

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

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED September 30, 2024

☐ 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 001-38538

electroCore, Inc.
(Exact name of Registrant as specified in its charter)

Delaware **20-3454976**
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

200 Forge Way, Suite 205, Rockaway, NJ 07866
(Address of principal executive offices, including zip code)

(973) 290-0097
(Registrant's telephone number, including area code)

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 \$0.001 per share	ECOR	Nasdaq Capital Market

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 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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

As of November 7, 2024, the registrant had 6,554,591 shares of common stock outstanding.

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REFERENCES TO ELECTROCORE

In this Quarterly Report on Form 10-Q (this "Quarterly Report"), unless otherwise stated or the context otherwise requires, references to the "Company," "electroCore," "we," "us" and "our" refer to electroCore, Inc. a Delaware corporation and its subsidiaries.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, or Quarterly Report, contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed in the forward-looking statements. The statements contained in this Quarterly Report that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Forward-looking statements are often identified by the use of words such as, but not limited to, "anticipate," "believe," "can," "continue," "could," "estimate," "expect," "intend," "may," "plan," "project," "seek," "should," "strategy," "target," "will," "would" and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on information currently available to them. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to risks and uncertainties included in our Form 10-Qs, our annual report on Form 10-K for the year ended December 31, 2023 (the "Annual Report"), in our other filings with the U.S. Securities and Exchange Commission (the "SEC") or in materials incorporated by reference therein, including the information in the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in such filings. Furthermore, any such forward-looking statements in this Quarterly Report speak only as of the date of this Quarterly Report. Except as required by law, we undertake no obligation to update or revise any forward-looking statements to reflect events or circumstances after the date of such statements.

The electroCore logo, gammaCore, Truvaga, TAC-STIM, and other trademarks of electroCore, Inc. appearing in this Quarterly Report are the property of electroCore, Inc. All other trademarks, service marks and trade names in this Quarterly Report are the property of their respective owners. We have omitted the ® and ™ designations, as applicable, for the trademarks used in this Quarterly Report.

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
(unaudited)
(in thousands, except share data)

	September 30, 2024	December 31, 2023
Assets		
Current assets:		
Cash and cash equivalents	\$ 4,929	\$ 10,331
Restricted cash	250	250
Marketable securities	8,018	—
Accounts receivable, net	552	717
Inventories	1,956	2,160
Prepaid expenses and other current assets	1,074	836
Total current assets	16,779	14,294
Inventories, noncurrent	—	607
Property and equipment, net	170	204
Operating lease right of use assets, net	3,732	502
Other assets, net	364	495
Total assets	\$ 21,045	\$ 16,102
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 1,241	\$ 2,163
Accrued expenses and other current liabilities	6,308	5,871
Current portion of operating lease liabilities	363	89
Total current liabilities	7,912	8,123
Noncurrent liabilities:		
Operating lease liabilities, noncurrent	3,678	537
Total liabilities	11,590	8,660
Contingencies (see Note 14)	—	—
Stockholders' equity:		
Common Stock, par value \$0.001 per share; 500,000,000 shares authorized at September 30, 2024 and December 31, 2023; 6,507,011 shares issued and outstanding at September 30, 2024 and 6,002,628 shares issued and outstanding at December 31, 2023	7	6
Additional paid-in capital	183,133	172,704
Accumulated deficit	(173,862)	(165,204)
Accumulated other comprehensive income (loss)	177	(64)
Total stockholders' equity	9,455	7,442
Total liabilities and stockholders' equity	\$ 21,045	\$ 16,102

See accompanying notes to unaudited condensed consolidated financial statements.

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Operations
(unaudited)
(in thousands, except per share data)

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Net sales	\$ 6,554	\$ 4,508	\$ 18,136	\$ 10,839
Cost of goods sold	1,065	661	2,791	1,704
Gross profit	5,489	3,847	15,345	9,135
Operating expenses				
Research and development	521	1,249	1,555	4,213
Selling, general and administrative	7,619	6,724	22,881	20,233
Total operating expenses	8,140	7,973	24,436	24,446
Loss from operations	(2,651)	(4,126)	(9,091)	(15,311)
Other (income) expense				
Interest and other income	(159)	(94)	(439)	(298)
Other expense	5	—	128	—
Total other (income) expense	(154)	(94)	(311)	(298)
Loss before income taxes	(2,497)	(4,032)	(8,780)	(15,013)
Benefit from income taxes	—	—	122	211
Net loss	\$ (2,497)	\$ (4,032)	\$ (8,658)	\$ (14,802)
Net loss per share of common stock - Basic and Diluted	\$ (0.31)	\$ (0.68)	\$ (1.19)	\$ (2.87)
Weighted average common shares outstanding - Basic and Diluted (see Note 11)	8,093	5,945	7,255	5,149

See accompanying notes to unaudited condensed consolidated financial statements.

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Comprehensive Loss
(unaudited)
(in thousands)

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Net loss	\$ (2,497)	\$ (4,032)	\$ (8,658)	\$ (14,802)
Other comprehensive income (loss):				
Foreign currency translation adjustment	127	(22)	236	(29)
Unrealized gain on securities, net of taxes as applicable	5	—	5	—
Other comprehensive income (loss)	132	(22)	241	(29)
Comprehensive loss	<u>\$ (2,365)</u>	<u>\$ (4,054)</u>	<u>\$ (8,417)</u>	<u>\$ (14,831)</u>

See accompanying notes to unaudited condensed consolidated financial statements.

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Equity
For the Three and Nine Months Ended September 30, 2024 and 2023
(unaudited)
(in thousands)

	Mezzanine Equity		Stockholders' Equity					
	Preferred Stock		Common Stock		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive income (loss)	Total stockholders' equity
	Shares	Amount	Shares	Amount				
Balances as of January 1, 2024	—	\$ —	6,003	\$ 6	\$ 172,704	\$ (165,204)	\$ (64)	\$ 7,442
Net loss	—	—	—	—	—	(3,506)	—	(3,506)
Other comprehensive income	—	—	—	—	—	—	76	76
Issuance of stock related to employee compensation plans, net of forfeitures	—	—	3	—	—	—	—	—
Share based compensation	—	—	—	—	484	—	—	484
Balances as of March 31, 2024	—	—	6,006	6	173,188	(168,710)	12	4,496
Net loss	—	—	—	—	—	(2,655)	—	(2,655)
Other comprehensive income	—	—	—	—	—	—	33	33
Sale of common stock and warrants	—	—	438	—	9,306	—	—	9,306
Financing fees	—	—	—	—	(180)	—	—	(180)
Issuance of stock related to employee compensation plan, net of forfeitures	—	—	3	—	—	—	—	—
Share based compensation	—	—	—	—	472	—	—	472
Balances as of June 30, 2024	—	—	6,447	6	182,786	(171,365)	45	11,472
Net loss	—	—	—	—	—	(2,497)	—	(2,497)
Other comprehensive income	—	—	—	—	—	—	132	132
Financing fees	—	—	—	—	(52)	—	—	(52)
Issuance of stock related to employee compensation plan, net of forfeitures	—	—	60	1	(1)	—	—	—
Share based compensation	—	—	—	—	400	—	—	400
Balances as of September 30, 2024	—	\$ —	6,507	\$ 7	\$ 183,133	\$ (173,862)	\$ 177	\$ 9,455
Balances as of January 1, 2023	71	\$ —	4,745	\$ 5	\$ 163,520	\$ (146,370)	\$ (69)	\$ 17,086
Net loss	—	—	—	—	—	(5,867)	—	(5,867)
Other comprehensive income	—	—	—	—	—	—	56	56
Issuance of stock related to employee compensation plan, net of forfeitures	—	—	1	—	—	—	—	—
Preferred stock redemption	(71)	—	—	—	—	—	—	—
Share based compensation	—	—	—	—	572	—	—	572
Balances as of March 31, 2023	—	—	4,746	5	164,092	(152,237)	(13)	11,847
Net loss	—	—	—	—	—	(4,903)	—	(4,903)
Other comprehensive income	—	—	—	—	—	—	(63)	(63)
Issuance of stock related to employee compensation plan, net of forfeitures	—	—	6	—	—	—	—	—
Share based compensation	—	—	—	—	183	—	—	183
Balances as of June 30, 2023	—	—	4,752	5	164,275	(157,140)	(76)	7,064
Net loss	—	—	—	—	—	(4,032)	—	(4,032)
Other comprehensive income	—	—	—	—	—	—	(22)	(22)
Sale of common stock and warrants	—	—	1,233	1	8,143	—	—	8,144
Financing fees	—	—	—	—	(657)	—	—	(657)
Issuance of stock related to employee compensation plan, net of forfeitures	—	—	14	—	—	—	—	—
Share based compensation	—	—	—	—	543	—	—	543
Balances as of September 30, 2023	—	\$ —	5,999	\$ 6	\$ 172,304	\$ (161,172)	\$ (98)	\$ 11,040

See accompanying notes to unaudited condensed consolidated financial statements.

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
(unaudited)
(in thousands)

	Nine months ended September 30,	
	2024	2023
Cash flows from operating activities:		
Net loss	\$ (8,658)	\$ (14,802)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	1,356	1,298
Depreciation and amortization	592	735
Amortization of right of use assets	86	46
Inventory reserve charge	—	258
Increase in provision for credit losses	—	54
Changes in operating assets and liabilities:		
Accounts receivable	165	(241)
Inventories	435	(72)
Prepaid expenses and other assets	(289)	(219)
Accounts payable	84	904
Accrued expenses and other current liabilities	437	549
Operating lease liabilities	99	(55)
Net cash used in operating activities	(5,693)	(11,545)
Cash flows from investing activities:		
Purchase of marketable securities	(8,018)	—
Purchase of equipment	—	(165)
Net cash used in investing activities	(8,018)	(165)
Cash flows from financing activities:		
Sale of common stock and warrants	8,300	8,144
Financing fees	(232)	(657)
Net cash provided by financing activities	8,068	7,487
Effect of changes in exchange rates on cash and cash equivalents	241	(29)
Net decrease in cash and cash equivalents and restricted cash	(5,402)	(4,252)
Cash, cash equivalents, and restricted cash – beginning of period	10,581	17,962
Cash, cash equivalents, and restricted cash – end of period	\$ 5,179	\$ 13,710
Supplemental cash flows disclosures:		
Proceeds from sale of state net operating losses	\$ 122	\$ 211
Interest paid	\$ 13	\$ 8
Supplemental schedule of noncash activity:		
Insurance premium financing	\$ 359	\$ 433
Accounts payable paid through issuance of common stock and warrants	\$ 1,006	\$ —
Right-of-use asset and liability	\$ 3,316	\$ —

See accompanying notes to unaudited condensed consolidated financial statements.

ELECTROCORE, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(unaudited)

Note 1. The Company

electroCore, Inc. and its subsidiaries ("electroCore" or the "Company") is a commercial stage bioelectronic medicine and wellness company dedicated to improving health through its non-invasive vagus nerve stimulation ("nVNS") technology platform. The Company's focus is the commercialization of medical devices for the management and treatment of certain medical conditions and consumer product offerings utilizing nVNS to promote general wellness and human performance in the United States and select overseas markets.

electroCore, headquartered in Rockaway, NJ, has two wholly owned subsidiaries: electroCore UK Ltd and electroCore Germany GmbH. The Company has paused operations in Germany, with sales into the country and the rest of Europe being managed by electroCore UK Ltd.

Note 2. Summary of Significant Accounting Policies

(a) Basis of Presentation

The accompanying condensed consolidated financial statements were prepared in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") and with instructions to Form 10-Q and Article 10 of Regulation S-X under the Securities Exchange Act of 1934, as amended. In the opinion of management, the Company has made all necessary adjustments, which include normal recurring adjustments necessary for a fair presentation of the Company's condensed consolidated financial position and results of operations for the interim periods presented. Certain information and disclosures normally included in the annual consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted. These interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes for the year ended December 31, 2023, included in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 13, 2024. The results for the three and nine months ended September 30, 2024, are not necessarily indicative of the results to be expected for a full year, any other interim periods or any future year or period.

(b) Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of electroCore and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

(c) Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include sales returns, valuation of inventory, estimated useful life of licensed products, stock compensation, and contingencies.

(d) Cash, Cash Equivalents and Restricted Cash

The following table provides a reconciliation of cash, cash equivalents and restricted cash to the balance reflected on the Condensed Consolidated Statement of Cash Flows at September 30, 2024 and 2023:

(in thousands)	September 30, 2024	September 30, 2023
Cash and cash equivalents	\$ 4,929	\$ 13,460
Restricted cash	250	250
Total cash, cash equivalents and restricted cash	<u>\$ 5,179</u>	<u>\$ 13,710</u>

As of September 30, 2024, cash equivalents represented funds held in an interest-bearing demand deposit account, U.S. treasury bills, and a money market account.

The Company's restricted cash consists of cash that the Company is contractually obligated to maintain in accordance with the terms of its corporate credit card arrangement with Citibank, N.A. established in April 2022.

(e) Marketable Securities

Marketable securities are carried at fair value, with unrealized gains and losses reported as accumulated other comprehensive income, except for losses from impairments which are determined to be other than temporary. Realized gains and losses and declines in value judged to be other-than-temporary are included in the determination of net loss and are included in interest and other income net. Fair values are based on quoted market prices at the reporting date. Interest and dividends on available-for-sale securities are included in Interest and other income. As of September 30, 2024, marketable securities amounted to \$8.0 million and consist of U.S. treasury bills. The Company held no marketable securities at December 31, 2023.

(f) Licensed Products

The Company licenses a portion of its devices through its cash pay channels. The cost of these licensed devices is capitalized and included in Other Assets in the accompanying Condensed Consolidated Balance Sheets at September 30, 2024 and December 31, 2023, and is being recognized as cost of goods sold on the straight-line method over the estimated 12-36 month useful life of the devices. If certain licensed devices are returned and no longer meet quality specifications or the carrying amount of certain licensed devices are no longer deemed to be recoverable, the Company records a charge to cost of goods sold to write down such licensed devices to zero. The net book value of these licensed devices at September 30, 2024 and December 31, 2023 was \$312,000 and \$494,000, respectively. Changes in the value of these licensed devices in Other Assets are captured on the Statement of Cash Flows under the captions inventories and inventory reserve charge.

(g) Recently Adopted Accounting Standards

In November 2023, the FASB issued Accounting Standards Update (ASU) No. 2023-07, *Segment Reporting (Topic 280), Improvements to Reportable Segment Disclosures* which will require companies to disclose significant segment expenses that are regularly provided to the chief operating decision maker ("CODM"). The pronouncement is effective for annual filings for the year ended December 31, 2024. The Company is still assessing the impact of the adoption of this standard on its results of operations, financial position or cash flows.

In December 2023, the FASB issued Accounting Standards Update (ASU) No. 2023-09, *Income Taxes (Topic 740), Improvements to Income Tax Disclosures* which will require companies to make additional income tax disclosures. The pronouncement is effective for annual filings for the year ended December 31, 2025. The Company is still assessing the impact of the adoption of this standard but does not expect it to have a material impact on its results of operations, financial position or cash flows.

Note 3. Liquidity, Significant Risks and Uncertainties

Liquidity

The Company has experienced significant net losses, and it expects to continue to incur net losses for the near future as it works to increase market acceptance of its gammaCore therapy and general wellness and human performance products. The Company has never been profitable and has incurred net losses and negative cash used in operations each year since its inception. The Company incurred net losses of \$8.7 million and \$14.8 million and used cash in its operations of \$5.7 million and \$11.5 million for the nine months ended September 30, 2024 and 2023, respectively. These conditions have raised substantial doubt about the Company's ability to continue as a going concern.

The Company has historically funded its operations from the sale of its securities. During the nine months ended September 30, 2024, the Company received net proceeds of approximately \$9.0 million from such sales and as of September 30, 2024, the Company's cash, cash equivalents and marketable securities totaled \$13.2 million ("Cash Position").

Based on its current assessment, the Company believes its Cash Position will enable it to fund its operating expenses and capital expenditure requirements, as currently planned, for at least the next 12 months from the date the accompanying financial statements are issued. The Company therefore believes that the previously disclosed substantial doubt about its ability to continue as a going concern is alleviated. There remain significant risks and uncertainties regarding the Company's business, financial condition and results of operations. The Company's future capital requirements are difficult to forecast and will depend on many factors that are out of its control. If the Company is unable to achieve its planned operating results or maintain sufficient financial resources, including through potential positive cash flow from operations or supplemental access to third-party debt, equity or hybrid capital, its business, financial condition and results of operations may be materially and adversely affected.

Concentration of Revenue Risks

The Company earns a significant amount of its revenue in the United States from the VA/ DoD pursuant to its qualifying contract under the Federal Supply Schedule, or FSS, and open market sales to individual VA facilities. For the three months ended September 30, 2024 and 2023, the VA/DoD accounted for 72.9% and 60.7% of net sales, respectively. For the nine months ended September 30, 2024 and 2023, the VA/DoD accounted for 72.9% and 60.2% of net sales, respectively.

For the three and nine months ended September 30, 2024, Lovell accounted for more than 10% of our VA/DoD net sales. During the three months and nine months ended September 30, 2024, sales associated with one facility accounted for more than 10% of the total VA/DoD net sales. No facility accounted for more than 10% of the total VA/DoD net sales in the three and nine months ended September 30, 2023. During the three and nine months ended September 30, 2024 and 2023, one facility accounted for more than 10% of net sales from the National Health Service ("NHS").

Foreign Currency Exchange

The Company has foreign currency exchange risks related to revenue and operating expenses in currencies other than the local currencies in which it operates. The Company is exposed to currency risk from the potential changes in the functional currency values of its assets, liabilities, and cash flows denominated in foreign currencies.

Note 4. Revenue

The following tables present product net sales disaggregated by Channel and Geographic Market (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Channel:				
Rx gammaCore - VA/DoD	\$ 4,777	\$ 2,737	\$ 13,224	\$ 6,523
Rx gammaCore - U.S. Commercial	441	439	1,350	1,314
Outside the United States	485	465	1,398	1,299
Truvaga	657	266	1,614	703
TAC-STIM	194	601	550	1,000
Total Net Sales	<u>\$ 6,554</u>	<u>\$ 4,508</u>	<u>\$ 18,136</u>	<u>\$ 10,839</u>
Geographic Market:				
Product revenue	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
United States	\$ 6,069	\$ 4,044	\$ 16,738	\$ 9,541
United Kingdom	454	412	1,266	1,117
Other	15	33	82	98
License revenue				
Japan	16	19	50	83
Total Net Sales	<u>\$ 6,554</u>	<u>\$ 4,508</u>	<u>\$ 18,136</u>	<u>\$ 10,839</u>

The Company generally invoices the customer and recognizes revenue once its performance obligations are satisfied, at which point payment is unconditional. Agreed upon payment terms with customers are within 30 days of shipment. Accordingly, contracts with customers do not include a significant financing component.

Note 5. Cash, Cash Equivalents, Restricted Cash and Marketable Securities

The following tables summarize the Company's cash, cash equivalents and marketable securities as of September 30, 2024 and December 31, 2023.

As of September 30, 2024

	Amortized Cost	Unrealized Gain	Unrealized (Loss)	Fair Value
Cash, cash equivalents and restricted cash	\$ 5,179	\$ —	\$ —	\$ 5,179
Marketable Securities:				
U.S. Treasury Bills	8,013	5	—	8,018
Total marketable securities	8,013	5	—	8,018
Total cash, cash equivalents, restricted cash and marketable securities	\$ 13,192	\$ 5	\$ —	\$ 13,197

As of December 31, 2023

	Amortized Cost	Unrealized Gain	Unrealized (Loss)	Fair Value
Cash, cash equivalents and restricted cash	\$ 10,581	\$ —	\$ —	\$ 10,581

Note 6. Fair Value Measurements

Financial assets and liabilities carried at fair value are classified and disclosed in one of the following three levels of the fair value hierarchy:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Observable inputs (other than Level 1 quoted prices), such as quoted prices in active markets for similar assets or liabilities, quoted prices in markets that are not active for identical or similar assets or liabilities, or other inputs that are observable or can be corroborated by observable market data.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to determining the fair value of the assets or liabilities, including pricing models, discounted cash flow methodologies and similar techniques.

A summary of the assets and liabilities carried at fair value in accordance with the hierarchy defined above is as follows:

September 30, 2024	Total	Fair Value Hierarchy		
		Level 1	Level 2	Level 3
Assets				
Cash, cash equivalents and restricted cash	\$ 5,179	\$ 5,179	\$ —	\$ —
Marketable Securities:				
U.S. treasury bills	8,018	8,018	—	—
Total cash, cash equivalents, restricted cash and marketable securities	\$ 13,197	\$ 13,197	\$ —	\$ —
December 31, 2023	Total	Fair Value Hierarchy		
		Level 1	Level 2	Level 3
Assets				
Total cash, cash equivalents and restricted cash	\$ 10,581	\$ 10,581	\$ —	\$ —

As of September 30, 2024, the Company's Marketable securities in the amount of \$ 8.0 million were carried at fair value in accordance with Level 1 as described above. The Company had no financial assets or liabilities as of December 31, 2023 that required valuation in accordance with the levels described above. The Company recognizes transfers between levels of the fair value hierarchy as of the end of the reporting period. There were no transfers within the hierarchy during the nine months ended September 30, 2024, and year ended December 31, 2023. The carrying amount of the Company's receivables and payables approximate their fair value due to their maturity.

Note 7. Inventories

As of September 30, 2024 and December 31, 2023, inventories consisted of the following:

(in thousands)	September 30, 2024	December 31, 2023
Raw materials	\$ 803	\$ 832
Work in process	439	1,538
Finished goods	714	397
Total inventories	1,956	2,767
Less: noncurrent inventories	—	607
Current inventories	<u>\$ 1,956</u>	<u>\$ 2,160</u>

The reserve for obsolete inventory was \$0.6 million and \$0.7 million as of September 30, 2024 and December 31, 2023, respectively. The Company records charges for obsolete inventory in cost of goods sold. As of December 31, 2023, noncurrent inventory was comprised of approximately \$0.5 million in raw materials and \$0.1 million of work in process, respectively. Inventory classified under the category "Work in process" consists of prefabricated assembled product.

Note 8. Leases

For the three and nine months ended September 30, 2024, the Company recognized lease expenses of \$178,000 and \$357,000, respectively. For the three and nine months ended September 30, 2023, the Company recognized lease expenses of \$ 38,000 and \$114,000, respectively. This expense does not include non-lease components associated with the lease agreements as the Company elected not to include such charges as part of the lease expense.

On February 6, 2024, the Company entered into The First Amendment to Lease Agreement (the "Rockaway Amendment") to extend its Rockaway, New Jersey lease for an additional 10 years. The Rockaway Amendment was effective May 1, 2024, and expires on July 31, 2034, with a tenant option to renew for an additional five years. The increase in the term of the lease for the existing leased property was accounted for as a lease modification, therefore, the associated operating lease right of use assets and operating lease liabilities for the existing space were remeasured as of February 6, 2024. The Rockaway Amendment also includes the expansion of leased property from 13,643 square feet to 22,557 square feet. The Company has accounted for the expansion space as an increase in lease right of use assets effective with the Rockaway Amendment commencement date of June 1, 2024.

Supplemental Balance Sheet Information for Operating Leases:

(in thousands)	September 30, 2024	December 31, 2023
Operating leases:		
Operating lease right of use assets	\$ 3,732	\$ 502
Operating lease liabilities:		
Current portion of operating lease liabilities	363	89
Noncurrent operating lease liabilities	3,678	537
Total operating lease liabilities	<u>\$ 4,041</u>	<u>\$ 626</u>
Weighted average remaining lease term (in years)	14.8	5.2
Weighted average discount rate	13.5%	13.8%

Future lease payments as of September 30, 2024:

(in thousands)	
Remainder of 2024	\$ 90
2025	369
2026	516
2027	603
2028	627
2029 and thereafter	8,388
Total future lease payments	<u>10,593</u>
Less: Amounts representing interest	(6,552)
Total	<u>\$ 4,041</u>

Note 9. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities as of September 30, 2024 and December 31, 2023 consisted of the following:

(in thousands)	September 30, 2024	December 31, 2023
Accrued professional fees	\$ 323	\$ 282
Accrued bonuses and incentive compensation	2,302	2,352
Accrued litigation legal fees expense	1,125	1,041
Accrued insurance expense	359	247
Accrued research and development expenses	655	655
Accrued vacation and other employee related expenses	929	628
Accrued tax expenses	325	272
Deferred revenue	42	245
Other	248	149
	<u>\$ 6,308</u>	<u>\$ 5,871</u>

Finance and Security Agreement

On July 2, 2024, the Company entered into a Commercial Insurance Premium Finance and Security Agreement (the "2024 Agreement"). The 2024 Agreement provides for a single borrowing of approximately \$ 493,000 with a ten-month term and an annual interest rate of 8.75%. The proceeds from this transaction were used to partially fund the premiums due under certain of the Company's insurance policies. The amounts payable are secured by the Company's rights under such policies. Beginning July 2024, the Company began paying monthly installments of approximately \$51,000.

During the three and nine months ended September 30, 2024, the Company recognized \$ 5,000 and \$13,000 in aggregate interest expense related to the Company's 2024 and 2023 insurance premium financing, respectively.

Note 10. Shareholders' Equity

Securities Purchase Agreements

On June 3, 2024, the Company entered into a securities purchase agreement (the "Registered Direct Purchase Agreement") with an institutional accredited investor (the "Purchaser") for the sale (the "Registered Direct Offering") by the Company of pre-funded warrants (the "RD Pre-funded Warrants") to purchase up to 225,000 shares of the Company's common stock, par value \$ 0.001 per share (the "Common Stock") (the "RD Pre-funded Warrant Shares"). In a concurrent private placement, the Company issued and sold to the Purchaser unregistered warrants to purchase up to 112,500 shares of Common Stock (the "PIPE Warrants" and shares of Common Stock underlying the PIPE Warrants, the "PIPE Warrant Shares"). Each RD Pre-funded Warrant in the Registered Direct Offering was sold together with one-half of one PIPE Warrant at a combined effective offering price of \$ 6.4925 per share. The PIPE Warrants became exercisable after the date of issuance at a price of \$6.43 per share and will expire on June 5, 2029.

In a separate private placement, on May 31, 2024, the Company entered into securities purchase agreements with certain institutional and accredited investors and directors of the Company (the "Private Agreements"), which collectively provided for the sale by the Company of (i) 438,191 shares of Common Stock (the "Private Shares"), (ii) pre-funded warrants (the "Private Pre-funded Warrants") to purchase up to 770,119 shares of Common Stock and (iii) warrants (the "Private Warrants" and together with the PIPE Warrants, the "Warrants") to purchase up to 604,150 shares of Common Stock (the "Private Warrant Shares"). Each share of Common Stock (or Private Pre-funded Warrant) in this private placement was sold together with one-half of one Private Warrant at a combined effective offering price of \$6.4925 per share. The Private Warrants will have the same terms as the PIPE Warrants sold to the Purchaser.

The Private Shares were sold at a purchase price of \$6.43 per share. The RD Pre-funded Warrants and Private Pre-funded Warrants were sold at a purchase price of \$6.43 minus \$0.001 per Pre-Funded Warrant, and are exercisable immediately at an exercise price of \$ 0.001 per share. The PIPE Warrants and Private Warrants are only exercisable for whole shares of Common Stock.

The net proceeds to the Company resulting in the sale of securities described above was approximately \$ 9.0 million, after deducting other offering expenses payable by the Company, and excluding the proceeds, if any, from the exercise of the warrants. Of the net proceeds, \$1 million came from the issuance of securities to the Company's legal counsel. Upon issuance of the shares, certain of the Company's financial obligations to its legal counsel were deemed paid and satisfied in full.

The Company accounts for common stock warrants in accordance with applicable accounting guidance provided in ASC Topic 815-40, Derivatives and Hedging – Contracts in Entity's Own Equity, or ASC Topic 815-40, as either derivative liabilities or equity instruments depending on the specific terms of the warrant. The Company determined that the warrants associated this financing qualified for equity classification.

Stock Purchase Warrants

The following table presents a summary of stock purchase warrants outstanding as of September 30, 2024.

	Number of Warrants (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding, January 1, 2024	924	\$ 4.54	5.1	\$ 1,477
Stock purchase warrants	716			
Exercised	—			
Expired	—			
Outstanding, September 30, 2024	1,640	\$ 5.37	4.5	\$ 3,215
Exercisable, September 30, 2024	1,640	\$ 5.37	4.5	\$ 3,215

A total of 1,608,433 pre-funded warrants were excluded from this table of which 995,119 were issued during the nine months ended September 30, 2024.

Note 11. Net Loss Per Share

Basic net loss per share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding during the period. Diluted loss per share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding adjusted to give effect to potentially dilutive securities. Due to their nominal exercise price of \$0.001 per share, 1,608,433 pre-funded warrants are considered common stock equivalents and are included in weighted average shares outstanding in the accompanying condensed consolidated statement of operations as of the applicable purchase date. Stock unit awards, stock options, and warrants (other than the pre-funded warrants) have not been included in the diluted loss per share calculation as their inclusion would have had an anti-dilutive effect.

The potential common stock equivalents that have been excluded from the computation of diluted loss per share consist of the following:

(in thousands)	Nine months ended September 30,	
	2024	2023
Stock options	548	537
Stock units	454	231
Stock purchase warrants	1,640	924
	2,642	1,692

Note 12. Income Taxes

The Company may be eligible, from time to time, to receive cash from the sale of its net operating losses under New Jersey's Department of the Treasury - Division of Taxation NOL Transfer Program. For the nine months ended September 30, 2024 and 2023, the Company received net cash payments of \$122,000 and \$211,000, respectively from the sale of its New Jersey state net operating losses.

Note 13. Stock Based Compensation

The following table presents a summary of activity related to stock options during the nine months ended September 30, 2024:

	Number of Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding, January 1, 2024	516	\$ 37.46	7.7	\$ 307
Granted	98			
Exercised	—			
Cancelled	(66)			
Outstanding, September 30, 2024	548	\$ 31.39	7.2	\$ 681
Exercisable, September 30, 2024	340	\$ 46.49	6.6	\$ 338

The intrinsic value is calculated as the difference between the fair market value at September 30, 2024 and the exercise price per share of the stock option. The options granted to employees generally vest over a three-year period.

The following table presents a summary of activity related to restricted and deferred stock units ("Stock Units") granted during the nine months ended September 30, 2024:

	Number of Shares (in thousands)	Weighted Average Grant Date Fair Value
Outstanding, January 1, 2024	227	\$ 7.41
Granted	304	
Vested and delivered	(66)	
Cancelled	(11)	
Outstanding, September 30, 2024	454	\$ 6.79

In general, Stock Units granted to employees vest over two to four-year periods.

Immediately following the Company's annual meeting of stockholders, the Company generally grants each non-employee director an equity award that vests over a 12-month period. Upon a non-employee director's initial appointment or election to the board of directors, the Company grants such non-employee director an equity award subject to vesting as determined by the board of directors.

The Company recognized stock compensation expense for its equity awards as follows:

	Three months ended September 30,		Nine months ended September 30,	
(in thousands)	2024	2023	2024	2023
Selling, general and administrative	\$ 368	\$ 477	\$ 1,247	\$ 1,102
Research and development	21	60	77	178
Cost of goods sold	11	6	32	18
Total expense	<u>\$ 400</u>	<u>\$ 543</u>	<u>\$ 1,356</u>	<u>\$ 1,298</u>

Total unrecognized compensation cost related to unvested awards as of September 30, 2024 was \$2.5 million and is expected to be recognized over the next 1.6 years.

Valuation Information for Stock-Based Compensation

The Company uses the Black-Scholes model to estimate the grant date fair value of each stock option awarded. Effective July 1, 2023, expected volatility was based 100% on the Company's historical common stock volatility. For the period presented below, the expected volatility was based on a composite comprising of 50% of the Company's historical common stock volatility; the remaining 50% was based on historical volatility of its peers. The risk-free interest rate was based on the average U.S. Treasury rate that most closely resembled the expected life of the related award. The expected term of the award was calculated using the simplified method. No dividend was assumed as the Company does not pay regular dividends on its common stock and does not anticipate paying any dividends in the foreseeable future.

The weighted average assumptions used in the Black-Scholes option pricing model in valuing stock options granted during the nine months ended September 30, 2024 and 2023, are summarized in the table below.

	Nine months ended September 30,	
	2024	2023
Fair value at grant date	\$ 4.31	\$ 3.95
Expected volatility	101.9%	122.4%
Risk-free interest rate	4.0%	4.1%
Expected holding period, in years	4.0	5.8
Dividend yield	—%	—%

The fair value of each Stock Unit is the market close price of the Company's common stock on the trading day immediately preceding the date of grant.

Note 14. Contingencies

Stockholders Litigation

On September 26, 2019, and October 31, 2019, purported stockholders of the Company served putative class action lawsuits in the United States District Court for the District of New Jersey captioned *Allyn Turnofsky vs. electroCore, Inc.*, et al., Case 3:19-cv-18400, and *Priewe vs. electroCore, Inc.*, et al., Case 1:19-cv-19653, respectively. In addition to the Company, the defendants include present and past directors and officers, and Evercore Group L.L.C., Cantor Fitzgerald & Co., JMP Securities LLC and BTIG, LLC, the underwriters for the initial public offering (IPO). The plaintiffs each seek to represent a class of stockholders who (i) purchased the Company's common stock in the IPO or whose purchases are traceable to the IPO, or (ii) who purchased common stock between the IPO and September 25, 2019. The complaints each alleged that the defendants violated Sections 11 and 15 of the Securities Act and Sections 10(b) and 20(a) of the Exchange Act, with respect to (i) the registration statement and related prospectus for the IPO, and (ii) certain post-IPO disclosures filed with the SEC. The complaints sought unspecified compensatory damages, interest, costs and attorneys' fees. The *Priewe* case was voluntarily dismissed on February 19, 2020.

In the *Turnofsky* case, on November 25, 2019, several plaintiffs and their counsel moved to be selected as lead plaintiff and lead plaintiff's counsel. On April 24, 2020, the Court granted the motion of Carole Tibbs and the firm Bragar, Egel & Squire, P.C. On July 17, 2020, the plaintiffs filed an amended complaint in *Turnofsky*. In addition to the prior claims, the amended complaint added an additional director defendant and two investors as defendants, and added a claim against the Company and the underwriters for violating Section 12(a)(2) of the Securities Act.

On September 15, 2020, the Company and the other defendants filed a motion to dismiss the amended complaint for failure to state a claim. On November 6, 2020, the plaintiffs filed their opposition to the motion to dismiss. The Company and the other defendants filed reply papers in support of the motion on December 7, 2020. Argument of the motion to dismiss occurred on June 18, 2021. On August 13, 2021, the Court dismissed the amended complaint with leave to re-plead. On October 4, 2021, the plaintiffs filed a second amended complaint in the *Turnofsky* case. The defendants moved to dismiss, and briefing on the motion was complete on January 7, 2022. On July 13, 2023, the court dismissed the second amended complaint with leave to re-plead. The plaintiffs did not file a third amended complaint. On August 23, 2023, the plaintiffs provided the court with an order of dismissal, and the court entered the order on August 24, 2023. On September 8, 2023, plaintiff Carole Tibbs filed a notice of appeal to the United States Court of Appeals for the Third Circuit. The appeal has been docketed as number 23-2655. The principal brief of appellant and appendix were filed on January 5, 2024. The appellees' brief was filed on February 15, 2024, and the appellant's reply brief was filed on March 15, 2024. On October 9, 2024, the court advised that it will decide the appeal on the papers and will not hear oral argument.

The Company intends to continue to vigorously defend itself in these matters. However, in light of, among other things, the preliminary stage of these litigation matters, the Company is unable to determine the reasonable probability of loss or a range of potential loss. Accordingly, the Company has not established an accrual for potential losses, if any, that could result from any unfavorable outcome, and there can be no assurance that these litigation matters will not result in substantial defense costs and/or judgments or settlements that could adversely affect the Company's financial condition.

The Company is subject to various claims, complaints and legal actions in the normal course of business from time to time. The Company is not aware of any further currently pending litigation for which it believes the outcome could have a material adverse effect on its operations or financial position. The Company expenses associated legal fees including those relating to the stockholder litigation described in this Note 14 in the period they are incurred.

Note 15. Related Party Transactions

Consulting Agreements

On October 4, 2024, the Company and a former executive entered into a consulting agreement pursuant to which the former executive will provide financial and accounting consulting services to the Company on an hourly basis for 12 months after the effective date of his retirement, subject to potential extension upon mutual agreement.

On July 11, 2024, the Company and a member of its board of directors entered into a consulting agreement pursuant to which the board member is expected to begin providing consulting and advisory services to the Company's Chief Executive Officer for a one-year term as of the completion of his service on the Board, effective as of immediately prior to the Company's 2025 Annual Meeting of Stockholders. The director will be paid an hourly or per diem fee for such services rendered, if any, and was granted a stock option to purchase 50,000 shares of common stock of the Company at an exercise price of \$6.43 per share, which shall vest and be exercisable in 12 equal monthly installments, subject to full vesting, if earlier, immediately prior to the 2025 Annual Meeting of Stockholders or a Change of Control so long as the director remains in continuous service to the Company through such date.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

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

You should read this section in conjunction with our unaudited interim condensed consolidated financial statements and related notes included in this Quarterly Report and our audited consolidated financial statements and related notes thereto and management's discussion and analysis of financial condition and results of operations for the year ended December 31, 2023 included in our Annual Report. As discussed in the section titled "Cautionary Note Regarding Forward-Looking Statements," the following discussion and analysis contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those under the caption "Risk Factors" in the aforementioned Annual Report and this Quarterly Report.

We are a commercial stage bioelectronic medicine and wellness company dedicated to improving health and quality of life through our propriety non-invasive vagus nerve stimulation ("nVNS") technology platform.

nVNS modulates neurotransmitters through its effects on both the peripheral and central nervous systems. Our nVNS treatment is delivered through a proprietary high-frequency burst waveform that safely and comfortably passes through the skin and stimulates therapeutically relevant fibers in the vagus nerve. Various scientific publications suggest that nVNS works through a variety of mechanistic pathways including the modulation of neurotransmitters.

Historically, vagus nerve stimulation or VNS, required an invasive surgical procedure to implant a costly medical device. This has generally limited VNS from being used by anyone other than the most severe patients. Our non-invasive medical devices and general wellness products are self-administered and intended for regular or intermittent use over many years.

Our capabilities include product development, regulatory affairs and compliance, sales and marketing, product testing, assembly, fulfillment, and customer support. We derive revenues from the sale of products in the United States and select overseas markets. We have two principal product categories:

- Handheld, personal use medical devices for the management and treatment of certain medical conditions such as primary headache; and
- Handheld, personal use consumer product offerings utilizing nVNS technology to promote general wellness and human performance.

We believe our nVNS treatment may be used in the future to effectively treat additional medical conditions.

Our goal is to be a leader in non-invasive neuromodulation by using our proprietary nVNS platform technology to deliver better health. To achieve this, we offer multiple propositions:

- Prescription gammaCore medical devices for the treatment of certain medical conditions such as primary headache;
- Truvaga products for the support of general health and wellbeing; and
- TAC-STIM for human performance.

Our flagship gammaCore Sapphire is a prescription medical device that is FDA cleared for a variety of primary headache conditions. gammaCore is available by prescription only and Sapphire is a portable, reusable, rechargeable and reloadable personal use option for patients to use at home or on the go. Prescriptions are written by a health care provider and dispensed from a specialty pharmacy, through the patient's healthcare system, or shipped directly to certain patients in the United States directly from our facility in Rockaway, NJ. After the initial prescription is filled, access to additional therapy can be refilled for certain of our gammaCore products through the input of a prescription-only authorization.

We offer two versions of our Truvaga products for the support of general health and wellbeing. Truvaga 350 is a personal use consumer electronics general wellness product and Truvaga Plus, which was launched in April 2024, is our next generation, app-enabled general wellness product. Neither product require a prescription, and both are available direct-to-consumer from electroCore at www.truvaga.com.

TAC-STIM is a form of nVNS for human performance and has been developed in collaboration with the United States Department of Defense Biotech Optimized for Operational Solutions and Tactics, or BOOST program. TAC-STIM products are available as a Commercial Off the Shelf (COTS) solution to professional organizations and are the subject of ongoing research and evaluation within the United States Air Force Special Operations Command, the United States Army Special Operations Command and at the United States Air Force Research Laboratory.

Truvaga and TAC-STIM products are intended for general wellness in compliance with the FDA guidance document entitled "General Wellness: Policy for Low-Risk Devices; Guidance for Industry and FDA Staff, issued on September 27, 2019." Truvaga and TAC-STIM products are not intended to diagnose, treat, cure, or prevent any disease or medical condition.

We are exploring strategies to make our TAC-STIM product available to other branches of the active-duty military and certain human performance professionals in the United States and abroad. Our TAC-STIM product is not a medical device and is not intended to diagnose, cure, mitigate, prevent, or treat a disease or condition.

Our two largest customers by revenue are the United States Department of Veterans Affairs and United States Department of Defense, or VA/DoD, and the United Kingdom National Health Service, or NHS, utilizing our FDA cleared and CE marked product, gammaCore.

The VA/DoD comprised 72.9% of our revenue during the nine months ended September 30, 2024. The majority of our 2024 sales were made through open market sales to individual facilities within the VA Hospital system and a smaller amount pursuant to our qualifying contract under the Federal Supply Schedule, or FSS, which was secured by us in December 2018 and through Lovell Government Services, or Lovell. The initial term of our FSS contract was scheduled to expire on January 15, 2024. We obtained modifications to the initial contract, temporarily extending the term from January 15, 2024 to December 14, 2024, while the VA/DoD Federal Supply Schedule Service reviews our follow-on offer application for a replacement FSS contract. Although we continue to work with the appropriate government personnel to replace our existing FSS contract, there can be no assurance that the VA/DoD will accept our application which may limit or eliminate our ability to sell certain gammaCore products into the government channel pursuant to our qualifying FSS contract or individual facilities that utilize our FSS contract number for open market purchases.

In August 2023, we signed a non-exclusive distribution agreement with Lovell providing Lovell the right to list and distribute certain gammaCore products into the federal market. Lovell is a Service-Disabled Veteran-Owned Small Business (SDVOSB) offering medical and pharmaceutical goods and services to federal healthcare providers. Listing products with Lovell is intended to streamline the sales process to a variety of government procurement channels through Lovell's compliance with contracting regulations and its provision of logistical solutions connected directly into government contracting portals, all of which are intended to help government agencies meet their SDVOSB procurement goals. Customers for these vehicles are federal healthcare systems such as the Veterans Health Administration (VHA, which includes the VA/DoD), the Military Health System (MHS), and Indian Health Services (IHS), which we believe serve up to approximately 21 million patients combined. Between November 2023 and January 2024, certain gammaCore products were added to the FSS, the VA/DoD's Distribution and Pricing Agreement or DAPA, GSA Advantage, and Defense Logistics Agency's ECAT system procurement portals through the Lovell contract vehicles, enabling the purchase of gammaCore products within the government channel and throughout the federal markets, including, but not limited to, the VA/DoD. The gammaCore products offered through Lovell provide government customers with similar product configuration options to those currently sold through our existing FSS contract and open market sales made directly to individual VA/DoD facilities. We expect a significant portion of our 2024 sales to continue in the government channel broadly, and to our largest customer the VA/DoD, specifically, pursuant to our FSS contract if replaced and / or through our relationship with Lovell and its qualifying FSS, GSA, DAPA, and ECAT contracts for which gammaCore has been added.

Sales under the Med Tech Funding Mandate, or MTFM, program for cluster headache in the UK comprised 5.1% and 5.4% of our revenue during the three and nine months ended September 30, 2024, respectively. In October 2023, we were notified by NHS Supply Chain that it intends to continue to include the gammaCore device within their framework agreement, commencing March 2024 through March 2026 with our option to extend for a further two years. In 2024, we expect NICE to review the guidance document and any changes in recommendation or pricing may adversely impact our ability to work with NHS England on the MTFM program.

We believe there may be large commercial opportunities for our gammaCore medical device with adoption by third-party payors, cash pay and physician dispense models, along with general wellness and human performance propositions through our Truvaga and TAC-STIM products. Therefore, we will continue our investments to expand our efforts in these channels and markets in 2024 and beyond.

We face a variety of challenges and risks that we will need to address and manage as we pursue our strategies, including our ability to develop and retain an effective sales force, achieve market acceptance of our gammaCore medical device among clinicians, patients, and third-party payers, expand the use of our gammaCore medical device to additional therapeutic indications, and to develop our nascent wellness and human performance business including the recent launch of Truvaga Plus, our next generation app-enabled device under the Truvaga brand.

Because of the numerous risks and uncertainties associated with our commercialization efforts, as well as research and product development activities, we are unable to predict the timing or amount of increased expenses, or when, if ever, we will be able to achieve or maintain profitability. Even if we are able to increase sales of our products, we may not become profitable. If we fail to become profitable or are unable to sustain profitability, then we may be unable to continue our operations at planned levels and be forced to reduce or terminate our operations.

Our expected cash requirements for the next 12 months and beyond are based on the commercial success of our products and our ability to control operating expenses. We believe our cash, cash equivalents, marketable securities, and anticipated revenue will enable us to fund our operating expenses, working capital and capital expenditures as currently planned through 12 months from the date of the financial statements in this Quarterly Report, however, there can be no assurance that we will have sufficient cash flow and liquidity to fund our planned activities, which could force us to significantly reduce or curtail our activities and, ultimately potentially cease operations. See "Liquidity Outlook."

Critical Accounting Estimates

The preparation of our financial statements is in accordance with accounting principles generally accepted in the United States of America, or GAAP, which require us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and other related disclosures. While we believe our estimates, assumptions and judgments are reasonable, they are based on information presently available. Actual results may differ significantly from these estimates due to changes in judgments, assumptions and conditions as a result of unforeseen events or otherwise, which could have a material impact on our financial position and results of operations.

We consider an accounting estimate to be critical if: (i) the accounting estimate requires us to make assumptions about matters that were highly uncertain at the time the accounting estimate was made, and (ii) changes in the estimate that are reasonably likely to occur from period to period or use of different estimates that we reasonably could have used in the current period, would have a material impact on our financial condition or results of operations. The critical accounting estimates, that we believe have the greatest potential impact on the condensed consolidated financial statements are disclosed in the section titled Critical Accounting Policies and Estimates in Part II of our Annual Report.

Results of Operations

Comparison of the three months ended September 30, 2024 to the three months ended September 30, 2023

The following table sets forth amounts from our condensed consolidated statements of operations for the three months ended September 30, 2024 and 2023:

	For the three months ended September 30, 2024		
	2024	2023	Change
<i>(in thousands)</i>			
Consolidated statements of operations:			
Net sales	\$ 6,554	\$ 4,508	\$ 2,046
Cost of goods sold	1,065	661	404
Gross profit	5,489	3,847	1,642
Gross margin	84%	85%	
Operating expenses			
Research and development	521	1,249	(728)
Selling, general and administrative	7,619	6,724	895
Total operating expenses	8,140	7,973	167
Loss from operations	(2,651)	(4,126)	1,475
Other (income) expense			
Interest and other income	(159)	(94)	(65)
Other expense	5	—	5
Total other (income) expense	(154)	(94)	(60)
Loss before income taxes	(2,497)	(4,032)	1,535
Benefit from income taxes	—	—	—
Net loss	\$ (2,497)	\$ (4,032)	\$ 1,535

Net Sales

Net sales for the three months ended September 30, 2024 increased 45% as compared to the three months ended September 30, 2023. The increase of \$2.0 million is due to an increase in net sales across major channels including our prescription gammaCore medical devices sold in the United States and abroad; and revenue from the sales of our nonprescription general wellness Truvaga products. We expect that the majority of our remaining 2024 fiscal year revenue will continue to come from the VA/DoD. In addition, the amount of revenue we recognize from the sale of our TAC-STIM product, however, may fluctuate significantly from quarter to quarter. See the above Overview for discussion regarding our FSS contract with the VA/DoD.

The following table sets forth our product net sales:

<i>(in thousands)</i>	Three months ended September 30,	
	2024	2023
Product		
Rx gammaCore - Department of Veteran Affairs and Department of Defense	\$ 4,777	\$ 2,737
Rx gammaCore - U.S. Commercial	441	439
Outside the United States	485	465
Truvaga	657	266
TAC-STIM	194	601
	<u>\$ 6,554</u>	<u>\$ 4,508</u>

Gross Profit

Gross profit increased by \$1.6 million for the three months ended September 30, 2024 compared to the three months ended September 30, 2023. Gross margin was 84% and 85% for the three months ended September 30, 2024 and 2023, respectively. Gross profit and gross margin for the remainder of 2024 will be largely dependent on revenue levels, product mix, and any changes in the estimated useful lives of licensed devices.

Research and Development

Research and development expense in the third quarter of 2024 was \$0.5 million, as compared to \$1.2 million in the third quarter of 2023. This decrease was primarily due to a significant reduction in investments associated with the development of our next generation of smartphone-integrated and smartphone-connected non-invasive therapies. For the remainder of 2024, we expect our research and development expense to continue to be lower than the comparable period in 2023.

Selling, General and Administrative

Selling, general and administrative expense of \$7.6 million for the three months ended September 30, 2024 increased by \$0.9 million, or 13%, as compared to \$6.7 million for the previous year period. This increase was primarily due to our greater variable selling and marketing costs consistent with our increase in sales. During the remainder of 2024, we plan on continuing to make targeted investments in sales and marketing to support our commercial efforts, particularly around sales and marketing efforts across all major U.S. channels.

Other (Income) Expense

The increase in Other (Income) Expense of \$60,000 is primarily due to an increase in interest income.

Comparison of the nine months ended September 30, 2024 to the nine months ended September 30, 2023

The following table sets forth amounts from our condensed consolidated statements of operations for the nine months ended September 30, 2024 and 2023:

	For the nine months ended September 30,			
	2024	2023	Change	
	(in thousands)			
Consolidated statements of operations:				
Net sales	\$ 18,136	\$ 10,839	\$	7,297
Cost of goods sold	2,791	1,704		1,087
Gross profit	15,345	9,135		6,210
Gross margin	85%	84%		
Operating expenses				
Research and development	1,555	4,213		(2,658)
Selling, general and administrative	22,881	20,233		2,648
Total operating expenses	24,436	24,446		(10)
Loss from operations	(9,091)	(15,311)		6,220
Other (income) expense				
Interest and other income	(439)	(298)		(141)
Other expense	128	—		128
Total other (income) expense	(311)	(298)		(13)
Loss before income taxes	(8,780)	(15,013)		6,233
Benefit for income taxes	122	211		(89)
Net loss	\$ (8,658)	\$ (14,802)	\$	6,144

Net Sales

Net sales increased 67% for the nine months ended September 30, 2024 compared to the prior year period. The increase of \$7.3 million is due to an increase in net sales across all major channels including the sale of our prescription gammaCore medical devices in our U.S. Department of Veteran Affairs and U.S. commercial channel, and revenue from the sales of our nonprescription Truvaga products. We expect that the majority of remaining 2024 fiscal year revenue will continue to come from our U.S. channels. The amount of revenue we recognize from the sale of our TAC-STIM product, however, may fluctuate significantly from quarter to quarter.

The following table sets forth our channel net sales:

<i>(in thousands)</i>	Nine months ended September 30,	
	2024	2023
Product		
Rx gammaCore - Department of Veteran Affairs and Department of Defense	\$ 13,224	\$ 6,523
Rx gammaCore - U.S. Commercial	1,350	1,314
Outside the United States	1,398	1,299
Truvaga	1,614	703
TAC-STIM	550	1,000
	<u>\$ 18,136</u>	<u>\$ 10,839</u>

Gross Profit

Gross profit increased \$6.2 million for the nine months ended September 30, 2024 compared to the prior year. Gross margin increased to 85% for the nine months ended September 30, 2024 compared to 84% for the nine months ended September 30, 2023. In recent quarters, we have sold an increasing number of longer duration therapy, resulting in a higher average selling price. Gross profit and gross margin in the remainder of 2024 will be largely dependent on revenue levels, product mix, and any changes in the estimated useful lives of licensed devices.

Research and Development

Research and development expense decreased by \$2.7 million or 63% for the nine months ended September 30, 2024 compared to the prior year period. This decrease was primarily due to a significant reduction in investments associated with the development of our next generation of smartphone-integrated and smartphone-connected non-invasive therapies. For the remainder of 2024, we expect our research and development expense to continue to be lower than the comparable period in 2023.

Selling, General and Administrative

Selling, general and administrative expense of \$22.9 million for the nine months ended September 30, 2024 increased by \$2.6 million compared to \$20.2 million for the previous year period. This increase was primarily due to our greater variable selling and marketing costs consistent with our increase in sales and recognition of lease expense associated with the lease expansion of our facility in Rockaway, New Jersey. During the remainder of 2024, we plan on continuing to make targeted investments in sales and marketing to support our commercial efforts, particularly around sales and marketing efforts across all major U.S. channels. Selling, general and administrative expense for the nine months ended September 30, 2023 included severance charges of \$445,000.

Other (Income) Expense

The decrease in Other Income of \$13,000 is primarily due to increased interest income offset by a one-time expense associated with the termination of an agreement in the current period.

Benefit from Income Taxes

We may be eligible, from time to time, to receive cash from the sale of our net operating losses under New Jersey's Department of the Treasury - Division of Taxation NOL Transfer Program. On March 6, 2024, the Company received a net cash payment of \$122,000 from the sale of its New Jersey state net operating losses.

Cash Flows

The following table sets forth the significant sources and uses of cash for the periods noted below:

<i>(in thousands)</i>	For the nine months ended September 30,	
	2024	2023
Net cash (used in) provided by		
Operating activities	\$ (5,693)	\$ (11,545)
Investing activities	\$ (8,018)	\$ (165)
Financing activities	\$ 8,068	\$ 7,487

Operating Activities

Net cash used in operating activities was \$5.7 million and \$11.5 million for the nine months ended September 30, 2024 and 2023, respectively. This decrease is primarily due to the decrease in our net loss adjusted for non-cash expense items.

Investing Activities

During the nine months ended September 30, 2024, \$8.0 million was used in investing activities primarily the result of the purchase of \$8.0 million in marketable securities.

Financing Activities

During the nine months ended September 30, 2024, net cash provided by financing activities was \$8.1 million which was attributable to the Company entering into a registered direct offering and concurrent private placements, which closed on June 5, 2024. In addition, we received \$1.0 million from the issuance of securities to our legal counsel. Upon issuance of these shares, certain of our financial obligations to our legal counsel were deemed paid and satisfied in full. During the nine months ended September 30, 2023 net cash provided by financing activities was \$7.5 million which was attributable to the Company entering into a registered direct offering and concurrent private placements, which closed on July 31, 2023.

Liquidity Outlook

We have experienced significant net losses, and we expect to continue to incur net losses for the near future as we work to increase market acceptance of our gammaCore therapy and general wellness and human performance products. We have never been profitable and we have incurred net losses and negative cash used in operations in each year since our inception. We incurred net losses of \$8.7 million and \$14.8 million and used cash in our operations of \$5.7 million and \$11.5 million for the nine months ended September 30, 2024 and 2023, respectively.

We have historically funded our operations from the sale of our securities. During the nine months ended September 30, 2024, we received net proceeds of approximately \$9.0 million from such sales and as of September 30, 2024, our cash, cash equivalents, restricted cash and marketable securities totaled \$13.2 million.

Based on our current assessment, reduction in net loss and current cash position, we believe we will be able to fund our operating expenses and capital expenditure requirements, as currently planned, for at least the next 12 months from the date the accompanying financial statements are issued. We therefore believe that the previously disclosed substantial doubt about our ability to continue as a going concern is alleviated. There remain significant risks and uncertainties regarding our business, financial condition and results of operations. Our future capital requirements are difficult to forecast and will depend on many factors that are out of our control. If we are unable to achieve our planned operating results or maintain sufficient financial resources, including through potential cash flow from operations or supplemental access to third-party debt, equity or hybrid capital, our business, financial condition and results of operations may be materially and adversely affected.

On January 18, 2022, we filed a Form S-3 registration statement, or the 2022 Shelf Registration Statement, with the SEC, for the issuance of common stock, preferred stock, warrants, rights, debt securities and units, which we refer to collectively as the Shelf Securities, up to an aggregate amount of \$75.0 million. The 2022 Shelf Registration Statement was declared effective on January 25, 2022. The proposed maximum offering price per unit and the proposed maximum aggregate offering price per class of Shelf Security will be determined from time to time by us in connection with the issuance by us of the Shelf Securities. Until such time as the aggregate market value of our securities held by non-affiliates equals or exceeds \$75.0 million, the aggregate maximum offering price of all Shelf Securities issued by us in any given 12-calendar month period pursuant to the 2022 Shelf Registration Statement (or any successor registration statement on Form S-3) may not exceed one-third of the aggregate market value of our securities held by non-affiliates. As of September 30, 2024, we had approximately \$11.6 million available of unused capacity under the 2022 Shelf Registration Statement, subject to the one-third limit. If our public float increases, we will have additional availability under such limit, and if our public float increases to \$75.0 million or more, such one-third limit will terminate. There can be no assurance that our public float will increase, that we will no longer be subject to such limitation, that such limitation may not reapply after termination under applicable SEC rules, or that the 2022 Shelf Registration Statement will allow us to raise additional capital in a timely manner, on acceptable terms, or at all.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We develop our products in the United States and sell those products into several countries. As a result, our financial results could be affected by factors such as changes in foreign currency exchange rates or weak economic conditions in foreign markets. Most of our sales in Europe are denominated in British Pound Sterling and our license agreement with Teijin Limited is denominated in Japanese Yen. As our sales in currencies other than the U.S. dollar increase, our exposure to foreign currency fluctuations may increase. In addition, changes in exchange rates also may affect the end-user prices of our products compared to those of our foreign competitors, who may be selling their products based on local currency pricing. These factors may make our products less competitive in some countries.

If the U.S. dollar uniformly increased or decreased in strength by 10% relative to the foreign currencies in which our sales were denominated, our net income would have correspondingly increased or decreased by an immaterial amount for the nine months ended September 30, 2024.

Our exposure to market interest rate risk is confined to our cash and cash equivalents and marketable securities. The goals of our investment policy are preservation of capital, fulfillment of liquidity needs and fiduciary control of cash and investments. We also seek to maximize income from our investments without assuming significant risk. To achieve our goals, we may maintain a portfolio of cash equivalents and investments in a variety of securities of high credit quality. The securities in our investment portfolio, if any, are not leveraged, are classified as available for sale and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our cash equivalents, we do not believe that an increase in market rates would have any material negative impact on interest income recognized in our statement of operations. We have no investments denominated in foreign currencies and therefore our investments are not subject to foreign currency exchange risk. We contract with investigational sites, suppliers and other vendors in Europe and internationally. In addition, our license agreement requires payments to us to be denominated in Japanese Yen. We are subject to fluctuations in foreign currency rates in connection with these agreements. We do not hedge our foreign currency exchange rate risk.

All of the potential changes noted above are based on sensitivity analyses performed on our financial position as of September 30, 2024.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the rules and forms, and that such information is accumulated and communicated to us, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decision making regarding required disclosure. In designing and evaluating our disclosure controls and procedures, we recognize that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, as ours are designed to do, and we apply our judgment in evaluating whether the benefits of the controls and procedures that we adopt outweigh their costs.

As required by Rule 13a-15(b) of the Exchange Act, an evaluation as of September 30, 2024 was conducted under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act). Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures, as of September 30, 2024 were effective and remediated the material weakness described below.

Management's Report in Internal Control Over Financial Reporting

During October 2023, a vendor notified us that it had not received a payment we made via wire transfer based on instructions the Company believed were sent by the vendor. Our internal controls over vendor management, as designed, would not have timely prevented an unauthorized payment based on incorrect vendor information from occurring. As such, the Company has concluded that a material weakness existed in its internal controls over financial reporting. This material weakness did not result in any identified misstatement, and there were no changes to previously reported financial results.

Remediation Plan for the Material Weakness

In 2024, management has implemented measures designed to ensure that the control deficiencies that contributed to the material weakness were remediated, such that these controls are designed, implemented, and operating effectively.

Remediation efforts included but are not limited to (a) enhance processes and procedures around payment security, (b) verifying changes to vendor information on a timely basis, and (c) using alternate channels to verify changes to vendor payment information.

As of the three months ended September 30, 2024, management has completed its testing and evaluation of the implementation of internal controls and revised processes and has concluded that the material weakness has been remediated and will provide reasonable assurance that they will prevent or detect a material error in our financial statements.

Changes in Internal Control over Financial Reporting

Except as described above, there was no change in our internal control over financial reporting as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act, that occurred during the three months ended September 30, 2024 that has materially affected or is reasonably likely to materially affect our internal control over financial reporting.

PART II— OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

The information set forth in Note 14. *Contingencies* of the condensed consolidated financial statements included in this Quarterly Report is incorporated here by reference to this Part II Item 1.

Item 1A.

RISK FACTORS

You should carefully consider the risk factors included in Item 1A. of our Annual Report and the other information in this Quarterly Report, including the section of this Quarterly Report titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes. If any of the events described in our Annual Report, and the following risk factor and the risks described elsewhere in this Quarterly Report occur, our business, operating results and financial condition could be seriously harmed. This Quarterly Report also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of factors that are described in our Annual Report and elsewhere in this Quarterly Report.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

Item 3. DEFAULTS UPON SENIOR SECURITIES

None.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

Item 5. OTHER INFORMATION

(a) Effective as of November 13, 2024, the board of directors of the Company (the "Board") approved and adopted the second amended and restated bylaws of the Company (the "Amended and Restated Bylaws"), which amend certain of the provisions of Article III, Sections 5(B)(1), (B)(4), (B)(5), (F), and (G). Among other things, the amendments set forth in the Amended and Restated Bylaws (i) address provisions of the universal proxy rules adopted by the SEC, by clarifying that to comply with such rules, stockholders who intend to solicit proxies in support of a director nominee other than the Board's nominees must provide a notice to the Company that sets forth the information required by Rule 14a-19 under the Exchange Act, including with respect to applicable notice and solicitation requirements, and that the Company shall disregard any proxies or votes solicited for such stockholder's nominee(s) by any such stockholder who fails to comply with Rule 14a-19; (ii) specify the process and disclosure requirements for a stockholder submitting notice of a director nomination with respect to, among other things, (x) the dates of first contact between the proposed director and the stockholder nominee; (y) known financial supporters of the proposed director; and (z) a form of questionnaire and form of nominee's representation and agreement that must be delivered to the Company and requiring that such items, completed by the nominee, be delivered to the Company along with such notice of a director nomination; and (iii) require that a stockholder directly or indirectly soliciting proxies from other stockholders use a proxy card color other than white.

The foregoing summary is qualified in its entirety by reference to the text of the Amended and Restated Bylaws filed as Exhibit 3.1 to this Report.

(b) Not applicable.

(c) Trading Plans.

During the quarter ended September 30, 2024, no director or Section 16 officer adopted or terminated any Rule 10b5-1 trading arrangements or non-Rule 10b5-1 trading arrangements (in each case, as defined in Item 408(a) of Regulation S-K promulgated by the SEC).

Item 6. EXHIBITS

Exhibit Number	Description
3.1*	Second Amended and Restated Bylaws, dated November 13, 2024
10.1*	Consulting Agreement by and between electroCore, Inc and Brian M. Posner, dated October 4, 2024
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith.

SIGNATURES

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

Company Name

Date: November 13, 2024

By: /s/ DANIEL S. GOLDBERGER
Daniel S. Goldberger
Chief Executive Officer
(Principal Executive Officer)

Date: November 13, 2024

By: /s/ JOSHUA S. LEV
Joshua S. Lev
Chief Financial Officer
(Principal Financial and Accounting Officer)

SECOND AMENDED AND RESTATED BYLAWS

OF

ELECTROCORE, INC.
(A DELAWARE CORPORATION)

November 13, 2024

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ELECTROCORE, INC.
SECOND AMENDED AND RESTATED BYLAWS

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office shall be established and maintained at the office of The Corporation Service Company, in the City of Wilmington, in the County of New Castle, in the State of Delaware, and said corporation, or other such person or entity as the Board of Directors may from time to time designate, shall be the registered agent of the corporation.

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. If adopted, the corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the General Corporation Law of the State of Delaware (the "**DGCL**").

Section 5. Annual Meetings.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in Section 5(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), and the rules and regulations thereunder) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting.

(1) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(3) and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class and number of shares of each class of capital stock of the corporation which are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, and (5) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee and to serving as a director if elected); (B) a representation that the stockholder or Proponent (as defined below), if any, will or is part of a group that will (1) solicit proxies from holders of the corporation's outstanding capital stock representing at least 67% of the voting power of shares of capital stock entitled to vote on the election of directors, (2) include a statement to that effect in its proxy statement and/or its form of proxy, (3) otherwise comply with Rule 14a-19 under the 1934 Act and (4) provide the Secretary not less than five (5) business days prior to the meeting or any adjournment or postponement thereof, with reasonable documentary evidence (as determined by the Secretary in good faith) that such stockholder and/or Proponent, if any, complied with such representations; (C) a representation that each nominee such stockholder proposes is currently in compliance with the Board of Director requirements set forth under the corporation's board-approved Corporate Governance Guidelines (the "**Corporate Guidelines**") and will remain in compliance with the Corporate Guidelines throughout the duration of the nomination process, and that such stockholder will update the applicable notice pursuant to Section 5(c) should any proposed nominee become noncompliant with the Corporate Guidelines; and (D) the information required by Sections 5(b)(4) and 5(b)(5). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

(2) Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14a-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(3), and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Sections 5(b)(4) and 5(b)(5).

(3) To be timely, the written notice required by Section 5(b)(1) or 5(b)(2) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that, subject to the last sentence of this Section 5(b)(3), in the event that no annual meeting was held during the preceding year or the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or for which the public announcement thereof has been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(4) The written notice required by Section 5(b)(1) or 5(b)(2) shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a **"Proponent"** and collectively, the **"Proponents"**): (A) the name and address of each Proponent, as they appear on the corporation's books; (B) the class, series and number of shares of the corporation that are owned beneficially and of record by each Proponent; (C) a description of all agreements, arrangements or understandings (whether oral or in writing) with respect to (i) such proposal or nomination, or (ii) any compensation or payments to be paid to any such proposed nominee between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing pertaining to the nomination or other business brought before the meeting of the stockholders; (D) in the case of a stockholder nomination to the Board of Directors, the date of first contact between the proposed director and the stockholder nominee with respect to (i) the corporation and (ii) any proposed nomination or nominations of any person for election to the Board of Directors; (E) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 5(b)(1)) or to propose the business that is specified in the notice (with respect to a notice under Section 5(b)(2)); (F) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of the corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 5(b)(1)) or to carry such proposal (with respect to a notice under Section 5(b)(2)); (G) identification of the names and addresses of other stockholders, including any Proponent, known by any of the nominating stockholders to support such nominations, and to the extent known, the class and number of all shares of the corporation's capital stock owned beneficially or of record by such other stockholder or beneficial owner(s); and (H) a description of all Derivative Transactions (as defined below) by each Proponent during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

(5) To be eligible to be a candidate for election as a director of the corporation at an annual or special meeting under this Section 5, a candidate must be nominated in a manner prescribed by this Section 5 and the candidate for nomination, whether nominated by the Board of Directors or by a stockholder of record, must have previously delivered (in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board of Directors) to the Secretary at the principal executive offices of the corporation, (i) a written questionnaire in the form provided by the Secretary with respect to the background, qualifications, stock ownership and independence of such proposed nominee, and such additional information with respect to such proposed nominee as would be required to be provided by the corporation if such proposed nominee were a participant in the solicitation of proxies by the corporation in connection with such annual or special meeting (which questionnaire shall be provided by the Secretary upon written request of any stockholder of record identified by name within five (5) business days of such written request).

(6) Within the time period specified in this Section 5 for providing written notice of the applicable nomination, each nominee for election as a director of the corporation must deliver to the Secretary a written representation and agreement in the form required by the corporation (which form a stockholder providing notice shall request in writing from the Secretary prior to submitting such notice and which the Secretary shall provide to such stockholder within ten (10) days after receiving such request) that such person (i) intends, if elected as a director of the corporation, to serve as director of the corporation for the term for which he or she is elected and (ii) in his or her individual capacity, would be in compliance and will comply, if elected as a director of the corporation, with all applicable publicly disclosed confidentiality, corporate governance, conflict of interest, Regulation FD and stock ownership and trading policies and guidelines of the corporation, all applicable publicly disclosed codes of conduct and ethics of the corporation and all other guidelines and policies of the corporation generally applicable to directors (which other guidelines and policies will be provided to such person within five (5) business days after the Secretary receives a written request therefor from such person).

(c) A stockholder providing written notice required by Section 5(b)(1) or 5(b)(2) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five (5) business days prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than two (2) business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) business days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 5(b)(3) to the contrary, in the event that the number of directors in an Expiring Class (as defined below) is increased and there is no public announcement of the appointment of a director to such class, or, if no appointment was made, of the vacancy in such class, made by the corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with Section 5(b)(3), a stockholder's notice required by this Section 5 and which complies with the requirements in Section 5(b)(1), other than the timing requirements in Section 5(b)(3), shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation. For purposes of this section, an **"Expiring Class"** shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

(e) A person shall not be eligible for election or re-election as a director unless the person is nominated either in accordance with clause (ii) of Section 5(a), or in accordance with clause (iii) of Section 5(a). Except as otherwise required by law, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 5(b)(4)(D) and 5(b)(4)(E), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

(f) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 5(a)(iii) of these Bylaws. Unless otherwise required by law, if any stockholder giving notice provided by this Section 5 provides notice pursuant to Rule 14a-19 and subsequently fails to comply with its requirements, then the corporation shall disregard any proxies or votes solicited for the stockholder's nominee(s).

(g) Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for exclusive use by the Board of Directors.

(h) For purposes of Sections 5 and 6,

(1) "**affiliates**" and "**associates**" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the "**1933 Act**").

(2) "**Derivative Transaction**" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

(w) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation,

(x) which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation,

(y) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes, or

(z) which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

(3) "**public announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, Globe Newswire or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairperson of the Board of Directors, (ii) the Chief Executive Officer (or if there is no Chief Executive Officer, the President), or (iii) the Board of Directors pursuant to a resolution approved by the affirmative vote of a majority of the directors then in office, and may not be called by any other person or persons.

(b) The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. No business may be transacted at such special meeting otherwise than specified in the notice of meeting.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers written notice to the Secretary of the corporation setting forth the information required by Section 5(b)(1). In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if written notice setting forth the information required by Section 5(b)(1) of these Bylaws shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The stockholder shall also update and supplement such information as required under Section 5(c). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or for which the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(d) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 6(c) of these Bylaws.

Section 7. Notice of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is deemed given when deposited in the U.S. mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his, her or its attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of one-third of the voting power of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairperson of the meeting or by vote of the holders of a majority of the voting power of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at a duly constituted meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute or by applicable stock exchange rules, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at a duly constituted meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by statute, or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, one-third of the voting power of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by applicable stock exchange rules or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at a duly constituted meeting shall be the act of such class or classes or series.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairperson of the meeting or by the vote of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting, although less than a quorum. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his or her act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

Section 12. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number and class of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 13. Action without Meeting. No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the President, or, if the President is absent, a chairperson of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairperson. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 15. Number and Term of Office. The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 16. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 17. Classes of Directors. Effective immediately following the closing of the initial public offering pursuant to an effective registration statement under the 1933 Act, covering the offer and sale of the Corporation's common stock to the public (the "**Initial Public Offering**") the directors shall be divided into three classes as nearly equal in number as practicable, hereby designated as Class I, Class II and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the initial classification becomes effective. The term of office of the initial Class I directors shall expire upon the election of directors at the first annual meeting of stockholders following the closing of the Initial Public Offering; the term of office of the initial Class II directors shall expire upon the election of directors at the second annual meeting of stockholders following the closing of the Initial Public Offering; and the term of office of the initial Class III directors shall expire upon the election of directors at the third annual meeting of stockholders following the closing of the Initial Public Offering. At each annual meeting of stockholders, commencing with the first annual meeting of stockholders following the closing of the Initial Public Offering, each of the successors elected to replace the directors of a class whose term shall have expired at such annual meeting shall be elected to hold office until the third annual meeting of stockholders next succeeding his or her election and until his or her respective successor shall have been duly elected and qualified. Subject to the rights of holders of any outstanding series of Preferred Stock with respect to the election of directors, if the number of directors that constitutes the Board of Directors is changed, any newly created directorships or decrease in directorships shall be so apportioned by the Board of Directors among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Notwithstanding the foregoing provisions of this paragraph, and subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, each director shall serve until such director's successor is duly elected and qualified or until such director's earlier death, resignation or removal.

Section 18. Vacancies. Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders, *provided, however*, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, the resignation shall be deemed effective at the time of delivery of the resignation to the Secretary. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his or her successor shall have been duly elected and qualified.

Section 20. Removal.

(a) Subject to the rights of holders of any series of Preferred Stock to elect additional directors under specified circumstances, neither the Board of Directors nor any individual director may be removed without cause.

(b) Subject to any limitation imposed by law, any individual director or directors may be removed with cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all then outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors, voting together as a single class.

Section 21. Meetings.

(a) **Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) **Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairperson of the Board, the Chief Executive Officer or a majority of the total number of authorized directors.

(c) **Meetings by Electronic Communications Equipment.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) **Notice of Special Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be given orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 22. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 44 for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however*, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 23. Action without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 24. Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor. Directors need not be stockholders of the Corporation. No person shall qualify for service as a director of the Corporation if he or she is a party to any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than the Corporation, or has received any such compensation or other payment from any person or entity other than the Corporation, in each case in connection with candidacy or service as a director of the Corporation; provided that agreements providing only for indemnification and/or reimbursement of out-of-pocket expenses in connection with candidacy as director (but not, for the avoidance of doubt, in connection with service as a director) and any pre-existing employment agreement a candidate has with his or her employer (not entered into in contemplation of the employer's investment in the Corporation or such employee's candidacy as a director) shall not be disqualifying under this Section 24; and provided, further, that agreements, arrangements, understandings, compensation or other payments in connection with candidacy or service as a director of the Corporation shall not be disqualifying under this Section 24 if the Board in its discretion makes an affirmative determination that the director satisfies applicable regulatory and stock exchange listing requirements to be an independent director of the Corporation and that the director is free of any other relationship (with the Corporation and its consolidated subsidiaries (collectively, the "**Company**") or any stockholder or otherwise) that would interfere with the exercise of independent judgment by such director.

Section 25. Committees.

(a) **Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

(b) **Other Committees.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) **Term.** The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) **Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 26. Duties of Chairperson of the Board of Directors and Lead Independent Director.

(a) The Chairperson of the Board of Directors, if appointed and when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairperson of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(b) The Chairperson of the Board of Directors, or if the Chairperson is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors (the "**Lead Independent Director**"). The Lead Independent Director will perform such other duties as may be established or delegated by the Board of Directors.

Section 27 . Organization. At every meeting of the directors, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Lead Independent Director, or if the Lead Independent Director has not been appointed or is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairperson of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer, director or other person directed to do so by the person presiding over the meeting, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 28. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairperson of the Board of Directors (provided that notwithstanding anything to the contrary contained in these Bylaws, the Chairperson of the Board of Directors shall not be deemed an officer of the corporation unless so designated by the Board of Directors), the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 29. Tenure and Duties of Officers .

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairperson of the Board of Directors or the Lead Independent Director has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairperson of the Board of Directors or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(e) **Duties of Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) **Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(g) **Duties of Treasurer.** Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

Section 30. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 31. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 32. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 33. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 34. Voting Of Securities Owned By the Corporation . All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairperson of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

SHARES OF STOCK

Section 35. Form and Execution of Certificates . The shares of the corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificate shall be entitled to have a certificate signed by or in the name of the corporation by the Chairperson of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 36. Lost Certificates . A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 37. Transfers .

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 38. Fixing Record Dates .

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

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

Section 39. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 40. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35), may be signed by the Chairperson of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however*, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 41. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 42. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

Section 43. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 44. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.

(a) **Directors and Executive Officers.** The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, "**executive officers**" shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however*, that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, provided, further, that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) **Other Officers, Employees and Other Agents.** The corporation shall have power to indemnify its non-executive officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate responsibility for determining whether any such non-executive officer, employee or other agent shall be given indemnification to such person or persons as the Board of Directors may designate.

(c) **Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding; *provided, however*, that, if the DGCL requires, an advancement of expenses incurred by a director or executive officer in his or her capacity as a director or executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "**undertaking**"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision (hereinafter a "**final adjudication**") from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this section or otherwise.

(d) **Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer, as applicable. Any right to indemnification or advances granted by this Bylaw to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this section or otherwise shall be on the corporation.

(e) **Non-Exclusivity of Rights.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

(f) **Survival of Rights** . The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) **Insurance** . To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this section.

(h) **Amendments** . Any repeal or modification of this section shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) **Saving Clause** . If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this section that shall not have been invalidated, or by any other applicable law. If this section shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

(j) **Certain Definitions** . For the purposes of this Bylaw, the following definitions shall apply:

(1) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a "director," "executive officer," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

ARTICLE XII

NOTICES

Section 45. Notices.

(a) **Notice To Stockholders** . Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by U.S. mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice To Directors . Any notice required to be given to any director may be given by the method stated in subsection (a), or as otherwise provided in these Bylaws, with notice other than one which is delivered personally to be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known address of such director.

(c) Affidavit Of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice To Person With Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address . Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 46. Bylaw Amendments. Subject to the limitations set forth in Section 44(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal these Bylaws of the corporation. Any adoption, amendment or repeal of these Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal these Bylaws of the corporation; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

LOANS TO OFFICERS OR EMPLOYEES

Section 47. Loans to Officers or Employees . Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

October 4, 2024
Brian Posner

Re: Consulting Engagement

Dear Brian:

On behalf of electroCore, Inc., a Delaware company (the "Company"), I am pleased to offer you a position as a consultant to the Company. This letter, when signed by you, will constitute our agreement (the "Agreement") concerning your role as a consultant to the Company.

1. Duties; Term; Termination. During the term of this Agreement, you hereby agree to serve as a non-exclusive independent contractor to the Company by providing financial and account consulting services (the "Services") to the Company. The Services will be furnished only with respect to such matters and within such timeframes as are specified by the Company. It is expected that you will be available, either in person or by phone, within a reasonable timeframe with representatives of the Company to provide updates on your consulting services and to discuss other Company business.

The term of this Agreement shall expire on the twelve (12) month anniversary of the Effective Date (the "Initial Term"). The initial term of the Agreement shall be renewed for successive ninety (90) day periods (each a "Renewal Term" and together with the Initial Term, the "Term") as necessary and upon mutual agreement and updated fees. Either party may terminate this Agreement at any time by providing the other with written notice of such termination.

You shall always comply with any Requirements of Law applicable to the promotion, marketing and/or sale of the Company's products within the United States of America and any other applicable country. In addition, you shall not perform your obligations hereunder in a manner that would cause the Company to not be in compliance with any Requirements of Law of the United States of America (including but not limited to the U.S. Export Administration regulations, laws, any laws related to money-laundering, currency reporting and recordkeeping requirements, and the Foreign Corrupt Practices Act) or any other applicable country. "Requirements of Law" shall mean the organizational documents of any entity, any law, treaty, rule or regulation, order, decree, permit, license or other restriction or requirement of any governmental authority.

2. Compensation. As full compensation for your services to the Company hereunder and in consideration for the assignment of the Intellectual Property (as provided below, if applicable), you shall be paid an hourly consulting fee of two hundred and fifty dollars (\$250) per hour (the "Fee"), not to exceed 20 hours per month without prior authorization. The fee will be payable within 30 days of receipt of the invoice detailing the hours of Services performed for the prior month. Invoices for Services are to be submitted to accountspayable@electrocore.com.

In addition to the foregoing compensation, the Company shall reimburse you for any reasonable out-of-pocket expenses, including reasonable travel expenses, incurred by you in connection with the performance of the Services in accordance with the Company's expense reimbursement policy as in effect; provided, however, any individual expense item in excess of \$500 shall require the Company's prior written approval.

3. Independent Contractor. It is understood that your services are being furnished to the Company as an independent contractor and not as an employee. Except as otherwise provided in this Agreement, you shall have sole discretion and responsibility for the selection of procedures, processes, materials, working hours, and other incidents of performance of Services under this Agreement, subject to oversight from the Company's Chief Executive Officer or other authorized officer (the "Manager"). During the term of this Agreement, you will not be entitled to participate in any employee benefit plans currently or hereafter maintained by the Company.

4. Taxes. The parties acknowledge and agree that you will be solely and completely responsible for any and all taxes due and owing to any governmental entity or agency (federal, state and/or local) on any monies or compensation received by you from the Company under this Agreement. You will pay all taxes arising from his receipt of compensation under this Agreement, including, but not limited to, any self-employment or payroll taxes. You agree that the Company will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes, making any insurance contributions, including for unemployment or disability, or obtaining workers' compensation insurance on your behalf. You shall be responsible for, and shall indemnify the Company against, all such taxes or contributions, including penalties and interest.

5. Confidential Information. During the term of this Agreement and for a period of three (3) years after the termination or expiration of this Agreement, you shall not use for your personal benefit, or disclose, communicate or divulge to, or use for the direct or indirect benefit of any person, corporation or other entity, other than the Company, any information (including all derivatives, enhancements and improvements thereto developed by you) regarding procedures, techniques, computer programs, research or development projects or results, trade secrets or inventions used or developed by the Company, or any other confidential information relating to or dealing with the business operations or activities of the Company, made known to you or learned or acquired by you from or through the Company or in connection with your Services to the Company. Regardless of the period of time you serve as a consultant to the Company, you agree to be bound by this obligation until such time as, and to the extent that, such information is published by the Company or is in or becomes part of the public domain (other than by reason of your fault or breach of this Agreement).

6. IP Assignment. You hereby transfer, convey and assign all of your right, title, and interest in and to all Inventions, whether or not such Inventions are reduced to practice, and to all know-how and trade secrets relating thereto, and in and to any and all continuations, continuations-in-part, divisions, reissues, reexaminations and extensions thereof, and to all international priority rights and all foreign rights relating to each of the foregoing throughout the world, along with any and all rights of enforcement with respect thereto, including all rights to sue, settle and recover for the past, present and future infringement thereof, and any and all causes of action related thereto. The term "Inventions" shall mean all intellectual property, including, but not limited to, any and all inventions, copyrights, copyright applications or registrations, original works of authorship, developments, improvements, patents, patent applications, trademarks, trademark applications, trade names or trade secrets, whether owned or created solely by you or jointly with another hereafter developed until such time as you cease to be a consultant to the Company, in the case of all of the foregoing only to the extent related to the design, development, manufacture or sale of the Company's products or services. You agree to execute all patent applications, assignments and other documents, and to take all other steps, necessary to vest in the Company the right, title and interest in and to the Inventions and in and to any and all patents obtainable therefor and/or related thereto in the United States and in foreign countries, and to take all actions as reasonably requested by the Company, at the Company's expense, to secure and maintain all rights of the Company in and to the Intellectual Property.

7. Restrictive Covenant. During your service as a consultant to the Company, you shall not (nor shall you assist, cooperate with, invest in or with, or permit any of your affiliates or relatives to) directly or indirectly, develop, own, manage, operate, control, invent or in any manner participate in the development, ownership, management, operation, control or invention of, or serve as a partner, employee, principal, agent, consultant or in any other capacity or otherwise contract with, or have any financial interest in, or aid or assist any other person or entity that develops, manufactures or sells products that compete with, or otherwise is in competition with, the Company's products or services.

If a court of competent jurisdiction should declare this Section, or any provision hereof, unenforceable because of any unreasonable restriction of duration and/or activity, then you hereby acknowledge and agree that such court shall have the express authority to reform this Agreement to provide for reasonable restrictions and/or grant the Company such other relief, at law or in equity, reasonably necessary to protect the interests of the Company. You specifically acknowledge that a breach of this Section would cause the Company to suffer immediate and irreparable harm, which could not be remedied by the payment of money. In the event of a breach or threatened breach by you of any of the provisions of this Section, the Company shall be entitled to seek injunctive relief to prevent or end such breach, without the requirement to post bond, and shall be entitled to recover reasonable attorneys' fees and expenses. Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or such threatened breach, including the recovery of damages.

8. Prior Employment. You and the Company acknowledge that you were previously employed by the Company and your last day of employment with the Company will be October 4, 2024. For so long as you continue to provide the services in accordance with the terms of this Agreement, you will continue to vest in any outstanding stock option, restricted stock, or restricted stock unit awards granted to you while you were employed by the Company, and your outstanding vested stock options will remain exercisable in accordance with their terms. For the avoidance of doubt, your change in status from a Company employee to an independent consultant of the Company does not constitute a Termination of Affiliation as that term is used in the Company's equity incentive plan, and your Equity Awards shall continue to vest during the term of this Agreement and any extension thereof. The Equity Awards shall remain subject to the terms of the Company's equity incentive plan.

9. Representations and Warranties. You represent that your execution of this Agreement and your performance of the Services hereunder do not and will not breach any other agreement, arrangements, understanding, obligation of confidentiality or employment, consulting or other relationship to which you are a party or by which you are bound, and that during the term of this Agreement or any extensions thereof, you will not enter into any agreement, either written or oral, in conflict herewith.

10. Use of Name. The Company shall not be entitled to use your name in its advertising, promotional and/or sales literature, or in any other form of publicity, without your prior approval.

11. Indemnification and Insurance. You shall defend, indemnify, and hold harmless the Company and its affiliates and their officers, directors, employees, agents, successors, and assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable attorneys' fees) arising out of or resulting from: (i) bodily injury, death of any person or damage to real or tangible, personal property resulting from your acts or omissions; or (ii) your breach of any representation, warranty, or obligation under this Agreement. The Company may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you. During the term of this Agreement, you shall maintain in force legally required insurance, including but not limited to, where applicable, workers' compensation, commercial general liability, errors and omissions, malpractice, and other forms of insurance, with policy limits sufficient to protect and indemnify the Company and its affiliates, and each of their officers, directors, agents, employees, subsidiaries, partners, members, controlling persons, and successors and assigns, from any losses resulting from your acts or omissions or the acts or omissions of any of your agents, contractors, servants, or employees. You agree to provide copies of such insurance policies upon the Company's request.

12. Miscellaneous. This Agreement, together with the documents referred to herein, contains the entire agreement of the parties with respect to the subject matter hereof and may be amended only by a written instrument signed by you and an officer of the Company. Because of the personal nature of the services to be rendered by you under this Agreement, you may not assign this Agreement without the prior written consent of the Company. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

13. Governing Law; Jurisdiction. This Agreement shall be governed in accordance with the law of the State of New Jersey. The parties hereto consent to the jurisdiction of the courts of the State of New Jersey for all disputes arising pursuant to this Agreement.

If you are in agreement with the foregoing terms, please indicate such agreement by signing the enclosed duplicate original of this letter in the space provided and returning it to the Company.

Very truly yours,
electroCore, Inc.

By: _____
Name: Dan Goldberger
Title: CEO

ACCEPTED AND AGREED TO:

Consultant

CERTIFICATION

I, Daniel S. Goldberger, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of electroCore, 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: November 13, 2024

/s/ Daniel S. Goldberger

Daniel S. Goldberger
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Joshua S. Lev, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of electroCore, 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: November 13, 2024

/s/ JOSHUA S. LEV

Joshua S. Lev

Chief Financial Officer

(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of electroCore, Inc, (the "Company") for the period ended September 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Daniel S. Goldberger, as Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 13, 2024

/s/ Daniel S. Goldberger

Daniel S. Goldberger
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of electroCore, Inc. (the "Company") for the period ended September 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Brian M. Posner, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 13, 2024

/s/ JOSHUA S. LEV
Joshua S. Lev
Chief Financial Officer
(Principal Financial and Accounting Officer)