) days of such termination of employment, or (ii) enter into any transaction or series of related transactions in which (A) the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than thirty-five percent (35%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions and (B) except as permitted by Section 7.3, Borrower ceases to own, directly or indirectly, 100% of the ownership interests in each Subsidiary of Borrower. Borrower shall not, and shall not permit any of its Subsidiaries to, without at least ten (10) days' prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Thousand Dollars (\$200,000.00) in assets or property of Borrower or any of its Subsidiaries, as applicable); (B) change its respective jurisdiction of organization, (C) except as permitted by Section 7.3, change its respective organizational structure or type, (D) change its respective legal name, or (E) change any organizational number(s) (if any) assigned by its respective jurisdiction of organization.

32

US-DOCS\149068676.3

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or shares or any property of another Person, in each case including for the avoidance of doubt through a merger, purchase, in-licensing arrangement or any similar transaction. A Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is a "co-Borrower" hereunder or has provided a secured Guaranty of Borrower's Obligations hereunder in accordance with Section 6.10) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

**7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Secured Parties) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or such Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens".

**7.6 Maintenance of Collateral Accounts.** With respect to Borrower any Guarantors, maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

**7.7 Restricted Payments.** (a) Declare or pay any dividends (other than dividends payable solely in capital stock) or make any other distribution or payment in respect of or redeem, retire or purchase any capital stock (other than (i) the declaration or payment of dividends to Borrower or its Subsidiaries, (ii) the declaration or payment of any dividends solely in the form of equity securities, and (iii) repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, employee, director or consultant equity plans, or similar plans, provided such repurchases do not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate per fiscal year), (b) other than the Obligations in accordance with the terms hereof, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity unless being replaced with Indebtedness of at least the same principal amount and such new Indebtedness is Permitted Indebtedness, or (c) be a party to or bound by an agreement that restricts a Subsidiary from paying dividends or otherwise distributing property to Borrower.

**7.8 Investments.** Directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so other than Permitted Investments.

**7.9 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, and (b) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries.

**7.10 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would

33

US-DOCS\149068676.3

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increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

**7.11 Compliance.** (a) Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Term Loan for that purpose; (b) fail to meet the minimum funding requirements of ERISA; (c) permit a Reportable Event or Prohibited Transaction, as

defined in ERISA, to occur; (d) fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; or (e) withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**7.12 Compliance with Anti-Terrorism Laws.** Directly or indirectly, Knowingly or permit any Affiliate to enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Directly or indirectly or permit any Affiliate to, (a) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

**7.13 Financial Covenants.**

(a) **Minimum Liquidity.** (x) If, as of any date of determination falling on or prior to April 30, 2025, the Net Product Revenue, measured on a trailing twelve-month basis as of the last day of the most recently ended month, is greater than [\*\*], permit Qualified Cash to be less than [\*\*] plus the Qualified Cash A/P Amount and (y) at all other times, permit Qualified Cash to be less than [\*\*] plus the Qualified Cash A/P Amount.

(b) **Minimum Net Product Revenue.** Commencing with the measurement period ending March 31, 2024, as of the last day of each month, permit Net Product Revenue, measured on a trailing twelve-month basis, to be lower than the value equal to 109% of the actual Net Product Revenue as of the month ending twelve (12) months prior to such date of determination. From the July 31, 2024, testing period onward, Net Product Revenue, measured on a trailing twelve-month basis, to be lower than the value equal to 110% of the actual Net Product Revenue as of the month ending twelve (12) months prior to such date of determination. For clarity, the minimum Net Product Revenue levels for March through June 2024 are set forth below:

Measurement Period Ending	Minimum Net Product Revenue
March 31, 2024	[**]
April 30, 2024	[**]

34

US-DOCS\149068676.3

May 31, 2024	[**]
June 30, 2024	[**]
July 31, 2024	[**]
August 31, 2024	[**]
September 30, 2024	[**]
October 31, 2024	[**]

November 30, 2024	[***]
December 31, 2024	[***]
January 31, 2025	[***]
February 28, 2025	[***]

**7.14 Material Agreements.** Without the consent of Collateral Agent, amend any Material Agreement in a manner adverse to the interests of the Collateral Agent or Lenders.

## 8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "Event of Default") under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Term Loan on its due date, or (b) pay any other Obligation within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof);

### 8.2 Covenant Default.

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 3.7 (Post-Closing Obligations), 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Landlord Waivers; Bailee Waivers), 6.10 (Creation/Acquisition of Subsidiaries) or Borrower violates any provision in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any other Loan Document to which such person is a party, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within twenty (20) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the twenty (20) day period or cannot after diligent attempts by Borrower or such Subsidiary, as applicable, be cured within such twenty (20) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure

35

US-DOCS\149068676.3

to cure the default shall not be deemed an Event of Default (but no Term Loans shall be made during such cure period).

### 8.3 Material Adverse Change.

A Material Adverse Change has occurred;

### 8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) of this clause (a) are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); and

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any part of its business;

**8.5 Insolvency.** (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Term Loans shall be extended while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

**8.6 Other Agreements.** There is a default in (a) any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) or that could reasonably be expected to have a Material Adverse Change or (b) there is any default under a Material Agreement that permits the counterparty thereto to accelerate the payments owed thereunder;

**8.7 Judgments.** One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000.00) (not covered by independent third-party insurance as to which (a) Borrower reasonably believes such insurance carrier will accept liability, (b) Borrower or the applicable Subsidiary has submitted such claim to such insurance carrier and (c) liability has not been rejected by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) days after the entry thereof;

**8.8 Misrepresentations.** Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or the Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement, when taken as a whole, is incorrect in any material respect when made;

**8.9 Subordinated Debt.** A default or breach occurs under any subordination agreement, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

36

US-DOCS\149068676.3

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**8.10 Guaranty.** (a) Any Guaranty terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any Guaranty; or (c) any circumstance described in Section 8 occurs with respect to any Guarantor;

**8.11 Governmental Approvals; FDA Action.** Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term and such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or (b) (i) the FDA, DOJ or other Governmental Authority initiates a Regulatory Action or any other enforcement action against Borrower or any of its Subsidiaries or any supplier of Borrower or any of its Subsidiaries that causes Borrower or any of its Subsidiaries to recall, withdraw, remove or discontinue manufacturing, distributing, and/or marketing any of its products, even if such action is based on previously disclosed conduct; (ii) the FDA or any other comparable Governmental Authority issues a warning letter to Borrower or any of its Subsidiaries with respect to any of its activities or products which could reasonably be expected to result in a Material Adverse Change; (iii) Borrower or any of its Subsidiaries conducts a mandatory or voluntary recall which could reasonably be expected to result in liability and expense to Borrower or any of its Subsidiaries of Five Hundred Thousand Dollars (\$500,000) or more; (iv) Borrower or any of its

Subsidiaries enters into a settlement agreement with the FDA, DOJ or other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of Five Hundred Thousand Dollars (\$500,000) or more, or that could reasonably be expected to result in a Material Adverse Change, even if such settlement agreement is based on previously disclosed conduct; or (v) the FDA or any other comparable Governmental Authority revokes any authorization or permission granted under any Registration, or Borrower or any of its Subsidiaries withdraws any Registration, that could reasonably be expected to result in a Material Adverse Change.

**8.12 Lien Priority.** Except as the result of the action or inaction of the Collateral Agent or the Lenders, any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens arising as a matter of applicable law.

## 9. RIGHTS AND REMEDIES

### 9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of Required Lenders shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right and at the written direction of the Required Lenders shall, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

37

US-DOCS\149068676.3

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(ii) make a demand for payment upon any Guarantor pursuant to the Guaranty delivered by such Guarantor;

(iii) apply to the Obligations any (A) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, (B) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower, or (C) amounts received from any Guarantors in accordance with the respective Guaranty delivered by such Guarantor; and/or

(iv) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right and at the written direction of the Required Lenders shall, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its Liens in the Collateral (held for the ratable benefit of the Secured Parties). Borrower shall assemble the Collateral if Collateral Agent requests and make it available at such location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, any of the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any Collateral Account maintained with Collateral Agent or any Lender or otherwise in respect of which a Control Agreement has been delivered in favor of Collateral Agent (for the ratable benefit of the Secured Parties) and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries; and

38

US-DOCS\149068676.3

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(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance.

**9.2 Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts of Borrower directly with the applicable Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge,

encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make extend Term Loans hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Term Loans terminates.

**9.3 Protective Payments.** If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds.** Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other Obligations owing to Collateral Agent or any Lender

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under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to the Lenders' Pro Rata Shares unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's Pro Rata Share of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its Pro Rata Share of scheduled payments made on any

date or dates, then such Lender shall remit to Collateral Agent or other the Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its Pro Rata Share, then the portion of such payment or distribution in excess of such Lender's Pro Rata Share shall be received and held by such Lender in trust for and shall be promptly paid over to the other Lenders (in accordance with their respective Pro Rata Shares) for application to the payments of amounts due on such other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for the Secured Parties for purposes of perfecting Collateral Agent's security interest therein (held for the ratable benefit of the Secured Parties).

**9.5 Liability for Collateral.** So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6 No Waiver; Remedies Cumulative.** Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or by Borrower or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver.** Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

40

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## 10. NOTICES

Other than as specifically provided herein, all notices, consents, requests, approvals, demands, or other communication (collectively, "Communications") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent,

Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: NEURONETICS, INC.  
3222 Phoenixville Pike  
Malvern, PA 19355  
Attn: Chief Financial Officer  
Email: [\*\*\*]

with a copy to: NEURONETICS, INC.  
3222 Phoenixville Pike  
Malvern, PA 19355  
Attn: General Counsel  
Fax:  
Email: [\*\*\*]

with a copy (which  
shall not constitute  
notice) to: Morrison & Foerster LLP  
250 West 55th Street  
New York, NY 10019  
Attn: Geoff Peck  
Email: [\*\*\*]

If to Collateral  
Agent: SOLAR CAPITAL LTD.  
500 Park Avenue, 3rd Floor  
New York, NY 10022  
Attention: Anthony Storino  
Fax: [\*\*\*]  
Email: [\*\*\*]

with a copy (which  
shall not constitute  
notice) to: LATHAM & WATKINS LLP  
505 Montgomery Street, Suite 2000  
San Francisco, CA 94111  
Attention: Haim Zaltzman  
Facsimile: [\*\*\*]  
Email: [\*\*\*]

## 11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

**11.1 Waiver of Jury Trial.** EACH OF BORROWER, COLLATERAL AGENT AND LENDERS UNCONDITIONALLY WAIVES ANY AND ALL RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS, ANY OF THE INDEBTEDNESS SECURED HEREBY, ANY DEALINGS AMONG BORROWER,

COLLATERAL AGENT AND/OR LENDERS RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG BORROWER, COLLATERAL AGENT AND/OR LENDERS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. THE WAIVER ALSO SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**11.2 Governing Law and Jurisdiction.** THIS AGREEMENT, THE OTHER LOAN DOCUMENTS (EXCLUDING THOSE LOAN DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT.

**11.3 Submission to Jurisdiction.** Any legal action or proceeding with respect to the Loan Documents shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, Borrower hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts. Notwithstanding the foregoing, Collateral Agent and Lenders shall have the right to bring any action or proceeding against Borrower (or any property of Borrower) in the court of any other jurisdiction Collateral Agent or Lenders deem necessary or appropriate in order to realize on the Collateral or other security for the Obligations. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

**11.4 Service of Process.** Borrower irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable requirements of law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Borrower specified herein (and shall be effective when such mailing shall be effective, as

42

US-DOCS\149068676.3

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provided therein). Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**11.5 Non-exclusive Jurisdiction.** Nothing contained in this Article 11 shall affect the right of Collateral Agent or Lenders to serve process in any other manner permitted by applicable requirements of law or commence legal proceedings or otherwise proceed against Borrower in any other jurisdiction.

## 12. GENERAL PROVISIONS

## 12.1 Successors and Assigns.

(a) This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's prior written consent (which may be granted or withheld in Collateral Agent's discretion, subject to Section 12.5). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in (any such sale, transfer, assignment, negotiation, or grant of a participation, a "Lender Transfer") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; *provided, however*, that any such Lender Transfer (other than (i) any Transfer at any time that an Event of Default has occurred and is continuing, or (ii) a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of Collateral Agent (such approved assignee, an "Approved Lender"). Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require.

(b) Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Lender's own financing or securitization transactions) shall be permitted, without Borrower's consent, to any Person which is an Affiliate or Subsidiary of Borrower, a then-current direct competitor of Borrower, as reasonably determined by Collateral Agent at the time of such assignment, vulture funds or distressed debt funds, as reasonably determined by Collateral Agent at the time of such assignment, and natural persons.

(c) Collateral Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a register for the recordation of the names and addresses of the Lenders, and the Term Loan Commitments of, and principal amounts (and stated interest) of the Term Loans owing to each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Collateral Agent and Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice. 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 Term 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 commitments, loans or its other obligations under any Loan

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Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan 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, Collateral Agent (in its capacity as Collateral Agent) shall have no responsibility for maintaining a Participant Register. Borrower agrees that each participant shall be entitled to the benefits of the provisions in Exhibit C attached

hereto (subject to the requirements and limitations therein, including the requirements under Section 7 of Exhibit C attached hereto (it being understood that the documentation required under Section 7 of Exhibit C attached hereto 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 this Section 12.1; provided that such participant shall not be entitled to receive any greater payment under Exhibit C attached hereto, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation.

**12.2 Indemnification.** Borrower agrees to indemnify, defend and hold each Secured Party and their respective directors, officers, employees, consultants, agents, attorneys, or any other Person affiliated with or representing such Secured Party (each, an “**Indemnified Person**”) harmless against: (a) all obligations, demands, claims, and liabilities (collectively, “**Claims**”) asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses and Lenders’ Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents (including reasonable and invoiced out-of-pocket attorneys’ fees and expenses), except, in each case, for Claims and/or losses directly caused by such Indemnified Person’s gross negligence or willful misconduct. Borrower hereby further agrees to indemnify, defend and hold each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable and invoiced out-of-pocket fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person’s gross negligence or willful misconduct.

**12.3 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.4 Correction of Loan Documents.** Collateral Agent may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.

**12.5 Amendments in Writing; Integration.** (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

44  
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(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender’s Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender’s written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent’s written consent or signature; and

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "Required Lenders" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its Guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.5 or the definitions of the terms used in this Section 12.5 insofar as the definitions affect the substance of this Section 12.5; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.8. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the immediately preceding sentence.

(b) Other than as expressly provided for in Section 12.5(a)(i)-(iii), Collateral Agent may, at its discretion, or if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements with respect to such subject matter. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

**12.6 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, portable document format (.pdf) or other electronic transmission will be as effective as delivery of a manually executed counterpart hereof.

**12.7 Survival.** Except as otherwise provided in this Agreement, all covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied.

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The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.8 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

**12.8 Confidentiality.** In handling any confidential information of Borrower, each of the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own confidential information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Lender's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Term Loans (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, rule, regulation, regulatory or self-regulatory authority, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement or have agreed to similar confidentiality terms with the Lenders and/or Collateral Agent, as applicable, with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent through no breach of this provision by the Lenders or the Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.8 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.8.

**12.9 Right of Set Off.** Borrower hereby grants to Collateral Agent and to each Lender, a Lien, security interest and right of set off as security for all Obligations to Secured Parties hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of any Secured Party or any entity under the control of such Security Party (including a Collateral Agent Affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, any Secured Party may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED BY BORROWER.

**12.10 Cooperation of Borrower.** If necessary, Borrower agrees to (i) execute any documents reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment (or portion thereof) or Term Loan (or portion thereof) to an assignee in accordance with Section 12.1, (ii) make Borrower's management personnel available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments, the Term Loans or portions thereof (which meetings shall be

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conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent and the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment (or portions

thereof) or Term Loan (or portions thereof) reasonably may request. Subject to the provisions of Section 12.8, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment (or portions thereof), any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

**12.11 Public Announcement.** Subject to Borrower's review and approval, Borrower hereby agrees that Collateral Agent and each Lender may make a public announcement of the transactions contemplated by this Agreement, and may publicize the same in marketing materials, newspapers and other publications, and otherwise, and in connection therewith may use Borrower's name, tradenames and logos. Collateral Agent and the Lenders may also make disclosures to the Securities and Exchange Commission or other governmental agency and any other public disclosure with investors, other governmental agencies or other related persons.

**12.12 Collateral Agent and Lender Agreement.** Collateral Agent and the Lenders hereby agree to the terms and conditions set forth on Exhibit B attached hereto. Borrower acknowledges and agrees to the terms and conditions set forth on Exhibit B attached hereto.

**12.13 Time of Essence.** Time is of the essence for the performance of Obligations under this Agreement.

**12.14 Termination Prior to Maturity Date; Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement and for which no claim has been made) in accordance with the terms of this Agreement, this Agreement may be terminated prior to the Maturity Date by Borrower, effective five (5) Business Days after written notice of termination is given to the Collateral Agent and the Lenders.

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47

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

NEURONETICS, INC.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to Loan and Security Agreement]*

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**COLLATERAL AGENT AND LENDER:**

**SOLAR CAPITAL LTD.**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Signature Page to Loan and Security Agreement]**

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**LENDERS:**

**SUNS SPV LLC**

By \_\_\_\_\_

Name: Anthony Storino

Title: Authorized Signatory

**SCP PRIVATE CREDIT INCOME FUND SPV LLC**

By \_\_\_\_\_

Name: Anthony Storino

Title: Authorized Signatory

**SCP PRIVATE CREDIT INCOME BDC SPV LLC**

By \_\_\_\_\_

Name: Anthony Storino

Title: Authorized Signatory

**SCP PRIVATE CORPORATE LENDING FUND SPV LLC**

By \_\_\_\_\_

Name: Anthony Storino  
Title: Authorized Signatory

**SCP SF DEBT FUND L.P.**

By \_\_\_\_\_

Name: Anthony Storino  
Title: Authorized Signatory

**[Signature Page to Loan and Security Agreement]**

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**SCHEDULE 1.1**

**Lenders and Commitments**

<b>Term A Loans</b>		
<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
SLR Investment Corp.	\$5,612,935.51	16.037%
SUNS SPV LLC	\$12,399,509.81	35.427%
SCP Private Credit Income Fund SPV LLC	\$4,096,038.24	11.703%
SCP Private Credit Income BDC SPV LLC	\$3,055,625.78	8.730%
SCP Private Corporate Lending Fund SPV LLC	\$5,549,578.80	15.856%
SCP Cayman Debt Master Fund SPV LLC	\$2,374,202.48	6.783%
SLR CP SF Debt Fund SPV LLC	\$1,912,109.38	5.463%
<b>TOTAL</b>	<b>\$35,000,000.00</b>	<b>100.00%</b>

<b>Term B Loans</b>		
<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
SLR Investment Corp.	\$1,286,603.24	51.464%
SCP Private Credit Income Fund L.P.	\$292,574.16	11.703%
SCP Private Credit Income BDC LLC	\$218,258.98	8.730%
SCP Private Corporate Lending Fund SPV LLC	\$396,398.49	15.856%
SCP Cayman Debt Master Fund SPV LLC	\$169,585.89	6.783%
SLR CP SF Debt Fund SPV LLC	\$136,579.24	5.463%
<b>TOTAL</b>	<b>\$2,500,000.00</b>	<b>100.00%</b>

Term C Loans		
Lender	Term Loan Commitment	Commitment Percentage
SLR Investment Corp.	\$11,579,429.16	51.464%
SCP Private Credit Income Fund L.P.	\$2,633,167.44	11.703%
SCP Private Credit Income BDC LLC	\$1,964,330.82	8.730%
SCP Private Corporate Lending Fund SPV LLC	\$3,567,586.41	15.856%
SCP Private Corporate Lending Fund L.P.	\$1,526,273.01	6.783%
SLR CP SF Debt Fund SPV LLC	\$1,229,213.16	5.463%
<b>TOTAL</b>	<b>\$22,500,000.00</b>	<b>100.00%</b>

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**Aggregate**

Lender	Term Loan Commitment	Commitment Percentage
SLR Investment Corp.	\$18,478,967.91	30.798%
SUNS SPV LLC	\$12,399,509.81	20.666%
SCP Private Credit Income Fund SPV LLC	\$4,096,038.24	6.827%
SCP Private Credit Income Fund L.P.	\$2,925,741.60	4.876%
SCP Private Credit Income BDC SPV LLC	\$3,055,625.78	5.093%
SCP Private Credit Income BDC LLC	\$2,182,589.80	3.638%
SCP Private Corporate Lending Fund SPV LLC	\$9,513,563.70	15.856%
SCP Private Corporate Lending Fund L.P.	\$1,526,273.01	2.544%
SCP Cayman Debt Master Fund SPV LLC	\$2,543,788.37	4.240%
SLR CP SF Debt Fund SPV LLC	\$3,277,901.78	5.463%
<b>TOTAL</b>	<b>\$60,000,000.00</b>	<b>100.00%</b>

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## EXHIBIT A

### Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (a) any interest of Borrower as a lessee or sublessee under a real property lease; (b) rights held under a license that are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is effective under Section 9-406, 9-407, 9-408 or 9-409 of the Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); (c) any interest of Borrower as a lessee under an Equipment lease if Borrower is prohibited by the terms of such lease from granting a security interest in such lease or under which such an assignment or Lien would cause a default to occur under such lease; and (d) any "intent to use" United States Trademark applications for which a statement of use or an amendment to allege use has not been filed (but only until such statement is filed) solely to the extent, if any, that, and only during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent to use Trademark applications under applicable federal law provided, however, that upon termination of such prohibition, such interest shall immediately become Collateral without any action by Borrower, Collateral Agent or any Lender.

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## EXHIBIT B

### Collateral Agent and Lender Terms

#### 1. Appointment of Collateral Agent.

(a) Each Lender hereby appoints Solar (together with any successor Collateral Agent pursuant to Section 7 of this Exhibit B) as Collateral Agent under the Loan Documents and authorizes Collateral Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from Borrower, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Collateral Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) Without limiting the generality of clause (a) above, Collateral 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 other bankruptcy, insolvency or similar proceeding), and each Person

making any payment in connection with any Loan Document to any Lender is hereby authorized to make such payment to Collateral Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of Collateral Agent and Lenders with respect to any Obligation in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Lender), (iii) act as collateral agent for the Secured Parties for purposes of the perfection of all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral as permitted pursuant to the Loan Agreement, (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 Collateral Agent and the other Lenders with respect to the Borrower and/or the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) 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 Collateral Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Collateral Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any Deposit Account maintained by Borrower or any Guarantor with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Collateral Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed. Collateral 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 any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Exhibit B to the extent provided by Collateral Agent.

(c) Under the Loan Documents, Collateral Agent (i) is acting solely on behalf of the Lenders, with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Collateral Agent", the terms "agent", "Collateral Agent" and "collateral agent" and similar terms in any Loan Document to refer to Collateral 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 Person and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Collateral Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i)

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through (iii) above. Except as expressly set forth in the Loan Documents, Collateral Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by Solar or any of its Affiliates in any capacity.

## 2. Binding Effect; Use of Discretion; E-Systems.

(a) Each Lender, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Collateral Agent or the Required Lenders (or, if expressly required in any Loan Document, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Collateral Agent in reliance upon the instructions of the Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Collateral Agent or the Required 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, shall be authorized and binding upon all of Lenders.

(b) If Collateral Agent shall request instructions from the Required Lenders or all affected Lenders with respect to any act or action (including failure to act) in connection with any Loan Document, then Collateral Agent shall be entitled to refrain from such act or taking such action unless and until Collateral Agent

shall have received instructions from the Required Lenders or all affected Lenders, as the case may be, and Collateral Agent shall not incur liability to any Person by reason of so refraining. Collateral Agent shall be fully justified in failing or refusing to take any action under any Loan Document (i) if such action would, in the opinion of Collateral Agent, be contrary to any Requirement of Law or any Loan Document, (ii) if such action would, in the opinion of Collateral Agent, expose Collateral Agent to any potential liability under any Requirement of Law or (iii) if Collateral Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Collateral Agent as a result of Collateral Agent acting or refraining from acting under any Loan Document in accordance with the instructions of the Required Lenders or all affected Lenders, as applicable.

**(c)** Collateral Agent is hereby authorized by Borrower and each Lender to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Term Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Collateral Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents (including, without limitation, borrowing base certificates) and similar items on, by posting to or submitting and/or completion, on E-Systems. Borrower and each Lender acknowledges and agrees that the use of transmissions via an E-System or electronic mail is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse, and Borrower and each Lender assumes and accepts such risks by hereby authorizing the transmission via E-Systems or electronic mail. Each "e-signature" on any such posting shall be deemed sufficient to satisfy any requirement for a "signature", and each such posting shall be deemed sufficient to satisfy any requirement for a "writing", in each case including pursuant to any Loan Document, any applicable provision of any Code, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter. All uses of an E-System shall be governed by and subject to, in addition to this Section, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related contractual obligations executed by Collateral Agent, Borrower and/or Lenders in connection with the use of such E-System. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED "AS IS" AND "AS AVAILABLE". NO REPRESENTATION OR WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-SYSTEMS.

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### **3. Collateral Agent's Reliance, Etc**

. Collateral Agent may, without incurring any liability hereunder, (a) 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, Borrower) and (b) rely and act upon any document and information (including those transmitted by electronic transmission) 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. None of Collateral Agent and 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 Borrower hereby waives and shall not assert (and Borrower shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting from the gross negligence or willful misconduct of Collateral Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment of a court of competent jurisdiction) in connection with the duties of Collateral Agent expressly set forth herein. Without limiting the foregoing, Collateral Agent: (i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons, except to the extent that a court of competent jurisdiction determines in a final non-appealable judgment that Collateral Agent acted with gross negligence or

willful misconduct in the selection of such Related Person; (ii) shall not be responsible to any Lender or other Person 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 Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of Borrower or any Related Person of Borrower in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to Borrower, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Collateral Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Collateral 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 Borrower or as to the existence or continuation or possible occurrence or continuation of any 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 Event of Default that is clearly labeled "notice of default" (in which case Collateral Agent shall promptly give notice of such receipt to all Lenders, provided that Collateral Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Collateral Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction); and, for each of the items set forth in clauses (i) through (iv) above, each Lender and Borrower hereby waives and agrees not to assert (and Borrower shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action it might have against Collateral Agent based thereon.

#### 4. **Collateral Agent Individually**

. Collateral Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, Borrower or any Affiliate of Borrower as though it were not acting as Collateral Agent and may receive separate fees and other payments therefor. To the extent Collateral Agent or any of its Affiliates makes any Term Loans 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", "Required Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Collateral Agent or such Affiliate, as the case may be, in its individual capacity as Lender, or as one of the Required Lenders.

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#### 5. **Lender Credit Decision; Collateral Agent Report**

. Each Lender acknowledges that it shall, independently and without reliance upon Collateral Agent, any Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by Collateral Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of Borrower 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. Except for documents expressly required by any Loan Document to be transmitted by Collateral Agent to the Lenders, Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of Borrower or any Affiliate of Borrower that may come in to the possession of Collateral Agent or any of its Related Persons. Each Lender agrees that it shall not rely on any field examination, audit or other report provided by Collateral Agent or its Related Persons (an "**Collateral Agent Report**"). Each Lender further acknowledges that any Collateral Agent Report (a) is provided to the Lenders solely as a courtesy, without

consideration, and based upon the understanding that such Lender will not rely on such Collateral Agent Report, (b) was prepared by Collateral Agent or its Related Persons based upon information provided by Borrower solely for Collateral Agent's own internal use, and (c) may not be complete and may not reflect all information and findings obtained by Collateral Agent or its Related Persons regarding the operations and condition of Borrower. Neither Collateral Agent nor any of its Related Persons makes any representations or warranties of any kind with respect to (i) any existing or proposed financing, (ii) the accuracy or completeness of the information contained in any Collateral Agent Report or in any related documentation, (iii) the scope or adequacy of Collateral Agent's and its Related Persons' due diligence, or the presence or absence of any errors or omissions contained in any Collateral Agent Report or in any related documentation, and (iv) any work performed by Collateral Agent or Collateral Agent's Related Persons in connection with or using any Collateral Agent Report or any related documentation. Neither Collateral Agent nor any of its Related Persons shall have any duties or obligations in connection with or as a result of any Lender receiving a copy of any Collateral Agent Report. Without limiting the generality of the forgoing, neither Collateral Agent nor any of its Related Persons shall have any responsibility for the accuracy or completeness of any Collateral Agent Report, or the appropriateness of any Collateral Agent Report for any Lender's purposes, and shall have no duty or responsibility to correct or update any Collateral Agent Report or disclose to any Lender any other information not embodied in any Collateral Agent Report, including any supplemental information obtained after the date of any Collateral Agent Report. Each Lender releases, and agrees that it will not assert, any claim against Collateral Agent or its Related Persons that in any way relates to any Collateral Agent Report or arises out of any Lender having access to any Collateral Agent Report or any discussion of its contents, and agrees to indemnify and hold harmless Collateral Agent and its Related Persons from all claims, liabilities and expenses relating to a breach by any Lender arising out of such Lender's access to any Collateral Agent Report or any discussion of its contents.

## 6. Indemnification

Each Lender agrees to reimburse Collateral Agent and each of its Related Persons (to the extent not reimbursed by Borrower as required under the Loan Documents (including pursuant to Section 12.2 of the Agreement)) promptly upon demand for its Pro Rata Share of any out-of-pocket costs and expenses (including, without limitation, fees, charges and disbursements of financial, legal and other advisors and any Taxes or insurance paid in the name of, or on behalf of, Borrower) incurred by Collateral Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, amendment, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to, its rights or responsibilities under, any Loan Document. Each Lender further agrees to indemnify Collateral Agent and each of its Related Persons (to the extent not reimbursed by

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Borrower as required under the Loan Documents (including pursuant to Section 12.2 of the Agreement)), ratably according to its Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, to the extent not indemnified by the applicable Lender, Taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by, or asserted against Collateral 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 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 Collateral Agent or any of its Related Persons under or with respect to the foregoing; provided that no Lender shall be liable to Collateral Agent or any of its Related Persons under this Section 6 of this Exhibit B to

the extent such liability has resulted from the gross negligence or willful misconduct of Collateral Agent or, as the case may be, such Related Person, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent required by any applicable Requirement of Law, Collateral Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that Collateral Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason, or if Collateral Agent reasonably determines that it was required to withhold Taxes from a prior payment to or for the account of any Lender but failed to do so, such Lender shall promptly indemnify Collateral Agent fully for all amounts paid, directly or indirectly, by Collateral Agent as Tax or otherwise, including penalties and interest, and together with all expenses incurred by Collateral Agent. Collateral Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding Tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Collateral Agent is entitled to indemnification from such Lender under the immediately preceding sentence of this Section 6 of this Exhibit B.

#### **7. Successor Collateral Agent**

. Collateral 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, in accordance with the terms of this Section 7 of this Exhibit B. If Collateral Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Collateral Agent. If, after 30 days after the date of the retiring Collateral Agent's notice of resignation, no successor Collateral Agent has been appointed by the Required Lenders and has accepted such appointment, then the retiring Collateral Agent may, on behalf of the Lenders, appoint a successor Collateral Agent from among the Lenders. Effective immediately upon its resignation, (a) the retiring Collateral Agent shall be discharged from its duties and obligations under the Loan Documents, (b) the Lenders shall assume and perform all of the duties of Collateral Agent until a successor Collateral Agent shall have accepted a valid appointment hereunder, (c) the retiring Collateral 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 Collateral Agent was, or because such Collateral Agent had been, validly acting as Collateral Agent under the Loan Documents, and (iv) subject to its rights under Section 2(b) of this Exhibit B, the retiring Collateral Agent shall take such action as may be reasonably necessary to assign to the successor Collateral Agent its rights as Collateral Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Collateral Agent, a successor Collateral Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Collateral Agent under the Loan Documents.

#### **8. Release of Collateral**

. Each Lender hereby consents to the release and hereby directs Collateral Agent to release (or in the case of clause (b)(ii) below, release or subordinate) the following:

(a) any Guarantor if all of the stock of such Subsidiary owned by Borrower is sold or transferred in a transaction permitted under the Loan Documents (including pursuant to a valid waiver or

US-DOCS149068676.3

consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to any Loan Document; and

(b) any Lien held by Collateral Agent for the benefit of the Secured Parties against (i) any Collateral that is sold or otherwise disposed of by Borrower in a transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any Collateral subject to a Lien that is expressly permitted

under clause (c) of the definition of the term "Permitted Lien" and (iii) all of the Collateral and Borrower, upon (A) termination of all of the Commitments, (B) the payment in full in cash of all of the Obligations (other than inchoate indemnity obligations for which no claim has been made), and (C) to the extent requested by Collateral Agent, receipt by Collateral Agent and Lenders of liability releases from Borrower in form and substance acceptable to Collateral Agent (the satisfaction of the conditions in this clause (iii), the "Termination Date").

### 9. Setoff and Sharing of Payments

. In addition to any rights now or hereafter granted under any applicable Requirement of Law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default and subject to Section 10(d) of this Exhibit B, each Lender is hereby authorized at any time or from time to time upon the direction of Collateral Agent, without notice to Borrower or any other Person, any such notice being hereby expressly waived, to setoff and to appropriate and to apply any and all balances held by it at any of its offices for the account of Borrower (regardless of whether such balances are then due to Borrower) and any other properties or assets at any time held or owing by that Lender or that holder to or for the credit or for the account of Borrower against and on account of any of the Obligations that are not paid when due. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so offset or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares of the Obligations. Borrower agrees, to the fullest extent permitted by law, that (a) any Lender may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may purchase participations in accordance with the preceding sentence and (b) any Lender so purchasing a participation in the Term Loans made or other Obligations held by other Lenders or holders may exercise all rights of offset, bankers' liens, counterclaims or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Term Loans and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of offset, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

### 10. Advances; Payments; Non-Funding Lenders; Actions in Concert

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(a) Advances; Payments. If Collateral Agent receives any payment with respect to a Term Loan for the account of the Lenders on or prior to 2:00 p.m. (New York time) on any Business Day, Collateral Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on such Business Day. If Collateral Agent receives any payment with respect to a Term Loan for the account of Lenders after 2:00 p.m. (New York time) on any Business Day, Collateral Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day.

(b) Return of Payments.

(i) If Collateral Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Collateral Agent or on behalf of from Borrower and such related payment is not received by Collateral Agent, then Collateral Agent will be entitled to recover such amount (including interest accruing on such amount at the rate otherwise

US-DOCS149068676.3

applicable to such Obligation) from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Collateral Agent determines at any time that any amount received by Collateral Agent under any Loan Document must be returned to Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of any Loan Document, Collateral Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Collateral Agent on demand any portion of such amount that Collateral Agent has distributed to such Lender, together with interest at such rate, if any, as Collateral Agent is required to pay to Borrower or such other Person, without setoff, counterclaim or deduction of any kind and Collateral Agent will be entitled to set off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(c) **Actions in Concert.** Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of any Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Collateral Agent or Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under any Loan Document shall be taken in concert and at the direction or with the consent of Collateral Agent or Required Lenders.

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## EXHIBIT C

### Taxes; Increased Costs.

#### 1. Defined Terms

. For purposes of this Exhibit C:

(a) **"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.

(b) **"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, (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) 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 (B) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Term Loan or Term Loan Commitment pursuant to a law in effect on the date on which (A) such Lender acquires such interest in the Term Loan or Term Commitment or (B) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2 or Section 4 of this Exhibit C, 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, (iii) Taxes attributable to such Recipient's failure to comply with Section 7 of this Exhibit C and (iv) any withholding Taxes imposed under FATCA.

(c) **"FATCA"** means Sections 1471 through 1474 of the Internal Revenue 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 or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue 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 Internal Revenue Code.

(d) **"Foreign Lender"** means a Lender that is not a U.S. Person.

(e) **"Indemnified Taxes"** means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (ii) to the extent not otherwise described in clause (i), Other Taxes.

(f) **"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 Term Loan or Loan Document).

(g) **"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.

(h) **"Recipient"** means Collateral Agent or any Lender, as applicable.

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(i) **"U.S. Person"** means any Person that is a "United States person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

(j) **"Withholding Agent"** means Borrower and Collateral Agent.

## 2. Payments Free of Taxes

. Any and all payments by or on account of any obligation of Borrower under any Loan Document 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 Borrower 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 2 or Section 4 of this Exhibit C) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

## 3. Payment of Other Taxes by Borrower

. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Collateral Agent timely reimburse it for the payment of, any Other Taxes.

## 4. Indemnification by Borrower

. Borrower shall indemnify each Recipient, within 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 Section 2 of this Exhibit C or this Section 4) 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. A certificate as to the amount of such payment or liability delivered to Borrower by a

Lender (with a copy to Collateral Agent), or by Collateral Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

## 5. Indemnification by the Lenders

. Each Lender shall severally indemnify Collateral Agent, within 10 days after demand therefor, for (a) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Collateral Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (b) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.1 of the Agreement relating to the maintenance of a Participant Register and (c) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Collateral Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Collateral Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Collateral Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Collateral Agent to the Lender from any other source against any amount due to Collateral Agent under this Section 5.

## 6. Evidence of Payments

. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to the provisions of this Exhibit C, Borrower shall deliver to Collateral Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Collateral Agent.

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## 7. Status of Lenders

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(a) 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 and Collateral Agent, at the time or times reasonably requested by Borrower or Collateral Agent, such properly completed and executed documentation reasonably requested by Borrower or Collateral Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Collateral Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Collateral Agent as will enable Borrower or Collateral 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 Sections 7(b)(i), 7(b)(ii) and 7(b)(iv) of this Exhibit C) 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.

(b) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(i) any Lender that is a U.S. Person shall deliver to Borrower and Collateral 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 or Collateral Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(ii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Collateral Agent (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 or Collateral Agent), whichever of the following is applicable:

- (A) 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 copies of IRS Form W-8BEN or IRS Form W-8BEN-E 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 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;
- (B) executed copies of IRS Form W-8ECI;
- (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate, in form and substance reasonably acceptable to Borrower and Collateral Agent, to the effect that such Foreign Lender (or other applicable Person) is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" related to Borrower as described in

US-DOCS149068676.3

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Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

- (D) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9, 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 on behalf of each such direct and indirect partner;

(iii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Collateral Agent (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 or Collateral Agent), executed copies 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 or Collateral Agent to determine the withholding or deduction required to be made;

(iv) 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 Internal Revenue Code, as applicable), such Lender shall deliver to Borrower and Collateral Agent at the time or times prescribed by law

and at such time or times reasonably requested by Borrower or Collateral Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Borrower or Collateral Agent as may be necessary for Borrower and Collateral 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 (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement; and

(v) each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Collateral Agent in writing of its legal inability to do so.

#### 8. 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 the provisions of this Exhibit C (including by the payment of additional amounts pursuant to the provisions of this Exhibit C), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under the provisions of this Exhibit C 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 Section 8 (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 8, in no

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event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 8 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 Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 8 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.

#### 9. Increased Costs

. If any change in applicable law shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of 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, and the result shall be to increase the cost to such Recipient of making, converting to, continuing or maintaining any Term Loan or of maintaining its obligation to make any such Term Loan, or to reduce the amount of any sum received or receivable by such Recipient (whether of principal, interest or any other amount), then, upon the request of such Recipient, Borrower will pay to such Recipient such additional amount or amounts as will compensate such Recipient for such additional costs incurred or reduction suffered.

#### 10. Survival

. Each party's obligations under the provisions of this Exhibit C shall survive the resignation or replacement of Collateral Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Term Loan Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**EXHIBIT D**

**Loan Payment Request Form**

Fax To: (212) 993-1698 Date: \_\_\_\_\_

**LOAN PAYMENT:**

Neuronetics, Inc.

From Account # \_\_\_\_\_ To Account # \_\_\_\_\_

(Deposit Account #)(Loan Account #)

Principal \$ \_\_\_\_\_ and/or Interest \$ \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**LOAN ADVANCE:**

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # \_\_\_\_\_ To Account # \_\_\_\_\_

(Loan Account #)(Deposit Account #)

Amount of Advance \$ \_\_\_\_\_

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

Authorized Signature: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**OUTGOING WIRE REQUEST:**

Complete only if all or a portion of funds from the loan advance above is to be wired.

Beneficiary Name: \_\_\_\_\_ Amount of Wire: \$ \_\_\_\_\_

Beneficiary Bank: \_\_\_\_\_ Account Number: \_\_\_\_\_

City and State: \_\_\_\_\_

US-DOCS\149068676.3

Beneficiary Bank Transit (ABA) #: \_\_\_\_\_ Beneficiary Bank Code (Swift, Sort, Chip, etc.): \_\_\_\_\_

(For International Wire Only)

Intermediary Bank: \_\_\_\_\_ Transit (ABA) #: \_\_\_\_\_

For Further Credit to: \_\_\_\_\_

Special Instruction: \_\_\_\_\_

By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature: \_\_\_\_\_ 2<sup>nd</sup> Signature (if required): \_\_\_\_\_

Print Name/Title: \_\_\_\_\_ Print Name/Title: \_\_\_\_\_

Telephone #: \_\_\_\_\_ Telephone #: \_\_\_\_\_ ]

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## EXHIBIT E

### Compliance Certificate

TO: SOLAR CAPITAL LTD., as Collateral Agent and Lender

FROM: Neuronetics, Inc.

The undersigned authorized officer ("Officer") of Neuronetics, Inc. ("Borrower"), hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement dated as of March 2, 2020, by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the "Loan Agreement;"

capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below;

(b) There are no Events of Default, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower's Subsidiaries, has timely filed all required tax returns and reports; Borrower, and each of Borrower's Subsidiaries, has timely paid all foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting Borrower's certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.

	Reporting Covenant	Requirement	Actual	Complies
1)	Monthly financial statements	Monthly within 30 days	Yes	No N/A
2)	Quarterly financial statements	Quarterly within 45 days	Yes	No N/A
<hr/>				
3)	Annual (CPA Audited) statements	Within 90 days after FYE	Yes	No N/A
4)	Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (within earlier of 10 days of approval or 60 days after FYE), and when revised	Yes	No N/A
5)	A/R & A/P agings	If applicable	Yes	No N/A
6)	8-K, 10-K and 10-Q Filings	within 5 days of filing	Yes	No N/A
7)	Compliance Certificate	Monthly within 30 days	Yes	No N/A
8)	IP Report	When required	Yes	No N/A

	Total amount of Borrower's cash and cash equivalents at the last day of the measurement period	\$ _____	Yes	No	N/A
10)	Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period	\$ _____	Yes	No	N/A

#### Deposit and Securities Accounts

(Please list all accounts; attach separate sheet if additional space needed)

Institution Name	Account Number	New Account?	Account Control Agreement in place?	
1)		Yes	No	Yes
2)		Yes	No	Yes
3)		Yes	No	Yes
4)		Yes	No	Yes

#### Financial Covenants

Minimum Liquidity Requirement	(A) Qualified Cash \$ _____	(B) A/P not paid within 90 days from invoice date \$ _____	Complies with Minimum Liquidity Requirement (Is (A) greater than or equal to \$10,000,000 plus (B))?	Y	NN/A
Minimum Product Revenue (period ending _____)	(A) Actual Product Revenue \$ _____	(B) Minimum Product Revenue per Section 7.13(b) \$ _____	Complies with Minimum Product Revenue (Is (A) greater than or equal to (B))?	Y	N

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#### Other Matters

- 1) Have there been any changes in Key Persons since the last Compliance Certificate? Yes No
- 2) Have there been any transfers/sales/disposals/retirement of Collateral or IP prohibited by the Loan Agreement? Yes No

3) Have there been any new or pending claims or causes of action against Borrower that involve more than One Hundred Thousand Dollars (\$100,000.00)? Yes No

4) Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate. Yes No

5) Has Borrower or any Subsidiary entered into or amended any Material Agreement? If yes, please explain and provide a copy of the Material Agreement(s) and/or amendment(s). Yes No

6) Has Borrower provided the Collateral Agent with all notices required to be delivered under Sections 6.2(a) and 6.2(c) of the Loan Agreement? Yes No

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#### Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

NEURONETICS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

#### **COLLATERAL AGENT USE ONLY**

Received by: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Verified by: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Compliance Status: Yes No

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**EXHIBIT I**

**ACH LETTER**

SLR INVESTMENT CORP.  
500 Park Avenue, 3rd Floor  
New York, NY 10022  
Attention: Anthony Storino  
Fax: (212) 993-1698  
Email: storino@solarcapital.com

Re: Loan and Security Agreement dated as of March 2, 2020 (the "Agreement") by and among Neuronetics, Inc. ("Borrower"), SLR Investment Corp. (formerly, Solar Capital Ltd.) ("Solar"), as collateral agent (in such capacity, "Collateral Agent") and the Lenders listed on Schedule 1.1 thereof or otherwise a party thereto from time to time, including Solar in its capacity as a Lender and Collateral Agent (each a "Lender" and collectively, the "Lenders"). Capitalized terms used but not otherwise defined herein shall have the meanings given them under the Agreement.

In connection with the above referenced Agreement, the Borrower hereby authorizes the Collateral Agent to, at its discretion and with prior notice of at least one (1) Business Day, initiate debit entries to the Borrower's account indicated below (i) on each payment date of all Obligations then due and owing, (ii) at any time any payment due and owing with respect to Lender Expenses, and (iii) upon an Event of Default, any other Obligations outstanding, in each case pursuant to Section 2.3(e) of the Agreement. The Borrower authorizes the depository institution named below to debit to such account.

DEPOSITORY NAME	BRANCH
CITY	STATE AND ZIP CODE
TRANSIT/ABA NUMBER	ACCOUNT NUMBER

This authority will remain in full force and effect so long as any amounts are due under the Agreement.

**NEURONETICS, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**Exhibit 10.22**

Form of Restrictive Covenant and Severance Agreement – VP (Pennsylvania)

**RESTRICTIVE COVENANT AND SEVERANCE AGREEMENT**

This Restrictive Covenant and Severance Agreement (the "Agreement") is made and entered into effective as of July 1, 2021 (the "Effective Date"), by and between Neuronetics, Inc., a Delaware corporation ("Company") and \_\_\_\_\_ ("Executive").

**RECITALS**

WHEREAS, in order to encourage Executive's continued dedication to Company, the Board of Directors of Company (the "Board") desires to provide Executive with severance benefits following certain terminations of employment;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, the adequacy and sufficiency of which are hereby acknowledged, Company and Executive hereby agree as follows:

**1. Term of Agreement.** The "Term" of this Agreement will begin on the Effective Date and continue until the earliest of: (i) termination of Executive's employment by Company for Cause, by Executive without Good Reason, or due to Executive's death or Disability; (ii) if Executive becomes entitled to benefits, payment of all benefits to which Executive is entitled under this Agreement and satisfaction of all other obligations of Executive and Company with respect to this Agreement, including Executive's obligations pursuant to the Restrictive Covenant Agreement (as defined herein); and (iii) termination pursuant to Section 11 of this Agreement.

**2. At-Will Employment.** Company and Executive acknowledge that Executive's employment will continue to be at-will as defined under applicable law, and either Company or

Executive may terminate the employment relationship at any time and for any reason. If Executive's employment with Company terminates for any reason, Executive shall not be entitled to any payments, benefits, damages, awards, or compensation other than the payment of accrued but unpaid wages, as required by law, and any unreimbursed business expenses, and as provided by this Agreement.

### **3. Termination.**

**3.1 Cause.** Company in its sole discretion, may terminate Executive's employment and cancel all of Company's obligations under this Agreement for Cause at any time. The term "Cause" shall mean the occurrence of one or more of the following events: any (a) act of fraud, embezzlement, or theft; (b) willful disregard of Company rules, policies, or procedures or of the assigned duties of Executive or directions of the CEO or the Board (other than due to physical or mental illness or Disability), which has not been corrected (to the extent correctable) within thirty (30) days of Executive receiving a written notice for substantial correction from Company; (c) gross negligence, meaning an act or omission exhibiting a conscious indifference or disregard of Company rules, policies, or procedures or of the assigned duties of Executive, which has not been corrected (to the extent correctable) within thirty (30) days of Executive receiving a written notice for substantial correction from Company; (d) breach of fiduciary duty for personal gain during the course of Executive's

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#### Form of Restrictive Covenant and Severance Agreement – VP (Pennsylvania)

employment with Company; (e) commission by Executive of a felony; (f) intentional act or intentional failure to act by Executive which reasonably could be expected to have a material adverse effect on Company's business, reputation, or operations, which has not been corrected (to the extent correctable) within thirty (30) days of Executive receiving a written notice for substantial correction from Company; or (g) determination that Executive intentionally omitted any requested information or falsified any disclosed information either in Executive's resume or during Executive's interview process with Company. Whether an event constituting "Cause" exists, and whether that event is correctable, shall be determined in the sole discretion of Company.

In the event Company elects to terminate Executive's employment in accordance with this Section, such termination shall be without prejudice to any other remedy to which Company may be entitled under law, equity, or this Agreement. Furthermore, the termination will be effective as of the date of the original written notice of termination and neither party shall have any further obligation to the other (including the payment of any severance benefits by Company to Executive) except for Executive's obligations set forth in the Restrictive Covenant Agreement, which will remain in full force and effect. Specifically, should Company terminate this Agreement for Cause, Executive shall not be entitled to any further compensation other than Executive's earned but unpaid base salary (at the annual rate then in effect), any expense reimbursements to be paid in accordance with Company policy, and payments for any accrued but unused vacation or paid time off in accordance with Company's policies and applicable law (the "Accrued

Amounts") up to the effective date of termination of employment with Company (the "Termination Date").

**3.2 Resignation without Good Reason.** Executive may resign Executive's employment without Good Reason at any time. Executive shall not be entitled to any further compensation other than the Accrued Amounts up to the Termination Date. Company, in its sole discretion, may elect to have Executive immediately cease providing services to Company upon receipt of Executive's notice of resignation; provided, however, Company shall pay the Accrued Amounts through the Termination Date.

**3.3 Without Cause or Resignation for Good Reason.**

(a)Executive's employment may be terminated at any time by Company, without any requirement of Cause, upon delivery to Executive of thirty (30) days' prior written notice of its intention to terminate Executive's employment (the "Termination Period"). Company, in its sole discretion, may elect to have Executive immediately cease providing services to Company during the Termination Period; provided, however, Company shall pay the Accrued Amounts through the end of the Termination Period, whether or not Company elects to continue Executive's services during all or a portion of the Termination Period.

(b)Subject to the terms and conditions of this Agreement, in the event of (A) Executive's termination of employment by Company without Cause, or (B) Executive's resignation for Good Reason, Executive's obligations pursuant to the Restrictive Covenant Agreement will remain in full force and effect. Executive and Company also agree that in the event Executive's termination or resignation in accordance with this Section constitutes a separation from service within the meaning

- 2 -

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Form of Restrictive Covenant and Severance Agreement – VP (Pennsylvania)

of Treasury Regulation Section 1.409A-1(h), Company, in addition to the Accrued Amounts for the Termination Period, will provide Executive:

(1) severance at a rate equal to Executive's monthly base salary in effect at the time of such termination or resignation for a period of six (6) months (the "Severance Period");

(2)any unpaid annual incentive bonus, if any, determined in Company's sole discretion in accordance with the incentive bonus program established by Company for senior executives of Company (the "Incentive Bonus"), payable to Executive for the fiscal year that ended immediately preceding Executive's termination of employment, regardless of any requirement that Executive be employed on the date of payment; and

(3)if Executive (and Executive's spouse or dependents, as applicable) timely elects to continue health, dental, and/or vision coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Company will pay the full premium cost associated with such COBRA continuation coverage

consistent with such coverages as are offered to then active employees until the earliest to occur of (i) the expiration of the Severance Period; (ii) the date Executive first becomes eligible for health, dental, or vision coverage with a subsequent employer; (iii) the date Executive is no longer eligible for continuation coverage under COBRA; or (iv) the date Executive violates the provisions of the Restrictive Covenant Agreement. Notwithstanding the foregoing, if Company determines that it cannot provide the benefit required by this Paragraph (4) without potentially violating applicable law (including Section 2716 of the Public Health Service Act) or incurring an excise tax, Company shall in lieu thereof provide to Executive a taxable monthly payment for the period described herein in an amount equal to the monthly COBRA premium that Executive would be required to pay to continue Executive's and Executive's dependents' COBRA continuation coverage based on the premium for the first month of COBRA continuation coverage.

(c) "Good Reason" means Executive's "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h) following the initial existence of one or more of the following conditions arising without Executive's consent:

(1) a material adverse change of Executive's position with Company that reduces Executive's title, level of authority, duties, and/or responsibilities from those in effect immediately prior to the reduction;

(2) a reduction in base salary or target incentive compensation opportunity;

(3) any failure to provide that Executive is eligible to participate in Company benefit plans on a basis that is generally comparable to similarly-situated senior corporate officers of Company;

- 3 -

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#### Form of Restrictive Covenant and Severance Agreement – VP (Pennsylvania)

(4) a relocation of Executive's principal worksite of more than 35 miles one way unless such relocation reduces Executive's commute to such worksite; or

(5) any action or inaction that constitutes a material breach by Company of any employment agreement between Executive and Company, if applicable, or a material breach of this Agreement (including a failure to assume this Agreement by any successor to Company).

Within 30 days following the initial existence of a condition described above, Executive must provide written notice to Company of the existence of the condition, and Company must fail to remedy the condition within 120 days of receipt of such notice. If Company fails to remedy the condition, Executive must separate from service with Company within 30 days of the end of the 120-day cure period. If Executive does not separate from service with Company within such 30-day period, Executive will not have incurred a separation from service for Good Reason.

#### 3.4 Change in Control.

(a) For purposes of this Agreement, "Change in Control" shall have the meaning set forth in the Neuronetics, Inc. 2018 Equity Incentive Plan, as may be amended from time to time (the "Equity Plan"); provided, however, that if any amounts under this Agreement are determined to be subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), then a transaction will not be deemed a Change in Control for purposes of this Agreement unless the transaction qualifies as a change in control event within the meaning of Code Section 409A.

(b) Subject to the terms and conditions of this Agreement, if, during the three (3) month period immediately preceding, through the twelve (12) month period immediately following, the occurrence of a Change in Control, (A) Company terminates Executive's employment without Cause, or (B) Executive resigns for Good Reason, Company will provide Executive:

(1) the amounts described in Subparagraphs (1), (2), and (3) of Section 3.3(b) of this Agreement; provided, however, that the Severance Period shall be extended to nine (9) months;

(2) an amount equal to Executive's target Incentive Bonus for the fiscal year of Executive's termination of employment; and

(3) immediate and full vesting (and the ability to exercise, if applicable) of all outstanding unvested restricted stock, stock options, and other equity incentives awarded to Executive by Company.

In the event Executive is entitled to payments pursuant to this Section 3.4, then this Section shall supersede Section 3.3 of this Agreement.

**3.5 Death; Disability.** In the event Executive's employment ends due to Executive's death or Disability, this Agreement shall terminate and Executive shall not be

- 4 -

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#### Form of Restrictive Covenant and Severance Agreement – VP (Pennsylvania)

entitled to any further compensation under this Agreement other than the Accrued Amounts up to the Termination Date. For purposes of this Agreement, "Disability" means a condition entitling Executive to benefits under Company's long-term disability plan, policy, or arrangement; provided, however, that if no such plan, policy, or arrangement is then maintained by Company and applicable to Executive, "Disability" will mean Executive's inability to perform Executive's duties to Company due to a physical or mental condition that can be expected to result in death or that can be expected to last (or has already lasted) for a continuous period of 90 days or more, or for 120 days in any 180 consecutive day period, as determined by an independent physician reasonably satisfactory to Executive and Company whose fees shall be paid by Company. Termination as a result of a Disability will not be construed as a termination by Company "without Cause."

#### **3.6 Release; Timing of Payment.**

(a) Company shall not be obligated to make any severance payment to Executive under Section 3.3 or 3.4 of this Agreement until Executive has timely delivered to Company a separation agreement, which will include a release of all claims against Company and a non-disparagement clause in favor of Company, in form and substance satisfactory to Company ("Release"), no later than forty-five (45) days following the Termination Date.

(b) The base salary and COBRA continuation severance payable pursuant to Sections 3.3 and 3.4 above shall be paid in substantially equal installments in accordance with Company's payroll practices over the Severance Period; the Incentive Bonus severance described in Section 3.3(b)(2) above shall be paid in a single lump sum on the date Incentive Bonus payments are paid to employees generally; the Incentive Bonus severance described in Section 3.4(b)(2) above shall be payable in a single lump sum commencing within the sixty (60) days immediately following the Termination Date; and any equity awards will be payable in accordance with the Equity Plan, as applicable. Notwithstanding the foregoing, no amounts will be paid pursuant to this Agreement unless and until the Release has become effective and irrevocable under all applicable law; provided, that if the period from the Termination Date until the date of payment can encompass two consecutive calendar years, payment will not be made until the later calendar year. The first payment after the Release has become effective shall include all amounts that would have been paid following the Termination Date had the Release been effective as of the Termination Date but which were not yet paid.

**3.7 Violation of Restrictive Covenant Agreement.** Notwithstanding anything herein to the contrary, Executive's violation of the Restrictive Covenant Agreement at any point during the Severance Period shall result in forfeiture of all unpaid amounts set forth in Sections 3.3 and 3.4 above, Company shall be under no further obligation to make any further payment to Executive, and Executive will be required to repay to Company the gross amount of any payments made pursuant to this Agreement within thirty (30) days of the demand by Company.

**3.8 No Mitigation.** Executive shall not be obligated to seek other employment or take other action to mitigate the amounts payable to Executive hereunder.

- 5 -

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Form of Restrictive Covenant and Severance Agreement – VP (Pennsylvania)

**3.9 No Additional Severance.** Executive acknowledges and agrees that the severance described in this Section 3 shall be in lieu of any other severance payments or benefits to which Executive may be eligible or entitled to receive under any other severance plan or arrangement of Company or its affiliates.

**3.10 Clawback.** Notwithstanding anything herein to the contrary, any amounts payable pursuant to Section 3.3 or 3.4 above remain subject to Company's clawback policy. By entering into this Agreement, Executive acknowledges and agrees that Executive is subject to any clawback and recoupment policies that may be applicable to Executive as an employee of Company, as in effect (or as may be amended) from time to time.

**4. Restrictive Covenant Agreement.** Executive acknowledges and agrees to abide by the terms of the Confidentiality, Non-Competition and Inventions Assignment Agreement, as may be amended from time to time, and substantially in the form as attached hereto as Exhibit A, and/or any other restrictive covenant agreement in the form and substance determined in the discretion of Company (the "Restrictive Covenant Agreement"). Executive acknowledges that the Restrictive Covenant Agreement shall continue to remain in full-force and effect in accordance with its terms following cessation of Executive's employment with Company for any reason. If Executive does not execute the Restrictive Covenant Agreement on or before the fifth (5<sup>th</sup>) calendar day following the Effective Date, or does not have a prior Restrictive Covenant Agreement already in effect as of the Effective Date, this Agreement shall be deemed null and void from the outset and Company shall have no obligations hereunder.

**5. Arbitration.**

**5.1** Executive and Company agree and stipulate that any claims, disputes, and demands which may arise out of Executive's employment with Company, Executive's termination of employment, the interpretation or application of any term, provision, and/or language in this Agreement, and/or disputes, controversies or claims between Executive and Company, regardless of whether said claims, disputes, or demands are based on contract law, common law, federal or state statutes, federal or state constitutional provisions, or otherwise, shall first be submitted to mediation administered by the American Arbitration Association ("AAA") under its Employment Arbitration Rules and Medication Procedures, before resorting to arbitration. Thereafter, any unresolved claim, dispute, or demand shall be submitted to final and binding arbitration pursuant to the Federal Arbitration Act ("Act") in accordance with the Employment Arbitration Rules (or successor rules) of the AAA and Federal Rule of Civil Procedure 68; provided, however, that nothing in this Section shall preclude either party from seeking or obtaining judicial enforcement of the Restrictive Covenant Agreement, through injunctive or equitable relief without arbitration as provided in the Restrictive Covenant Agreement. The FAA applies to this Agreement because Company's business involves interstate commerce. Specifically, Company's business affects interstate commerce because Company operates facilities in various states outside of Pennsylvania; it purchases goods and services and other products from vendors who are located outside of Pennsylvania; it ships goods and other products and provides services to persons and entities in various states outside of Pennsylvania; and/or it promotes its business in various states.

**5.2** The arbitration shall be conducted before a single arbitrator who is licensed to practice law in the Commonwealth of Pennsylvania and familiar with employment disputes.

- 6 -

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**Form of Restrictive Covenant and Severance Agreement – VP (Pennsylvania)**

The parties may select an arbitrator for their dispute by agreement. If the parties cannot agree upon an arbitrator within thirty (30) days from either party's request for arbitration, either party may request a list of proposed arbitrators from AAA. AAA will guide the parties through the selection of a neutral arbitrator in accordance with its Rules and will provide the parties at least two complete panels from which a selection may be made. The arbitration shall be scheduled within one hundred eighty (180) days after the arbitrator has been selected with the hearing to

take place in Chester County, Pennsylvania, and the arbitrator shall issue a written decision within thirty (30) days after the close of the hearing, unless otherwise agreed by the parties.

**5.3** The parties shall have the right to file dispositive motions and post-hearing briefs. The arbitrator's authority and jurisdiction shall be limited to determining the matter in dispute consistent with controlling law and this Agreement. Except as otherwise provided herein, the arbitrator shall apply, and shall not deviate from, the substantive law of the state in which the claim(s) arose and/or federal law, as applicable. The arbitrator shall have the same authority to order remedies (e.g., emotional distress damages, punitive damages, equitable relief, etc.) as would a court of competent jurisdiction. The arbitrator shall not have the authority to hear disputes not recognized by existing law and shall dismiss such claims upon motion by either party in accordance with the summary judgment standards of the applicable jurisdiction. Similarly, the arbitrator shall not have the authority to order any remedy that a court would not be authorized to order. The arbitrator shall render a written award setting forth the arbitrator's findings of fact and conclusions of law within 30 days after the close of the hearing, unless otherwise agreed by the parties. The arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the formation, enforceability, applicability, or interpretation of this Agreement, including without limitation any claim that this Agreement is void or voidable. Thus, the parties voluntarily waive the right to have a court determine the enforceability of this Agreement.

**5.4** Any party hereto who refuses or fails to proceed to arbitration of a dispute covered by this Agreement, after having received a written request from the other party that it/he do so, will be liable to the party requesting arbitration for all attorney fees, costs, and litigation expenses incurred in compelling arbitration.

**5.5** The parties acknowledge that because of their relative positions, knowledge and sophistication, they are capable of, and voluntarily consent to, an equal division of the arbitrator compensation and administrative fees incurred in connection with any arbitration conducted under this Section, so long as such an order would be consistent with the AAA's employment arbitration rules and mediation procedures. Each party shall be solely responsible for payment of its own attorney's fees, if any, relating to the arbitration, unless otherwise required by statute or contract.

**6. Successors.** This Agreement shall be binding upon any successor of Company and any successor shall be deemed substituted for Company under the terms of this Agreement. As used in this Agreement, the term "successor" shall include any person, firm, corporation, or other business entity which at any time, whether by merger, purchase, or otherwise, acquires all or substantially all of the assets or business of Company. Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of Company to assume and agree to perform the obligations under this Agreement in the same manner

- 7 -

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Form of Restrictive Covenant and Severance Agreement – VP (Pennsylvania)

and to the same extent that Company would be required to perform it if no such succession had taken place. Company shall be permitted to assign this Agreement to its successors and assigns, and all

covenants and agreements hereunder shall inure to the benefit of and be enforceable by or against its successors and assigns.

**7. Entire Agreement.** This Agreement supersedes any and all prior or contemporaneous understandings, expectations, statements, representations, negotiations, promises, and agreements (regardless of whether written or oral, expressed or implied) between Company and Executive relating to the subject matter hereof, other than the Restrictive Covenant Agreement and except as provided herein. This Agreement, and the Restrictive Covenant Agreement, incorporate and constitute the full, entire, and complete agreement between Company and Executive with respect to the subject matter hereof and no other agreements, expectations, understandings, representations, and/or promises between the parties and/or their representatives shall be considered valid or effective unless expressly stated herein. Executive shall remain subject to clawback policy of Company, as well as the personnel policies and procedures of Company to the extent that such policies and procedures are not inconsistent with the terms and provisions of this Agreement.

**8. 409A Savings Clause.** All amounts payable under this Agreement are intended to comply with the "short term deferral" exception from Code Section 409A, specified in Treas. Reg. § 1.409A-1(b)(4) (or any successor provision) or the "separation pay plan" exception specified in Treas. Reg. § 1.409A-1(b)(9) (or any successor provision), or both of them, and shall be interpreted in a manner consistent with the applicable exceptions. Notwithstanding the foregoing, to the extent that any amounts payable in accordance with this Agreement are subject to Code Section 409A, this Agreement shall be interpreted and administered in such a way as to comply with Code Section 409A to the maximum extent possible. Any reference in this Agreement to a termination of employment means a "separation from service" as defined in Code Section 409A and the applicable guidance issued thereunder. All rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Code Section 409A. If payment of any amount subject to Code Section 409A is triggered by a separation from service that occurs while the Employee is a "specified employee" (as defined by Code Section 409A) with the Company, and if such amount is scheduled to be paid within six (6) months after such separation from service, the amount shall accrue without interest and shall be paid on the first business day after the end of such six-month period, or, if earlier, within 15 days after the appointment of the personal representative or executor of the Employee's estate following the Employee's death.

Notwithstanding anything in this Agreement to the contrary, in no event shall Company commence payment or distribution to Executive of any amount that constitutes "nonqualified deferred compensation" within the meaning of Code Section 409A, earlier than the earliest permissible date under Code Section 409A that such amount could be paid or distributed without the imposition of additional taxes, interest, or penalties under Code Section 409A. If any payments or distributions are delayed pursuant to the immediately preceding sentence, Company will accrue such amounts without interest during such period as the payment or distribution may be required to be deferred under Code Section 409A, and will become payable and be paid by Company in a lump-sum payment on the first business day that such amount could be paid or distributed without additional taxes, interest, or penalties being imposed under Code Section 409A.

**9. Section 280G.**

**9.1** In the event that part or all of the payments or benefits to be paid or provided to the Executive under this Agreement together with the aggregate present value of payments, consideration, compensation, and benefits under all other plans, arrangements, and agreements applicable to the Executive ("Total Payments") will be subject to an excise tax under the provisions of Code Section 4999 ("Excise Tax"), the Total Payments shall be reduced so that the maximum amount of the Total Payments (after reduction) will be one dollar (\$1.00) less than the amount that would cause the Total Payments to be subject to the Excise Tax; provided, however, that the Total Payments shall only be reduced to the extent the after-tax value of amounts received by the Executive after application of the above reduction would exceed the after-tax value of the Total Payments received by the Executive without application of such reduction. If applicable, the particular payments that are to be reduced shall be subject to the mutual agreement of the Executive and the Company, with a view to maximizing the value of the payments to the Executive that are not reduced.

**9.2** For purposes of determining whether any of the Total Payments will be subject to the Excise Tax and the amount of such Excise Tax, (a) all of the Total Payments shall be treated as "parachute payments" within the meaning of Code Section 280G(b)(2), unless in the opinion of tax counsel (the "Tax Counsel") reasonably acceptable to the Executive and selected by the accounting firm (the "Auditor") which was, immediately prior to the Change in Control, the Company's independent auditor, such other payments or benefits (in whole or in part) do not constitute parachute payments, including by reason of Code Section 280G(b)(4)(A), (b) all "excess parachute payments" within the meaning of Code Section 280G(b)(1) shall be treated as subject to the Excise Tax unless, in the opinion of Tax Counsel, such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered, within the meaning of Code Section 280G(b)(4)(B), in excess of the base amount allocable to such reasonable compensation, or are otherwise not subject to the Excise Tax, and (c) the value of any noncash benefits or any deferred payment or benefit shall be determined by the Auditor in accordance with the principles set forth in Code Section 280G(d)(3) and (d)(4). Prior to the payment date set forth in Section 3.4 of this Agreement, Company shall provide the Executive with its calculation of the amounts referred to in this Section 9.2 and such supporting materials as are reasonably necessary for the Executive to evaluate Company's calculations. If the Executive disputes Company's calculations (in whole or in part), the reasonable opinion of Tax Counsel with respect to the matter in dispute shall prevail.

**10. Taxes, Penalties, and Fees.** It is the sole obligation of Executive, or Executive's estate or beneficiary, to remain aware of and to pay any and all taxes, fees, or penalties (including any excise taxes) due now or in the future on benefits received under this Agreement, whether or not Executive or Executive's beneficiary has received cash from Company at the time the taxes, fees, or penalties become due. Executive acknowledges that tax requirements may change during the term of this Agreement and that it is Executive's (or Executive's estate's or beneficiary's) obligation to remain aware of these changes and to fulfill these obligations. Any amounts payable (or transfers of property) pursuant to this Agreement will be subject to federal, state, and local tax withholding to the extent required by applicable law.

**11. Amendment.** No change, amendment, alteration, deletion, addition, supplementation, clarification, or modification to this Agreement or any of its terms shall be valid or

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Form of Restrictive Covenant and Severance Agreement – VP (Pennsylvania)

of any effect unless, and only if, it is reduced to writing as a formal and specific amendment to this Agreement and is signed by Executive and Company. Notwithstanding the foregoing, no amendment to this Agreement may accelerate any amount payable to Executive unless the amendment and acceleration are allowable by Code Section 409A, or the amounts payable are not subject to Code Section 409A. Further notwithstanding the foregoing, no payment to Executive shall occur upon termination of this Agreement unless the requirements of Code Section 409A have been met, to the extent applicable. Company and Executive agree to execute any and all amendments to this Agreement as they mutually agree may be necessary or appropriate to ensure compliance with the distribution provisions of Code Section 409A or as otherwise needed to ensure that this Agreement complies with, or remains exempt from, Code Section 409A.

**12. Severability.** The invalidity or unenforceability of a particular provision of this Agreement shall not affect the enforceability of any other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

**13. Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof or of any other right herein.

**14. Notices.** Any notice to be given under this Agreement by either party to the other may be effective either by personal delivery in writing or by mail, certified mail, postage prepaid with return receipt requested. Mailed notices shall be addressed to Executive's current residence or to Company's principal business address. Notices delivered personally shall be deemed communicated as of the actual receipt thereof, and mailed notices shall be deemed communicated and received three (3) days after the mailing of same.

**15. Applicable Law; Venue.** This Agreement shall be governed by and interpreted under the laws of the Commonwealth of Pennsylvania, and all actions brought to enforce or interpret this Agreement shall be in the courts applicable to Chester County, Pennsylvania.

**16. Construction of Agreement.** The terms, provisions, and conditions of this Agreement represent the results of negotiations between and among the parties hereto, each of which has had the opportunity to be represented by counsel of its own choosing, and neither of which has acted under duress or coercion whether legal, economic or otherwise. Accordingly, the terms, provisions, and conditions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings.

**17. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.

**18. Consultation with Attorney.** Executive acknowledges and agrees that Executive has been afforded the opportunity to review this Agreement with Executive's legal counsel prior to execution hereof.

- 10 -

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IN WITNESS WHEREOF, the parties have hereto set their hand to this Agreement as set out below.

EXECUTIVENEURONETICS, INC.

By: \_\_\_\_\_  
[Name] its: \_\_\_\_\_

\_\_\_\_\_  
Date Date

ATTEST:

\_\_\_\_\_  
By: \_\_\_\_\_  
Date

- 11 -

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**EXHIBIT A**  
**RESTRICTIVE COVENANT AGREEMENT**

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- 12 -

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**Exhibit 10.26**

**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT**

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this “*Agreement*”) is made by and between NEURONETICS, INC. (the “*Company*”) and KEITH J. SULLIVAN (“*Executive*”), and is effective as of November 2, 2023 (the “*A&R Effective Date*”).

WHEREAS, the Company and Executive previously executed an Employment Agreement dated July 14, 2020 (the “**Prior Agreement**”), which became effective as of the date that Executive commenced his employment with the Company (the “**Original Effective Date**”);

WHEREAS, since the Original Effective Date, the Company’s Board of Directors (the “**Board**”) has approved certain modifications to Executive’s employment arrangements, and the Company has determined that such modifications should be reflected in the documents that memorialize Executive’s employment relationship with the Company;

WHEREAS, in furtherance of the foregoing, the parties wish to amend and restate the Prior Agreement as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and intending to be bound hereby, the parties agree as follows:

1. Duration of Agreement; Amendment and Restatement.

1.1. This Agreement is effective as of the A&R Effective Date, and has no specific expiration date. Unless terminated by agreement of the parties, this Agreement will govern Executive’s employment by the Company until that employment ceases.

1.2. The Prior Agreement is hereby amended, restated, superseded, and replaced by this Agreement in all respects.

2. Title; Duties.

2.1. Executive will be employed as the Company’s President and Chief Executive Officer. Executive will devote his best efforts and substantially all of his business time and services to the Company Group to perform such duties as may be customarily incident to his position and as may reasonably be assigned to him from time to time. Executive shall report to the Company’s Board of Directors (the “**Board**”). Except as otherwise set forth in Section 2.2, Executive will not, in any capacity, engage in other business activities or perform services for any other individual, firm or corporation without the prior written consent of the Board; *provided, however, that without such consent, Executive may engage in charitable, non-profit and public service activities, so long as such activities do not in any respect interfere or conflict with Executive’s performance of his duties and obligations to the Company Group; and provided further that Executive may serve on for-profit boards of directors (other than the Board) only with the consent of the Board.*

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2.2. Executive agrees to reduce his current (as of the Original Effective Date) for-profit board service from three (3) companies to two (2) companies within six (6) months after the Original Effective Date. Executive and the Board will periodically discuss whether continued outside for-profit board service is consistent with the requirements of Section 2.1 as well as the policies of proxy advisory firms and institutional investors. Executive agrees to comply with any reasoned decision of the Board with respect thereto.

2.3. The Board intends to appoint Executive to fill a newly created vacancy resulting from the increase of the size of the Board from six members to seven members contemporaneously with or as promptly as practicable after the Original Effective Date. Thereafter, Executive’s election to serve as a continuing director on the Board shall be determined by the Company’s stockholders.

3. Place of Performance. Executive will substantially perform his services hereunder at the principal executive offices of the Company in Malvern, PA; *provided, however, that Executive may be required to travel from time to time for business purposes.*

4. Compensation.

4.1. Base Salary. Executive's annual salary (the "**Base Salary**") will be seven hundred thousand dollars (\$700,000), paid in accordance with the Company's payroll practices as in effect from time to time. The Base Salary will be reviewed annually in the first quarter of the fiscal year by the Compensation Committee of the Company's Board of Directors (the "**Committee**"). The Committee will make recommendations to the Board concerning, and the non-executive Board members will determine, Base Salary in their respective discretion.

4.2. Annual Bonus. Executive shall be eligible to receive an annual incentive bonus (the "**Bonus**"), with a target amount equal to 100% of his Base Salary, subject to annual review by the Committee. The Committee will make recommendations to the Board concerning, and the non-executive Board members will determine, Executive's Bonus target in their respective discretion. The actual Bonus payable with respect to a particular fiscal year will be determined by the Board, after consulting with the Committee, based on the achievement of corporate and/or individual objectives established by the Board in consultation with the Committee and Executive. Notwithstanding the foregoing, the Bonus payable for the Company's 2020 fiscal year shall be no less than the target Bonus, determined on a pro rata basis based on the number of days Executive is employed by the Company during 2020. Any Bonus payable under this paragraph will be paid during the calendar year immediately following the fiscal year in respect of which the bonus is payable and, except as otherwise provided in Section 5.1.1, will only be paid if Executive remains continuously employed by the Company through the actual bonus payment date.

4.3. Equity Incentive Awards.

4.3.1. Beginning in 2022, Executive shall be eligible to receive equity-based compensation commensurate with his position in connection with any annual equity-based awards made to senior executives of the Company. Such awards shall be made in the sole discretion of the Committee and shall be subject to the terms and conditions set forth in the Company's 2018 Equity Incentive Plan (the "**Plan**") (or other applicable plan) and award

-2-

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agreements, and in all cases shall be recommended by the Committee and determined by the non-executive Board members in their respective discretion.

4.3.2. As an inducement to Executive's employment with the Company, the Committee shall approve a grant of two million (2,000,000) shares of the Company's common stock (the "**Sign-On Equity Grant**"). The Sign-On Equity Grant will be made on the Original Effective Date. Such Sign-On Equity Grant shall be structured as an inducement grant under Nasdaq Listing Rule 5635(c), but otherwise subject to all terms and conditions of the Plan and related agreements.

4.3.3. The Sign-On Equity Grant shall be in the form of: (i) restricted stock units representing five hundred thousand (500,000) shares of the Company's common stock, vesting in four (4) annual installments on the anniversary of the grant date; (ii) non-qualified stock options representing

one million (1,000,000) shares of common stock with an exercise price equal to the closing price of the Company's common stock on the grant date and with 25% vesting on the first anniversary of the grant date and the remaining 75% vesting ratably over the following thirty-six (36) months; and (iii) performance stock units representing five hundred thousand (500,000) shares of the Company's common stock vesting upon attainment of the performance metrics set forth in the grant agreement, in each case of clauses (i) through (iii), subject to Executive's continuous employment with the Company through the relevant date.

**4.4. Employee Benefits.** During Executive's employment, Executive will be eligible to participate in all employee benefit plans and programs made available by the Company from time to time to its executives generally, subject to applicable plan terms and policies. The Company periodically reviews its benefits, policies, benefits providers and practices and may terminate, alter or change them at its discretion from time to time.

**4.5. Reimbursement of Expenses.** Executive will be reimbursed by the Company for all reasonable business expenses incurred by Executive in accordance with the Company's customary expense reimbursement policies as in effect from time to time; *provided, however, that in lieu of reimbursement for personal mileage for travel by automobile Executive shall receive a monthly stipend in the amount of one thousand two hundred dollars (\$1,200) (grossed-up for applicable taxes).* Notwithstanding anything herein to the contrary, to the extent any expense, reimbursement or in-kind benefit provided to Executive constitutes a "deferral of compensation" within the meaning of Section 409A of the Internal Revenue Code (the "Code") (i) the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive must be incurred during Executive's term of employment; (ii) the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive in any other calendar year, (iii) the reimbursements for expenses for which Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred and (iv) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

**5. Termination.** Executive's employment with the Company may be terminated by the Company or Executive at any time and for any reason. Upon any cessation of his

-3-

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employment with the Company, Executive will be entitled only to such compensation and benefits as described in this Section 5. Upon any cessation of his employment for any reason, unless otherwise requested by the Company, Executive agrees to resign immediately from all officer and director positions he then holds with the Company Group.

**5.1. Termination without Cause or for Good Reason.** If Executive's employment by the Company ceases due to a termination by the Company without Cause or a resignation by Executive for Good Reason, Executive will be entitled to:

5.1.1. payment of any annual bonus otherwise payable (but for the cessation of Executive's employment) with respect to a year ended prior to the cessation of Executive's employment;

5.1.2. continuation of Executive's Base Salary for a period equal to twelve (12) months ("Severance Period"), payable in accordance with the Company's standard payroll practices;

5.1.3. payment of prorated Bonus for the current year based on the achievement of the performance criteria achieved through the termination date, as determined by the Board after consultation with the Committee, paid in accordance with the Company's standard payroll practices; and

5.1.4. if Executive is eligible for COBRA benefits, waiver of the applicable premium otherwise payable for COBRA continuation coverage for Executive (and, to the extent covered immediately prior to the date of such cessation, his eligible dependents) during the Severance Period.

Except as otherwise provided in this Section 5.1, and except for payment of all (i) accrued and unpaid Base Salary through the date of such cessation, (ii) any expense reimbursements to be paid in accordance with the Company policy and (iii) payments for any accrued but unused paid time off in accordance with the Company's policies and applicable law, all compensation and benefits will cease at the time of such cessation and the Company Group will have no further liability or obligation by reason of such cessation. The payments and benefits described in this Section 5.1 are in lieu of, and not in addition to, any other severance arrangement maintained by the Company Group. Notwithstanding any provision of this Agreement, the payments and benefits described in Section 5.1 are conditioned on: (i) Executive's execution and delivery to the Company and the expiration of all applicable statutory revocation periods, by the 45th day following the effective date of his cessation of employment, of a general release of claims against the Company Group in a form reasonably prescribed by the Company (the "Release"); and (b) Executive's continued compliance with the Restrictive Covenants (as defined below). Subject to Section 5.4, the benefits described in Section 5.1 will be paid or provided (or begin to be paid or provided) as soon as administratively practicable (or determinable in the case of the benefits described in Sections 5.1.1 and 5.1.3, if later) after the Release becomes irrevocable, provided that if the 45 day period described above begins in one taxable year and ends in a second taxable year such payments or benefits shall not commence until the second taxable year.

5.2. Termination Following a Change in Control. If Executive's employment by the Company ceases due to a termination by the Company without Cause or a resignation by

-4-

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Executive for Good Reason during the twelve (12) month period immediately following the occurrence of a Change in Control (as defined below), in addition to the benefits provided pursuant to Section 5.1, the Severance Period shall be extended from twelve (12) months to twenty-four (24) months and all outstanding unvested restricted stock, stock options and other equity incentives awarded to Executive by the Company, including, without limitation, the Sign-On Equity Grant, will become immediately and automatically fully vested and exercisable (as applicable), subject to Executive's execution and non-revocation of the Release.

5.3. Other Terminations. If Executive's employment with the Company ceases for any reason other than as described in Section 5.1 or Section 5.2 above (including but not limited to termination (i) by the Company for Cause, (ii) by Executive without Good Reason, (iii) as a result of Executive's retirement, (iv) as a result of Executive's death or (v) as a result of Executive's Disability, then the Company Group's obligation to Executive will be limited solely to (a) accrued and unpaid Base

Salary through the date of such cessation, (b) any expense reimbursements to be paid in accordance with the Company policy and (c) payments for any accrued but unused paid time off in accordance with the Company's policies and applicable law. All compensation and benefits will cease at the time of such cessation and, except as otherwise provided by COBRA or this Section 5.3, the Company Group will have no further liability or obligation by reason of such termination. The foregoing will not be construed to limit Executive's right to payment or reimbursement for claims incurred prior to the date of such termination under any insurance contract funding an employee benefit plan, policy or arrangement of the Company in accordance with the terms of such insurance contract.

**5.4. Compliance with Section 409A.** If the termination giving rise to the payments described in Section 5.1 or Section 5.2 is not a "Separation from Service" within the meaning of Treas. Reg. § 1.409A-1(h)(1) (or any successor provision), then the amounts otherwise payable pursuant to that section will instead be deferred without interest and will not be paid until Executive experiences a Separation from Service. To the maximum extent permitted under Section 409A of the Code and its corresponding regulations, the cash severance benefits payable under this Agreement are intended to meet the requirements of the short-term deferral exemption under Section 409A of the Code and the "separation pay exception" under Treas. Reg. §1.409A-1(b)(9)(iii). To the extent compliance with the requirements of Treas. Reg. § 1.409A-3(i)(2) (or any successor provision) is necessary to avoid the application of an additional tax under Section 409A of the Internal Revenue Code to payments due to Executive upon or following his Separation from Service, then notwithstanding any other provision of this Agreement (or any otherwise applicable plan, policy, agreement or arrangement), any such payments that are otherwise due within six months following Executive's Separation from Service (taking into account the preceding sentence of this paragraph) will be deferred without interest and paid to Executive in a lump sum immediately following that six month period. For purposes of the application of Treas. Reg. § 1.409A-1(b)(4) (or any successor provision), each payment in a series of payments will be deemed a separate payment.

**5.5. PPACA.** Notwithstanding anything in this Agreement to the contrary, the waiver in respect of COBRA premiums pursuant to Section 5.1 shall cease to the extent required to avoid adverse consequences to the Company Group under the Patient Protection and Affordable Care Act of 2010 and regulations thereunder.

-5-

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**5.6. Section 280G.** If any payment or distribution by the Company to or for the benefit of Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise pursuant to or by reason of any other agreement, policy, plan, program or arrangement or the lapse or termination of any restriction on or the vesting or exercisability of any payment or benefit (each a "**Payment**"), would be subject to the excise tax imposed by Section 4999 of the Code (or any successor provision thereto) or to any similar tax imposed by state or local law (such tax or taxes are hereafter collectively referred to as the "**Excise Tax**"), then the aggregate amount of Payments payable to Executive shall be reduced to the aggregate amount of Payments that may be made to Executive without incurring an excise tax (the "**Safe-Harbor Amount**") in accordance with the immediately following sentence; *provided that* such reduction shall only be imposed if the aggregate after-tax value of the Payments retained by Executive (after giving effect to such reduction) is equal to or greater than the aggregate after-tax value (after giving effect to the Excise Tax) of the Payments to Executive without any such reduction. Any such reduction shall be made in the following order: (i) first,

any future cash payments (if any) shall be reduced (if necessary, to zero); (ii) second, any current cash payments shall be reduced (if necessary, to zero); (iii) third, all non-cash payments (other than equity or equity derivative related payments) shall be reduced (if necessary, to zero); and (iv) fourth, all equity or equity derivative payments shall be reduced.

**5.7. Definitions.** For purposes of this Agreement:

5.7.1. **"Cause"** means Executive's (a) conviction of, or the entry of a plea of guilty or no contest to, a felony, any crime of moral turpitude or any other crime that materially adversely affects the Company Group's operations, financial performance, reputation, or relationship with its customers, suppliers or employees; (b) chronic alcohol abuse or abuse of controlled drugs; (c) a material breach of this Agreement or any duty owed to the Company Group; (d) dishonesty, including fraud, embezzlement, theft or other misuse of property with respect to the Company Group; (e) refusal to perform the lawful and reasonable directives of the Board; (f) gross negligence or willful misconduct in the performance of duties (g) or breach of Executive's restrictive covenants; or (h) a material violation of any written policy of the Company Group, including, without limitation, policies relating to discrimination, harassment, fraternization and nepotism.

5.7.2. **"Change in Control"** shall have the same meaning given it under the Plan.

5.7.3. **"Disability"** means a condition entitling Executive to benefits under the Company's long term disability plan, policy or arrangement; *provided, however,* that if no such plan, policy or arrangement is then maintained by the Company and applicable to Executive, **"Disability"** will mean Executive's inability to perform his duties under this Agreement due to a mental or physical condition that can be expected to result in death or that can be expected to last (or has already lasted) for a continuous period of 90 days or more, or for 120 days in any 180 consecutive day period. Termination as a result of a Disability will not be construed as a termination by the Company "without Cause."

5.7.4. **"Good Reason"** means any of the following, without Executive's prior consent: (a) a material reduction in Base Salary or target Bonus opportunity (except for

-6-

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reductions proportionately applicable to all of the Company's executives); (b) a material diminution of Executive's duties or responsibilities; or (c) a material breach of this Agreement by the Company. However, none of the foregoing events or conditions will constitute Good Reason unless Executive provides the Company with written objection to the event or condition within thirty (30) days following the occurrence thereof, the Company does not reverse or otherwise cure the event or condition within thirty (30) days of receiving that written objection, and Executive resigns Executive's employment within thirty (30) days following the expiration of that cure period.

**6. Restrictive Covenants.** To induce the Company to enter into this Agreement and in recognition of the compensation to be paid to Executive pursuant to Sections 4 and 5 of this Agreement, Executive agrees to be bound by the provisions of this Section 6 (the "**Restrictive Covenants**"). The Restrictive Covenants will apply without regard to whether any termination or cessation of Executive's employment is initiated by the Company or Executive, and without regard to the reason for that termination or cessation.

6.1. Covenant Not To Solicit. Executive covenants that, during his employment by the Company and for a period of twenty four (24) months following immediately thereafter (the “**Restricted Period**”), Executive shall not, directly or indirectly, for Executive’s own benefit or for the benefit of any other Person, in any capacity (as a principal, shareholder, partner, member, investor, director, officer, agent, advisor, executive, consultant, contractor, employee, lender or otherwise):

6.1.1. direct, induce, solicit, recruit or attempt to persuade any Person to terminate such Person’s employment or other relationship with the Company Group or not to establish an employment or other relationship with the Company Group, whether or not such Person is or would be an employee, consultant, contractor, officer and/or director, whether or not such relationship is or would be pursuant to a written or oral agreement and whether or not such relationship is for a specific period of time or is at-will;

6.1.2. employ or establish a business relationship with (or attempt to employ or establish a business relationship with), or encourage or assist any Person to employ or establish a business relationship with, any individual who was an employee, consultant, contractor, officer or director of the Company Group during the twelve month period preceding such termination;

6.1.3. call upon, solicit, contact, or serve in any capacity any of the then-existing clients, Customers, vendors or suppliers of the Company Group, any clients, Customers, vendors or suppliers that have had a relationship with the Company Group during the twelve (12) months preceding the Termination Date, or any potential clients, Potential Customers, vendors or suppliers that were solicited by the Company Group during the twelve (12) months preceding the Termination Date for the purpose of engaging in a Competing Business or in any manner that could adversely affect alter or change the relationship (contractual or otherwise) which such clients, Customers, Potential Customers, vendors or suppliers have with the Company Group;

6.1.4. (a) direct or engage in any act or omission that could otherwise disrupt, damage, impair, or interfere with the business of the Company Group (or attempt to do the same) whether by way of interfering with or disrupting the relationship of the Company Group

-7-

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with employees, customers, agents, representatives, clients, Customers, Potential Customers, vendors, suppliers consultants or contractor of the Company Group, or (b) otherwise induce or attempt to induce any such Person to cease doing business, reduce or otherwise limit its business with the Company Group; or

6.1.5. solicit business from any Customer or Prospective Customer, or do business with any Customer or Prospective Customer of the Company Group, involving the Business.

6.2. Non-Competition. During Executive’s service with the Company Group and for the Restricted Period, Executive shall not, directly or indirectly, for Executive’s own benefit or for the benefit of any other Person, in any capacity (as a principal, shareholder, partner, member, investor, director, officer, agent, advisor, executive, consultant, contractor, employee, lender or otherwise), engage or participate in, or be financially interested in, any Person involved in a Competing Business anywhere in the United States or any other country or region in which the Company Group is then selling its products and services, is planning to sell its products and services or is planning to apply for, or has

applied for, regulatory approval to sell its products and services, including but not limited to, those Persons set forth on Attachment A (provided, however, that nothing contained in this Section 6.2 shall prevent Executive from holding for passive investment of less than two percent (2%) of any class of equity securities of a company whose securities are publicly traded on a national securities exchange or in a national market system).

6.3. **Confidentiality.** Executive recognizes and acknowledges that the Proprietary Information (as defined in below) is a valuable, special and unique asset of the business of the Company Group. As a result, both during the Term and for the ten (10) year period thereafter, Executive will not, without the prior written consent of the Company, for any reason divulge to any third-party or use for his own benefit, or for any purpose other than the exclusive benefit of the Company Group, any Proprietary Information, provided, however, that during the Term and at all times thereafter, Executive will not, without the prior written consent of the Company, for any reason divulge to any third-party or use for his own benefit, or for any purpose other than the exclusive benefit of the Company Group, any trade secrets. Notwithstanding the foregoing, nothing in this Agreement prohibits Executive from initiating communications directly with, responding to any inquiries from, providing testimony before, providing confidential information to, reporting possible violations of law or regulation to, or from filing a claim or assisting with an investigation directly with a self-regulatory authority or a government agency or entity, including the U.S. Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General (collectively, the "**Regulators**"), or from making other disclosures that are protected under the whistleblower provisions of state or federal law or regulation. In connection with any such activity, Executive must identify any information that is confidential and ask the Regulator for confidential treatment of such information. Despite the foregoing, Executive is not permitted to reveal to any other Person, including any governmental, law enforcement, or regulatory authority, information employee came to learn during the course of Executive's employment with the Company that is protected from disclosure by any applicable privilege, including but not limited to the attorney-client privilege, attorney work product doctrine and/or other applicable

-8-

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legal privileges. The Company Group does not waive any applicable privileges or the right to continue to protect its privileged attorney-client information, attorney work product, and other privileged information. Notwithstanding any other provisions of this Agreement, pursuant to 18 USC Section 1833(b), Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of the Company Group's trade secret that is made: (a) confidentially to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose a trade secret to Executive's attorney and use the trade secret information in related court proceedings, provided that Executive files any document containing the trade secret information under seal and does not disclose the trade secret, except pursuant to court order. Executive agrees that he will not, while employed by the Company or engaged as a consultant and/or director of the Company Group, improperly use or disclose any proprietary information or trade secrets of any former or concurrent employer or other Person, if any, with whom Executive has an agreement or duty to keep such

information or secrets confidential, if any, and that Executive will not use, disclose or bring onto the premises of the Company Group any unpublished document or proprietary information belonging to any such employer or Person unless consented to in writing by such employer or Person. Executive recognizes that the Company Group has received and in the future will receive from third parties (including customers of the Company Group) their confidential or proprietary information subject to a duty on the Company Group's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Executive agrees to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any Person or to use it except as necessary in carrying out Executive's work for the Company Group, consistent with the Company Group's agreement with such other Person.

#### **6.4. Property of the Company Group.**

**6.4.1. Proprietary Information.** All right, title and interest in and to Proprietary Information will be and remain the sole and exclusive property of the Company Group. Executive will not remove from the Company Group's offices or premises any documents, records, notebooks, files, correspondence, reports, memoranda or similar materials of or containing Proprietary Information, or other materials or property of any kind belonging to the Company Group unless necessary or appropriate in the performance of his duties to the Company Group. If Executive removes such materials or property in the performance of his duties, he will return such materials or property promptly after the removal has served its purpose. Executive will not make, retain, remove and/or distribute any copies of any such materials or property, or divulge to any third person the nature of and/or contents of such materials or property, except to the extent necessary to satisfy contractual obligations of the Company Group, to perform his duties on behalf of the Company Group or pursuant to the exceptions set forth in Section 6.3. Upon termination of Executive's employment with the Company, he will leave with the Company Group or promptly return to the Company Group all originals and copies of such materials or property then in his possession.

-9-

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#### **6.4.2. Intellectual Property.**

(a) Executive has attached hereto, as Attachment B, a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by Executive prior to becoming an employee, consultant, officer and/or director of the Company (collectively referred to as "**Prior Inventions**"), which are owned by Executive alone or jointly with others, which relate to the Company Group's business, proposed business, products or research and development, and which are not assigned to the Company Group hereunder; or, if no such list is attached, Executive represents that there are no such Prior Inventions. If in the course of Executive's service with the Company Group, Executive incorporates into a Company Group product, process or machine a Prior Invention owned by Executive or in which Executive has an interest, the Company, or its designee, is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide, assignable, transferable, and sub-licenseable license to make, have made, modify, use and sell such Prior Invention as part of or in connection with such product, process or machine.

(b) Executive agrees that he will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assigns to the Company, or its designee, all Executive's right, title, and interest in and to any and all inventions,

original works of authorship, developments, concepts, improvements or any trade secrets which relate in any manner to the Company Group's business or proposed business, whether or not patentable or registrable under patent, copyright or similar laws, which Executive may solely or jointly conceive or develop or reduce to practice (or may have conceived or developed or reduced to practice) or cause (or may have caused) to be conceived or developed or reduced to practice, at any time prior to the date of this Agreement until Executive is no longer an employee, consultant, officer and/or director of the Company (collectively referred to as "**Inventions**"), including any and all intellectual property rights inherent in the Inventions and appurtenant thereto including, without limitation, all patent rights, copyrights, trademark rights and trade secret rights (collectively referred to as "**Intellectual Property Rights**"). Executive further acknowledges that all original works of authorship which are made by Executive (solely or jointly with others) within the scope of Executive's service or duties as an employee, consultant, officer and/or director and which are protectable by copyright are "works made for hire", as that term is defined in the United States Copyright Act.

(c) Executive agrees to keep and maintain adequate and current records of all Inventions. The records will be in the form of notes, sketches, drawings, and any other format that may be specified by the Company. The records will be available to the Company at all times, and the Company, or its designee, shall retain all right, title, and interest in and to the same.

(d) Executive agrees to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company Group's rights in the Inventions and any Intellectual Property Rights related thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, or its designee, the sole and exclusive right, title and interest

-10-

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in and to such Inventions and any Intellectual Property Rights relating thereto. Executive further agrees that Executive's obligation to execute or cause to be executed, when it is in Executive's power to do so, any such instrument or papers shall continue after the termination of this Agreement. If the Company is unable because of Executive's mental or physical incapacity or for any other reason to secure Executive's signature to apply for or to pursue any application for any United States or foreign Intellectual Property Right covering Inventions assigned to the Company, or its designee, as above, then Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive's agent and attorney in fact, to act for and in Executive's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, or copyright, trademark or other registrations thereon with the same legal force and effect as if executed by Executive.

6.5. Returning the Company Group Documents and Property. Executive agrees that, upon termination of Executive's service with the Company, for any reason, Executive will deliver to the Company, or its designee, and will not keep in Executive's possession or deliver to anyone else, any and all records, data, notes, reports, information, proposals, lists, correspondence, emails, specifications, drawings, blueprints, sketches, materials, other documents, or reproductions or copies (including but not limited to on computer discs or drives) of any aforementioned items either developed

by Executive pursuant to Executive's service with the Company or otherwise relating to the business of the Company Group, retaining neither copies nor excerpts thereof. Executive also agrees that, at such time, or earlier upon request, Executive will deliver to the Company, or its designee, all the Company Group property in Executive's possession, including cell phones, computers, computer discs, drives and other equipment or devices, and that if Executive fails to do so the Company may withhold from Executive's compensation the replacement cost of the Company Group property Executive has not returned.

6.6. **Non-Disparagement**. Executive acknowledges and agrees that Executive will not while employed by the Company or engaged as a consultant and/or director of the Company and for the ten (10) year period following the end of such service with the Company, whether in writing or orally, malign, denigrate or disparage the Company Group or any of their respective predecessors or successors, or any of the current or former directors, officers, employees, shareholders, partners, members, agents or representatives of any of the foregoing, with respect to any of their respective past or present activities, or otherwise publish (whether in writing or orally) statements that tend to portray any of the aforementioned parties in an unfavorable light. Disclosure of information Executive is required to disclose pursuant to any applicable law, court order, subpoena, compulsory process of law or governmental decree shall not constitute a violation or breach of this Section 6.6, provided that Executive delivers written notice of such required disclosure to the Company or its designee promptly before making such disclosure if such notice is not prohibited by applicable law, court order, subpoena, compulsory process of law or governmental decree.

6.7. **Relatives, Affiliates, Etc.** Executive acknowledges and agree that Executive will not hire or otherwise engage to provide products or services to the Company Group (as an employee, consultant, supplier, vendor, or otherwise) any Person that is

-11-

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Executive's Affiliate or any Person that is Executive's familial relative by marriage or by birth (including adoption) without disclosure to and the written consent of the Board.

6.8. **Definitions**. For purposes of this Agreement:

6.8.1. **"Affiliate"** means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such specified Person, provided that, in any event, any business in which the Company has any direct ownership interest shall be treated as an Affiliate of the Company.

6.8.2. **"Company Group"** means, collectively and individually, the Company and each of its Affiliates.

6.8.3. **"Competing Business"** means any Person engaged in the development, manufacture and marketing of medical devices indicated for treatment of depression, or any other indications developed, being developed or being considered for development by the Company.

6.8.4. **"Control"** (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, means the direct or indirect possession of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

6.8.5. ***Customer*** shall mean those Persons for whom or which the Company Group performed services or to whom or which the Company Group sold or licensed its products, during the twelve (12) months preceding the cessation of Executive's employment with the Company for any reason.

6.8.6. ***Intellectual Property*** means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents and patent applications claiming such inventions, (b) all trademarks, service marks, trade dress, logos, trade names, fictitious names, brand names, brand marks and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (d) all mask works and all applications, registrations, and renewals in connection therewith, (e) all trade secrets (including research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, methodologies, technical data, designs, drawings and specifications), (f) all computer software (including data, source and object codes and related documentation), (g) all other proprietary rights, (h) all copies and tangible embodiments thereof (in whatever form or medium), or (i) similar intangible personal property which have been or are developed or created in whole or in part by Executive (a) at any time and at any place while Executive is employed by the Company and which, in the case of any or all of the foregoing, are related to and used in connection with the business of the Company Group, or (b) as a result of tasks assigned to Executive by the Company Group.

-12-

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6.8.7. ***Person*** means any individual, firm, corporation, partnership, limited liability company, trust, joint venture, association, governmental entity, unincorporated entity or other entity.

6.8.8. ***Proprietary Information*** means any and all the Company Group proprietary or confidential information, technical data, trade secrets or know-how, including, but not limited to, research, product plans and developments, prototypes, products, services, client lists and clients, prospective clients and contacts, proposals, client purchasing practices, prices and pricing methodology, cost information, terms and conditions of business relationships with clients, client research and other needs, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, distribution and sales methods and systems, sales and profit figures, finances, personnel information including, but not limited to, information regarding compensation, skills and duties, as well as reports and other business information that Executive learns of, obtain, or that is disclosed to Executive relating to the Company Group at any time prior to or during the course of Executive's service to the Company, either directly or indirectly, in writing, orally or by review or inspection of documents or other tangible property. Failure by the Company Group to mark any of the Proprietary Information as confidential or proprietary shall not affect its status as Proprietary Information.

6.8.9. ***Prospective Customer*** shall mean Persons whose business was solicited by the Company Group during the twelve (12) months preceding the date on which Executive's employment with the Company ceases for any reason.

6.9. Acknowledgements. Executive acknowledges that the Restrictive Covenants are reasonable and necessary to protect the legitimate interests of the Company Group, that the duration and geographic scope of the Restrictive Covenants are reasonable given the nature of this Agreement and the position Executive holds within the Company, and that the Company would not enter into this Agreement or otherwise employ Executive unless Executive agrees to be bound by the Restrictive Covenants set forth in this Section 6.

6.10. Remedies and Enforcement Upon Breach.

6.10.1. Specific Enforcement. Executive acknowledges that any breach by him, willfully or otherwise, of the Restrictive Covenants will cause continuing and irreparable injury to the Company Group for which monetary damages would not be an adequate remedy. Executive shall not, in any action or proceeding to enforce any of the provisions of this Agreement, assert the claim or defense that such an adequate remedy at law exists. In the event of any such breach or threatened breach by Executive of any of the Restrictive Covenants, the Company Group, as applicable, shall be entitled to injunctive or other similar equitable relief in any court, without any requirement that a bond or other security be posted, and this Agreement shall not in any way limit remedies of law or in equity otherwise available to the Company Group.

6.10.2. Economic Remedies. Executive acknowledges and agree that if Executive breaches any of the provisions of this Agreement, the Company will have the right and remedy to require Executive to account for and pay over to the Company or its designee, all compensation, profits, monies, accruals, increments or other benefits Executive derives or receives as a result of such breach. This right and remedy will be in addition to, and not in lieu of, any other rights and remedies available to the Company Group under law or in equity.

-13-

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6.10.3. Judicial Modification. If any court determines that any of the Restrictive Covenants, or any part thereof, is unenforceable because of the duration or geographical scope of such provision, such court shall have the power to modify such provision and, in its modified form, such provision shall then be enforceable.

6.10.4. Enforceability. If any court holds the Restrictive Covenants unenforceable by reason of their breadth or scope or otherwise, it is the intention of the parties hereto that such determination not bar or in any way affect the right of the Company Group to the relief provided above in the courts of any other jurisdiction within the geographic scope of such Restrictive Covenants.

6.10.5. Disclosure of Restrictive Covenants. Executive agrees to disclose the existence and terms of the Restrictive Covenants to any employer that Executive may work for during the Restricted Period.

6.10.6. Extension of Restricted Period. If Executive breaches Section 6.1 in any respect, the restrictions contained in that section will be extended for a period equal to the period that Executive was in breach.

7. Miscellaneous.

7.1. Other Agreements. Executive represents and warrants to the Company that there are no restrictions, agreements or understandings whatsoever to which he is a party that would prevent or make unlawful his execution of this Agreement, that would be inconsistent or in conflict with this Agreement or Executive's obligations hereunder, or that would otherwise prevent, limit or impair the performance by Executive of his duties under this Agreement.

7.2. Cooperation. Executive further agrees that she will cooperate fully with the Company and its counsel with respect to any matter (including litigation, investigations, or governmental proceedings) in which Executive was in any way involved during his employment with the Company. Executive shall render such cooperation in a timely manner on reasonable notice from the Company. The Company shall reimburse Executive any reasonable expenses incurred in rendering such cooperation.

7.3. Successors and Assigns. The Company may assign this Agreement to any successor to its assets and business by means of liquidation, dissolution, sale of assets or otherwise. The duties of Executive hereunder are personal to Executive and may not be assigned by him.

7.3.1. Governing Law and Enforcement. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the principles of conflicts of laws. Any legal proceeding arising out of or relating to this Agreement will be subject to mediation followed by binding arbitration in Chester County, PA, *provided, however,* that any dispute involving the Restrictive Covenants of Section 6 may be instituted in a state or federal court in the Commonwealth of Pennsylvania, and Executive and the Company hereby consent to the personal and exclusive jurisdiction of such court(s) and hereby waive any objection(s) that they may have to personal jurisdiction, the laying of venue of any such proceeding and any claim or defense of inconvenient forum.

-14-

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7.4. Waivers. The waiver by either party of any right hereunder or of any breach by the other party will not be deemed a waiver of any other right hereunder or of any other breach by the other party. No waiver will be deemed to have occurred unless set forth in a writing. No waiver will constitute a continuing waiver unless specifically stated, and any waiver will operate only as to the specific term or condition waived.

7.5. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced as though the invalid, illegal or unenforceable provision had never been herein contained.

7.6. Survival. This Agreement will survive the cessation of Executive's employment to the extent necessary to fulfill the purposes and intent of this Agreement.

7.7. Notices. Any notice or communication required or permitted under this Agreement will be made in writing and (a) sent by overnight courier, (b) mailed by overnight U.S. express mail, return receipt requested, (c) sent by telecopier, or (d) sent by email. Any notice or communication to Executive will be sent to the address contained in his personnel file. Any notice or communication to the

Company will be sent to the Company's principal executive offices, to the attention of its General Counsel. Notwithstanding the foregoing, either party may change the address for notices or communications hereunder by providing written notice to the other in the manner specified in this paragraph.

7.8. Entire Agreement; Amendments. This Agreement contains the entire agreement and understanding of the parties hereto relating to the subject matter hereof, and merges and supersedes all prior and contemporaneous discussions, agreements and understandings of every nature relating to that subject matter (including, without limitation, the employment term sheet). This Agreement may not be changed or modified, except by an agreement in writing signed by each of the parties hereto.

7.9. Withholding. All payments (or transfers of property) to Executive will be subject to tax withholding to the extent required by applicable law.

7.10. Section Headings. The headings of sections and paragraphs of this Agreement are inserted for convenience only and will not in any way affect the meaning or construction of any provision of this Agreement.

7.11. Counterparts; Facsimile. This Agreement may be executed in multiple counterparts (including by facsimile signature), each of which will be deemed to be an original, but all of which together will constitute but one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

<remainder of page intentionally left blank; signature page follows>

-15-

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IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized officer, and Executive has executed this Agreement, effective as of the A&R Effective Date.

**NEURONETICS, INC.**

By: \_\_\_\_\_

Name: W. Andrew Macan

Title: Executive Vice President, General Counsel, and Chief  
Compliance Officer

**KEITH J. SULLIVAN**

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*Signature Page to Amended and Restated Employment Agreement*

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**ATTACHMENT A – COMPETITORS**

Brainsway Ltd. and its Affiliates

MagVenture, Inc. and its Affiliates

The Magstim Company Ltd. and its Affiliates

Nextstim plc and its Affiliates

TeleEMG, LLC a/k/a CloudTMS) and its Affiliates

MAG & More GmbH and its Affiliates

Remed Co., Ltd and its Affiliates

Shenzhen Yingchi Technology Co. Ltd. and its Affiliates

Transcranial Magnetic Stimulation (TMS) service provider organizations that currently or in the future manufacture, contract manufacture, distribute, sell, lease, franchise, or otherwise commercialize medical devices indicated for treatment of depression, or any other indications developed, being developed or being considered for development by the Company

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**ATTACHMENT B - PRIOR INVENTIONS**

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**Exhibit 10.28**

CERTAIN INFORMATION IN THIS EXHIBIT MARKED [\*\*] HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT IS PRIVATE OR CONFIDENTIAL.

November 25, 2019

Mr. W. Andrew Macan

[\*\*\*]

Dear Andy:

On behalf of everyone at Neuronetics, we are delighted at the prospect of having you become part of our Senior Management Team. We are pleased to offer you employment with Neuronetics, Inc. on the following terms:

1. **Position.** You will serve in a full-time capacity as Sr. Vice President, General Counsel, Chief Compliance Officer and Corporate Secretary. You will report to the Chief Executive Officer of the Company. Your primary duties will be those consistent with your title. This is a Malvern-based position and the expectation is that you would relocate from Texas to the Greater Philadelphia area and regularly work from the Company's offices in Malvern. By signing this letter agreement, you represent and warrant to the Company that you are under no contractual commi = inconsistent with your obligations to the Company. Your anticipated start date will be Janu
2. **Salary.** You will be compensated at a semi-monthly rate of \$14,583.33, less applicable taxes and other withholdings, on the 15<sup>th</sup> and the last day of each month, or the business day prior if these are not a business day, based on an annualized base salary of \$350,000 (the "Base Salary"). This salary will be paid in accordance with the Company's standard payroll practices for salaried employees, and will be subject to adjustment pursuant to the Company's employee compensation policies in effect from time to time.
3. **Bonus.** You will be eligible to receive a discretionary cash bonus equal to a percentage of your annual Base Salary (the "Incentive Bonus"), which Incentive Bonus will be payable based on the financial performance of the Company, the attainment of certain corporate and departmental goals and your personal performance. The amount of such Incentive Bonus will be determined in the sole discretion of the Board of Directors of the Company (the "Board") or the Compensation Committee thereof. The Incentive Bonus, if any, for 2020 is targeted at 40% of your actual salary earned in 2020. The Incentive Bonus may be increased or decreased dependent upon the attainment of certain corporate, departmental and personal performance measures, as defined by you and the CEO.
4. **Benefits.** You will be permitted to participate in such group medical, dental, vision, life, accident and long-term disability insurance and other fringe benefits and retirement plans as the Company may make available from time to time to its other similarly situated senior employees; provided, however, that nothing contained in this letter agreement shall restrict the ability of the Company to amend or terminate such plans, programs and arrangements at any time and from time to time.
5. **Vacation.** You will be eligible for vacation each year, in accordance with the Company's standard vacation policy, and to those holidays observed by the Company. The Company's current vacation policy permits four weeks of vacation per year for Vice President level and above employees, prorated for your first year of employment based on your start date. Based upon our proration calculation, you are eligible for 19.5 vacation days in 2020. Arrangements for all such absences must, of course, be made to ensure that your responsibilities are properly covered. In addition, you will also be eligible for 7 personal/sick days annually, pro-rated for your first year based on your

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start date and otherwise in accordance with the Company's personal/sick days policy. Based on your start date, you will be eligible for 6.5 personal/sick days in 2020.

6. **Long Term Incentive.** As long-term incentive compensation, you will also be granted restrictive stock units under Neuronetics' 2018 Equity Incentive Plan with a target value (in accordance with Neuronetics' methodology) of \$440,000. You will vest in 33.33% of the restrictive stock units on the first anniversary of your commencement of service, another 33.33% on the second anniversary of your commencement of service and the final 33.34% on the third anniversary of your commencement of service, in each case provided you remain employed by Neuronetics on the given vesting date. The terms and conditions of the restricted stock units will be more fully described in the Company's 2018 Equity Incentive Plan and Restricted Stock Unit Award Agreement to be provided to you.
7. **Relocation Assistance.** You will be provided a lump sum amount of \$60,000, grossed-up in accordance with the Company's methodology to defray the tax liability associated with such payment (collectively, the "Relocation Payment"), to assist in your relocation to the Greater Philadelphia area. We will pay the Relocation Payment to you with the Company's first regularly scheduled payroll that is at least (10) days following your start date. By signing this offer letter, you agree that if, within twenty four (24) months of your start date, you voluntarily terminate employment with the Company other than for Good Reason (as defined in the Severance Agreement discussed below) or if the Company terminates your employment for Cause (as defined in the Severance Agreement), you will reimburse the Company in the full amount of the Relocation Payment. The Company may, in its discretion, deduct all or a portion of the Relocation Payment from your final paycheck (and, as a condition of your employment, you will sign an authorization form agreeing to such deduction). You promise to reimburse the Company for the remaining balance of the Relocation Payment after deducting any portion of the Relocation Payment from your final paycheck.
8. **Professional Fees.** Expenses that you incur to remain a member in good standing of the bars of the Commonwealth of Pennsylvania and the State of New Jersey, limited to fees for continuing education, travel expense associated with such education (which should generally be ground travel in light of the opportunities for such education in the Greater Philadelphia region) and annual registration fees, will be considered reimbursable expenses to you, subject to your compliance with the Company's then-current expense reimbursement policies.
9. **Restrictive Covenant and Invention Assignment Agreement.** Like all Company employees, you will be required, as a condition to your employment with the Company, to sign the Company's standard Restrictive Covenant and Invention Assignment Agreement, a copy of which is attached hereto.
10. **Period of Employment.** Your employment with the Company will be "at will," meaning that either you or the Company will be entitled to terminate your employment at any time and for any reason, with or without cause. Any contrary representations which may have been made to you are superseded by this letter agreement. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may not be changed, except by an express written agreement signed by you and a duly authorized officer of the Company.
11. **Severance.** On your first day, you and the Company will enter into the Severance Agreement, a copy of which is attached hereto.
12. **Outside Activities.** While you render services to the Company, you will not engage in any other gainful employment, business or activity without the written consent of the Company. While you

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render services to the Company, you also will not assist any person or organization in competing with the Company, in preparing to compete with the Company or in hiring any employees of the Company.

13. **Withholding Taxes.** All forms of compensation referred to in this letter are subject to reduction to reflect applicable withholding and payroll taxes.

14. **Entire Agreement.** This letter and the Exhibits attached hereto contain all of the terms of your employment with the Company and supersede any prior understandings or agreements, whether oral or written, between you and the Company.

15. **Amendment and Governing Law.** This letter agreement may not be amended or modified except by an express written agreement signed by you and a duly authorized officer of the Company. The terms of this letter agreement and the resolution of any disputes will be governed by the laws of the Commonwealth of Pennsylvania.

We hope that you find the foregoing terms acceptable. This offer is available for your acceptance until the end of business on December 2, 2019. Any acceptance postmarked after this date will be considered invalid. Please countersign your acceptance of this offer in the space provided below and return to me along with the Restrictive Covenant and Invention Assignment Agreement as soon as possible. This offer and your employment with the Company is contingent upon your providing legal proof of your identity and authorization to work in the United States as required by law, as well as satisfactory completion of reference and criminal background checks and drug screening.

Please do not hesitate to contact me should you have any questions. We look forward to you joining the Neuronetics team.

Sincerely,

NEURONETICS, INC.

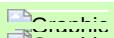
By: /s/ Christopher Thatcher  
Name: Christopher Thatcher  
Title: President and Chief Executive Officer



/s/ W. Andrew Macan

Date: 11/26/2019

The provisions of this offer of employment have been read, are understood, and the offer is herewith accepted. I understand that my employment is contingent upon the successful completion of a drug screening test and criminal history and background checks, as well as upon execution of the Restrictive Covenant and Invention Assignment Agreement.





DOB: [\*\*\*]



**Exhibit 10.27**

Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

**AMENDED AND RESTATED RESTRICTIVE COVENANT AND SEVERANCE AGREEMENT**

This Amended and Restated Restrictive Covenant and Severance Agreement (this "Agreement") is made and entered into effective as of November 2, 2023 (the "A&R Effective Date"), by and between Neuronetics, Inc., a Delaware corporation ("Company") and Keith Sullivan ("Executive").

**Recitals**

WHEREAS, Company and Executive previously entered into an Employment Agreement dated July 14, 2020, which set forth the terms and conditions of Executive's employment with Company (as amended, the "Employment Agreement"); and

WHEREAS, Company and Executive previously executed a Restrictive Covenant and Severance Agreement effective as of July 1, 2021 (the "Original Effective Date"), which superseded certain terms of the Employment Agreement (such agreement, the "Original RCS Agreement");

WHEREAS, since the Original Effective Date, the Company's Board of Directors (the "Board") has approved certain modifications to Executive's employment arrangements, and the Company has determined that such modifications should be reflected in the documents that memorialize Executive's employment relationship with the Company; and

WHEREAS, in furtherance of the foregoing, the parties wish to amend and restate the Original RCS Agreement as set forth in this Agreement.

**Agreement**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, the adequacy and sufficiency of which are hereby acknowledged, Company and Executive hereby agree as follows:

**1. Term of Agreement; Amendment and Restatement.**

**1.1** The "Term" of this Agreement will begin on the A&R Effective Date and continue until the earliest of: (i) termination of Executive's employment by Company for Cause, by Executive without Good Reason, or due to Executive's death or Disability; (ii) if Executive becomes entitled to benefits, payment of all benefits to which Executive is entitled under this Agreement and satisfaction of all other obligations of Executive and Company with respect to this Agreement, including Executive's obligations pursuant to the Restrictive Covenant Agreement (as defined herein); and (iii) termination pursuant to Section 11 of this Agreement.

**1.2** The Original RCS Agreement is hereby amended, restated, superseded, and replaced by this Agreement in all respects.

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Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

**2. At-Will Employment.** Company and Executive acknowledge that Executive's employment will continue to be at-will as defined under applicable law, and either Company or Executive may terminate the employment relationship at any time and for any reason. If Executive's employment with Company terminates for any reason, Executive shall not be entitled to any payments, benefits, damages, awards, or compensation other than the payment of accrued but unpaid wages, as required by law, and any unreimbursed business expenses, and as provided by this Agreement.

**3. Termination.**

**3.1 Cause.** Company in its sole discretion, may terminate Executive's employment and cancel all of Company's obligations under this Agreement for Cause at any time. The term "Cause" shall mean the occurrence of one or more of the following events: any (a) act of fraud, embezzlement, or theft; (b) willful disregard of Company rules, policies, or procedures or of the assigned duties of Executive or directions of the Board (other than due to physical or mental illness or Disability), which has not been corrected (to the extent correctable) within thirty (30) days of Executive receiving a written notice for substantial correction from Company; (c) gross negligence, meaning an act or omission exhibiting a conscious indifference or disregard of Company rules, policies, or procedures or of the assigned duties of Executive, which has not been corrected (to the extent correctable) within thirty (30) days of Executive receiving a written notice for substantial correction from Company; (d) breach of fiduciary duty for personal gain during the course of Executive's employment with Company; (e) commission by Executive of a felony; (f) intentional act or intentional failure to act by Executive which reasonably could be expected to have a material adverse effect on Company's business, reputation, or operations, which has not been corrected (to the extent correctable) within thirty (30) days of Executive receiving a written notice for substantial correction from Company; or (g) determination that Executive intentionally omitted any requested information or falsified any disclosed information either in Executive's resume or during Executive's interview process with Company. Whether an event constituting "Cause" exists, and whether that event is correctable, shall be determined in the sole discretion of Company.

In the event Company elects to terminate Executive's employment in accordance with this Section, such termination shall be without prejudice to any other remedy to which Company may be entitled under law, equity, or this Agreement. Furthermore, the termination will be effective as of the date of the original written notice of termination and neither party shall have any further obligation to the other (including the payment of any severance benefits by Company to Executive) except for Executive's obligations set forth in the Restrictive Covenant Agreement, which will remain in full force and effect. Specifically, should Company terminate this Agreement for Cause, Executive shall not be entitled to any further compensation other than Executive's earned but unpaid base salary (at the annual rate then in effect), any expense reimbursements to be paid in accordance with Company policy, and payments for any accrued but unused vacation or paid time off in accordance with Company's policies and applicable law (the "Accrued Amounts") up to the effective date of termination of employment with Company (the "Termination Date").

**3.2 Resignation without Good Reason.** Executive may resign Executive's employment without Good Reason at any time. Executive shall not be entitled to any further compensation other than the Accrued Amounts up to the Termination Date. Company, in its

- 2 -

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Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

sole discretion, may elect to have Executive immediately cease providing services to Company upon receipt of Executive's notice of resignation; provided, however, Company shall pay the Accrued Amounts through the Termination Date.

**3.3 Without Cause or Resignation for Good Reason.**

(a)Executive's employment may be terminated at any time by Company, without any requirement of Cause, upon delivery to Executive of thirty (30) days' prior written notice of its intention to terminate Executive's employment (the "Termination Period"). Company, in its sole discretion, may elect to have Executive immediately cease providing services to Company during the Termination Period; provided, however, Company shall pay the Accrued Amounts through the end of the Termination Period, whether or not Company elects to continue Executive's services during all or a portion of the Termination Period.

(b)Subject to the terms and conditions of this Agreement, in the event of (A) Executive's termination of employment by Company without Cause, or (B) Executive's resignation for Good Reason, Executive's obligations pursuant to the Restrictive Covenant Agreement will remain in full force and effect. Executive and Company also agree that in the event Executive's termination or resignation in accordance with this Section constitutes a separation from service within the meaning of Treasury Regulation Section 1.409A-1(h), Company, in addition to the Accrued Amounts for the Termination Period, will provide Executive:

(1) severance at a rate equal to Executive's monthly base salary in effect at the time of such termination or resignation for a period of twelve (12) months (the "Severance Period");

(2)any unpaid annual incentive bonus, if any, determined in Company's sole discretion in accordance with the incentive bonus program established by Company for senior executives of Company (the "Incentive Bonus"), payable to Executive for the fiscal year that ended immediately preceding Executive's termination of employment, regardless of any requirement that Executive be employed on the date of payment;

(3)if Executive (and Executive's spouse or dependents, as applicable) timely elects to continue health, dental, and/or vision coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Company will pay the full premium cost associated with such COBRA continuation coverage consistent with such coverages as are offered to then active employees until the earliest to occur of (i) the expiration of the Severance Period; (ii) the date Executive first becomes eligible for health, dental, or vision coverage with a subsequent employer; (iii) the date Executive is no longer eligible for continuation coverage under COBRA; or (iv) the date Executive violates the provisions of the Restrictive Covenant Agreement. Notwithstanding the foregoing, if Company determines that it cannot provide the benefit required by this Paragraph (4) without potentially violating applicable law (including Section 2716 of the Public Health Service Act) or incurring an excise tax, Company shall in lieu thereof provide to Executive a

- 3 -

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Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

taxable monthly payment for the period described herein in an amount equal to the monthly COBRA premium that Executive would be required to pay to continue Executive's and Executive's dependents' COBRA continuation coverage based on the premium for the first month of COBRA continuation coverage; and

(4)an amount equal to Executive's Incentive Bonus for the fiscal year of Executive's termination of employment, assuming attainment of performance goals at target, multiplied by a fraction (not to exceed one), (i) the numerator of which equals the number of days during the current fiscal year that Executive was employed by Company through the Termination Date, and (ii) the denominator of which is 365.

(c)"Good Reason" means Executive's "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h) following the initial existence of one or more of the following conditions arising without Executive's consent:

(1)a material adverse change of Executive's position with Company that reduces Executive's title, level of authority, duties, and/or responsibilities from those in effect immediately prior to the reduction;

(2)a reduction in base salary or target incentive compensation opportunity;

(3)any failure to provide that Executive is eligible to participate in Company benefit plans on a basis that is generally comparable to similarly-situated senior corporate officers of Company;

(4)a relocation of Executive's principal worksite of more than 35 miles one way unless such relocation reduces Executive's commute to such worksite; or

(5)any action or inaction that constitutes a material breach by Company of any employment agreement between Executive and Company, if applicable, or a material breach of this Agreement (including a failure to assume this Agreement by any successor to Company).

Within 30 days following the initial existence of a condition described above, Executive must provide written notice to Company of the existence of the condition, and Company must fail to remedy the condition within 120 days of receipt of such notice. If Company fails to remedy the condition, Executive must separate from service with Company within 30 days of the end of the 120-day cure period. If Executive does not separate from service with Company within such 30-day period, Executive will not have incurred a separation from service for Good Reason.

### **3.4 Change in Control.**

(a)For purposes of this Agreement, "Change in Control" shall have the meaning set forth in the Neuronetics, Inc. 2018 Equity Incentive Plan, as may be

- 4 -

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### **Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan**

amended from time to time (the "Equity Plan"); provided, however, that if any amounts under this Agreement are determined to be subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), then a transaction will not be deemed a Change in Control for purposes of this Agreement unless the transaction qualifies as a change in control event within the meaning of Code Section 409A.

(b)Subject to the terms and conditions of this Agreement, if, during the three (3) month period immediately preceding, through the twelve (12) month period immediately following, the occurrence of a Change in Control, (A) Company terminates Executive's employment without Cause, or (B) Executive resigns for Good Reason, Company will provide Executive:

(1)the amounts described in Subparagraphs (1), (2), and (3) of Section 3.3(b) of this Agreement; provided, however, that the Severance Period shall be extended to twenty-four (24) months;

(2) an amount equal to Executive's target Incentive Bonus for the fiscal year of Executive's termination of employment, multiplied by 1.5; and

(3) immediate and full vesting (and the ability to exercise, if applicable) of all outstanding unvested restricted stock, stock options, and other equity incentives awarded to Executive by Company.

In the event Executive is entitled to payments pursuant to this Section 3.4, then this Section shall supersede Section 3.3 of this Agreement.

**3.5 Death; Disability.** In the event Executive's employment ends due to Executive's death or Disability, this Agreement shall terminate and Executive shall not be entitled to any further compensation under this Agreement other than the Accrued Amounts up to the Termination Date. For purposes of this Agreement, "Disability" means a condition entitling Executive to benefits under Company's long-term disability plan, policy, or arrangement; provided, however, that if no such plan, policy, or arrangement is then maintained by Company and applicable to Executive, "Disability" will mean Executive's inability to perform Executive's duties to Company due to a physical or mental condition that can be expected to result in death or that can be expected to last (or has already lasted) for a continuous period of 90 days or more, or for 120 days in any 180 consecutive day period, as determined by an independent physician reasonably satisfactory to Executive and Company whose fees shall be paid by Company. Termination as a result of a Disability will not be construed as a termination by Company "without Cause."

**3.6 Release; Timing of Payment.**

(a) Company shall not be obligated to make any severance payment to Executive under Section 3.3 or 3.4 of this Agreement until Executive has timely delivered to Company a separation agreement, which will include a release of all claims against Company and a non-disparagement clause in favor of Company, in form and substance satisfactory to Company ("Release"), no later than forty-five (45) days following the Termination Date.

- 5 -

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Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

(b) The base salary and COBRA continuation severance payable pursuant to Sections 3.3 and 3.4 above shall be paid in substantially equal installments in accordance with Company's payroll practices over the Severance Period; the Incentive Bonus severance described in Section 3.3(b)(2) above shall be paid in a single lump sum on the date Incentive Bonus payments are paid to employees generally; the Incentive Bonus severance described in Section 3.3(b)(4) and Section 3.4(b)(2) above shall be payable in a single lump sum commencing within the sixty (60) days immediately following the Termination Date; and any equity awards will be payable in accordance with the Equity Plan, as applicable. Notwithstanding the foregoing, no amounts will be paid pursuant to this Agreement unless and until the Release has become effective and irrevocable under all applicable law; provided, that if the period from the Termination Date until the date of payment can encompass two consecutive calendar years, payment will not be made until the later calendar year. The first payment after the Release has become effective shall include all amounts that would have been paid following the Termination Date had the Release been effective as of the Termination Date but which were not yet paid.

**3.7 Violation of Restrictive Covenant Agreement.** Notwithstanding anything herein to the contrary, Executive's violation of the Restrictive Covenant Agreement at any point during the Severance Period shall result in forfeiture of all unpaid amounts set forth in Sections 3.3 and 3.4 above, Company shall be under no further obligation to make any further payment to

Executive, and Executive will be required to repay to Company the gross amount of any payments made pursuant to this Agreement within thirty (30) days of the demand by Company.

**3.8 No Mitigation.** Executive shall not be obligated to seek other employment or take other action to mitigate the amounts payable to Executive hereunder.

**3.9 No Additional Severance.** Executive acknowledges and agrees that the severance described in this Section 3 shall be in lieu of any other severance payments or benefits to which Executive may be eligible or entitled to receive under any other severance plan or arrangement of Company or its affiliates.

**3.10 Clawback.** Notwithstanding anything herein to the contrary, any amounts payable pursuant to Section 3.3 or 3.4 above remain subject to Company's clawback policy. By entering into this Agreement, Executive acknowledges and agrees that Executive is subject to any clawback and recoupment policies that may be applicable to Executive as an employee of Company, as in effect (or as may be amended) from time to time.

**4. Restrictive Covenant Agreement.** Executive acknowledges and agrees to abide by the terms of the Confidentiality, Non-Competition and Inventions Assignment Agreement, as may be amended from time to time, and substantially in the form previously executed by Executive and Company, and/or any other restrictive covenant agreement in the form and substance determined in the discretion of Company (the "Restrictive Covenant Agreement"). Executive acknowledges that the Restrictive Covenant Agreement shall continue to remain in full-force and effect in accordance with its terms following cessation of Executive's employment with Company for any reason. If Executive does not execute the Restrictive Covenant Agreement on or before the fifth (5th) calendar day following the Original Effective Date, or does not have a prior Restrictive Covenant Agreement

- 6 -

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Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

already in effect as of the Original Effective Date, this Agreement shall be deemed null and void from the outset and Company shall have no obligations hereunder.

**5. Arbitration.**

**5.1** Executive and Company agree and stipulate that any claims, disputes, and demands which may arise out of Executive's employment with Company, Executive's termination of employment, the interpretation or application of any term, provision, and/or language in this Agreement, and/or disputes, controversies or claims between Executive and Company, regardless of whether said claims, disputes, or demands are based on contract law, common law, federal or state statutes, federal or state constitutional provisions, or otherwise, shall first be submitted to mediation administered by the American Arbitration Association ("AAA") under its Employment Arbitration Rules and Medication Procedures, before resorting to arbitration. Thereafter, any unresolved claim, dispute, or demand shall be submitted to final and binding arbitration pursuant to the Federal Arbitration Act ("Act") in accordance with the Employment Arbitration Rules (or successor rules) of the AAA and Federal Rule of Civil Procedure 68; provided, however, that nothing in this Section shall preclude either party from seeking or obtaining judicial enforcement of the Restrictive Covenant Agreement, through injunctive or

equitable relief without arbitration as provided in the Restrictive Covenant Agreement. The FAA applies to this Agreement because Company's business involves interstate commerce. Specifically, Company's business affects interstate commerce because Company operates facilities in various states outside of Pennsylvania; it purchases goods and services and other products from vendors who are located outside of Pennsylvania; it ships goods and other products and provides services to persons and entities in various states outside of Pennsylvania; and/or it promotes its business in various states.

**5.2** The arbitration shall be conducted before a single arbitrator who is licensed to practice law in the Commonwealth of Pennsylvania and familiar with employment disputes. The parties may select an arbitrator for their dispute by agreement. If the parties cannot agree upon an arbitrator within thirty (30) days from either party's request for arbitration, either party may request a list of proposed arbitrators from AAA. AAA will guide the parties through the selection of a neutral arbitrator in accordance with its Rules and will provide the parties at least two complete panels from which a selection may be made. The arbitration shall be scheduled within one hundred eighty (180) days after the arbitrator has been selected with the hearing to take place in Chester County, Pennsylvania, and the arbitrator shall issue a written decision within thirty (30) days after the close of the hearing, unless otherwise agreed by the parties.

**5.3** The parties shall have the right to file dispositive motions and post-hearing briefs. The arbitrator's authority and jurisdiction shall be limited to determining the matter in dispute consistent with controlling law and this Agreement. Except as otherwise provided herein, the arbitrator shall apply, and shall not deviate from, the substantive law of the state in which the claim(s) arose and/or federal law, as applicable. The arbitrator shall have the same authority to order remedies (e.g., emotional distress damages, punitive damages, equitable relief, etc.) as would a court of competent jurisdiction. The arbitrator shall not have the authority to hear disputes not recognized by existing law and shall dismiss such claims upon motion by either party in accordance with the summary judgment standards of the applicable jurisdiction. Similarly, the arbitrator shall not have the authority to order any remedy that a

- 7 -

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#### Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

court would not be authorized to order. The arbitrator shall render a written award setting forth the arbitrator's findings of fact and conclusions of law within 30 days after the close of the hearing, unless otherwise agreed by the parties. The arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the formation, enforceability, applicability, or interpretation of this Agreement, including without limitation any claim that this Agreement is void or voidable. Thus, the parties voluntarily waive the right to have a court determine the enforceability of this Agreement.

**5.4** Any party hereto who refuses or fails to proceed to arbitration of a dispute covered by this Agreement, after having received a written request from the other party that it/he do so, will be liable to the party requesting arbitration for all attorney fees, costs, and litigation expenses incurred in compelling arbitration.

**5.5** The parties acknowledge that because of their relative positions, knowledge and sophistication, they are capable of, and voluntarily consent to, an equal division of the arbitrator

compensation and administrative fees incurred in connection with any arbitration conducted under this Section, so long as such an order would be consistent with the AAA's employment arbitration rules and mediation procedures. Each party shall be solely responsible for payment of its own attorney's fees, if any, relating to the arbitration, unless otherwise required by statute or contract.

**6. Successors.** This Agreement shall be binding upon any successor of Company and any successor shall be deemed substituted for Company under the terms of this Agreement. As used in this Agreement, the term "successor" shall include any person, firm, corporation, or other business entity which at any time, whether by merger, purchase, or otherwise, acquires all or substantially all of the assets or business of Company. Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of Company to assume and agree to perform the obligations under this Agreement in the same manner and to the same extent that Company would be required to perform it if no such succession had taken place. Company shall be permitted to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by or against its successors and assigns.

**7. Entire Agreement.** This Agreement supersedes any and all prior or contemporaneous understandings, expectations, statements, representations, negotiations, promises, and agreements (regardless of whether written or oral, expressed or implied) between Company and Executive relating to the subject matter hereof (including the Original RCS Agreement and the Employment Agreement), other than the Restrictive Covenant Agreement and except as provided herein. This Agreement, the Restrictive Covenant Agreement, and the Employment Agreement (except Section 5 thereof, which is superseded by this Agreement) incorporate and constitute the full, entire, and complete agreement between Company and Executive with respect to the subject matter hereof and no other agreements, expectations, understandings, representations, and/or promises between the parties and/or their representatives shall be considered valid or effective unless expressly stated herein. Executive shall remain subject to clawback policy of Company, as well as the personnel policies and procedures of Company to the extent that such policies and procedures are not inconsistent with the terms and provisions of this Agreement.

- 8 -

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Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

**8. 409A Savings Clause.** All amounts payable under this Agreement are intended to comply with the "short term deferral" exception from Code Section 409A, specified in Treas. Reg. § 1.409A-1(b)(4) (or any successor provision) or the "separation pay plan" exception specified in Treas. Reg. § 1.409A-1(b)(9) (or any successor provision), or both of them, and shall be interpreted in a manner consistent with the applicable exceptions. Notwithstanding the foregoing, to the extent that any amounts payable in accordance with this Agreement are subject to Code Section 409A, this Agreement shall be interpreted and administered in such a way as to comply with Code Section 409A to the maximum extent possible. Any reference in this Agreement to a termination of employment means a "separation from service" as defined in Code Section 409A and the applicable guidance issued thereunder. All rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Code Section 409A. If payment of any amount subject to Code Section 409A is triggered by a separation from service that occurs while

the Employee is a "specified employee" (as defined by Code Section 409A) with the Company, and if such amount is scheduled to be paid within six (6) months after such separation from service, the amount shall accrue without interest and shall be paid on the first business day after the end of such six-month period, or, if earlier, within 15 days after the appointment of the personal representative or executor of the Employee's estate following the Employee's death.

Notwithstanding anything in this Agreement to the contrary, in no event shall Company commence payment or distribution to Executive of any amount that constitutes "nonqualified deferred compensation" within the meaning of Code Section 409A, earlier than the earliest permissible date under Code Section 409A that such amount could be paid or distributed without the imposition of additional taxes, interest, or penalties under Code Section 409A. If any payments or distributions are delayed pursuant to the immediately preceding sentence, Company will accrue such amounts without interest during such period as the payment or distribution may be required to be deferred under Code Section 409A, and will become payable and be paid by Company in a lump-sum payment on the first business day that such amount could be paid or distributed without additional taxes, interest, or penalties being imposed under Code Section 409A.

## **9. Section 280G.**

**9.1** In the event that part or all of the payments or benefits to be paid or provided to the Executive under this Agreement together with the aggregate present value of payments, consideration, compensation, and benefits under all other plans, arrangements, and agreements applicable to the Executive ("Total Payments") will be subject to an excise tax under the provisions of Code Section 4999 ("Excise Tax"), the Total Payments shall be reduced so that the maximum amount of the Total Payments (after reduction) will be one dollar (\$1.00) less than the amount that would cause the Total Payments to be subject to the Excise Tax; provided, however, that the Total Payments shall only be reduced to the extent the after-tax value of amounts received by the Executive after application of the above reduction would exceed the after-tax value of the Total Payments received by the Executive without application of such reduction. If applicable, the particular payments that are to be reduced shall be subject to the mutual agreement of the Executive and the Company, with a view to maximizing the value of the payments to the Executive that are not reduced.

**9.2** For purposes of determining whether any of the Total Payments will be subject to the Excise Tax and the amount of such Excise Tax, (a) all of the Total Payments shall be

- 9 -

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Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

treated as "parachute payments" within the meaning of Code Section 280G(b)(2), unless in the opinion of tax counsel (the "Tax Counsel") reasonably acceptable to the Executive and selected by the accounting firm (the "Auditor") which was, immediately prior to the Change in Control, the Company's independent auditor, such other payments or benefits (in whole or in part) do not constitute parachute payments, including by reason of Code Section 280G(b)(4)(A), (b) all "excess parachute payments" within the meaning of Code Section 280G(b)(1) shall be treated as subject to the Excise Tax unless, in the opinion of Tax Counsel, such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered, within the meaning of Code Section 280G(b)(4)(B), in excess of the base amount

allocable to such reasonable compensation, or are otherwise not subject to the Excise Tax, and (c) the value of any noncash benefits or any deferred payment or benefit shall be determined by the Auditor in accordance with the principles set forth in Code Section 280G(d)(3) and (d)(4). Prior to the payment date set forth in Section 3.4 of this Agreement, Company shall provide the Executive with its calculation of the amounts referred to in this Section 9.2 and such supporting materials as are reasonably necessary for the Executive to evaluate Company's calculations. If the Executive disputes Company's calculations (in whole or in part), the reasonable opinion of Tax Counsel with respect to the matter in dispute shall prevail.

**10. Taxes, Penalties, and Fees.** It is the sole obligation of Executive, or Executive's estate or beneficiary, to remain aware of and to pay any and all taxes, fees, or penalties (including any excise taxes) due now or in the future on benefits received under this Agreement, whether or not Executive or Executive's beneficiary has received cash from Company at the time the taxes, fees, or penalties become due. Executive acknowledges that tax requirements may change during the term of this Agreement and that it is Executive's (or Executive's estate's or beneficiary's) obligation to remain aware of these changes and to fulfill these obligations. Any amounts payable (or transfers of property) pursuant to this Agreement will be subject to federal, state, and local tax withholding to the extent required by applicable law.

**11. Amendment.** No change, amendment, alteration, deletion, addition, supplementation, clarification, or modification to this Agreement or any of its terms shall be valid or of any effect unless, and only if, it is reduced to writing as a formal and specific amendment to this Agreement and is signed by Executive and Company. Notwithstanding the foregoing, no amendment to this Agreement may accelerate any amount payable to Executive unless the amendment and acceleration are allowable by Code Section 409A, or the amounts payable are not subject to Code Section 409A. Further notwithstanding the foregoing, no payment to Executive shall occur upon termination of this Agreement unless the requirements of Code Section 409A have been met, to the extent applicable. Company and Executive agree to execute any and all amendments to this Agreement as they mutually agree may be necessary or appropriate to ensure compliance with the distribution provisions of Code Section 409A or as otherwise needed to ensure that this Agreement complies with, or remains exempt from, Code Section 409A.

**12. Severability.** The invalidity or unenforceability of a particular provision of this Agreement shall not affect the enforceability of any other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

- 10 -

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Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

**13. Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof or of any other right herein.

**14. Notices.** Any notice to be given under this Agreement by either party to the other may be effective either by personal delivery in writing or by mail, certified mail, postage prepaid with return receipt requested. Mailed notices shall be addressed to Executive's current residence or to Company's principal business address. Notices delivered personally shall be deemed communicated as of the

actual receipt thereof, and mailed notices shall be deemed communicated and received three (3) days after the mailing of same.

**15. Applicable Law; Venue.** This Agreement shall be governed by and interpreted under the laws of the Commonwealth of Pennsylvania, and all actions brought to enforce or interpret this Agreement shall be in the courts applicable to Chester County, Pennsylvania.

**16. Construction of Agreement.** The terms, provisions, and conditions of this Agreement represent the results of negotiations between and among the parties hereto, each of which has had the opportunity to be represented by counsel of its own choosing, and neither of which has acted under duress or coercion whether legal, economic or otherwise. Accordingly, the terms, provisions, and conditions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings.

**17. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.

**18. Consultation with Attorney.** Executive acknowledges and agrees that Executive has been afforded the opportunity to review this Agreement with Executive's legal counsel prior to execution hereof.

IN WITNESS WHEREOF, the parties have hereto set their hand to this Agreement as set out below.

**NEURONETICS, INC.**

By: \_\_\_\_\_

Name: W. Andrew Macan

Title: Executive Vice President, General Counsel,  
and Chief Compliance Officer

**KEITH J. SULLIVAN**

- 11 -

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Amended and Restated Restrictive Covenant and Severance Agreement – Keith Sullivan

ATTEST:

By: \_\_\_\_\_ Date: \_\_\_\_\_

- 12 -

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the registration statements (Nos. 333-226343, 333-252233 and 333-266606) on Form S-8 and (No. 333-266617) on Form S-3 of our report dated **March 7, 2023** **March 7, 2024**, with respect to the financial statements of Neuronetics, Inc.

/s/ KPMG LLP

Philadelphia, Pennsylvania

March 7, **2023** **2024**

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**CERTIFICATION**

I, Keith J. Sullivan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Neuronetics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures, and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report, any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **March 7, 2023** **March 7, 2024**

By: /s/ Keith J. Sullivan

Name: Keith J. Sullivan

Title: President and Chief Executive Officer  
(Principal Executive Officer)

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**Exhibit 31.2**

**CERTIFICATION**

I, Stephen Furlong, certify that:

1. I have reviewed this Annual Report on Form 10-K of Neuronetics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures, and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report, any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **March 7, 2023** **March 7, 2024**

By: **/s/ Stephen Furlong**

Name: **Stephen Furlong**

Title: **EVP, Chief Financial Officer and Treasurer**  
**(Principal Financial and Accounting Officer)**

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**Exhibit 32.1**

**CERTIFICATION**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Keith J. Sullivan, President and Chief Executive Officer of Neuronetics, Inc. (the "Company"), and Stephen Furlong, Senior Vice President, Chief Financial Officer and Treasurer of the Company, each hereby certifies that, to the best of his or her knowledge:

1. The Company's Annual Report on Form 10-K for the fiscal year ended **December 31, 2022** **December 31, 2023**, to which this Certification is attached as Exhibit 32.1 (the "Annual Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: **March 7, 2023** **March 7, 2024**

**IN WITNESS WHEREOF**, the undersigned have set their hands hereto as of the 7th day of March, **2023**, 2024.

By: **/s/ Keith J. Sullivan**

Name: **Keith J. Sullivan**

By: **/s/ Stephen Furlong**

Name: **Stephen Furlong**

Title: President and Chief Executive Officer  
(Principal Executive Officer)

Title: EVP, Chief Financial Officer and Treasurer  
(Principal Financial and Accounting Officer)

"This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Neuronetics, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing."

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## EMPLOYEE HANDBOOK

### NEURONETICS, INC.

### CLAWBACK POLICY

December 1, 2023

#### Introduction

The Board of Directors (the "Board") of Neuronetics, Inc. (the "Company") believes that it is in the best interests of the Company and its shareholders to create and maintain a culture that emphasizes integrity and accountability and that reinforces the Company's pay-for-performance compensation philosophy. The Board has therefore adopted this policy which provides for the recoupment of certain incentive-based executive compensation in the event of an accounting restatement resulting from material noncompliance with financial reporting requirements applicable to the Company under the federal securities laws (the "Policy"). This Policy is designed to comply with Section 10D of the Securities Exchange Act of 1934 (the "Exchange Act") and with the requirements set forth in Listing Rule 5608 of the corporate governance rules of the NASDAQ Stock Market, and shall be construed and interpreted in accordance with such intent.

#### Administration

Unless otherwise determined by action of the Board, this Policy will be administered by the Board's Compensation Committee (the "Compensation Committee"). Any determinations made by the Board will be final and binding on all affected individuals. The Board may, in its discretion, act under this Policy in lieu of the Compensation Committee in which case references herein to the Compensation Committee will be deemed to mean the Board.

#### Covered Executives

This Policy applies to the Company's current and former executive officers, as determined by the Compensation Committee in accordance with Section 10D of the Exchange Act and the listing standards of the national securities exchange on which the Company's securities are listed from time to time, and, in the discretion of the Compensation Committee, to any other employees of the Company holding a title of Vice President or above ("Covered Executives").

#### Incentive Compensation

For purposes of this Policy, "Incentive Compensation" means any compensation that is granted, earned, or vested based wholly or in part on the attainment of a Financial Reporting Measure (as defined below).

For the avoidance of doubt, Incentive Compensation does not include compensation that is earned exclusively based upon the passage of time.

**“Financial Reporting Measures”** are measures that are determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

**Recoupment; Accounting Restatement**

In the event the Company is required to prepare an accounting restatement of its financial statements as a result of the Company’s material noncompliance with United States Generally

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Accepted Accounting Principles (a “**Material Misstatement**”), the Compensation Committee will require reimbursement and/or forfeiture of any Excess Incentive Compensation (as defined below) received on or after the Effective Date (as that term is defined below) by each Covered Executive (a) after beginning service as a Covered Executive; (b) who served as a Covered Executive at any time during the performance period for such Incentive Compensation; (c) while the Company had a class of securities listed on a national securities exchange or a national securities association; and (d) during the three completed fiscal years immediately preceding the Accounting Restatement Date (as that term is defined below). In addition to such last three completed fiscal years, the immediately preceding clause (d) includes any transition period that results from a change in the Company’s fiscal year within or immediately following such three completed fiscal years; provided, however, that a transition period between the last day of the Company’s previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to twelve months shall be deemed a completed fiscal year. For purposes of this Policy, Incentive Compensation is deemed “received” in the Company’s fiscal period during which the Financial Reporting Measure specified in the Incentive Compensation award is attained, even if the payment or grant of the Incentive Compensation occurs after the end of that period. For the avoidance of doubt, Incentive Compensation that is subject to both a Financial Reporting Measure vesting condition and a service-based vesting condition shall be considered received when the relevant Financial Reporting Measure is achieved, even if the Incentive Compensation continues to be subject to the service-based vesting condition.

**“Accounting Restatement”** means an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

**“Accounting Restatement Date”** means the earlier to occur of: (i) the date the Board, a committee of the Board, or the officer or officers of the Company authorized to take such action if the Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement; and (ii) the date a court, regulator, or other legally authorized body directs the Company to prepare an Accounting Restatement.

**“Excess Incentive Compensation”** means the amount of Incentive Compensation previously received that exceeds the amount of Incentive Compensation that otherwise would have been received had it been determined based on the restated amounts in such Accounting Restatement, and must be computed without regard to any taxes paid by the relevant Covered Executive; provided, however, that for Incentive Compensation based on stock price or total stockholder return, where the amount of Excess Incentive Compensation is not subject to mathematical recalculation directly from the information in an Accounting Restatement: (a) the amount of Excess Incentive Compensation must be based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or total

stockholder return upon which the Incentive Compensation was received; and (b) the Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the national stock exchange on which the Company's common stock is listed.

If the Compensation Committee cannot determine the amount of excess Incentive Compensation received by the Covered Executive directly from the information in the accounting restatement,

then it will make its determination based on a reasonable estimate of the effect of the accounting restatement.

#### **Method of Recoupment**

The Compensation Committee will determine, in its sole discretion, the method for recouping Incentive Compensation hereunder which may include, without limitation:

- requiring repayment of cash Incentive Compensation previously paid;
- seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer, or other disposition of any equity-based awards;
- to the extent otherwise permitted by law, offsetting the recouped amount from any compensation otherwise owed by the Company to the Covered Executive;
- cancelling outstanding unvested equity awards; and/or
- taking any other remedial and recovery action permitted by law, as determined by the Compensation Committee,

#### **No Indemnification**

Neither the Company nor any direct or indirect subsidiary of the Company will indemnify any Covered Executives against the loss of any Excess Incentive Compensation or reimburse an Covered Executive for purchasing insurance to cover any such loss or enter into any agreement that exempts any Incentive Compensation that is granted, paid or awarded to an Covered Executive from the application of this Policy or that waives the Company's right to recovery of any Excess Incentive Compensation.

#### **Interpretation**

The Compensation Committee is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. It is intended that this Policy be interpreted in a manner that is consistent with the requirements of Section 10D of the Exchange Act and any applicable rules or standards adopted by the Securities and Exchange Commission or any national securities exchange on which the Company's securities are listed.

#### **Effective Date**

This Policy will be effective as of the date set forth above (the "**Effective Date**") and will apply to Incentive Compensation that is received by a Covered Executives on or after October 2, 2023.

#### **Amendment; Termination**

Subject to the review and approval of the Board, the Compensation Committee may amend this Policy from time to time in its discretion and will amend this Policy as it deems necessary to reflect final regulations adopted by the Securities and Exchange Commission under Section 10D of the Exchange Act and to comply with any rules or standards adopted by a national securities exchange on which the

Company's securities are then-listed. Subject to the review and approval of the Board, the Compensation Committee may terminate this Policy at any time.

#### **Other Recoupment Rights**

The Board intends that this Policy will be applied to the fullest extent of the law. The Compensation Committee may require that any employment agreement, equity award agreement, or similar agreement entered into on or after the Effective Date will, as a condition to the grant of any benefit thereunder, require a Covered Executive to agree to abide by the terms of this Policy. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies available to the Company.

#### **Impracticability**

The Compensation Committee will recover any Excess Incentive Compensation in accordance with this Policy unless such recovery would be impracticable, as determined by the Compensation Committee in accordance with Rule 10D-1 of the Exchange Act and the listing standards of the national securities exchange on which the Company's securities are listed.

#### **Successors**

This Policy will be binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives.

#### **Acknowledgment**

Each Covered Executive shall sign and return to the Company, within 30 calendar days following the later of (i) the effective date of this Policy first set forth above or (ii) the date the individual becomes a Covered Executive, the Acknowledgement Form attached hereto as **Exhibit A**, pursuant to which the Covered Executive agrees to be bound by, and to comply with, the terms and conditions of this Policy.

**Exhibit A**  
to  
**Neuronetics, Inc. Clawback Policy**  
(see attached)

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**NEURONETICS, INC.**

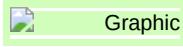
**CLAWBACK POLICY**

**ACKNOWLEDGEMENT FORM**

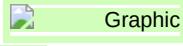
By signing below, the undersigned acknowledges and confirms that the undersigned has received and reviewed a copy of the Neuronetics, Inc. (the “**Company**”) Clawback Policy (the “**Policy**”).

By signing this Acknowledgement Form, the undersigned acknowledges and agrees that the undersigned is and will continue to be subject to the Policy and that the Policy will apply both during and after the undersigned’s employment with the Company. Further, by signing below, the undersigned agrees to abide by the terms of the Policy, including, without limitation, by returning any Excess Incentive Compensation (as defined in the Policy) to the Company to the extent required by, and in a manner consistent with, the Policy.

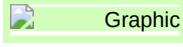
**COVERED PERSON:**



Signature



Print Name



Date

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