

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 June 30, 2021

or

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

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

Commission file number: 001-40355

**Treace Medical Concepts, Inc.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

47-1052611

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

203 Fort Wade Rd, Suite 150

Ponte Vedra, Florida 32081

(Address of principal executive offices, including zip code)

(904) 373-5940

(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, \$0.001 par value	TMCI	The Nasdaq Global Select 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  Accelerated filer  Non-accelerated filer   
Smaller reporting company  Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 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 August 2, 2021, 52,781,693 shares of the registrant's common stock, \$0.001 par value per share, were outstanding.

TREACE MEDICAL CONCEPTS, INC.

FORM 10-Q FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2021

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## SPECIAL NOTES REGARDING FORWARD-LOOKING STATEMENTS

As used in this Quarterly Report on Form 10-Q (“Quarterly Report”), unless expressly indicated or the context otherwise requires, references to “Treace Medical Concepts,” “we,” “us,” “our,” “the Company,” and similar references refer to Treace Medical Concepts, Inc. This Quarterly Report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as codified in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) concerning our business, operations and financial performance and condition, as well as our plans, objectives and expectations for our business, operations and financial performance and condition. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “anticipate,” “assume,” “believe,” “contemplate,” “continue,” “could,” “due,” “estimate,” “expect,” “goal,” “intend,” “may,” “objective,” “plan,” “predict,” “potential,” “positioned,” “seek,” “should,” “target,” “will,” “would” and other similar expressions that are predictions of or indicate future events and future trends, or the negative of these terms or other comparable terminology.

These forward-looking statements include, but are not limited to, statements about:

- the expected use of our products by physicians;
- the expected growth of our business and our organization;
- our expected uses of the net proceeds from our recent initial public offering (“IPO”) and our existing cash and cash equivalents;
- our expectations regarding government and third-party payor coverage and reimbursement;
- our ability to retain and recruit key personnel, including the continued development of a sales and marketing infrastructure;
- our ability to obtain an adequate supply of materials and components for our products from our third-party suppliers, most of whom are single-source suppliers;
- our plans and expected timeline related to our products, or developing new products, to address additional indications or otherwise;
- our ability to obtain, maintain and expand regulatory clearances for our products and any new products we create;
- our ability to manufacture sufficient quantities of our products with sufficient quality;
- our ability to obtain and maintain intellectual property protection for our products;
- our ability to expand our business into new geographic markets;
- our compliance with extensive Nasdaq requirements and government laws, rules and regulations both in the United States and internationally;
- our estimates of our expenses, ongoing losses, future revenue, capital requirements and our need for, or ability to obtain, additional financing;
- our expectations regarding the time during which we will be an emerging growth company under the JOBS Act;
- our ability to identify and develop new and planned products and/or acquire new products;
- the effect of the COVID-19 pandemic and its impact on our business;
- developments and projections relating to our competitors or our industry; and
- our plans to conduct further clinical trials.

We believe that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able to accurately predict or control and that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. These forward-looking statements are based on management’s current expectations, estimates, forecasts and projections about our business and the industry in which we operate and management’s beliefs and assumptions and are not guarantees of future performance or development and involve known and unknown risks, uncertainties and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this Quarterly Report may turn out to be inaccurate. Factors that may cause actual results

to differ materially from current expectations include, among other things, those listed under “Risk Factors” and elsewhere in this Quarterly Report. Potential investors are urged to consider these factors carefully in evaluating the forward-looking statements.

These forward-looking statements speak only as of the date of this Quarterly Report. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future. You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this Quarterly Report to conform these statements to actual results or to changes in our expectations.

You should read this Quarterly Report and the documents that we reference in this Quarterly Report and have filed with the Securities and Exchange Commission (“SEC”) as exhibits to this Quarterly Report with the understanding that our actual future results, levels of activity, performance and events and circumstances may be materially different from what we expect.

## PART I—FINANCIAL INFORMATION

## Item 1. Financial Statements (Unaudited).

**TREACE MEDICAL CONCEPTS, INC.**  
**Condensed Balance Sheets**  
(in thousands, except share and per share amounts)  
(unaudited)

	June 30, 2021	December 31, 2020
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 119,621	\$ 18,079
Accounts receivable, net of allowance for doubtful accounts of \$271 and \$446 as of June 30, 2021 and December 31, 2020, respectively	10,047	14,486
Inventories	7,643	7,820
Prepaid expenses and other current assets	3,512	593
<b>Total current assets</b>	<b>140,823</b>	<b>40,978</b>
Property and equipment, net	1,475	829
<b>Total assets</b>	<b>\$ 142,298</b>	<b>\$ 41,807</b>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities		
Accounts payable	\$ 2,921	\$ 2,265
Accrued liabilities	1,957	1,848
Accrued commissions	2,553	3,513
Accrued compensation	2,434	2,183
Short-term debt	-	1,788
<b>Total current liabilities</b>	<b>9,865</b>	<b>11,597</b>
Derivative liability on term loan	245	245
Long-term debt, net of discount of \$723 and \$811 as of June 30, 2021 and December 31, 2020, respectively	29,277	29,189
<b>Total liabilities</b>	<b>39,387</b>	<b>41,031</b>
Commitments and contingencies (Note 7)		
Stockholders' equity		
Series A convertible preferred stock, \$0.001 par value, 0 shares authorized and 0 shares issued and outstanding as of June 30, 2021; 6,687,500 shares authorized and 6,687,475 shares issued and outstanding as of December 31, 2020, respectively; liquidation value of \$0 and \$8,000 as of June 30, 2021 and December 31, 2020, respectively	—	7,935
Preferred stock, \$0.001 par value, 5,000,000 shares authorized; 0 shares issued and outstanding as of June 30, 2021; 0 shares authorized, issued and outstanding as of December 31, 2020	—	—
Common stock, \$0.001 par value, 300,000,000 shares authorized; 52,755,981 issued and outstanding as of June 30, 2021; 66,875,000 shares authorized, 37,366,865 issued and outstanding as of December 31, 2020	45	28
Common stock Class B, \$0.001 par value, 0 shares authorized, issued and outstanding as of June 30, 2021; 1,000,000 shares authorized and 0 shares issued and outstanding as of December 31, 2020	—	—
Additional paid-in capital	131,734	14,166
Accumulated deficit	(28,868)	(21,353)
<b>Total stockholders' equity</b>	<b>102,911</b>	<b>776</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 142,298</b>	<b>\$ 41,807</b>

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

**TREACE MEDICAL CONCEPTS, INC.**  
**Condensed Statement of Operations and Comprehensive Loss**  
**(in thousands, except share and per share amounts)**  
**(unaudited)**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Revenue	\$ 20,654	\$ 7,739	\$ 39,361	\$ 18,995
Cost of goods sold	3,944	2,085	7,271	4,474
Gross profit	16,710	5,654	32,090	14,521
Operating expenses				
Sales and marketing	14,010	4,789	26,158	12,127
Research and development	2,422	982	4,290	2,415
General and administrative	4,329	1,401	7,095	2,696
Total operating expenses	20,761	7,172	37,543	17,238
Loss from operations	(4,051)	(1,518)	(5,453)	(2,717)
Interest and other income, net	6	3	7	36
Interest expense	(1,038)	(458)	(2,069)	(899)
Other expense, net	(1,032)	(455)	(2,062)	(863)
Net loss and comprehensive loss	(5,083)	(1,973)	(7,515)	(3,580)
Convertible preferred stock cumulative and undeclared dividends	(39)	(159)	(196)	(318)
Net loss attributable to common stockholders	\$ (5,122)	\$ (2,132)	\$ (7,711)	\$ (3,898)
Net loss per share attributable to common stockholders, basic and diluted	\$ (0.10)	\$ (0.06)	\$ (0.18)	\$ (0.11)
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	49,187,285	37,068,288	43,556,107	37,060,491

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

**TREACE MEDICAL CONCEPTS, INC.**  
**Condensed Statement of Stockholders' Equity (Deficit)**  
**(in thousands, except share amounts)**  
**(unaudited)**

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount			
<b>Balances at December 31, 2020</b>	6,687,475	\$ 7,935	37,366,865	\$ 28	\$ 14,166	\$ (21,353)	\$ 776
Issuance of common stock upon exercise of stock options	—	—	962,633	2	761	—	763
Vesting of restricted stock awards	—	—	5,866	—	—	—	—
Share-based compensation expense	—	—	—	—	1,277	—	1,277
Issuance of common stock from initial public offering, net of issuance costs and underwriting discount of \$10.6 million	—	—	6,953,125	7	107,603	—	107,610
Issuance of common stock upon net exercise of warrants	—	—	621,570	1	(1)	—	—
Conversion of convertible preferred stock and accrued dividends on convertible preferred stock into common stock	(6,687,475)	(7,935)	6,845,922	7	7,928	—	—
Net loss	—	—	—	—	—	(7,515)	(7,515)
<b>Balances at June 30, 2021</b>	—	\$ —	52,755,981	\$ 45	\$ 131,734	\$ (28,868)	\$ 102,911
<b>Balances at December 31, 2019</b>	6,687,475	\$ 7,935	37,031,841	\$ 28	\$ 12,884	\$ (17,686)	\$ 3,161
Issuance of common stock upon exercise of stock options	—	—	36,447	—	41	—	41
Share-based compensation expense	—	—	—	—	457	—	457
Net loss	—	—	—	—	—	(3,580)	(3,580)
<b>Balances at June 30, 2020</b>	6,687,475	\$ 7,935	37,068,288	\$ 28	\$ 13,382	\$ (21,266)	\$ 79

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

	Preferred Stock		Common Stock		Paid-In Capital	Accumulated Deficit	Stockholders' Deficit
	Shares	Amount	Shares	Amount			
<b>Balances at March 31, 2021</b>	6,687,475	\$ 7,935	38,057,416	\$ 30	\$ 15,136	\$ (23,785)	\$ (684)
Issuance of common stock upon exercise of stock options	—	—	272,082	—	193	—	193
Vesting of restricted stock awards	—	—	5,866	—	—	—	—
Share-based compensation expense	—	—	—	—	875	—	875
Issuance of common stock from initial public offering, net of issuance costs and underwriting discount of \$10.6 million	—	—	6,953,125	7	107,603	—	107,610
Issuance of common stock upon net exercise of warrants	—	—	621,570	1	(1)	—	—
Conversion of convertible preferred stock and accrued dividends on convertible preferred stock into common stock	(6,687,475)	(7,935)	6,845,922	7	7,928	—	—
Net loss	—	—	—	—	—	(5,083)	(5,083)
<b>Balances at June 30, 2021</b>	—	—	52,755,981	45	131,734	(28,868)	102,911
<b>Balances at March 31, 2020</b>	6,687,475	\$ 7,935	37,068,288	\$ 28	\$ 13,134	\$ (19,293)	\$ 1,804
Share-based compensation expense	—	—	—	—	248	—	248
Net loss	—	—	—	—	—	(1,973)	(1,973)
<b>Balances at June 30, 2020</b>	6,687,475	\$ 7,935	37,068,288	\$ 28	\$ 13,382	\$ (21,266)	\$ 79

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



**TREACE MEDICAL CONCEPTS, INC.**  
**Condensed Statements of Cash Flows**  
(in thousands)  
(unaudited)

	Six Months Ended June 30, 2021	Six Months Ended June 30, 2020
<b>Cash flows from operating activities</b>		
Net loss	\$ (7,515)	\$ (3,580)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization expense	220	667
(Recovery) Provision for allowance for doubtful accounts	(72)	228
Share-based compensation expense	1,277	457
Amortization of debt issuance costs	88	118
Provision for inventory obsolescence	88	412
<b>Net changes in operating assets and liabilities:</b>		
Accounts Receivable	4,511	3,532
Inventory	89	(2,590)
Prepaid expenses and other assets	(2,919)	178
Accounts payable	656	1,071
Accrued liabilities	(600)	(3,233)
Net cash used in operating activities	<u>(4,177)</u>	<u>(2,740)</u>
<b>Cash flows from investing activities</b>		
Purchases of property and equipment	(866)	(923)
Net cash used in investing activities	<u>(866)</u>	<u>(923)</u>
<b>Cash flows from financing activities</b>		
Proceeds from SBA Loan	—	1,788
Repayments on SBA Loan	(1,788)	—
Proceeds from issuance of common stock upon initial public offering, net of issuance costs and underwriting fees of \$10.6 million	107,610	—
Proceeds from exercise of employee stock options	763	41
Net cash provided by financing activities	<u>106,585</u>	<u>1,829</u>
Net increase (decrease) in cash and cash equivalents	<u>101,542</u>	<u>(1,834)</u>
Cash and cash equivalents at beginning of period	18,079	12,139
Cash and cash equivalents at end of period	<u>\$ 119,621</u>	<u>\$ 10,305</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	2,917	—
<b>NONCASH FINANCING ACTIVITIES:</b>		
Issuance of common stock upon exercise of warrants	1	—
Conversion of convertible preferred stock and accrued dividends on convertible preferred stock into common stock	7,935	—

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

## 1. Formation and Business of the Company

### *The Company*

Treace Medical Concepts, LLC was formed on July 29, 2013. Effective July 1, 2014, the entity converted to a C Corporation and changed its name to Treace Medical Concepts, Inc. (the "Company"). The Company is a commercial-stage orthopedic medical device company driving a paradigm shift in the surgical treatment of *Hallux Valgus* (commonly known as bunions) with the goal of advancing the standard of care for the surgical management of bunion deformities. The Company has pioneered the proprietary Lapiplasty 3D Bunion Correction System – a combination of novel instruments, implants and surgical methods designed to improve the inconsistent clinical outcomes of traditional approaches to bunion surgery. In addition, the Company offers other advanced instrumentation and implants for use in the Lapiplasty Procedure or other ancillary procedures performed in high frequency with bunion surgery. The Company operates from its corporate headquarters located in Ponte Vedra, Florida.

The Company received 510(k) clearance for the Lapiplasty System in March 2015 and began selling its surgical medical devices in September 2015.

### *Initial Public Offering*

On April 27, 2021, the Company completed its initial public offering ("IPO") of 12,937,500 shares of its common stock, which included the exercise in full of the underwriters' option to purchase additional shares. As part of the IPO, 6,953,125 shares of common stock were issued and sold by the Company (inclusive of 703,125 shares pursuant to the exercise of the underwriters' option) and 5,984,375 shares of common stock were sold by the selling stockholders named in the prospectus (inclusive of 984,375 shares pursuant to the exercise of the underwriters' option), at a price to the public of \$17.00 per share. The Company received net proceeds of approximately \$107.6 million, after deducting underwriting discounts and commissions of \$8.3 million and offering expenses payable by the Company of \$2.3 million. Upon the completion of the IPO, all 6,687,475 shares of Series A convertible preferred stock then outstanding were converted into shares of common stock on a one-to-one basis plus 158,447 shares of common stock were issued to pay accrued cumulative dividends on Series A convertible preferred stock of \$2.5 million.

### *Forward Stock Split*

On April 16, 2021, in connection with the IPO, the Company filed an Amended and Restated Certificate of Incorporation with the Delaware Secretary of State to implement a 1.3375-for-1 forward stock split (the "Forward Stock Split"), effective on April 16, 2021, whereby each 1.0 share of Class A common stock issued and outstanding was reclassified as 1.3375 shares of Class A common stock and each 1.0 share of Series A convertible preferred stock (each a "Preferred Share") issued and outstanding was reclassified as 1.3375 Preferred Shares. In connection with the Forward Stock Split, the total number of shares of all classes of stock which the Company is authorized to issue was adjusted to 73,562,500, divided into 66,875,000 shares of Class A common stock and 6,687,500 Preferred Shares. There was no adjustment to the par value of \$0.001 per share. All share and per share amounts in the accompanying financial statements for the prior period have been retroactively adjusted to reflect the Forward Stock Split. In lieu of issuing fractional shares in connection with the Forward Stock Split, the Company is obligated to pay cash in an amount equal to the fair value of such fractional shares (as determined in good faith by the Company's Board of Directors).

### *Coronavirus Pandemic*

The Company's operations have been impacted by the coronavirus ("COVID-19") pandemic beginning in 2020. In response to COVID-19, certain states within the United States implemented shelter-in-place rules requiring certain businesses not deemed "essential" to close and requiring elective procedures to be delayed. The Company's revenue growth was adversely impacted, particularly by the restrictions on elective procedures, from March 2020 through May 2020, when such restrictions were largely eased. There is still uncertainty around the breadth and duration of business disruptions related to COVID-19, as well as its impact on the United States and international economies, especially as more potentially contagious and virulent variants of the virus are spreading. While the Company has experienced revenue growth during the

pandemic, if states implement shelter-in-place rules again or medical facilities implement restrictions on elective surgeries, the Company may be required to adjust its forecasted revenues and operating results.

## 2. Summary of Significant Accounting Policies

### *Basis of Presentation*

The accompanying unaudited condensed financial statements have been prepared using accounting principles generally accepted in the United States of America (“GAAP”) and the requirements of the Securities and Exchange Commission (“SEC”) for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by U.S. GAAP can be condensed or omitted. These condensed financial statements have been prepared on the same basis as the Company’s annual financial statements included in the final prospectus filed with SEC dated April 22, 2021 in connection with the Company’s IPO.

The unaudited condensed financial statements included herein reflect all adjustments, including normal recurring adjustments, which are, in the opinion of management, necessary for a fair presentation of the financial position, results of operations and cash flows for the periods presented. The results of operations for the three and six months ended June 30, 2021 are not necessarily indicative of the results that may be expected for future quarters or for the fiscal year ending December 31, 2021.

### *Use of Estimates*

The preparation of condensed financial statements in conformity with 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 financial statements and the reported amounts of revenues and expenses during the reporting periods. Although these estimates are based on the Company’s knowledge of current events and actions it may undertake in the future, actual results may ultimately materially differ from these estimates and assumptions.

Significant estimates and assumptions include reserves and write-downs related to accounts receivable, inventories, the recoverability of long term assets, valuation of equity instruments, valuation of common stock, stock-based compensation, deferred tax assets and related valuation allowances and impact of contingencies.

### *Property and Equipment, Net*

Property and equipment is recorded at cost. Depreciation of property and equipment is recorded using the straight-line method over the following estimated useful lives of the related assets as follows:

	<u>Years</u>
Furniture, fixtures and equipment	7
Machinery and equipment	3
Capitalized surgical instruments	3
Computer equipment	3
Leasehold improvements	5 or lease term, whichever is shorter
Software	3

Beginning January 1, 2021, the Company adjusted the useful life of its capitalized instruments from 18 months to 36 months. The change in useful life was made as a prospective adjustment and resulted in a decrease of depreciation expense of less than \$0.1 million and \$0.1 million during the three and six months ended June 30, 2021 and no impact on earnings per share. The change in useful life is expected to reduce depreciation expense by \$0.2 million per year.

### *Segments*

The Company operates and manages its business as one reportable and operating segment, which is the business of designing, manufacturing, and marketing medical devices for physicians, surgeons, ambulatory surgery centers and hospitals. The Company’s chief executive officer, who is the chief operating decision maker, reviews financial information on an aggregate basis for purposes of allocating and evaluating financial performance. All long-lived assets are maintained in the United States.

### **Concentration of Credit Risk**

The Company earns revenue from the sale of its products to customers such as hospitals and ambulatory surgery centers. Sales of the Lapiplasty System and ancillary products accounted for the Company's revenue for the three and six months ended June 30, 2021 and 2020. No single customer accounted for more than 10% of revenue for the three and six months ended June 30, 2021 and 2020. The Company's accounts receivable are derived from revenue earned from customers. The Company performs ongoing credit evaluations of its customers' financial condition and generally requires no collateral from its customers. At June 30, 2021, and December 31, 2020, no customer accounted for more than 10% of accounts receivable or revenue.

### **Accounts Receivable and Allowances**

Accounts receivable are generally from hospitals and ambulatory surgery centers and are stated at amounts billed less allowances for doubtful accounts. The Company continually monitors customer payments and maintains an allowance for estimated losses resulting from a customer's inability to make required payments. The Company considers factors such as historical experience, credit quality, age of the accounts receivable balances, geographic related risks and economic conditions that may affect a customer's ability to pay. Accounts receivable are written off when the Company deems individual balances are no longer collectible. As of June 30, 2021 and December 31, 2020, accounts receivable is presented net of an allowance for doubtful accounts of \$0.3 million and \$0.4 million, respectively. For the three months ended June 30, 2021 and 2020, the Company recorded a provision for bad debts of \$0 and \$0.2 million, respectively. For the six months ended June 30, 2021 and 2020, the Company recorded a recovery (provision) for bad debts of \$0.1 million and \$(0.2) million, respectively.

### **Inventories**

Inventories consist primarily of surgical kits and components as finished goods and are stated at the lower of cost or net realizable value. Cost is determined based on an average cost method which approximates the first-in, first-out basis and includes primarily outsourced manufacturing costs and direct manufacturing overhead costs.

The Company reviews inventory for obsolescence and writes down inventory, as necessary. For the three months ended June 30, 2021 and 2020, the Company recorded a provision of \$0.1 million and \$0.1 million, respectively, for obsolete inventory to cost of goods sold. For the six months ended June 30, 2021 and 2020, the Company recorded a provision of \$0.1 million and \$0.4 million, respectively, for obsolete inventory to cost of goods sold.

### **Deferred Offering Costs**

Deferred offering costs, consisting of legal, accounting and other fees and costs relating to the Company's IPO, were capitalized and recorded on the balance sheet. The deferred offering costs are offset against the proceeds received upon the closing of the IPO. At the closing of the IPO, the Company offset the proceeds received by \$2.3 million in offering costs. As of June 30, 2021 and December 31, 2020, \$0 and \$0.2 million, respectively, in deferred offering costs were recorded on the condensed balance sheets. During the three and six months ended June 30, 2021 and 2020, the Company did not write off any deferred offering costs.

## **3. Recent Accounting Pronouncements**

### **Recent Accounting Pronouncements Not Yet Adopted**

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)* ("ASC 842"), which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both parties to a contract (i.e. lessees and lessors). In July 2018, the FASB issued ASU 2018-10, *Codification Improvements to Topic 842, Leases*, which provides clarification to ASU 2016-02. In March 2019, the FASB issued ASU 2019-01, which provides clarification on implementation issues associated with adopting ASU 2016-02. These ASUs (collectively the "new leasing standard") requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease, respectively. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. ASC 842 provides a lessee with an option to not account for leases with a term of 12 month or less as leases in the scope of the new standard. ASC 842 supersedes the previous leases standard, ASC 840, *Leases*. In July 2018, the FASB issued ASU 2018-11, *Leases (Topic 842): Targeted Improvements*, which allows entities to elect an optional transition

method where entities may continue to apply the existing lease guidance during the comparative periods and apply the new lease requirements through a cumulative effect adjustment in the period of adoption rather than in the earliest period presented. The new standard is effective for the Company for fiscal years beginning after December 15, 2021 and early application is permitted. The Company is classified as an emerging growth company (“EGC”) as of March 31, 2021 and December 31, 2020 and has decided to take advantage of the extended transition period granted to EGCs for complying with new or revised accounting standards. This provision allows an EGC to delay the adoption of some accounting standards until those standards would otherwise apply to private companies. The Company is currently assessing the impact that this standard may have on its financial statements.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments – Credit Losses*. This new guidance will require financial instruments to be measured at amortized cost, and trade accounts receivable to be presented at the net amount expected to be collected. The new model requires an entity to estimate credit losses based on historical information, current information and reasonable and supportable forecasts, including estimates of prepayments. In November 2019, the FASB issued ASU 2019-10, according to which, the new standard is effective for the Company for fiscal years beginning after December 15, 2022, and interim periods within that fiscal year. The Company is currently evaluating the impact of the new standard on its financial statements.

#### 4. Fair Value Measurements

Assets and liabilities recorded at fair value in the condensed financial statements are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Hierarchical levels which are directly related to the amount of subjectivity associated with the inputs to the valuation of these assets or liabilities are as follows:

Level 1—Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access as of the measurement date.

Level 2—Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities.

Level 3—Unobservable inputs for the asset or liability only used when there is little, if any, market activity for the asset or liability at the measurement date. This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value.

*Assets and Liabilities Measured and Recorded at Fair Value on a Recurring Basis* – The following assets and liabilities are measured at fair value on a recurring basis as of June 30, 2021 and December 31, 2020:

	June 30, 2021			
	Level 1	Level 2	Level 3	Total
<b>Assets:</b>				
Money market funds(1)	\$ 119,425	\$ —	\$ —	\$ 119,425
<b>Total</b>	<b>\$ 119,425</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 119,425</b>
<b>Liabilities:</b>				
Derivative liability	\$ —	\$ —	\$ 245	\$ 245
<b>Total</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 245</b>	<b>\$ 245</b>
	December 31, 2020			
	Level 1	Level 2	Level 3	Total
<b>Assets:</b>				
Money market funds(1)	\$ 17,577	\$ —	\$ —	\$ 17,577
<b>Total</b>	<b>\$ 17,577</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 17,577</b>
<b>Liabilities:</b>				
Derivative liability	\$ —	\$ —	\$ 245	\$ 245
<b>Total</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 245</b>	<b>\$ 245</b>

(1) Money market funds are included in cash and cash equivalents in the balance sheets as of June 30, 2021 and December 31, 2020.

As discussed in Note 6, in July 2020, the Company entered into a non-revolving term loan facility (the “CRG Term Loan Facility”) with CRG Servicing LLC (“CRG”) and accounted for embedded features in the agreement as a derivative liability with an initial fair value of \$0.2 million. The derivative liability was accounted for at fair value using the income approach and inputs consisting of (a) the probability of events occurring that trigger an event of default of the Company’s term loans under the CRG Term Loan Facility, ranging from 1% to 2%, (b) the prepayment premium payable upon early redemption, and (c) additional interest payable upon an event of default. The Company recognized no adjustments to the fair value of the derivative liability in net loss for the three and six months ended June 30, 2021 and 2020.

There were no assets or liabilities measured at fair value on a nonrecurring basis as of June 30, 2021 and December 31, 2020.

## 5. Balance Sheet Components

### *Cash and Cash Equivalents*

The Company’s cash and cash equivalents consisted of the following (in thousands):

	June 30, 2021	December 31, 2020
Cash	\$ 196	\$ 502
Cash equivalents:		
Money market funds	119,425	17,577
Total cash and cash equivalents	<u>\$ 119,621</u>	<u>\$ 18,079</u>

### *Property and equipment, net*

The Company’s property and equipment, net considered of the following (in thousands):

	June 30, 2021	December 31, 2020
Furniture and fixtures, and equipment	\$ 131	\$ 131
Construction in progress	75	—
Machinery and equipment	291	226
Capitalized surgical equipment	3,030	2,652
Computer equipment	196	150
Leasehold improvements	191	168
Software	138	138
Total property and equipment	4,052	3,465
Less: accumulated depreciation and amortization	(2,577)	(2,636)
Property and equipment, net	<u>\$ 1,475</u>	<u>\$ 829</u>

Depreciation and amortization expense on property and equipment was \$0.1 million and \$0.4 million for the three months ended June 30, 2021 and 2020, respectively. Depreciation and amortization expense on property and equipment was \$0.2 million and \$0.7 million for the six months ended June 30, 2021 and 2020, respectively.

### *Accrued liabilities*

Accrued other liabilities consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Accrued royalties expense	\$ 898	\$ 1,032
Accrued expense	534	565
Other	525	251
Total accrued liabilities	<u>\$ 1,957</u>	<u>\$ 1,848</u>

## 6. Long Term Debt

### *Silicon Valley Bank*

The Company entered into a Loan and Security Agreement dated April 18, 2018 (the “LSA”) with Silicon Valley Bank (“SVB”) as amended by a First Amendment to the Loan and Security (the “First Amendment”) dated February 14, 2019, a Second Amendment dated December 31, 2019 (the “Second Amendment”) and a Third Amendment dated August 3, 2020 (the “Third Amendment”). The LSA, as amended by the First Amendment, Second Amendment and Third Amendment (collectively the “SVB Credit Facility”) matures August 3, 2024.

The Company borrowed \$10.0 million upon execution of the First Amendment and \$10.0 million upon execution of the Second Amendment and repaid the term loans in August 2020 using the proceeds received from the CRG Term Loan Facility (described below). The term loans accrued interest, payable monthly in arrears, at a floating per annum rate equal to the greater of (i) prime rate plus 2.25% as published in the money rates section of the Wall Street Journal, or (ii) seven and one-half percent (7.5%) for tranche 1 and 2.

Under the Third Amendment, the SVB Credit Facility provides for up to \$10.0 million in a revolving line of credit. Availability under the revolving line of credit is subject to a formula based on, among other things, eligible accounts receivable. Borrowings on the line of credit bear interest at a floating rate per annum equal to the greater of (a) 1.00% above the prime rate as published from time to time in the money rates section of the Wall Street Journal and (b) 5.00%, and includes a termination fee of 1.00% of the revolving line of credit if the termination occurs before August 3, 2022.

Under the terms of the SVB Credit Facility, the Company granted SVB first priority liens and security interests in substantially all of the Company’s assets (excluding its intellectual property but including any proceeds and rights to payments associated with our intellectual property) as collateral. The SVB Credit Facility also contains certain representations and warranties, indemnification provisions in favor of SVB, affirmative and negative covenants (including, among other things, requirements that the Company maintain a minimum amount of liquidity and achieve minimum revenue targets, limitations on other indebtedness, liens, acquisitions, investments and dividends and requirements relating to financial reporting, sales and leasebacks, insurance and protection of the Company’s intellectual property rights) and events of default (including payment defaults, breaches of covenants following any applicable cure period, investor abandonment, a material impairment in the perfection or priority of the lender’s security interest or in the collateral, and events relating to bankruptcy or insolvency).

The Company issued warrants in connection with the SVB Credit Facility that gave the lender the right to purchase up to 713,330 shares of the Company’s Class A common stock (see Note 9). The Company valued the warrants based upon the probability-weighted expected return method and option pricing model using the Black-Scholes option pricing model and accounted for the warrants as debt discount and additional paid in capital on the balance sheets. On April 28, 2021, the holders of the warrants exercised their warrants in a cashless net exercise using the closing price of the Company’s common stock on the prior business day of \$31.27 as permitted by the warrant agreement. The exercise price of the warrants was \$4.0224. Accordingly, the transaction resulted in 621,570 shares of the Company’s common stock being issued to the warrant holders. The Company paid issuance costs in connection with the SVB Credit Facility of \$0.3 million which were recorded as a reduction of debt. The debt discount and debt issuance costs are amortized over the term of the debt using the effective interest method and included within interest expense on the statement of operations.

The Company did not have any balances outstanding under the revolving line of credit as of June 30, 2021 and December 31, 2020. As of June 30, 2021, the Company had \$10.0 million in available borrowings on the line of credit and was in compliance with all covenants under the SVB Credit Facility.

### *CRG Term Loan Facility*

On July 31, 2020, the Company entered into the CRG Term Loan Facility, to obtain up to \$50.0 million in financing over three tranches to be advanced no later than December 31, 2021. Principal amounts totaling \$30 million were borrowed through December 31, 2020 and are currently outstanding. The CRG Term Loan Facility matures on June 30, 2025, and the Company can elect to make quarterly interest-only payments or to pay interest in-kind through December 31, 2020. The Company is not required to make any principal payments until the maturity of the CRG Term Loan Facility and all outstanding principal and accrued interest are due upon the maturity of the CRG Term Loan Facility. Interest under the CRG Term Loan Facility is applied to outstanding principal and accrued interest at a rate of 13.00% per annum. In an event of

default occurs, interest under the CRG Term Loan Facility will increase by 4.00%. If the Company repays the CRG Term Loan Facility within one year of the borrowing date, the Company is required to pay a premium of 20.00% of the aggregated outstanding principal amount of the loans that is repaid. If the Company repays the CRG Term Loan Facility between one and two years from the borrowing date, it is required to pay a premium of 11.00% of the aggregated outstanding principal amount of the loans that is repaid. The CRG Term Loan Facility does not require a prepayment premium for loans being repaid on the prepayment date that is longer than two years from the initial borrowing date.

Under the terms of the CRG Term Loan Facility, the Company granted first priority liens and security interests in substantially all of the Company's assets as collateral (including the Company's intellectual property), provided that the priority of such liens are subject to an intercreditor agreement between CRG and SVB. The CRG Term Loan Facility also contains certain representations and warranties, indemnification provisions in favor of CRG, affirmative and negative covenants (including, among other things, requirements that the Company maintain a minimum amount of liquidity and achieve minimum revenue targets, comply with limitations on other indebtedness, liens, acquisitions, investments and dividends and requirements relating to financial reporting, sales and leasebacks, insurance and protection of the Company's intellectual property rights) and events of default (including payment defaults, breaches of covenants following any applicable cure period, investor abandonment, a material impairment in the perfection or priority of the lender's security interest or in the collateral, and events relating to bankruptcy or insolvency).

The Company paid \$0.5 million in fees to CRG and \$0.2 million in fees to third parties in connection with the CRG Term Loan Facility. The fees were recorded as debt issuance costs and classified as contra-debt. In addition, the Company recognized \$0.2 million as debt discount on borrowings under the CRG Term Loan Facility due to embedded features contained in the agreement which resulted in a derivative liability. Debt issuance costs and debt discount are amortized to interest expense using the effective interest method.

As of June 30, 2021 and December 31, 2020, the balance outstanding under the CRG Term Loan Facility, net of debt issuance costs and debt discount, was \$29.3 million and \$29.2 million, respectively.

### **PPP Loan**

The Company applied for and received a \$1.8 million loan (the "PPP Loan") under the Paycheck Protection Program (the "PPP") under the Coronavirus Aid Relief, and Economic Security Act ("CARES Act"). The PPP Loan, which was in the form of a promissory note, dated April 22, 2020, between the Company and SVB as the lender, was scheduled to mature on April 22, 2022 and accrued interest at a fixed rate of 1% per annum, and was payable monthly. The Company repaid \$1.8 million borrowed under the PPP Loan in March 2021.

The Company's debt consisted of the following (in thousands):

	<u>June 30, 2021</u>	<u>December 31, 2020</u>
<i>Revolving line of credit</i>		
SVB Credit Facility	\$ —	\$ —
<i>Term loans</i>		
CRG Term Loan Facility	30,000	30,000
PPP Loan	—	1,788
Total term loans	<u>30,000</u>	<u>31,788</u>
Less: debt discount and issuance costs	<u>(723)</u>	<u>(811)</u>
Total debt	29,277	30,977
Short-term debt	—	1,788
Long-term debt	<u>\$ 29,277</u>	<u>\$ 29,189</u>



As of June 30, 2021, future payments under term loan, including interest only payments and the final payment, were as follows (in thousands):

<b>Fiscal Year</b>	
2021 (remaining)	\$ —
2022	—
2023	—
2024	—
2025	30,000
Total principal payments	30,000
Less: Unamortized debt discount and debt issuance costs	(723)
Total short-term and long-term debt	<u>\$ 29,277</u>

During the three months ended June 30, 2021 and 2020, the Company recorded \$1.0 million and \$0.4 million, respectively, in interest expense related to the borrowings under the SVB Credit Facility and CRG Credit Facility. During the three and six months ended June 30, 2021 and 2020, amortization of the debt discount was immaterial.

## 7. Commitments and Contingencies

### *Operating Lease*

The Company has commitments for future payments related to its lease of office space located in Ponte Vedra, Florida. The Company leases its office space under an operating lease agreement expiring in 2026. Lease payments comprise of the base rent stated in the lease plus operating costs which include taxes, insurance and common area maintenance.

In November 2019 the Company amended the lease agreement to include additional space of the second floor of their existing building. In March 2021, the Company again amended the lease agreement to further expand the Company's office space and extend the lease expiration date to five years from the commencement of the Company's leasing of the expanded premises. The amended lease has not commenced as of June 30, 2021.

The future minimum rental obligations required under non-cancelable leases at June 30, 2021, including the future minimum rental obligations under the amended lease which had not commenced as of the period end, were as follows (in thousands):

<b>Fiscal Year</b>	
2021 (remaining)	\$ 439
2022	897
2023	722
2024	744
2025 & thereafter	925
Total minimum lease payments	<u>\$ 3,727</u>

Total rent expense was \$0.1 million and \$0.1 million for the three months ended June 30, 2021 and 2020, respectively. Total rent expense was \$0.3 million and \$0.1 million for the six months ended June 30, 2021 and 2020, respectively.

### *License and Royalty Commitments*

The Company has entered into product development and fee for service agreements with members of its Surgeon Advisory Board that specify the terms under which the member is compensated for his or her consulting services and grants the Company rights to the intellectual property created by the member in the course of such services. As products are commercialized with the assistance of members of the Surgeon Advisory Board, the Company may agree to enter into royalty agreement if the member's contributions to the product are novel, significant and innovative.

As of June 30, 2021 and December 31, 2020, the Company has royalty agreements with certain members of its Surgeon Advisory Board providing for royalties based on each individual's level of contribution. Each royalty agreement: (i) confirms the irrevocable transfer to the Company of all pertinent intellectual property rights; (ii) sets the applicable royalty rate; (iii) sets the period of time during which royalties are payable; (iv) is for a term of three years, renewable by the parties, and may be terminated by either party on 90 days' notice for convenience (provided that if terminated by the Company for convenience the obligation to pay royalties is not affected); and (v) prohibits the payment of royalties on products sold to entities and/or individuals with whom the surgeon advisor or any other surgeon advisor entitled to royalties is affiliated. Each of the royalty agreements may be subsequently amended to add the license of additional intellectual property covering new products, and as a result, multiple royalty rates and duration of royalty payments may be included in one royalty agreement.

As of June 30, 2021 and December 31, 2020, the Company's royalty agreements provide for (i) royalty payments for 10 years from first commercial sale of the relevant product and (ii) a royalty rate for each such agreement ranging from 0.4% to 3.0% of net sales for the particular product to which the surgeon contributed.

The Company recognized royalties' expense of \$0.9 million and \$0.3 million for the three months ended June 30, 2021 and 2020, respectively, and \$1.6 million and \$0.8 million for the six months ended June 30, 2021 and 2020, respectively. For the three and six month periods ended June 30, 2021 and 2020, the aggregate royalty rate was 4.1% and 4.3%, respectively.

### ***Contingencies***

From time to time, the Company may be a party to various litigation claims in the normal course of business. Legal fees and other costs associated with such actions are expensed as incurred. The Company assesses, in conjunction with legal counsel, the need to record a liability for litigation and contingencies. Accrual estimates are recorded when and if it is determinable that such a liability for litigation and contingencies are both probable and reasonably estimable.

## **8. Income Taxes**

The Company has not recorded an income tax provision for the three and six months ended June 30, 2021 and 2020 due to its operating losses. All losses before income taxes were generated in the United States.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax asset will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax assets, projected future taxable income, and tax planning strategies in making this assessment. Due to the Company's history of net losses, the deferred tax assets have been fully offset by full valuation allowance of \$5.5 million and \$5.5 million as of June 30, 2021 and December 31, 2020, respectively. There were no changes in the deferred tax asset valuation allowance for the three and six months ended June 30, 2021 and 2020.

The Company had unused federal and state net operating loss carryforwards of approximately \$14.6 million and \$9.5 million, respectively as of June 30, 2021, and federal and state net operating loss carryforwards of approximately \$14.6 million and \$9.5 million, respectively, as of December 31, 2020. The net operating loss carryforwards begin to expire in 2034 and research and development tax credit carryforwards of \$0.4 million and \$0.4 million as of June 30, 2021 and December 31, 2020, respectively, begin to expire in 2037.

The federal and state net operating loss carryforwards and credits may be subject to significant limitations under Section 382 and Section 383 of the Internal Revenue Code and similar provisions under state law. The Tax Reform Act contains provisions that limit the federal net operating loss carryforwards that may be used in any given year in the event of special occurrences, including significant ownership changes. A Section 382 "ownership change" generally occurs if one or more stockholders or groups of stockholders, who own at least 5% of the Company's stock, increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. The Company may have previously experienced, and may in the future experience, one or more Section 382 "ownership changes," including in connection with the IPO. If so, the Company may lose some or all of the tax benefits of its carryforwards and credits. Based on the Company's analysis as of June 30, 2021, the Company has determined that it does not expect these limitations to impair its ability to use its net operating losses prior to expiration.

The Company generally provides for income taxes in interim periods based on the estimated annual effective tax rate for the year, adjusting for discrete items in the quarter in which they arise. The annual effective tax rate before discrete items

was 25.5% for each of the three and six months ended June 30, 2021 and 2020. The Company's effective tax rate for the three and six months ended June 30, 2021 was based on best estimates, which may fluctuate through the remainder of the year due to the volatility and uncertainty of global economic conditions in connection with the COVID-19 pandemic.

## **9. Stockholders' Equity**

### ***Convertible Preferred Stock***

Under the Company's Amended and Restated Certificate of Incorporation in effect immediately before completion of the IPO, the Company was authorized to issue up to 6,687,500 shares of Series A convertible preferred stock (the "Preferred Shares"), with 6,687,475 shares issued and outstanding as of December 31, 2020. Immediately before the completion of the IPO, all outstanding Preferred Shares were converted into shares of the Company's common stock. Accordingly, no Preferred Shares were outstanding as of June 30, 2021.

*Dividends*—Dividends on the Preferred Shares accrued at the rate of 8% per annum on the original issue price and holders of the Preferred Shares had general preference rights with respect to dividends and distributions to holders of Common Stock. Accrued dividends were payable in cash or, at the election of the Company's Board of Directors, paid in kind by issuing Class A Common Stock at the then per share value as determined by an independent appraiser.

Upon the closing of the IPO in April 2021, the Company issued 158,447 shares of Class A Common Stock to settle accrued and unpaid Preferred Shares dividend of \$2.5 million on the Preferred Shares. At December 31, 2020, the Company had accrued and unpaid Preferred Shares dividend of \$2.3 million on the Preferred Shares.

*Voting Rights*—Holders of the Preferred Shares were entitled to vote with holders of Class A Common Stock equal to the number of shares of Class A Common Stock into which the Preferred Shares were convertible.

*Conversion*— Before the Preferred Shares conversion into the Company's common stock in connection with the IPO, the terms applicable to each Preferred Share provided that it was convertible, at the option of the holder at any time after the date of issuance and upon a deemed liquidation event, as defined in the Certificate of Incorporation, into the number of fully paid and non-assessable shares of Class A Common Stock as determined by dividing the original issue price per share of the Preferred Shares by the conversion price per share in effect at the time of conversion. The original conversion price per Preferred Share was the original issue price, and was subject to adjustment, as described in the Company's Amended and Restated Certificate of Incorporation in effect at the time the Preferred Shares were originally issued.

In addition, upon conversion, the Company was required to pay all accrued and unpaid dividends on such converted Preferred Shares (i) in cash, or (ii) upon the election of the Company's Board of Directors or the holders of Preferred Shares to receive payment of the dividends in kind, by issuing the holder additional shares of Class A Common Stock equal to the quotient of the accrued and unpaid dividends on the Preferred Shares with respect to the converted shares, divided by the most recent per share value, as determined by an independent appraiser. The Amended and Restated Certificate of Incorporation in effect immediately before the Company's IPO incorporated a provision whereby any accrued but unpaid dividends on the Preferred Shares automatically converted into common stock upon the Company's initial public offering, with April 16, 2021 being the date used for the purpose of calculating such accrued and unpaid dividends.

### ***Common Stock***

On April 27, 2021, the Company filed its Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware and its Amended and Restated Bylaws became effective in connection with the closing of the Company's IPO. The Amended and Restated Certificate of Incorporation authorized 300,000,000 shares of common stock, deleted all references to the various series of preferred stock that were previously authorized and created 5,000,000 shares of undesignated preferred stock with terms to be set by the Board of Directors. The Amended and Restated Certificate of Incorporation in effect immediately before the Company's IPO authorized the Company to issue up to 50,000,000 Class A Common Stock voting shares (which was adjusted to 66,875,000 shares with the Forward Stock Split) and 1,000,000 Class B Common Stock non-voting shares.

### Shares Reserved for Future Issuance

As of June 30, 2021 and December 31, 2020, the Company had reserved shares of common stock for future issuances as follows:

	June 30, 2021	December 31, 2020
Series A convertible preferred stock outstanding	—	6,687,475
Warrants to purchase Class A common stock	—	713,330
Common stock options and restricted stock awards issued and outstanding	8,501,658	8,081,828
Estimated preferred share conversion for dividends in kind	—	334,316
Common stock available for future grants	238,742,361	—
Class A common stock available for future grants	—	13,691,186
Class B common stock available for future grants	—	1,000,000
Total	<u>247,244,019</u>	<u>30,508,135</u>

### Stock Option Plan

#### 2021 Incentive Award Plan

In April 2021, the Company's Board of Directors and stockholders approved the 2021 Incentive Award Plan ("2021 Plan"). The Company has initially reserved 5,046,278 shares of common stock for issuance pursuant to a variety of stock-based compensation awards, including stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards and other stock-based awards. The number of shares initially reserved for issuance or transfer pursuant to awards under the 2021 Plan will be increased by (i) the number of shares represented by awards outstanding under the Company's 2014 Stock Plan ("2014 Plan") that become available for issuance under the counting provisions described below following the effective date and (ii) an annual increase on the first day of each fiscal year beginning in 2022 and ending in 2031, equal to the lesser of (i) 5.0% of the shares of stock outstanding (on an as converted basis) on the last day of the immediately preceding fiscal year and (ii) such smaller number of shares of stock as determined by our board of directors; provided, however, that no more than 37,847,090 shares of stock may be issued upon the exercise of incentive stock options. At June 30, 2021, the 2021 Plan is authorized to grant awards for up to 3,682,837 shares of Common Stock which may include incentive stock options, non-statutory stock options, or stock purchase rights.

Under the 2014 Plan, the Company was authorized to issue stock purchase rights and to grant options to purchase Class A Common Stock to employees, directors and consultants. Stock options under the 2014 Plan have a term of no more than ten years from the date of grant and vest in equal installments over a maximum of five years. No other awards can be granted under the 2014 Plan. 1,293,589 shares of common stock remain reserved for outstanding awards issued under the 2014 Stock Plan at the time of adoption of the 2021 Stock Plan.

Activity under the Stock Plans is set forth below:

	Outstanding Options		
	Number of Shares	Weighted- Average Remaining Contractual Term (in Years)	Weighted- Average Exercise Price
Balance, December 31, 2020	8,081,828	6.86	\$ 1.82
Options granted	1,375,310		\$ 10.02
Options exercised	(962,633)		\$ 0.81
Options canceled	(11,871)		\$ 4.55
Balance, June 30, 2021	8,482,634	7.67	\$ 3.83
Options vested and expected to vest at June 30, 2021	7,873,245	7.01	\$ 3.60
Options vested and exercisable at June 30, 2021	4,420,030	5.71	\$ 1.13

The aggregate intrinsic value is calculated as the difference between the exercise price of the underlying stock options and the fair value of the Company's common stock for stock options that were in-the-money as of period end.

Aggregate intrinsic values of options outstanding, options vested and expected to vest and options exercisable were \$232.7 million, \$217.8 million and \$133.2 million as of June 30, 2021, respectively.

### **Restricted Stock Awards**

In June 2021, the Company granted restricted stock awards (“RSA”). During the three months ended June 30, 2021 and 2020, the Company granted 24,890 RSAs and 0 RSAs, respectively, and during the six months ended June 30, 2021 and 2020, the Company granted 24,890 RSAs and 0 RSAs, respectively. The Company had 19,024 RSAs and 0 RSAs outstanding as of June 30, 2021 and December 31, 2020, respectively. The weighted average grant-date fair value per share of RSAs outstanding as of June 30, 2021 and December 31, 2020 was \$35.46 and \$0, respectively.

### **Employee Share Purchase Plan**

In April 2021, the Company’s Board of Directors and stockholders approved the 2021 Employee Stock Purchase Plan (“ESPP”). The Company has initially reserved 504,627 shares of common stock for purchase under the ESPP. Each offering to the employees to purchase stock under the ESPP will begin on a date to be determined by the Company’s Compensation Committee and will end no later than six months thereafter. On each purchase date, which falls on the last date of each offering period, ESPP participants will purchase shares of common stock at a price per share equal to 85% of the lesser of (1) the fair market value per share of the common stock on the offering date or (2) the fair market value of the common stock on the purchase date. The occurrence and duration of offering periods under the ESPP are subject to the determinations of the Company’s Compensation Committee, in its sole discretion. The Company has not yet commenced any enrollment periods under the ESPP.

### **Stock-Based Compensation**

During the three months ended June 30, 2021 and 2020, the Company granted stock options to employees to purchase an aggregate of 863,716 and 17,500 shares, respectively, of the Company’s common stock. During the six months ended June 30, 2021 and 2020, the Company granted stock options to employees to purchase an aggregate of 1,375,310 and 379,725 shares, respectively. The weighted-average grant date fair value of the employee stock options granted during the three months ended June 30, 2021 and 2020 were \$6.46 and \$2.41 per share, respectively. The weighted-average grant date fair value of the employee stock options granted during the six months ended June 30, 2021 and 2020 were \$4.98 and \$1.92 per share, respectively.

The Company uses the Black-Scholes option pricing model to determine the fair value of stock options at the grant dates with the following weighted-average assumptions for options granted during the three months ended June 30, 2021 and 2020:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Expected term (in years)	5.27 - 6.25 years	2.67 years	1.97 - 6.25 years	2.67 - 2.97 years
Expected volatility	35.57% - 36.55%	49.29%	35.57% - 55.60%	37.09% - 49.29%
Risk-free interest rate	1.03% - 1.07%	0.23%	0.07% - 1.07%	0.23% - 1.53%
Expected dividend yield	0.00%	0.00%	0.00%	0.00%

### **Expected Term**

The expected term represents the period that the stock options are expected to remain outstanding. For stock options issued subsequent to the IPO, the Company’s expected term is calculated using the simplified method, which is available where there is insufficient historical data about exercise patterns and post-vesting employment termination behavior. The simplified method is based on the vesting period and the contractual term for each grant. The midpoint between the vesting date and the maximum contractual expiration is used as the expected term under this method. Prior to the IPO, the Company determined the expected term based upon the probabilities of the anticipated timing of potential liquidity events.

### **Expected Volatility**

The expected volatility is derived from the historical stock volatilities of several comparable publicly listed peers over a period approximately equal to the expected term of the options as the Company had insufficient trading history to

determine the volatility of its common stock. In evaluating similarity, the Company considered factors such as industry, stage of life cycle and size.

#### ***Risk-Free Interest Rate***

The risk-free interest rate assumption is based on the U.S. Treasury yield curve in effect at the date of grant for zero-coupon U.S. Treasury notes with maturities approximately equal to the stock-based awards' expected term.

#### ***Expected Dividend Yield***

The expected dividend yield is zero as the Company has not paid nor does it anticipate paying any dividends on its common stock in the foreseeable future.

#### ***Fair Value of Common Stock***

Prior to the IPO, the fair value of the Company's common stock was determined by the Board of Directors with assistance from Management and, in part, on input from an independent third-party valuation firm. The Board of Directors determined the fair value of common stock by considering a number of objective and subjective factors, including valuations of comparable companies, sales of convertible preferred stock, operating and financial performance, probabilities of anticipated timing of potential liquidity events, the lack of liquidity of the Company's common stock and the general and industry-specific economic outlook. Subsequent to the IPO, the fair value of the Company's common stock is determined based on its closing price.

#### ***Stock-Based Compensation Expense***

Stock-based compensation expense is reflected in the statements of operations and comprehensive loss as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Sales and marketing expense	\$ 370	\$ 86	\$ 517	\$ 181
Research and development expense	103	59	166	108
General and administrative expense	402	103	594	168
Total	<u>\$ 875</u>	<u>\$ 248</u>	<u>\$ 1,277</u>	<u>\$ 457</u>

As of June 30, 2021 and December 31, 2020, there was \$10.3 million and \$4.1 million, respectively, of unrecognized stock-based compensation expense related to unvested common stock options, which the Company expects to recognize over a weighted-average period of 1.86 years and 3.01 years, respectively.

#### **10. Net Loss Per Share Attributable to Common Stockholders**

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders which is computed by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding for the period. As the Company reported a net loss for the three and six months ended June 30, 2021 and 2020, basic net loss per share attributable to common stockholders was the same as diluted

net loss per share attributable to common stockholders as the inclusion of potentially dilutive shares would have been antidilutive if included in the calculation (in thousands, except share and per share amounts):

	Three Months Ended		Six Months Ended	
	June 30, 2021	2020	June 30, 2021	2020
<b>Numerator</b>				
Net loss	\$ (5,083)	\$ (1,973)	\$ (7,515)	\$ (3,580)
Adjust: Convertible preferred stock cumulative and undeclared dividends	(39)	(159)	(196)	(318)
Net loss attributable to common stockholders	(5,122)	(2,132)	(7,711)	(3,898)
<b>Denominator</b>				
Weighted-average common stock outstanding, basic and diluted	49,187,285	37,068,288	43,556,107	37,060,491
Net loss per share attributable to common stockholders, basic and diluted	\$ (0.10)	\$ (0.06)	\$ (0.18)	\$ (0.11)

The following potentially dilutive securities outstanding have been excluded from the computation of diluted weighted average shares outstanding because such securities have an antidilutive impact due to the Company's net loss, in common stock equivalent shares:

	June 30, 2021	December 31, 2020
Series A convertible preferred stock outstanding	—	6,687,475
Warrants to purchase Class A common stock	—	713,330
Common stock option and restricted stock awards issued and outstanding	8,501,658	8,081,828
Total	8,501,658	15,482,633

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

*You should read the following discussion and analysis of our financial condition and results of operations together with our condensed financial statements and related notes thereto included in this Quarterly Report and our audited financial statements and related notes thereto for the year ended December 31, 2020, included in our prospectus dated April 22, 2021 filed with the U.S. Securities and Exchange Commission, pursuant to Rule 424(b)(4) under the Securities Act (the “Prospectus”). This discussion and other parts of this Quarterly Report contain forward-looking statements that involve risks and uncertainties, such as statements of our plans, objectives, expectations and intentions that are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in our Prospectus in the section titled “Risk Factors.” Please also see the section titled “Special Note Regarding Forward-Looking Statements.”*

### Overview

We are a commercial-stage orthopaedic medical device company with the goal of advancing the standard of care for the surgical management of bunion deformities. Bunions are complex three-dimensional (3D) deformities that originate from an unstable joint in the middle of the foot. We have pioneered our proprietary Lapiplasty® 3D Bunion Correction™ System (the “Lapiplasty System”) —a combination of instruments, implants and surgical methods (the “Lapiplasty Procedure”) designed to correct all three planes of the bunion deformity and secure the unstable joint, addressing the root cause of the bunion and getting patients back to their active lives quickly. Our mission is to be the leader in the surgical treatment of bunions by establishing the Lapiplasty System as the standard of care.

We were formed in 2013 and since receiving 510(k) clearance for the Lapiplasty System in March 2015, we have sold more than 30,000 Lapiplasty Procedure Kits in the United States. The Lapiplasty System is comprised of single-use implant kits (“Lapiplasty Procedure Kits”) and reusable instrument trays. We market and sell our Lapiplasty System to physicians, surgeons, ambulatory surgery centers and hospitals. The Lapiplasty Procedure can be performed in either hospital outpatient or ambulatory surgery centers settings, and utilizes existing, well-established reimbursement codes. We currently market and sell the Lapiplasty System through a combination of a direct employee sales force and independent sales agents across 98 territories in the United States. As of June 30, 2021, we had 52 direct sales representatives, 47 independent sales agents, and ten regional sales vice presidents who are responsible for managing the sales representatives and independent sales agents. For the three months ended June 30, 2021, employee sales representatives generated approximately 51% of revenues while approximately 49% of revenues came through independent sales agents. For the six months ended June 30, 2021, employee sales representatives generated approximately 48% of revenues while approximately 52% of revenues came through independent sales agents.

For the three months ended June 30, 2021, we generated revenue of \$20.7 million, with a gross margin of 80.9% and net loss of \$4.9 million, compared to revenue of \$7.7 million, with a gross margin of 73.1% and net loss of \$2.1 million for the three months ended June 30, 2020. Our revenue for the three months ended June 30, 2020 was adversely impacted by the COVID-19 pandemic as the number of Lapiplasty System procedures performed in the first half of that quarter were limited due to restrictive orders limiting elective surgeries.

On April 27, 2021, we completed our initial public offering (“IPO”) of 12,937,500 shares of common stock, which included the exercise in full of the underwriters’ option to purchase additional shares. Before our IPO, our primary sources of capital have been private placements of common stock and convertible preferred stock, debt financing agreements and revenue from the sale of our products. As part of the IPO, 6,953,125 shares of common stock were issued and sold by us (inclusive of 703,125 shares pursuant to the exercise of the underwriters’ option) and 5,984,375 shares of common stock were sold by the selling stockholders named in the Prospectus (inclusive of 984,375 shares pursuant to the exercise of the underwriters’ option), at a price to the public of \$17.00 per share. We received net proceeds of approximately \$107.6 million, after deducting underwriting discounts and commissions of \$8.3 million and offering expenses payable by us of \$2.3 million. Upon the completion of the IPO, all 6,687,475 shares of Series A convertible preferred stock then outstanding were converted into shares of common stock on a one-to-one basis plus 158,447 shares of common stock were issued to pay accrued cumulative dividends on Series A convertible preferred stock of \$2.5 million. As of June 30, 2021, we had cash and cash equivalents of \$119.6 million, an accumulated deficit of \$28.9 million and \$30.0 million of principal outstanding under our term loan agreement.

In March 2020, the World Health Organization declared the outbreak of a novel coronavirus (COVID-19) as a pandemic, and in response to COVID-19 at that time, certain states within the United States implemented shelter-in-place rules requiring certain businesses not deemed “essential” to close and requiring elective procedures to be delayed. These



restrictions began to adversely affect our revenue growth and operating results during the three months ended March 31, 2020. Restrictions on elective surgery were no longer in effect during the six months ended June 30, 2021. While we are encouraged by our results since restrictions were eased at the end of the second quarter of 2020 and with the introduction of vaccines in early 2021, we are aware that the actual and perceived impact of COVID-19 is changing and cannot be predicted, particularly due to potentially more contagious and virulent variants of the virus becoming prevalent and vaccination rates in the United States slowing. As a result, we cannot assure you that our recent procedure volumes are indicative of future results or that we will not experience additional negative impacts associated with COVID-19, which could be significant. The COVID-19 pandemic has negatively impacted our business, financial condition and results of operations by significantly decreasing and delaying the number of procedures performed using our products, and we expect the pandemic could continue to negatively impact our business, financial condition and results of operations.

### **Key Business Metrics**

We regularly review a number of operating and financial metrics, including the number of Lapiplasty Procedure Kits sold, the number of active surgeons using the Lapiplasty System and utilization rate, to evaluate our business, measure our performance, identify trends affecting our business, formulate our business plan and make strategic decisions. The number of Lapiplasty Procedure Kits sold during the three months ended June 30, 2021 increased by 2,254 or 147% over the three months ended June 30, 2020, and the number of active surgeons<sup>1</sup> as of June 30, 2021 was 1,492 increased by 217, or 17%, from 1,275 as of December 31, 2020.

We believe that the number of Lapiplasty Procedure Kits sold, number of active surgeons using the Lapiplasty System and utilization rate are useful indicators of our ability to drive adoption of the Lapiplasty System and generate revenue and are helpful in tracking the progress of our business. While we believe these metrics are representative of our current business, we anticipate these metrics may be substituted for additional or different metrics as our business grows.

### **Factors Affecting Our Business**

We believe that our financial performance has been and in the foreseeable future, will continue to depend on many factors, including COVID-19 as described above, those described below, those noted in the section titled “Special Note Regarding Forward-Looking Statements” and in the section titled “Risk Factors” (incorporated from our Prospectus).

### **Adoption of the Lapiplasty System**

The growth of our business depends on our ability to gain broader acceptance of the Lapiplasty System by successfully marketing and distributing the Lapiplasty System and ancillary products. We currently have approval at over 1,000 facilities across the United States and plan to continue to increase access by convincing even more surgeons and facility administrators that our products are superior alternatives to traditional products used in bunion surgical procedures. While surgeon adoption of the Lapiplasty Procedure remains critical to driving procedure growth, hospital and ambulatory surgery center facility approvals are necessary for both existing and future surgeon customers to access our products. To facilitate greater access to our products and drive future sales growth, we intend to continue educating hospitals and facility administrators on the differentiated benefits associated with the Lapiplasty System, supported by our robust portfolio of clinical data. If we are unable to successfully commercialize our Lapiplasty System, we may not be able to generate sufficient revenue to achieve or sustain profitability. In the near term, we expect we will continue to operate at a loss and we anticipate we will finance our operations principally through offerings of our capital stock and by incurring debt.

### **Investments in Innovation and Growth**

We expect to continue to focus on long-term revenue growth through investments in our business. In sales and marketing, we are also dedicating meaningful resources to expand our sales force and management team in the United States. We are hiring additional direct sales representatives and employee field sales management to strategically access more regions with high densities of prospective patients and by focusing the efforts of our independent sales channel on our products. In research and development, our team and our Surgeon Advisory Board are continually working on next-generation innovations of the Lapiplasty System and related products. In addition to expanding our Lapiplasty offerings with products like the Lapiplasty Mini-Incision System, we are continually exploring opportunities to advance our core

<sup>1</sup> We define the number of active surgeons as the number of surgeons that performed at least one procedure using the Lapiplasty System in the trailing twelve-month period.

Lapiplasty System instrumentation and implants to further improve surgical efficiency, enhance reproducibility of outcomes and speed surgical recovery for patients. We are also pursuing the development and potential commercialization, if cleared, of new products to address ancillary surgical procedures performed routinely in connection with the Lapiplasty Procedure. Moreover, in general and administrative, we expect to continue to hire personnel and expand our infrastructure to both drive and support our anticipated growth and operations as a public company. Accordingly, in the near term, we expect these activities to increase our net losses, but in the longer term we anticipate they will positively impact our business and results of operations.

### ***Seasonality***

We have experienced and expect to continue to experience seasonality in our business, with higher sales volumes in the fourth calendar quarter, historically accounting for approximately 40% of full year revenues, and lower sales volumes in the first calendar quarter. Our sales volumes in the fourth calendar quarter tend to be higher as many patients elect to have surgery after meeting their annual deductible and having time to recover over the winter holidays. Our sales volumes in the first calendar quarter also tend to be lower as a result of adverse weather and by resetting annual patient healthcare insurance plan deductibles, both of which may cause patients to delay elective procedures. The orthopaedic industry traditionally experiences lower sales volumes in the third quarter than throughout the rest of the year as elective procedures generally decline during the summer months. Although we follow orthopaedic industry trends generally, to date our third quarter sales volumes have not been lower than other quarters, but we may experience relatively lower sales volumes during third quarters in the future.

### ***Coverage and Reimbursement***

Hospitals, ambulatory surgery centers and surgeons that purchase or use our products generally rely on third-party payors to reimburse for all or part of the costs and fees associated with procedures using our products. As a result, sales of our products depend, in part, on the extent to which the procedures using our products are covered by third-party payors, including government programs such as Medicare and Medicaid, private insurance plans and managed care programs. Based on historical claims data from 2017, approximately 63% of Lapidus cases and 60% of all bunion surgical cases were paid by private payors.

Medicare payment rates to hospital outpatient departments are set under the Medicare hospital outpatient prospective payment system, which groups clinically similar hospital outpatient procedures and services with similar costs to ambulatory payment classifications (APCs). Each APC is assigned a single lump sum payment rate, which includes payment for the primary procedure as well as any integral, ancillary, and adjunctive services. The primary CPT codes for the Lapiplasty Procedure, CPT 28297 and CPT 28740, are grouped together under APC 5114. For Lapiplasty Procedures in which fusion is performed on multiple TMT joints, CPT 28730 applies and is classified under APC 5115.

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

#### ***Revenue***

We currently derive nearly all of our revenue from the sale of our proprietary Lapiplasty System, and to a lesser extent from ancillary products. The Lapiplasty System is comprised of single-use implant kits and reusable instrument trays. We sell the Lapiplasty System to physicians, surgeons, hospitals and ambulatory surgery centers in the United States through a network of independent agents and employee sales representatives. Our primary product is the Lapiplasty System, which is an instrumented, reproducible approach to 3D bunion correction that helps patients rapidly return to weight-bearing in a post-operative boot. We also offer other advanced instrumentation and implants for use in the Lapiplasty Procedure or other ancillary procedures performed in high frequency with bunion surgery. No single customer accounted for 10% or more of our revenue during the three and six months ended June 30, 2021. We expect our revenue to increase in absolute dollars in the foreseeable future as we expand our sales territories, new accounts and trained physician base and as existing physician customers perform more Lapiplasty Procedures, though it may fluctuate from quarter to quarter due to a variety of factors, including seasonality.

#### ***Cost of Goods Sold***

Cost of goods sold consists primarily of costs related to manufacturing costs for the purchase of our Lapiplasty System products from third-party manufacturers. Direct costs from our third-party manufacturers includes costs for raw materials plus the markup for the assembly of the components. Cost of goods sold also includes royalties, allocated overhead for indirect labor, depreciation, rent and information technology, certain direct costs such as those incurred for shipping our products and personnel costs. We expense all inventory provisions for excess and obsolete inventories as cost of goods sold. We record adjustments to our inventory valuation for estimated excess, obsolete and non-sellable inventories based on

assumptions about future demand, past usage, changes to manufacturing processes and overall market conditions. We expect our cost of goods sold to increase in absolute dollars in the foreseeable future to the extent more of our products are sold, though it may fluctuate from quarter to quarter.

### ***Gross Profit and Gross Margin***

We calculate gross profit as revenue less cost of goods sold, and gross margin as gross profit divided by revenue. Our gross margin has been and will continue to be affected by a variety of factors, primarily average selling prices, production and ordering volumes, change in mix of customers, third-party manufacturing costs and cost-reduction strategies. We expect our gross profit to increase in the foreseeable future as our revenue grows, though our gross margin may fluctuate from quarter to quarter due to changes in average selling prices as we introduce new products, and as we adopt new manufacturing processes and technologies.

### ***Operating Expenses***

#### *Sales and Marketing*

Sales and marketing expenses consist primarily of compensation for personnel, including salaries, bonuses, benefits, sales commissions and stock-based compensation, related to selling and marketing functions, physician education programs, training, travel expenses, marketing initiatives including our direct-to-patient outreach program and advertising, market research and analysis and conferences and trade shows. We expect sales and marketing expenses to continue to increase in absolute dollars in the foreseeable future as we continue to invest in our direct sales force and expand our marketing efforts, and as we continue to expand our sales and marketing infrastructure to both drive and support anticipated sales growth, though it may fluctuate from quarter to quarter.

#### *Research and Development*

Research and development (R&D) expenses consist primarily of engineering, product development, clinical studies to develop and support our products, regulatory expenses, patent costs, and other costs associated with products and technologies that are in development. These expenses include compensation for personnel, including salaries, bonuses, benefits and stock-based compensation, supplies, consulting, prototyping, testing, materials, travel expenses, depreciation and an allocation of facility overhead expenses. Additionally, R&D expenses include costs associated with our clinical studies, including clinical trial design, clinical trial site initiation and study costs, data management, related travel expenses and the cost of products used for clinical trials, internal and external costs associated with our regulatory compliance and quality assurance functions and allocated overhead costs. We expect R&D expenses to continue to increase in absolute dollars in the foreseeable future as we continue to hire personnel and invest in next-generation innovations of the Lapiplasty System and related products, though it may fluctuate from quarter to quarter due to a variety of factors, including the level and timing of our new product development efforts, as well as our clinical development, clinical trial and other related activities.

#### *General and Administrative*

General and administrative expenses consist primarily of compensation for personnel, including salaries, bonuses, benefits and stock-based compensation, related to finance, information technology, legal and human resource functions, as well as professional services fees (including legal, audit and tax fees), insurance costs, general corporate expenses and allocated facilities-related expenses. We expect general and administrative expenses to continue to increase in absolute dollars in the foreseeable future as we hire personnel and our expand infrastructure to both drive and support the anticipated growth in our organization and due to additional legal, accounting, insurance, compliance with the rules and regulations of the SEC and those of any stock exchange on which our securities are traded, investor relations, and other administrative and professional services expenses associated with operating as a public company, though it may fluctuate from quarter to quarter.

### ***Interest and other income, net***

Interest income and other income, net consists of interest received on our money market funds.

## Interest Expense

Interest expense consists of interest incurred and amortization of debt discount related to outstanding borrowings during the reported periods.

## Results of Operations

For the three and six months ended June 30, 2021 and 2020

The following table summarizes our results of operations for the periods presented below (\$ in thousands):

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2021	2020	Amount	%	2021	2020	Amount	%
Revenue	\$ 20,654	\$ 7,739	\$ 12,915	166.9%	\$ 39,361	\$ 18,995	\$ 20,366	107.2%
Cost of goods sold	3,944	2,085	1,859	89.2%	7,271	4,474	2,797	62.5%
Gross profit	16,710	5,654	11,056	195.5%	32,090	14,521	17,569	121.0%
Operating expenses								
Sales and marketing	14,010	4,789	9,221	192.5%	26,158	12,127	14,031	115.7%
Research and development	2,422	982	1,440	146.6%	4,290	2,415	1,875	77.6%
General and administrative	4,329	1,401	2,928	209.0%	7,095	2,696	4,399	163.2%
Total operating expenses	20,761	7,172	13,589	189.5%	37,543	17,238	20,305	117.8%
Loss from operations	(4,051)	(1,518)	(2,533)		(5,453)	(2,717)	(2,736)	
Interest income	6	3	3	100.0%	7	36	(29)	(80.6)%
Interest expense	(1,038)	(458)	(580)	126.6%	(2,069)	(899)	(1,170)	130.1%
Other income (expense), net	(1,032)	(455)	(577)	126.8%	(2,062)	(863)	(1,199)	138.9%
Net loss and comprehensive loss	(5,083)	(1,973)	(3,110)	157.6%	(7,515)	(3,580)	(3,935)	109.9%

The following shows the three months and six months results of operations as a percentage of revenue.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Revenue	100.0%	100.0%	100.0%	100.0%
Cost of goods sold	19.1%	26.9%	18.5%	23.6%
Gross profit	80.9%	73.1%	81.5%	76.4%
Operating expenses				
Sales and marketing	67.8%	61.9%	66.5%	63.8%
Research and development	11.7%	12.7%	10.9%	12.7%
General and administrative	21.0%	18.1%	18.0%	14.2%
Total operating expenses	100.5%	92.7%	95.4%	90.8%
Loss from operations	(19.6)%	(19.6)%	(13.9)%	(14.4)%
Interest income	0.0%	0.0%	0.0%	0.2%
Interest expense	(5.0)%	(5.9)%	(5.3)%	(4.7)%
Other income (expense), net	(5.0)%	(5.9)%	(5.3)%	(4.5)%
Net loss and comprehensive loss	(24.6)%	(25.5)%	(19.2)%	(18.9)%

Comparison of the three months ended June 30, 2021 and 2020

*Revenue.* Revenue increased \$12.9 million, or 166.9%, from \$7.7 million during the three months ended June 30, 2020, to \$20.6 million during the three months ended June 30, 2021. The increase in revenue was primarily due to an increased number of Lapiplasty Procedure Kits sold as the result of an expanded customer base and normalization of sales compared to the three months ended June 30, 2020, which was adversely impacted by government-mandated restrictions on elective procedures in response to the COVID-19 pandemic that lasted from March 2020 through May 2020 when such restrictions began to ease.

*Cost of Goods Sold Gross Profit and Gross Margin.* Cost of goods sold increased \$1.8 million, or 89.2%, from \$2.1 million during the three months ended June 30, 2020, to \$3.9 million during the three months ended June 30, 2021. The increase in cost of goods sold was primarily due to \$1.4 million increase in direct costs of goods sold resulting from increased sales, \$0.6 million increase in royalty expense resulting from our increased sales, and \$0.4 million increase in overhead costs resulting from the expansion of our headquarters and normalization of operations compared to the three months ended June 30, 2020, which was adversely impacted by pandemic-related restrictions on elective surgeries. The increases are offset by \$0.2 million decrease in provision for inventory obsolescence resulting from a lower number of days in inventory and \$0.2 million decrease in depreciation expense of our surgical instruments resulting from lower average net book value of surgical instruments. Gross margin increased from 73.1% during the three months ended June 30, 2020, to 80.9% during the three months ended June 30, 2021, primarily due to the decreased per unit direct costs of goods sold, depreciation expense of our surgical instruments, and provision for inventory obsolescence.

*Sales and Marketing Expenses.* Sales and marketing expenses increased \$9.2 million, or 192.5%, from \$4.8 million during the three months ended June 30, 2020, to \$14.0 million during the three months ended June 30, 2021. The increase in sales and marketing expenses was primarily due to growth in our overall business and normalization of sales operations compared to the three months ended June 30, 2020, in which we delayed expenditures for surgeon education events, patient outreach campaigns and other planned sales and marketing expenses to respond to the pandemic. Sales and marketing expenses increased as a result of an increase of \$3.0 million in professional services primarily for higher commissions from increased sales, an increase of \$3.0 million in advertising and marketing-related expenses primarily due to higher advertising fees, an increase of \$2.1 million in payroll and payroll-related expenses resulting from increased headcount of sales personnel, and \$0.4 million in clinical-related expenses and \$0.3 million in travel-related expenses resulting from increased sales efforts.

*Research and Development Expenses.* Research and development expenses increased \$1.4 million, or 146.6%, from \$1.0 million for the three months ended June 30, 2020, to \$2.4 million during the three months ended June 30, 2021. The increase in research and development expenses was due to an increase of \$0.7 million in payroll and payroll-related costs resulting from increased headcount of research personnel, an increase of \$0.4 million in professional services from higher consulting and patent filing fees, and an increase of \$0.3 million in clinical expenses resulting from higher purchases of materials used in our prototypes.

*General and Administrative Expenses.* General and administrative expenses increased \$2.9 million, or 209.0%, from \$1.4 million during the three months ended June 30, 2020, to \$4.3 million during the three months ended June 30, 2021. The increase in general and administrative expenses was primarily due to an increase of \$1.7 million in payroll and payroll-related costs as we increased headcount in our business, an increase of \$0.9 million in business-related expenses primarily resulting from increased insurance costs and fees, an increase of \$0.3 million in professional services primarily related to legal and audit expenses, and an increase of \$0.1 million in rent expense resulting from the expansion of our headquarters. The increases are offset by a decrease of \$0.2 million in bad debt expense.

*Interest and Other Income, Net.* The decrease in interest and other income, net during the three months ended June 30, 2021, was primarily due to lower rates on interest earned on our money market accounts as compared to the prior year period.

*Interest Expense.* Interest expense increased \$0.6 million from \$0.4 million during the three months ended June 30, 2020, to \$1.0 million during the three months ended June 30, 2021. The increase in interest expense was primarily due to an increase of \$10.0 million in balances outstanding on our CRG Term Loan Facility.

#### Comparison of the six months ended June 30, 2021 and 2020

*Revenue.* Revenue increased \$20.4 million, or 107.2%, from \$19.0 million during the six months ended June 30, 2020, to \$39.4 million during the six months ended June 30, 2021. The increase in revenue was primarily due to an increased number of Lapliasty Procedure Kits sold as the result of an expanded customer base and normalization of sales compared to the six months ended June 30, 2020, which was adversely impacted by government-mandated restrictions on elective procedures in response to the COVID-19 pandemic that lasted from March 2020 through May 2020 when such restrictions were largely eased.

*Cost of Goods Sold Gross Profit and Gross Margin.* Cost of goods sold increased \$2.8 million, or 62.5%, from \$4.5 million during the six months ended June 30, 2020, to \$7.3 million during the six months ended June 30, 2021. The increase in cost of goods sold was primarily due to \$2.1 million increase in direct costs of goods sold resulting from increased sales, \$0.8 million increase in royalty expense resulting from our increased sales, and \$0.6 million increase in overhead expenses resulting from expansion of our headquarters and headcount and the normalization of operations compared to the six months ended June 30, 2020, which was adversely impacted by pandemic-related restrictions on elective surgeries. The increases are offset by a decrease in provision for inventory obsolescence of \$0.3 million resulting from a lower number of days in inventory and \$0.5 million decrease in depreciation expense of our surgical instruments resulting from lower average net book value of surgical instruments. Gross margin increased from 76.4% during the six months ended June 30, 2020, to 81.5% during the six months ended June 30, 2021, primarily due to the decreased per unit direct costs of goods sold, depreciation expense of our surgical instruments, and provision for inventory obsolescence.

*Sales and Marketing Expenses.* Sales and marketing expenses increased \$14.0 million, or 115.7% from \$12.1 million during the six months ended June 30, 2020, to \$26.1 million during the six months ended June 30, 2021. The increase in sales and marketing expenses was primarily due to growth in our overall business and normalization of sales operations compared to the six months ended June 30, 2020, in which we delayed expenditures for surgeon education events, patient outreach campaigns and other planned sales and marketing expenses to respond to the pandemic. Sales and marketing expenses increased as a result of an increase of \$5.2 million in professional services primarily for higher commissions from increased sales, an increase of \$3.7 million in advertising and marketing-related expenses from higher advertising fees and public relations expenses, an increase of \$3.6 million in payroll and payroll-related expenses resulting from increased headcount of sales personnel, and an increase \$0.7 million in clinical-related expenses resulting from increased sales.

*Research and Development Expenses.* Research and development expenses increased \$1.9 million, or 77.6%, from \$2.4 million for the six months ended June 30, 2020, to \$4.3 million during the six months ended June 30, 2021. The increase in research and development expenses was primarily due to an increase of \$1.2 million in payroll and payroll-related costs resulting from increased headcount of research personnel, an increase of \$0.5 million in professional services from higher consulting and patent filing fees, and an increase of \$0.3 million in clinical expenses resulting from higher purchases of materials used in our prototypes.

*General and Administrative Expenses.* General and administrative expenses increased \$4.4 million, or 163.2%, to \$7.1 million during the six months ended June 30, 2021, from \$2.7 million during the six months ended June 30, 2020, when we implemented salary reductions, headcount freeze, and other actions in response to the pandemic. The increase in general and administrative expenses was primarily due to an increase of \$2.8 million in payroll and payroll-related costs as we increased headcount in our business, an increase of \$0.7 million in business-related expenses primarily resulting from

increased insurance costs and fees, an increase of \$0.7 million in professional services primarily related to legal and audit expenses, and an increase of \$0.2 million in rent expense resulting from the expansion of our headquarters. The increases are offset by a decrease of \$0.3 million in bad debt expense.

*Interest and Other Income, Net.* The decrease in interest and other income, net during the six months ended June 30, 2021, was primarily due to lower rates on interest earned on our money market accounts as compared to the prior year period.

*Interest Expense.* Interest expense increased \$1.2 million from \$0.9 million during the six months ended June 30, 2020, to \$2.1 million during the six months ended June 30, 2021. The increase in interest expense was primarily due to an increase of \$30.0 million in balances outstanding on our term loans and credit facility.

## **Liquidity and Capital Resources**

### **Overview**

Before our IPO, our primary sources of capital were private placements of common stock and convertible preferred stock, debt financing agreements and revenue from the sale of our products. As of June 30, 2021, we had cash and cash equivalents of \$119.6 million, an accumulated deficit of \$28.9 million and \$30.0 million of principal outstanding under our term loan agreement. We repaid \$1.8 million in borrowings outstanding from the Paycheck Protection Program (PPP) loan program under the Coronavirus Aid Relief and Economic Recovery Act (CARES Act) (the “PPP Loan”) in March 2021. In July 2020, we entered into the new term loan agreement with CRG Servicing LLC (“CRG”) to obtain up to \$50.0 million in financing over three tranches. We borrowed \$30.0 million under the new facility with CRG and repaid prior existing outstanding debt under our credit facility with Silicon Valley Bank (“SVB”). We also amended our existing credit facility with SVB to increase the revolving line of credit from \$5.0 million to \$10.0 million. We received net proceeds of \$107.6 million from our IPO. We believe that our existing cash and cash equivalents, available debt borrowings and expected revenues will be sufficient to meet our capital requirements and fund our operations for at least twelve months. We may be required or decide to raise additional financing to support further growth of our operations.

### **Short-Term and Long-Term Obligations**

#### *Silicon Valley Bank Loan*

On August 3, 2020, we entered into the Third Amendment to the Loan and Security Agreement (the “Third Amendment”), with Silicon Valley Bank (“SVB”) which terminated the third tranche term loan and increased the revolving line of credit to \$10.0 million. The Loan and Security Agreement (“LSA”), as amended by the First Amendment, Second Amendment, and Third Amendment (collectively, the “SVB Credit Facility”) matures August 3, 2024. The SVB Credit Facility incurs interest at the greater of (i) 1.00% above the Prime Rate or (ii) 5.00%, and is subject to a termination fee of 1.00%.

As of June 30, 2021, we had \$10.0 million of availability to borrow under the revolving line of credit and no borrowings outstanding related to our revolving line of credit.

Under the terms of the SVB Credit Facility, we granted SVB first priority liens and security interests in substantially all of our assets (excluding our intellectual property but including any proceeds and rights to payments associated with our intellectual property) as collateral. The SVB Credit Facility also contains certain representations and warranties, indemnification provisions in favor of SVB, affirmative and negative covenants (including, among other things, requirements that we maintain a minimum amount of liquidity and achieve minimum revenue targets, limitations on other indebtedness, liens, acquisitions, investments and dividends and requirements relating to financial reporting, sales and leasebacks, insurance and protection of our intellectual property rights) and events of default (including payment defaults, breaches of covenants following any applicable cure period, investor abandonment, a material impairment in the perfection or priority of the lender’s security interest or in the collateral), and events relating to bankruptcy or insolvency). As of June 30, 2021, we were in compliance with all covenants under the SVB Credit Facility.

#### *CRG Term Loan Facility*

On July 31, 2020, we entered into a non-revolving term loan facility with CRG (the “CRG Term Loan Facility”) to obtain up to \$50.0 million in financing over three tranches to be advanced no later than December 31, 2021. Principal borrowings outstanding excluding discount and issuance costs as of June 30, 2021, totaled \$30 million.

The CRG Term Loan Facility matures on June 30, 2025, and we can elect to make quarterly interest-only payments, to pay 7.50% interest in cash and 5.5% interest in-kind. We are not required to make any principal payments until the maturity of the CRG Term Loan Facility and all outstanding principal and accrued interest are due upon the maturity of the CRG Term Loan Facility. Interest under the CRG Term Loan Facility is applied to outstanding principal and accrued interest at a rate of 13.00% per annum. If an event of default occurs, interest under the CRG Term Loan Facility will increase by 4.00%. If we repay the CRG Term Loan Facility within one year of the applicable borrowing date, we are required to pay a premium of 20.00% of the aggregated outstanding principal amount of the loans that is repaid. If we repay the CRG Term Loan Facility between one and two years from the applicable borrowing date, we are required to pay a premium of 11.00% of the aggregated outstanding principal amount of the loans that is repaid. The CRG Term Loan Facility does not require a prepayment premium for loans being prepaid on the prepayment date that is after two years from the applicable borrowing date.

Under the terms of the CRG Term Loan Facility, we granted CRG first priority liens and security interests in substantially all of our assets as collateral (including our intellectual property), provided that the priority of such liens are subject to an intercreditor agreement between CRG and SVB. The CRG Term Loan Facility also contains certain representations and warranties, indemnification provisions in favor of CRG, affirmative and negative covenants (including, among other things, requirements that we maintain a minimum amount of liquidity and achieve minimum revenue targets, limitations on other indebtedness, liens, acquisitions, investments and dividends and requirements relating to financial reporting, sales and leasebacks, insurance and protection of our intellectual property rights) and events of default (including payment defaults, breaches of covenants following any applicable cure period, investor abandonment, a material impairment in the perfection or priority of the lender's security interest or in the collateral, and events relating to bankruptcy or insolvency). As of June 30, 2021, we were in compliance with all covenants under the CRG Term Loan Facility.

### ***Funding Requirements***

We use our cash to fund our operations, which primarily include the costs of manufacturing our Lapiplasty System and ancillary products, as well as our sales and marketing and research and development expenses and related personnel costs. We expect our sales and marketing expenses to increase for the foreseeable future as we continue to invest in our direct sales force and expand our marketing efforts, and as we continue to expand our sales and marketing infrastructure to both drive and support anticipated sales growth. We also expect R&D expenses to increase for the foreseeable future as we continue to hire personnel and invest in next-generation innovations of the Lapiplasty System and related products. In addition, we expect our general and administrative expenses to increase for the foreseeable future as we hire personnel and expand our infrastructure to both drive and support the anticipated growth in our organization. We will also incur additional expenses as a result of operating as a public company and also expect to increase the size of our administrative function to support the growth of our business. The timing and amount of our operating expenditures will depend on many factors, including:

- the scope and timing of our investment in our commercial infrastructure and sales force;
- the costs of our ongoing commercialization activities including product sales, marketing, manufacturing and distribution;
- the degree and rate of market acceptance of the Lapiplasty System;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- our need to implement additional infrastructure and internal systems;
- the research and development activities we intend to undertake in order to improve the Lapiplasty System and to develop or acquire additional products;
- the emergence of competing technologies or other adverse market developments;
- any product liability or other lawsuits related to our products;
- the expenses needed to attract and retain skilled personnel;
- the costs associated with being a public company; and
- the impact of the COVID-19 pandemic on our operations and business.

Based upon our current operating plan, we believe that the net proceeds from our IPO, together with our existing cash and cash equivalents, will enable us to fund our operating expenses and capital expenditure requirements for at least the next twelve months. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available



capital resources sooner than we expect. We may seek to raise any necessary additional capital through public or private equity offerings or debt financings, credit or loan facilities or a combination of one or more of these or other funding sources. Additional funds may not be available to us on acceptable terms or at all. If we fail to obtain necessary capital when needed on acceptable terms, or at all, we could be forced to delay, limit, reduce or terminate our product development programs, commercialization efforts or other operations. If we raise additional funds by issuing equity securities, our stockholders will suffer dilution and the terms of any financing may adversely affect the rights of our stockholders. In addition, as a condition to providing additional funds to us, future investors may demand, and may be granted, rights superior to those of existing stockholders. Debt financing, if available, is likely to involve restrictive covenants limiting our flexibility in conducting future business activities, and, in the event of insolvency, debt holders would be repaid before holders of our equity securities received any distribution of our corporate assets.

## Cash Flows

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

	Six Months Ended June 30,		Change	
	2021	2020	Amount	%
(in thousands, other than percent change)				
Net cash (used in) provided by:				
Operating activities	\$ (4,177)	\$ (2,740)	\$ (1,437)	52.4%
Investing activities	(866)	(923)	57	(6.2)%
Financing activities	106,585	1,829	104,756	5,727.5%
Net increase (decrease) in cash and cash equivalents	\$ 101,542	\$ (1,834)	\$ 103,376	(5,636.6)%

### Net Cash Used in Operating Activities

Net cash used in operating activities for the six months ended June 30, 2021, increased by \$1.4 million from the six months ended June 30, 2020, due to a decrease in operating assets and liabilities of \$2.6 million offset by an increase in net loss of \$3.7 million and decrease in noncash charges of \$0.3 million. The decrease in net operating assets was primarily due to reduced purchases of inventories of \$2.7 million, reduced settlements of accrued liabilities of \$2.6 million due to greater decrease in accrued commissions and accrued compensation for the six months ended June 30, 2020, as compared to the six months ended June 30, 2021. This decrease in net operating assets is offset by an increase in prepaid expenses and other assets of \$3.2 million resulting from an increase in general prepaid expenses due to our overall growth.

### Net Cash Used in Investing Activities

Net cash used in investing activities during the six months ended June 30, 2021, decreased by \$0.1 million from the six months ended June 30, 2020. The decrease was primarily due to lower level of purchases of capitalized surgical instruments for our reusable surgical kits during the six months ended June 30, 2021, as compared to the six months ended June 30, 2020.

### Net Cash Provided by Financing Activities

Net cash provided by financing activities during the six months ended June 30, 2021, increased by \$104.8 million from the six months ended June 30, 2020. The increase cash provided by financing activities was due to an increase in proceeds from the exercise of stock options of \$0.7 million and the receipt of net cash proceeds of \$107.6 million from the issuance shares of common stock, net of \$10.6 million in issuance costs, upon completion of our IPO on April 27, 2021. The increase is offset by the repayment of our PPP loan from the SBA of \$1.8 million in March 2021.

### Surgeon Advisory Board Royalty Agreements

We recognized royalties' expense of \$0.9 million and \$0.3 million for the three months ended June 30, 2021 and 2020, respectively, and \$1.6 million and \$0.8 million for the six months ended June 30, 2021 and 2020, respectively. For the three and six month periods ended June 30, 2021 and 2020, the aggregate royalty rate was 4.1% and 4.3%, respectively. Each of the SAB Royalty Agreements prohibits the payment of royalties on products sold to entities and/or individuals with whom any of the surgeon advisors is affiliated.

## **Off-Balance Sheet Arrangements**

We did not have during the period presented, and we currently have no off-balance sheet arrangements, such as structured finance, special purpose entities, or variable interest entities.

## **Critical Accounting Policies and Estimates**

Management's discussion and analysis of our financial condition and results of operations is based on our condensed financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these condensed financial statements requires us to make estimates and assumptions for the reported amounts of assets, liabilities, revenue, expenses and related disclosures. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions and any such differences may be material.

Beginning January 1, 2021, the Company adjusted the useful life of its capitalized instruments from 18 months to 36 months to align with the expected life of the instruments. The change in useful life is expected to reduce depreciation expense by \$0.2 million per year. During the three and six months ended June 30, 2021, there were no other material changes to our critical accounting policies or in the methodology used for estimates from those described in "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in the Prospectus.

## **Recently Issued Accounting Pronouncements**

See Note 3 to our condensed financial statements included elsewhere in this Quarterly Report for new accounting pronouncements not yet adopted as of the date of this Quarterly Report.

## **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

### ***Interest Rate Risk***

The primary objectives of our investment activities are to preserve principal and provide liquidity. The risk associated with fluctuating interest rates is primarily limited to our cash equivalents, which are carried at quoted market prices. Since our results of operations are not dependent on investments, the risk associated with fluctuating interest rates is limited to our investment portfolio, and we believe that a hypothetical 10% change in interest rates would not have a significant impact on our condensed financial statements included elsewhere in this Quarterly Report. As of June 30, 2021, our investments consisted only of low-yield overnight sweep investments. We do not currently use or plan to use financial derivatives in our investment portfolio.

### ***Foreign Currency Risk***

Our business is primarily conducted in U.S. dollars. We do not currently maintain a program to hedge exposures to non-U.S. dollar currencies. Any transactions that may be conducted in foreign currencies are not expected to have a material effect on our results of operations, financial position or cash flows.

## **Item 4. Controls and Procedures.**

### ***Evaluation of disclosure controls and procedures***

Our management, with the participation and supervision of our Chief Executive Officer and our Chief Financial Officer, have evaluated our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this Quarterly Report, our disclosure controls and procedures are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

***Changes in internal control over financial reporting***

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the period covered by this Quarterly Report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

***Inherent limitation on the effectiveness of internal control***

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

**Item 1. Legal Proceedings.**

We are not party to any material legal proceedings at this time. From time to time, we may become involved in various legal proceedings that arise in the ordinary course of our business.

**Item 1A. Risk Factors.**

As of the date of this Quarterly Report, there have been no material changes from the risk factors disclosed in our Prospectus dated April 22, 2021 as filed by us with the SEC pursuant to Rule 424(b)(4) under the Securities Act, relating to our registration statement on Form S-1 (File Nos. 333-254863 and 333-255451). Any of these factors could result in a significant or material adverse effect on our result of operations or financial conditions. Additional risk factors not presently known to us or that we currently deem immaterial may also impair our business or results of operations. We may disclose changes to such factors or disclose additional factors from time to time in our future filings with the SEC.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

**(a) Sales of Unregistered Securities**

None.

**(b) Use of Proceeds from Public Offering of Common Stock**

The registration statement on Form S-1 (File Nos. 333-254863) and the registration statement on Form S-1 (File No. 333- 255451) filed pursuant to Rule 462(b) relating thereto, each relating to the IPO of shares of our common stock, became effective on April 22, 2021. On April 27, 2021, we completed our IPO of 12,937,500 shares of common stock, which included the exercise in full of the underwriters' option to purchase additional shares. As part of the IPO, 6,953,125 shares of common stock issued and sold by us (inclusive of 703,125 shares pursuant to the exercise of the underwriters' option) and 5,984,375 shares of common stock sold by the selling stockholders named in the Prospectus (inclusive of 984,375 shares pursuant to the exercise of the underwriters' option), at a price to the public of \$17.00 per share. We received net proceeds of approximately \$107.6 million, after deducting underwriting discounts of \$8.3 million and commissions and offering expenses payable by us of \$2.3 million. Upon the completion of the IPO, all 6,687,475 shares of Series A convertible preferred stock then outstanding were converted into shares of common stock on a one-to-one basis plus 158,447 shares of common stock were issued to pay accrued cumulative dividends on Series A convertible preferred stock of \$2.5 million.

No payments for such expenses were made directly or indirectly to (i) any of our officers or directors or their associates, (ii) any persons owning 10% or more of any class of our equity securities or (iii) any of our affiliates.

We maintain the funds received from our IPO in a savings account, pending their use. There has been no material change in the planned use of proceeds from our IPO from that described in the Prospectus dated April 22, 2021 filed with the SEC pursuant to Rule 424(b)(4).

**Item 3. Defaults Upon Senior Securities.**

None.

**Item 4. Mine Safety Disclosures.**

Not applicable.

**Item 5. Other Information.**

None.

**Item 6. Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Exhibit(s)</b>	<b>Filing Date</b>
3.1	<a href="#">Amended and Restated Certificate of Incorporation of Treace Medical Concepts, Inc.</a>	8-K	001-40355	3.1	April 27, 2021
3.2	<a href="#">Amended and Restated Bylaws of Treace Medical Concepts, Inc.</a>	8-K	001-40355	3.2	April 27, 2021
4.1	Reference is made to Exhibits <a href="#">3.1</a> and <a href="#">3.2</a>				
4.2	<a href="#">Form of Common Stock Certificate</a>	S-1/A	333-254863	4.2	April 19, 2021
10.1+	<a href="#">Change in Control Severance Agreement by and between Treace Medical Concepts, Inc. and Mark Hair</a>	S-1/A	333-254863	10.6	April 19, 2021
10.2+	<a href="#">Change in Control Severance Agreement by and between Treace Medical Concepts, Inc. and Jaime Frias</a>	S-1/A	333-254863	10.7	April 19, 2021
10.3+	<a href="#">Change in Control Severance Agreement by and between Treace Medical Concepts, Inc. and John T. Treace</a>	S-1/A	333-254863	10.13	April 19, 2021
10.4+	<a href="#">Change in Control Severance Agreement by and between Treace Medical Concepts, Inc. and Daniel E. Owens</a>				
10.5+	<a href="#">Change in Control Severance Agreement by and between Treace Medical Concepts, Inc. and Joe W. Ferguson</a>				
10.6+	<a href="#">Change in Control Severance Agreement by and between Treace Medical Concepts, Inc. and Dipak A. Rajhansa</a>				
10.7+	<a href="#">Change in Control Severance Agreement by and between Treace Medical Concepts, Inc. and Sean F. Scanlan</a>				
31.1*	<a href="#">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.</a>				
31.2*	<a href="#">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.</a>				
32.1*†	<a href="#">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.</a>				

32.2*†	<a href="#">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.</a>
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because 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 (embedded within the Inline XBRL document)

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\* Filed herewith.

+ Indicates management contract or compensatory plan

† The certifications attached as Exhibit 32.1 and 32.2 that accompany this Quarterly Report are deemed furnished and not filed with the U.S. Securities and Exchange Commission and are not to be incorporated by reference into any filing of Treace Medical Concepts, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report, irrespective of any general incorporation language contained in such filing.

**SIGNATURES**

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

**Treace Medical Concepts, Inc.**

Date: August 5, 2021

By: /s/ John T. Treace  
Name: John T. Treace  
Title: Chief Executive Officer and Director (Principal Executive Officer)

Date: August 5, 2021

By: /s/ Mark L. Hair  
Name: Mark L. Hair  
Title: Chief Financial Officer (Principal Financial and Accounting Officer)

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**CHANGE IN CONTROL  
SEVERANCE AGREEMENT**

This CHANGE IN CONTROL SEVERANCE AGREEMENT is dated as of 5/25/2021, by and between TREACE MEDICAL CONCEPTS, INC., a Delaware corporation (the "Company"), and DANIEL E. OWENS (the "Executive").

**PURPOSE**

In order to induce the Executive to remain in the employment of the Company and its Affiliates in the event of a potential Change in Control (as defined below) or potential involuntary terminations, the Company desires to enter into this Change in Control Severance Agreement (the "Agreement") to provide the Executive with certain benefits if the Executive's employment is terminated in connection with or following the occurrence of a Change in Control or upon certain qualifying terminations. This Agreement amends and restates and supersedes in its entirety that certain Change in Control Severance Agreement by and between the Company and Executive, dated as of February 8, 2021 (the "Prior Agreement"), and upon Executive's signature hereto, the Prior Agreement shall be of no further force or effect.

NOW, THEREFORE, in consideration of the respective agreements of the parties contained herein, it is agreed as follows:

**SECTION 1. Definitions**

For purposes of this Agreement, the following terms have the meanings set forth below:

"Affiliate" means, with respect to any individual or entity, any other individual or entity who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such individual or entity.

"Annual Base Salary." means the Executive's annual base salary in effect immediately before his or her Severance.

"Annual Target Bonus Opportunity" means the amount of the annual cash incentive payable to an Executive under a Company or Affiliate annual incentive plan with respect to a given fiscal year of the Company or Affiliate, as applicable, assuming that the target level of performance under the plan was achieved.

"Board" means the Board of Directors of the Company.

"Cause" shall mean:

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(a) the Executive's willful and continued failure to attempt in good faith (other than as a result of incapacity due to mental or physical impairment) to substantially perform the duties of his or her position, and such failure is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(b) the Executive's failure to attempt in good faith to carry out, or comply with, in any material respect any lawful and reasonable directive of the Board or the Chief Executive Officer consistent with the duties of his or her position, which is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(c) a material breach by the Executive of the Company's code of ethics, which is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(d) the Executive's conviction, plea of no contest or plea of *nolo contendere*, or imposition of unadjudicated probation for any felony (other than a traffic violation or arising purely as a result of the Executive's position with the Company or an Affiliate and not in connection with any act or omission of the Executive);

(e) the Executive's knowing unlawful use (including being under the influence) or possession of illegal drugs; or

(f) the Executive's commission of a material bad faith act of fraud, embezzlement, misappropriation, willful misconduct, gross negligence, or breach of fiduciary duty, in each case against the Company or any Affiliate.

For the purposes of this definition, no act (or omission) that is (i) taken in good faith and (ii) not adverse to the best interests of the Company or its Affiliates shall be considered to be willful.

"Change in Control" shall have the same meaning as assigned to that term in the Company's 2021 Incentive Award Plan (or any successor to or replacement of such plan); *provided*, that such transaction must also constitute a "change in control event" within the meaning of Treasury Regulation Section 1.409A-3(i)(5).

"Change in Control Period" shall mean the period of time commencing three months prior to the closing of a Change in Control and ending 18 months following the closing of such Change in Control.

"Code" means the Internal Revenue Code of 1986, as amended.

"Disability" means a disability within the meaning of Code section 409A(a)(2)(C) and U.S. Treasury Regulations section 1.409A-3(i)(4) (or any successor provision).

“Effective Date” shall mean the date first set forth above.

“Good Reason” means the occurrence of any of the following events, unless the Executive otherwise consents in writing to such event:

(a) a material reduction in the Executive’s Annual Base Salary (other than a reduction that is applicable to all similarly situated employees generally and that occurs outside a Change in Control Period);

(b) with respect to a Change in Control Period only, a material reduction in the Executive’s Annual Target Bonus Opportunity as compared to his or her Annual Target Bonus Opportunity for the fiscal year of the Company in which the Change in Control occurred;

(c) requiring the Executive to relocate his or her principal place of employment to a location more than fifty (50) miles from the Executive’s current principal place of employment; or

(d) the failure or refusal by a successor or acquiring company, upon the consummation of a Change in Control, to (i) assume the obligations of the Company under this Agreement or (ii) assume obligations to Executive that are substantially equivalent to or more favorable than the obligations under this Agreement.

The Executive shall provide the Company with a written notice of resignation within ninety (90) days following the occurrence of the event constituting Good Reason and the Company (or its Affiliate, if applicable) shall have a period of thirty (30) days following its receipt of such notice in which to cure such event without such event constituting Good Reason. If the Company (or its Affiliate, if applicable) does not cure the condition or conditions by the end of such thirty (30) day period, the Executive may voluntarily terminate employment within thirty (30) days after the last day of the thirty (30) day cure period. The Executive’s voluntary termination of employment other than in accordance with the requirements of this definition shall not constitute termination for Good Reason.

“Release” means a general release of claims against the Company and the other persons specified therein in the form attached hereto as Exhibit A, or in such other form as is required to comply with applicable law.

“Separation from Service” means a “separation from service” with the Company within the meaning of Section 409A of the Code and the Department of Treasury regulations and other guidance promulgated thereunder.

“Severance” means (a) the involuntary termination of the Executive’s employment by the Company or any Affiliate thereof, other than for Cause, death or Disability or (b) a termination of the Executive’s employment with the Company and its Affiliates by the Executive for Good Reason in each case that, to the extent necessary, constitutes a Separation from Service.

“Severance Date” means the date on which the Executive incurs a Severance.

“Severance Period” means the period following the Executive’s Severance pursuant to which the Company owes payments and/or benefits to the Executive pursuant to this Agreement.

“Treasury Regulations” means the final, temporary or proposed regulations issued by the Treasury Department and/or Internal Revenue Service as modified in Title 26 of The United States Code of Federal Regulations. Any references made in this Agreement to specific Treasury Regulations shall also refer to any successor or replacement regulations thereto.

**SECTION 2. *Term of Agreement.*** The term of this Agreement (the “Term”) will commence on the Effective Date, and will continue until (a) in the event the Executive’s employment is terminated for any reason other than the Executive’s Severance, the date of such termination of employment, or (b) in the event the Executive incurs a Severance, the date on which the Company has fulfilled all obligations owed to the Executive pursuant to this Agreement.

**SECTION 3. *Severance Benefits***

3.1 Generally. Subject to Sections 3.6, 5 and 7.2 of this Agreement, the Executive shall be entitled to the severance payments and benefits described below.

3.2 Payment of Accrued Obligations. The Company shall pay to the Executive upon the Executive’s Severance a lump sum payment in cash, paid in accordance with applicable law, as soon as practicable but no later than ten (10) days after the Severance Date, equal to the sum of (a) the Executive’s accrued annual base salary and any accrued vacation pay through the Severance Date, and (b) any annual bonus earned by the Executive from the year preceding the Severance Date but not yet paid as of the Severance Date.

3.3 Severance Payments and Benefits Outside of a Change in Control Period. Subject to Section 3.6, upon the Executive’s Severance that occurs outside of a Change in Control Period, then in addition to the payments and benefits set forth in Section 3.2 above, the Company shall provide Executive with the following:

(a) During the period of time commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date, the Company shall continue to pay Executive his/her Annual Base Salary. Such payments shall be made in accordance with the Company’s standard payroll practices, less applicable withholdings, beginning on the first payroll date following the date the Release becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below, and with the first installment including any amounts that would have been paid had the Release been effective and irrevocable on the Severance Date.

(b) Executive shall be entitled to receive an amount equal to 100% percent of Executive’s Annual Target Bonus Opportunity (pro-rated based on the number of days Executive was employed by the Company during the calendar year in which the Severance Date occurs), payable at the same time annual bonuses are paid generally to other executives

of the Company for the relevant year, less applicable withholdings and deductions, but in no event later than March 15<sup>th</sup> of the year immediately following that in which the Severance Date occurs.

(c) The Company shall directly pay Executive's total COBRA premiums for the period commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date of COBRA continuation coverage under the Company's health benefit plan (i.e., medical, dental and vision coverage) (the "Non-CiC COBRA Period"). To the extent permitted by applicable law, Executive shall have the right to change Executive's coverage elections under the Company's health benefit plan during the COBRA continuation period and any such change in elections shall not reduce or eliminate the Company's obligation to pay applicable premiums. Notwithstanding Section 3.3(c), in the event that (i) the direct COBRA payment arrangement described in Section 3.3(c) would result in adverse tax consequences for the Executive under Code Section 105(h) (or similar law), (ii) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A of the Code under Treasury Regulation Section 1.409A-1(a)(5), or (iii) the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), the Company shall pay to the Executive an amount equal to one hundred and twenty five percent (125%) of the total premiums the Executive would be required to pay for the remaining Non-CiC COBRA Period under the Company's health benefit plan, determined using the COBRA premium rate in effect for the level of coverage that the Executive has in place immediately prior to the Severance Date (the "COBRA Payment"). The Company shall pay the COBRA Payment in substantially equal monthly installments over the remaining Non-CiC COBRA Period. In the event that the Company makes a payment pursuant to this Section 3.3(c), the Executive shall not be required to purchase COBRA continuation coverage in order to receive the COBRA Payment nor shall the Executive be required to apply the COBRA Payment to payment of applicable premiums for COBRA continuation coverage.

(d) In addition, to the extent permitted by applicable law and the Company's applicable benefit plans, during the Non-CiC COBRA Period the Company shall permit the Executive (and his or her eligible dependents) to participate in any optional life insurance and optional personal accident plans of the Company for which senior executives of the Company are eligible, to the same extent and at the same premium rates as if the Executive had continued to be an employee of the Company during such period.

3.4 Outplacement Services. Subject to Section 3.6, in addition to the benefits provided in Sections 3.3 and 3.5, upon Executive's Severance (whether during or outside a Change in Control Period), the Executive shall be entitled to receive outplacement services of up to \$10,000 for the period ending on the first anniversary of the Executive's Severance Date.

3.5 Severance Payments and Benefits During a Change in Control Period. Subject to Section 3.6, upon the Executive's Severance that occurs during a Change in Control Period, then, in

lieu of the severance payments and benefits set forth in Section 3.3 above and in addition to the payments and benefits set forth in Section 3.2 above, the Company shall provide Executive with the following:

(a) During the period of time commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date, the Company shall continue to pay Executive his/her Annual Base Salary. Such payments shall be made in accordance with the Company's standard payroll practices, less applicable withholdings, beginning on the first payroll date following the date the Release becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below, and with the first installment including any amounts that would have been paid had the Release been effective and irrevocable on the Severance Date.

(b) Executive shall be entitled to receive an amount equal to one hundred percent (100%) of Executive's Annual Target Bonus Opportunity, payable in a cash lump sum, less applicable withholdings, on the first payroll date following the date the Release becomes effective and irrevocable becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below.

(c) The Company shall directly pay Executive's total COBRA premiums for the period commencing on the Severance Date and ending on the eighteen (18) month anniversary of the Severance Date of COBRA continuation coverage under the Company's health benefit plan (i.e., medical, dental and vision coverage) (the "CiC COBRA Period"). To the extent permitted by applicable law, Executive shall have the right to change Executive's coverage elections under the Company's health benefit plan during the COBRA continuation period and any such change in elections shall not reduce or eliminate the Company's obligation to pay applicable premiums. Notwithstanding Section 3.5(c), in the event that (i) the direct COBRA payment arrangement described in Section 3.5(c) would result in adverse tax consequences for the Executive under Code Section 105(h) (or similar law), (ii) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A of the Code under Treasury Regulation Section 1.409A-1(a)(5), or (iii) the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), the Company shall pay to the Executive an amount equal to one hundred and twenty five percent (125%) of the total premiums the Executive would be required to pay for the remaining CiC COBRA Period under the Company's health benefit plan, determined using the COBRA premium rate in effect for the level of coverage that the Executive has in place immediately prior to the Severance Date (the "COBRA Payment"). The Company shall pay the COBRA Payment shall be paid in substantially equal monthly installments over the remaining CiC COBRA Period. In the event that the Company makes a payment pursuant to this Section 3.5(c), the Executive shall not be required to purchase COBRA continuation coverage in order to receive the COBRA Payment nor shall the Executive be required to apply the COBRA Payment to payment of applicable premiums for COBRA continuation coverage.

(d) In addition, to the extent permitted by applicable law and the Company's applicable benefit plans, during the CiC COBRA Period the Company shall permit the Executive (and his or her eligible dependents) to participate in any optional life insurance and optional personal accident plans of the Company for which senior executives of the Company are eligible, to the same extent and at the same premium rates as if the Executive had continued to be an employee of the Company during such period.

(e) In addition, each outstanding and unvested equity award (excluding any such awards that vest in whole or in part based on the attainment of performance-vesting conditions), including, without limitation, each restricted stock, stock option, restricted stock unit and stock appreciation right, held by Executive shall be subject to the accelerated vesting as set forth in the Plan (or, with respect to awards granted under the Company's 2014 Stock Plan (the "Prior Plan"), any accelerated vesting upon a Change in Control provided under the Prior Plan).

3.6 Release and Restrictive Covenant Agreement. The Executive shall be eligible to receive the payments and other benefits under this Agreement (other than payments under Section 3.2) only if after the Severance Date (a) the Executive first executes the Release in favor of the Company and others attached hereto as Exhibit A and the Release has not been revoked by the Executive, by the sixtieth (60th) day following the Severance Date (or such short time specified by the Company) (such date, the "Release Expiration Date"), and (b) the Executive provides the Company written attestation that the Confidentiality, Non-Competition, Non-Solicitation and Inventions Agreement attached hereto as Exhibit B (the "Restrictive Covenants Agreement") is in effect and enforceable. If the Executive does not execute and return the Release and attestation such that either or both agreements do not become effective (or, in the case of the Release, is revoked) before the Release Expiration Date immediately following the Severance Date, the Executive shall not be entitled to any payments or benefits under this Agreement (other than payments under Section 3.2).

3.7 Forfeiture. If the Executive is found in a judgment no longer subject to review or appeal to have breached the obligations set forth in the Restrictive Covenants Agreement, then the Executive shall immediately forfeit any amounts payable or benefits to be received and shall promptly reimburse the Company any amounts actually paid to the Executive pursuant to this Agreement (other than payments made pursuant to Section 3.2).

3.8 No Duplication of Benefits. Except as otherwise noted herein, during the Term of this Agreement the compensation to be paid to the Executive hereunder will be in lieu of any similar severance or termination compensation (compensation based directly on the Executive's annual salary or annual salary and bonus) to which the Executive may be entitled under any other Company or Affiliate severance or termination agreement, plan, program, policy, practice or arrangement (collectively, "Severance Plans"). The Executive affirmatively waives any rights he or she may have to payments or benefits provided under the Severance Plans to the extent the Executive receives similar payments or benefits under this Agreement. The Executive's entitlement to any compensation or benefits of a type not provided in this Agreement will be determined in accordance

with the Company's or its Affiliates' employee benefit plans and other applicable programs, policies and practices as in effect from time to time.

3.9 No Mitigation or Offset. In the event of any termination of the Executive's employment, the Executive shall not be required to seek other employment to mitigate damages, and any income earned by the Executive from other employment or self-employment shall not be offset against any obligations of the Company and its Affiliates to Executive under this Agreement.

**SECTION 4. Golden Parachute Tax.** It is the intention of the Company and the Executive that the Executive receive the full benefits available under this Agreement and any other agreement, plan, program, policy or similar arrangement providing for compensation or benefits in the event of a Change in Control. If a Change of Control occurs and a determination is made by legislation, regulation, ruling directed to the Executive or the Company, or court decision that the aggregate amount of any payment made to the Executive hereunder, or pursuant to any plan, program, policy or similar arrangement of the Company (or any subsidiary or affiliate or successor thereto) in connection with, on account of, or as a result of, such Change in Control constitutes "excess parachute payments" as defined in Code Section 280G (as well as any successor or similar sections thereof), subject to the excise tax provisions of Code Section 4999 (as well as any successor or similar sections thereof), the Executive shall be entitled to receive from the Company, in addition to any other amounts payable hereunder, a lump sum payment equal to 100% of such excise tax, plus an amount equal to the federal and state income tax, FICA, and Medicare taxes (based upon Executive's projected marginal income tax rates) on such lump sum payment. The amounts under this Section 4 shall be paid to Executive as soon as may be practicable after such final determination is made and in all events shall be made no later than the end of the Executive's taxable year next following his taxable year in which he remitted the related taxes. The Executive and the Company shall mutually and reasonably determine whether or not such determination has occurred or whether any appeal to such determination should be made.

**SECTION 5. Death During the Severance Period.** If the Executive dies during the Severance Period, any unpaid amounts shall be paid to the Executive's estate within ten (10) days following the Executive's death. The Executive's right to outplacement services described in Section 3.4 and continued participation in the life insurance and accident plans described in Sections 3.3 or 3.5 shall terminate as of the date of the Executive's death.

**SECTION 6. Amendments; Waiver.** This Agreement contains the entire agreement of the parties with respect to severance payments and benefits payable in connection with a Severance. No amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto. No waiver by either party of any breach by the other party of any provision or condition of this Agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

## **SECTION 7. General Provisions.**

7.1 Except as otherwise provided herein or by law, no right or interest of the Executive under this Agreement shall be assignable or transferable, in whole or in part, either directly or by operation of law or otherwise, including without limitation by execution, levy, garnishment, attachment, pledge or in any manner; no attempted assignment or transfer thereof shall be effective; and no right or interest of the Executive under this Agreement shall be liable for, or subject to, any obligation or liability of such Executive. When a payment is due under this Agreement to the Executive and the Executive is unable to care for his or her affairs, payment may be made directly to his or her guardian or personal representative.

7.2 If the Company or any Affiliate thereof is obligated by law or by contract to pay severance pay, a termination indemnity, notice pay, or the like, or if the Company or any Affiliate thereof is obligated by law or by contract to provide advance notice of separation ("Notice Period"), then any severance pay under this Agreement shall be reduced by the amount of any such severance pay, termination indemnity, notice pay or the like, as applicable, and by the amount of any compensation received during any Notice Period. If the Executive is entitled to benefits under the Workers Adjustment Retraining Notification Act of 1988, or any similar state or local statute or ordinance (collectively the "WARN Act"), severance pay under this Agreement shall be reduced dollar-for-dollar by any benefits received pursuant to the WARN Act.

7.3 Neither this Agreement, nor any modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving the Executive, or any person whomsoever, the right to be retained in the service of the Company or any Affiliate thereof, and the Executive shall remain subject to discharge to the same extent as if this Agreement had never existed.

7.4 If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed and enforced as if such provisions had not been included.

7.5 This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties, including the Executive, present and future, and any successor to the Company.

7.6 The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Agreement, and shall not be employed in the construction of this Agreement.

7.7 The Agreement shall not be required to be funded unless such funding is authorized by the Board. Regardless of whether the Agreement is funded, the Executive shall not have any right to, or interest in, any assets of any Company which may be applied by the Company to the payment of benefits or other rights under this Agreement. For purposes of clarity, nothing in this Section 7.7 shall be construed to relieve the Company or its Affiliates from their obligations to the Executive pursuant to this Agreement.



7.8 All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next-day delivery, with written verification of receipt. All communications shall be sent:

(i) To the Executive, at:

Last address in records of the Company

(ii) To the Company, at:

Treace Medical Concepts, Inc.  
203 Fort Wade Rd., Suite 150  
Ponte Vedra, FL 32081  
Attention: Chief Legal & Compliance Officer

7.9 This Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of Florida, without reference to principles of conflicts or choice of law under which the law of any other jurisdiction would apply.

7.10 The Company may withhold from any payments due to the Executive hereunder such amounts as are required to be withheld under applicable federal, state and local tax laws.

7.11 Notwithstanding anything to the contrary contained herein, nothing in this Agreement or the Restrictive Covenants Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (A) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (B) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

**SECTION 8. Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements, if any, understandings and arrangements, oral

or written, between the parties hereto with respect to severance, , including, without limitation, the Prior Agreement, except for any equity acceleration provided in the Prior Plan and/or the Plan.

#### **SECTION 9. *Disputes.***

9.1 Except as provided in the Restrictive Covenants Agreement, any dispute or controversy arising under, out of, in connection with or in relation to this Agreement shall, at the election and upon written demand of any party to this Agreement, be finally determined and settled by arbitration in Jacksonville, Florida in accordance with the rules and procedures of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof.

9.2 If, with respect to any alleged failure by the Company or its Affiliates to comply with any of the terms of this Agreement, the Executive hires legal counsel with respect to this Agreement or institutes any negotiations or institutes or responds to legal action to assert or defend the validity of, enforce his rights under, or recover damages for breach of this Agreement, and thereafter the Company or its Affiliates are found in a judgment no longer subject to review or appeal to have breached this Agreement in any material respect, then the Company or its Affiliates (but not both) shall reimburse the Executive for his actual expenses for attorneys' fees and disbursements within thirty (30) days following receipt of any invoice for such expenses.

#### **SECTION 10. *Section 409A of the Code.***

10.1 It is intended that this Agreement shall comply with or be exempt from the provisions of Section 409A of the Code and the Treasury Regulations relating thereto, so as not to subject the Executive to the payment of additional taxes and interest under Section 409A of the Code. This Agreement shall be interpreted, operated, and administered in a manner consistent with and in furtherance of this intent.

10.2 Any payment required under this Agreement that is payable in installment payments shall be deemed to be a separate payment for purposes of Section 409A of the Code and the Treasury Regulations thereunder.

10.3 Notwithstanding any provision to the contrary in this Agreement, no payment or distribution under this Agreement which constitutes an item of deferred compensation under Section 409A of the Code and becomes payable by reason of the Executive's termination of employment with the Company or its Affiliates or an Executive's resignation for Good Reason will be made unless the Executive's termination of employment or resignation (as applicable) constitutes a Separation from Service. In addition and solely to the extent required by Code Section 409A, no such payment or distribution will be made to the Executive prior to the earlier of (a) the expiration of the six (6)-month period measured from the date of the Executive's "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A of the Code) or (b) the date of the Executive's death, if the Executive is deemed at the time of such separation from service to be a "specified employee" within the meaning of that term under Section 409A(a)(2) of the Code and to the extent such delayed commencement is otherwise required in order to avoid a prohibited

distribution under Section 409A(a)(2) of the Code. All payments and benefits which had been delayed pursuant to the immediately preceding sentence shall be paid (without interest) to the Executive in a lump sum upon expiration of such six-month period (or if earlier upon the Executive's death).

10.4 Notwithstanding anything to the contrary in this Agreement, to the extent that any payments due under this Agreement as a result of Executive's termination of employment are subject to Executive's execution and delivery of a Release, in any case where Executive's Severance Date and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are conditioned on the Release and are treated as nonqualified deferred compensation for purposes of Section 409A of the Code shall be made in the later taxable year. To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of Executive's termination of employment are delayed pursuant to this Section 10.4, such amounts shall be paid in a lump sum on the first payroll date to occur in the subsequent taxable year.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**TREACE MEDICAL CONCEPTS, INC.**

/s/ John T. Treace

John T. Treace

Chief Executive Officer

**EXECUTIVE**

/s/ Daniel E. Owens

Daniel E. Owens

**EXHIBIT A**  
**RELEASE AGREEMENT**  
(To be signed after the Severance Date) <sup>1</sup>

In return for payment of severance benefits pursuant to the Change in Control Severance Agreement between Treace Medical Concepts, Inc., and me (the "CIC Severance Agreement"), I hereby generally and completely release Treace Medical Concepts, Inc. ("Treace"), its parent and subsidiary entities (collectively the "Company"), and its or their directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, insurers, affiliates, and assigns (collectively "Released Parties"), from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release Agreement (the "Agreement"). This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all claims related to my compensation or benefits from the Company, including wages, salary, bonuses, commissions, vacation pay, expense reimbursements (to the extent permitted by applicable law), severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including without limitation claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including without limitation claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("ADEA"), the federal Worker Adjustment and Retraining Notification Act (as amended) and similar laws in other jurisdictions, the Employee Retirement Income Security Act of 1974 (as amended), the Family and Medical Leave Act of 1993, and any similar laws in other jurisdictions; provided, however, that this Release does not waive, release or otherwise discharge any claim or cause of action arising after the date I sign this Agreement.

This Agreement includes a release of claims of discrimination or retaliation on the basis of workers' compensation status, but does not include workers' compensation claims. Excluded from this Agreement are any claims which by law cannot be waived in a private agreement between employer and employee, including but not limited to the right to file a charge with or participate in an investigation conducted by the Equal Employment Opportunity Commission ("EEOC") or any state or local fair employment practices agency. I waive, however, any right to any monetary recovery or other relief should the EEOC or any other agency pursue a claim on my behalf.

I acknowledge and represent that I have not suffered any age or other discrimination, harassment, retaliation, or wrongful treatment by any Released Party. I also acknowledge and represent that I have not been denied any rights including, but not limited to, rights to a leave or reinstatement from a leave under the Family and Medical Leave Act of 1993, the Uniformed Services Employment and Reemployment Rights Act of 1994, or any similar law of any jurisdiction.

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<sup>1</sup> To be updated for any changes in applicable law.

I agree that I am voluntarily executing this Agreement. I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA, as amended by the Older Workers Benefit Protection Act of 1990, and that the consideration given for this Release is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release specified in this paragraph does not apply to any rights or claims that may arise after the date I sign this Agreement; (b) I have been advised to consult with an attorney prior to signing this Agreement; (c) if a "Severance" (as defined in the CIC Severance Agreement) involves an employment termination program, I have received a disclosure from the Company that includes a description of the class, unit or group of individuals covered by the program, the eligibility factors for such program, and any time limits applicable to such program and a list of job titles and ages of all employees selected for this group termination and ages of those individuals in the same job classification or organizational unit who were not selected for termination; (d) I have at least twenty-one (21) or forty-five (45) days, depending on the circumstances of my Severance, from the date that I receive this Release (although I may choose to sign it any time on or after my Severance Date (as defined in the CIC Severance Agreement)) to consider the release; (e) I have seven (7) calendar days after I sign this Release to revoke it ("Revocation Period") by sending my revocation to the Human Resources Manager in writing at 203 Fort Wade Rd., Suite 150, Ponte Vedra, FL 32081; and (f) this Agreement will not be effective until I have signed it and returned it to the Company's Corporate Secretary and the Revocation Period has expired.

I UNDERSTAND THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

---

Daniel E. Owens

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Date

**EXHIBIT B**  
**RESTRICTIVE COVENANTS AGREEMENT**

See attached Employee Confidentiality, Nonsolicitation and Noncompete Agreement between Executive and the Company dated February 2021.

**CHANGE IN CONTROL  
SEVERANCE AGREEMENT**

This CHANGE IN CONTROL SEVERANCE AGREEMENT is dated as of 5/27/2021, by and between TREACE MEDICAL CONCEPTS, INC., a Delaware corporation (the "Company"), and JOE W. FERGUSON (the "Executive").

**PURPOSE**

In order to induce the Executive to remain in the employment of the Company and its Affiliates in the event of a potential Change in Control (as defined below) or potential involuntary terminations, the Company desires to enter into this Change in Control Severance Agreement (the "Agreement") to provide the Executive with certain benefits if the Executive's employment is terminated in connection with or following the occurrence of a Change in Control or upon certain qualifying terminations. This Agreement amends and restates and supersedes in its entirety that certain Change in Control Severance Agreement by and between the Company and Executive, dated as of October 5, 2020 (the "Prior Agreement"), and upon Executive's signature hereto, the Prior Agreement shall be of no further force or effect.

NOW, THEREFORE, in consideration of the respective agreements of the parties contained herein, it is agreed as follows:

**SECTION 1. Definitions**

For purposes of this Agreement, the following terms have the meanings set forth below:

"Affiliate" means, with respect to any individual or entity, any other individual or entity who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such individual or entity.

"Annual Base Salary." means the Executive's annual base salary in effect immediately before his or her Severance.

"Annual Target Bonus Opportunity" means the amount of the annual cash incentive payable to an Executive under a Company or Affiliate annual incentive plan with respect to a given fiscal year of the Company or Affiliate, as applicable, assuming that the target level of performance under the plan was achieved.

"Board" means the Board of Directors of the Company.

"Cause" shall mean:



(a) the Executive's willful and continued failure to attempt in good faith (other than as a result of incapacity due to mental or physical impairment) to substantially perform the duties of his or her position, and such failure is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(b) the Executive's failure to attempt in good faith to carry out, or comply with, in any material respect any lawful and reasonable directive of the Board or the Chief Executive Officer consistent with the duties of his or her position, which is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(c) a material breach by the Executive of the Company's code of ethics, which is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(d) the Executive's conviction, plea of no contest or plea of *nolo contendere*, or imposition of unadjudicated probation for any felony (other than a traffic violation or arising purely as a result of the Executive's position with the Company or an Affiliate and not in connection with any act or omission of the Executive);

(e) the Executive's knowing unlawful use (including being under the influence) or possession of illegal drugs; or

(f) the Executive's commission of a material bad faith act of fraud, embezzlement, misappropriation, willful misconduct, gross negligence, or breach of fiduciary duty, in each case against the Company or any Affiliate.

For the purposes of this definition, no act (or omission) that is (i) taken in good faith and (ii) not adverse to the best interests of the Company or its Affiliates shall be considered to be willful.

"Change in Control" shall have the same meaning as assigned to that term in the Company's 2021 Incentive Award Plan (or any successor to or replacement of such plan); *provided*, that such transaction must also constitute a "change in control event" within the meaning of Treasury Regulation Section 1.409A-3(i)(5).

"Change in Control Period" shall mean the period of time commencing three months prior to the closing of a Change in Control and ending 18 months following the closing of such Change in Control.

"Code" means the Internal Revenue Code of 1986, as amended.

"Disability" means a disability within the meaning of Code section 409A(a)(2)(C) and U.S. Treasury Regulations section 1.409A-3(i)(4) (or any successor provision).

“Effective Date” shall mean the date first set forth above.

“Good Reason” means the occurrence of any of the following events, unless the Executive otherwise consents in writing to such event:

- (a) a material reduction in the Executive’s Annual Base Salary (other than a reduction that is applicable to all similarly situated employees generally and that occurs outside a Change in Control Period);
- (b) with respect to a Change in Control Period only, a material reduction in the Executive’s Annual Target Bonus Opportunity as compared to his or her Annual Target Bonus Opportunity for the fiscal year of the Company in which the Change in Control occurred;
- (c) requiring the Executive to relocate his or her principal place of employment to a location more than fifty (50) miles from the Executive’s current principal place of employment; or
- (d) the failure or refusal by a successor or acquiring company, upon the consummation of a Change in Control, to (i) assume the obligations of the Company under this Agreement or (ii) assume obligations to Executive that are substantially equivalent to or more favorable than the obligations under this Agreement.

The Executive shall provide the Company with a written notice of resignation within ninety (90) days following the occurrence of the event constituting Good Reason and the Company (or its Affiliate, if applicable) shall have a period of thirty (30) days following its receipt of such notice in which to cure such event without such event constituting Good Reason. If the Company (or its Affiliate, if applicable) does not cure the condition or conditions by the end of such thirty (30) day period, the Executive may voluntarily terminate employment within thirty (30) days after the last day of the thirty (30) day cure period. The Executive’s voluntary termination of employment other than in accordance with the requirements of this definition shall not constitute termination for Good Reason.

“Release” means a general release of claims against the Company and the other persons specified therein in the form attached hereto as Exhibit A, or in such other form as is required to comply with applicable law.

“Separation from Service” means a “separation from service” with the Company within the meaning of Section 409A of the Code and the Department of Treasury regulations and other guidance promulgated thereunder.

“Severance” means (a) the involuntary termination of the Executive’s employment by the Company or any Affiliate thereof, other than for Cause, death or Disability or (b) a termination of the Executive’s employment with the Company and its Affiliates by the Executive for Good Reason in each case that, to the extent necessary, constitutes a Separation from Service.

“Severance Date” means the date on which the Executive incurs a Severance.

“Severance Period” means the period following the Executive’s Severance pursuant to which the Company owes payments and/or benefits to the Executive pursuant to this Agreement.

“Treasury Regulations” means the final, temporary or proposed regulations issued by the Treasury Department and/or Internal Revenue Service as modified in Title 26 of The United States Code of Federal Regulations. Any references made in this Agreement to specific Treasury Regulations shall also refer to any successor or replacement regulations thereto.

**SECTION 2. *Term of Agreement.*** The term of this Agreement (the “Term”) will commence on the Effective Date, and will continue until (a) in the event the Executive’s employment is terminated for any reason other than the Executive’s Severance, the date of such termination of employment, or (b) in the event the Executive incurs a Severance, the date on which the Company has fulfilled all obligations owed to the Executive pursuant to this Agreement.

**SECTION 3. *Severance Benefits***

3.1 Generally. Subject to Sections 3.6, 5 and 7.2 of this Agreement, the Executive shall be entitled to the severance payments and benefits described below.

3.2 Payment of Accrued Obligations. The Company shall pay to the Executive upon the Executive’s Severance a lump sum payment in cash, paid in accordance with applicable law, as soon as practicable but no later than ten (10) days after the Severance Date, equal to the sum of (a) the Executive’s accrued annual base salary and any accrued vacation pay through the Severance Date, and (b) any annual bonus earned by the Executive from the year preceding the Severance Date but not yet paid as of the Severance Date.

3.3 Severance Payments and Benefits Outside of a Change in Control Period. Subject to Section 3.6, upon the Executive’s Severance that occurs outside of a Change in Control Period, then in addition to the payments and benefits set forth in Section 3.2 above, the Company shall provide Executive with the following:

(a) During the period of time commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date, the Company shall continue to pay Executive his/her Annual Base Salary. Such payments shall be made in accordance with the Company’s standard payroll practices, less applicable withholdings, beginning on the first payroll date following the date the Release becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below, and with the first installment including any amounts that would have been paid had the Release been effective and irrevocable on the Severance Date.

(b) Executive shall be entitled to receive an amount equal to 100% percent of Executive’s Annual Target Bonus Opportunity (pro-rated based on the number of days Executive was employed by the Company during the calendar year in which the Severance Date occurs), payable at the same time annual bonuses are paid generally to other executives

of the Company for the relevant year, less applicable withholdings and deductions, but in no event later than March 15<sup>th</sup> of the year immediately following that in which the Severance Date occurs.

(c) The Company shall directly pay Executive's total COBRA premiums for the period commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date of COBRA continuation coverage under the Company's health benefit plan (i.e., medical, dental and vision coverage) (the "Non-CiC COBRA Period"). To the extent permitted by applicable law, Executive shall have the right to change Executive's coverage elections under the Company's health benefit plan during the COBRA continuation period and any such change in elections shall not reduce or eliminate the Company's obligation to pay applicable premiums. Notwithstanding Section 3.3(c), in the event that (i) the direct COBRA payment arrangement described in Section 3.3(c) would result in adverse tax consequences for the Executive under Code Section 105(h) (or similar law), (ii) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A of the Code under Treasury Regulation Section 1.409A-1(a)(5), or (iii) the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), the Company shall pay to the Executive an amount equal to one hundred and twenty five percent (125%) of the total premiums the Executive would be required to pay for the remaining Non-CiC COBRA Period under the Company's health benefit plan, determined using the COBRA premium rate in effect for the level of coverage that the Executive has in place immediately prior to the Severance Date (the "COBRA Payment"). The Company shall pay the COBRA Payment in substantially equal monthly installments over the remaining Non-CiC COBRA Period. In the event that the Company makes a payment pursuant to this Section 3.3(c), the Executive shall not be required to purchase COBRA continuation coverage in order to receive the COBRA Payment nor shall the Executive be required to apply the COBRA Payment to payment of applicable premiums for COBRA continuation coverage.

(d) In addition, to the extent permitted by applicable law and the Company's applicable benefit plans, during the Non-CiC COBRA Period the Company shall permit the Executive (and his or her eligible dependents) to participate in any optional life insurance and optional personal accident plans of the Company for which senior executives of the Company are eligible, to the same extent and at the same premium rates as if the Executive had continued to be an employee of the Company during such period.

3.4 Outplacement Services. Subject to Section 3.6, in addition to the benefits provided in Sections 3.3 and 3.5, upon Executive's Severance (whether during or outside a Change in Control Period), the Executive shall be entitled to receive outplacement services of up to \$10,000 for the period ending on the first anniversary of the Executive's Severance Date.

3.5 Severance Payments and Benefits During a Change in Control Period. Subject to Section 3.6, upon the Executive's Severance that occurs during a Change in Control Period, then, in

lieu of the severance payments and benefits set forth in Section 3.3 above and in addition to the payments and benefits set forth in Section 3.2 above, the Company shall provide Executive with the following:

(a) During the period of time commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date, the Company shall continue to pay Executive his/her Annual Base Salary. Such payments shall be made in accordance with the Company's standard payroll practices, less applicable withholdings, beginning on the first payroll date following the date the Release becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below, and with the first installment including any amounts that would have been paid had the Release been effective and irrevocable on the Severance Date.

(b) Executive shall be entitled to receive an amount equal to one hundred (100%) of Executive's Annual Target Bonus Opportunity, payable in a cash lump sum, less applicable withholdings, on the first payroll date following the date the Release becomes effective and irrevocable becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below.

(c) The Company shall directly pay Executive's total COBRA premiums for the period commencing on the Severance Date and ending on the eighteen (18) month anniversary of the Severance Date of COBRA continuation coverage under the Company's health benefit plan (i.e., medical, dental and vision coverage) (the "CiC COBRA Period"). To the extent permitted by applicable law, Executive shall have the right to change Executive's coverage elections under the Company's health benefit plan during the COBRA continuation period and any such change in elections shall not reduce or eliminate the Company's obligation to pay applicable premiums. Notwithstanding Section 3.5(c), in the event that (i) the direct COBRA payment arrangement described in Section 3.5(c) would result in adverse tax consequences for the Executive under Code Section 105(h) (or similar law), (ii) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A of the Code under Treasury Regulation Section 1.409A-1(a)(5), or (iii) the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), the Company shall pay to the Executive an amount equal to one hundred and twenty five percent (125%) of the total premiums the Executive would be required to pay for the remaining CiC COBRA Period under the Company's health benefit plan, determined using the COBRA premium rate in effect for the level of coverage that the Executive has in place immediately prior to the Severance Date (the "COBRA Payment"). The Company shall pay the COBRA Payment shall be paid in substantially equal monthly installments over the remaining CiC COBRA Period. In the event that the Company makes a payment pursuant to this Section 3.5(c), the Executive shall not be required to purchase COBRA continuation coverage in order to receive the COBRA Payment nor shall the Executive be required to apply the COBRA Payment to payment of applicable premiums for COBRA continuation coverage.

(d) In addition, to the extent permitted by applicable law and the Company's applicable benefit plans, during the CiC COBRA Period the Company shall permit the Executive (and his or her eligible dependents) to participate in any optional life insurance and optional personal accident plans of the Company for which senior executives of the Company are eligible, to the same extent and at the same premium rates as if the Executive had continued to be an employee of the Company during such period.

(e) In addition, each outstanding and unvested equity award (excluding any such awards that vest in whole or in part based on the attainment of performance-vesting conditions), including, without limitation, each restricted stock, stock option, restricted stock unit and stock appreciation right, held by Executive shall be subject to the accelerated vesting as set forth in the Plan (or, with respect to awards granted under the Company's 2014 Stock Plan (the "Prior Plan"), any accelerated vesting upon a Change in Control provided under the Prior Plan).

3.6 Release and Restrictive Covenant Agreement. The Executive shall be eligible to receive the payments and other benefits under this Agreement (other than payments under Section 3.2) only if after the Severance Date (a) the Executive first executes the Release in favor of the Company and others attached hereto as Exhibit A and the Release has not been revoked by the Executive, by the sixtieth (60th) day following the Severance Date (or such short time specified by the Company) (such date, the "Release Expiration Date"), and (b) the Executive provides the Company written attestation that the Confidentiality, Non-Competition, Non-Solicitation and Inventions Agreement attached hereto as Exhibit B (the "Restrictive Covenants Agreement") is in effect and enforceable. If the Executive does not execute and return the Release and attestation such that either or both agreements do not become effective (or, in the case of the Release, is revoked) before the Release Expiration Date immediately following the Severance Date, the Executive shall not be entitled to any payments or benefits under this Agreement (other than payments under Section 3.2).

3.7 Forfeiture. If the Executive is found in a judgment no longer subject to review or appeal to have breached the obligations set forth in the Restrictive Covenants Agreement, then the Executive shall immediately forfeit any amounts payable or benefits to be received and shall promptly reimburse the Company any amounts actually paid to the Executive pursuant to this Agreement (other than payments made pursuant to Section 3.2).

3.8 No Duplication of Benefits. Except as otherwise noted herein, during the Term of this Agreement the compensation to be paid to the Executive hereunder will be in lieu of any similar severance or termination compensation (compensation based directly on the Executive's annual salary or annual salary and bonus) to which the Executive may be entitled under any other Company or Affiliate severance or termination agreement, plan, program, policy, practice or arrangement (collectively, "Severance Plans"). The Executive affirmatively waives any rights he or she may have to payments or benefits provided under the Severance Plans to the extent the Executive receives similar payments or benefits under this Agreement. The Executive's entitlement to any compensation or benefits of a type not provided in this Agreement will be determined in accordance

with the Company's or its Affiliates' employee benefit plans and other applicable programs, policies and practices as in effect from time to time.

3.9 No Mitigation or Offset. In the event of any termination of the Executive's employment, the Executive shall not be required to seek other employment to mitigate damages, and any income earned by the Executive from other employment or self-employment shall not be offset against any obligations of the Company and its Affiliates to Executive under this Agreement.

**SECTION 4. Golden Parachute Tax.** It is the intention of the Company and the Executive that the Executive receive the full benefits available under this Agreement and any other agreement, plan, program, policy or similar arrangement providing for compensation or benefits in the event of a Change in Control. If a Change of Control occurs and a determination is made by legislation, regulation, ruling directed to the Executive or the Company, or court decision that the aggregate amount of any payment made to the Executive hereunder, or pursuant to any plan, program, policy or similar arrangement of the Company (or any subsidiary or affiliate or successor thereto) in connection with, on account of, or as a result of, such Change in Control constitutes "excess parachute payments" as defined in Code Section 280G (as well as any successor or similar sections thereof), subject to the excise tax provisions of Code Section 4999 (as well as any successor or similar sections thereof), the Executive shall be entitled to receive from the Company, in addition to any other amounts payable hereunder, a lump sum payment equal to 100% of such excise tax, plus an amount equal to the federal and state income tax, FICA, and Medicare taxes (based upon Executive's projected marginal income tax rates) on such lump sum payment. The amounts under this Section 4 shall be paid to Executive as soon as may be practicable after such final determination is made and in all events shall be made no later than the end of the Executive's taxable year next following his taxable year in which he remitted the related taxes. The Executive and the Company shall mutually and reasonably determine whether or not such determination has occurred or whether any appeal to such determination should be made.

**SECTION 5. Death During the Severance Period.** If the Executive dies during the Severance Period, any unpaid amounts shall be paid to the Executive's estate within ten (10) days following the Executive's death. The Executive's right to outplacement services described in Section 3.4 and continued participation in the life insurance and accident plans described in Sections 3.3 or 3.5 shall terminate as of the date of the Executive's death.

**SECTION 6. Amendments; Waiver.** This Agreement contains the entire agreement of the parties with respect to severance payments and benefits payable in connection with a Severance. No amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto. No waiver by either party of any breach by the other party of any provision or condition of this Agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

## **SECTION 7. General Provisions.**

7.1 Except as otherwise provided herein or by law, no right or interest of the Executive under this Agreement shall be assignable or transferable, in whole or in part, either directly or by operation of law or otherwise, including without limitation by execution, levy, garnishment, attachment, pledge or in any manner; no attempted assignment or transfer thereof shall be effective; and no right or interest of the Executive under this Agreement shall be liable for, or subject to, any obligation or liability of such Executive. When a payment is due under this Agreement to the Executive and the Executive is unable to care for his or her affairs, payment may be made directly to his or her guardian or personal representative.

7.2 If the Company or any Affiliate thereof is obligated by law or by contract to pay severance pay, a termination indemnity, notice pay, or the like, or if the Company or any Affiliate thereof is obligated by law or by contract to provide advance notice of separation ("Notice Period"), then any severance pay under this Agreement shall be reduced by the amount of any such severance pay, termination indemnity, notice pay or the like, as applicable, and by the amount of any compensation received during any Notice Period. If the Executive is entitled to benefits under the Workers Adjustment Retraining Notification Act of 1988, or any similar state or local statute or ordinance (collectively the "WARN Act"), severance pay under this Agreement shall be reduced dollar-for-dollar by any benefits received pursuant to the WARN Act.

7.3 Neither this Agreement, nor any modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving the Executive, or any person whomsoever, the right to be retained in the service of the Company or any Affiliate thereof, and the Executive shall remain subject to discharge to the same extent as if this Agreement had never existed.

7.4 If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed and enforced as if such provisions had not been included.

7.5 This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties, including the Executive, present and future, and any successor to the Company.

7.6 The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Agreement, and shall not be employed in the construction of this Agreement.

7.7 The Agreement shall not be required to be funded unless such funding is authorized by the Board. Regardless of whether the Agreement is funded, the Executive shall not have any right to, or interest in, any assets of any Company which may be applied by the Company to the payment of benefits or other rights under this Agreement. For purposes of clarity, nothing in this Section 7.7 shall be construed to relieve the Company or its Affiliates from their obligations to the Executive pursuant to this Agreement.



7.8 All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next-day delivery, with written verification of receipt. All communications shall be sent:

(i) To the Executive, at:

Last address in records of the Company

(ii) To the Company, at:

Treace Medical Concepts, Inc.  
203 Fort Wade Rd., Suite 150  
Ponte Vedra, FL 32081  
Attention: Chief Legal & Compliance Officer

7.9 This Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of Florida, without reference to principles of conflicts or choice of law under which the law of any other jurisdiction would apply.

7.10 The Company may withhold from any payments due to the Executive hereunder such amounts as are required to be withheld under applicable federal, state and local tax laws.

7.11 Notwithstanding anything to the contrary contained herein, nothing in this Agreement or the Restrictive Covenants Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (A) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (B) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

**SECTION 8. Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements, if any, understandings and arrangements, oral

or written, between the parties hereto with respect to severance, including, without limitation, the Prior Agreement, except for any equity acceleration provided in the Prior Plan and/or the Plan.

#### **SECTION 9. *Disputes.***

9.1 Except as provided in the Restrictive Covenants Agreement, any dispute or controversy arising under, out of, in connection with or in relation to this Agreement shall, at the election and upon written demand of any party to this Agreement, be finally determined and settled by arbitration in Jacksonville, Florida in accordance with the rules and procedures of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof.

9.2 If, with respect to any alleged failure by the Company or its Affiliates to comply with any of the terms of this Agreement, the Executive hires legal counsel with respect to this Agreement or institutes any negotiations or institutes or responds to legal action to assert or defend the validity of, enforce his rights under, or recover damages for breach of this Agreement, and thereafter the Company or its Affiliates are found in a judgment no longer subject to review or appeal to have breached this Agreement in any material respect, then the Company or its Affiliates (but not both) shall reimburse the Executive for his actual expenses for attorneys' fees and disbursements within thirty (30) days following receipt of any invoice for such expenses.

#### **SECTION 10. *Section 409A of the Code.***

10.1 It is intended that this Agreement shall comply with or be exempt from the provisions of Section 409A of the Code and the Treasury Regulations relating thereto, so as not to subject the Executive to the payment of additional taxes and interest under Section 409A of the Code. This Agreement shall be interpreted, operated, and administered in a manner consistent with and in furtherance of this intent.

10.2 Any payment required under this Agreement that is payable in installment payments shall be deemed to be a separate payment for purposes of Section 409A of the Code and the Treasury Regulations thereunder.

10.3 Notwithstanding any provision to the contrary in this Agreement, no payment or distribution under this Agreement which constitutes an item of deferred compensation under Section 409A of the Code and becomes payable by reason of the Executive's termination of employment with the Company or its Affiliates or an Executive's resignation for Good Reason will be made unless the Executive's termination of employment or resignation (as applicable) constitutes a Separation from Service. In addition and solely to the extent required by Code Section 409A, no such payment or distribution will be made to the Executive prior to the earlier of (a) the expiration of the six (6)-month period measured from the date of the Executive's "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A of the Code) or (b) the date of the Executive's death, if the Executive is deemed at the time of such separation from service to be a "specified employee" within the meaning of that term under Section 409A(a)(2) of the Code and to the extent such delayed commencement is otherwise required in order to avoid a prohibited

distribution under Section 409A(a)(2) of the Code. All payments and benefits which had been delayed pursuant to the immediately preceding sentence shall be paid (without interest) to the Executive in a lump sum upon expiration of such six-month period (or if earlier upon the Executive's death).

10.4 Notwithstanding anything to the contrary in this Agreement, to the extent that any payments due under this Agreement as a result of Executive's termination of employment are subject to Executive's execution and delivery of a Release, in any case where Executive's Severance Date and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are conditioned on the Release and are treated as nonqualified deferred compensation for purposes of Section 409A of the Code shall be made in the later taxable year. To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of Executive's termination of employment are delayed pursuant to this Section 10.4, such amounts shall be paid in a lump sum on the first payroll date to occur in the subsequent taxable year.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**TREACE MEDICAL CONCEPTS, INC.**

/s/ John T. Treace

John T. Treace

Chief Executive Officer

**EXECUTIVE**

/s/ Joe Ferguson

Joe W. Ferguson

**EXHIBIT A**  
**RELEASE AGREEMENT**  
(To be signed after the Severance Date) <sup>1</sup>

In return for payment of severance benefits pursuant to the Change in Control Severance Agreement between Treace Medical Concepts, Inc., and me (the "CIC Severance Agreement"), I hereby generally and completely release Treace Medical Concepts, Inc. ("Treace"), its parent and subsidiary entities (collectively the "Company"), and its or their directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, insurers, affiliates, and assigns (collectively "Released Parties"), from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release Agreement (the "Agreement"). This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all claims related to my compensation or benefits from the Company, including wages, salary, bonuses, commissions, vacation pay, expense reimbursements (to the extent permitted by applicable law), severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including without limitation claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including without limitation claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("ADEA"), the federal Worker Adjustment and Retraining Notification Act (as amended) and similar laws in other jurisdictions, the Employee Retirement Income Security Act of 1974 (as amended), the Family and Medical Leave Act of 1993, and any similar laws in other jurisdictions; provided, however, that this Release does not waive, release or otherwise discharge any claim or cause of action arising after the date I sign this Agreement.

This Agreement includes a release of claims of discrimination or retaliation on the basis of workers' compensation status, but does not include workers' compensation claims. Excluded from this Agreement are any claims which by law cannot be waived in a private agreement between employer and employee, including but not limited to the right to file a charge with or participate in an investigation conducted by the Equal Employment Opportunity Commission ("EEOC") or any state or local fair employment practices agency. I waive, however, any right to any monetary recovery or other relief should the EEOC or any other agency pursue a claim on my behalf.

I acknowledge and represent that I have not suffered any age or other discrimination, harassment, retaliation, or wrongful treatment by any Released Party. I also acknowledge and represent that I have not been denied any rights including, but not limited to, rights to a leave or reinstatement from a leave under the Family and Medical Leave Act of 1993, the Uniformed Services Employment and Reemployment Rights Act of 1994, or any similar law of any jurisdiction.

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<sup>1</sup> To be updated for any changes in applicable law.

I agree that I am voluntarily executing this Agreement. I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA, as amended by the Older Workers Benefit Protection Act of 1990, and that the consideration given for this Release is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release specified in this paragraph does not apply to any rights or claims that may arise after the date I sign this Agreement; (b) I have been advised to consult with an attorney prior to signing this Agreement; (c) if a "Severance" (as defined in the CIC Severance Agreement) involves an employment termination program, I have received a disclosure from the Company that includes a description of the class, unit or group of individuals covered by the program, the eligibility factors for such program, and any time limits applicable to such program and a list of job titles and ages of all employees selected for this group termination and ages of those individuals in the same job classification or organizational unit who were not selected for termination; (d) I have at least twenty-one (21) or forty-five (45) days, depending on the circumstances of my Severance, from the date that I receive this Release (although I may choose to sign it any time on or after my Severance Date (as defined in the CIC Severance Agreement)) to consider the release; (e) I have seven (7) calendar days after I sign this Release to revoke it ("Revocation Period") by sending my revocation to the Human Resources Manager in writing at 203 Fort Wade Rd., Suite 150, Ponte Vedra, FL 32081; and (f) this Agreement will not be effective until I have signed it and returned it to the Company's Corporate Secretary and the Revocation Period has expired.

I UNDERSTAND THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

---

Joe W. Ferguson

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Date

**EXHIBIT B**  
**RESTRICTIVE COVENANTS AGREEMENT**

See attached Employee Confidentiality, Nonsolicitation and Noncompete Agreement between Executive and the Company dated June 24, 2014.

**CHANGE IN CONTROL  
SEVERANCE AGREEMENT**

This CHANGE IN CONTROL SEVERANCE AGREEMENT is dated as of 5/21/2021, by and between TREACE MEDICAL CONCEPTS, INC., a Delaware corporation (the "Company"), and DIPAK A. RAJHANSA (the "Executive").

**PURPOSE**

In order to induce the Executive to remain in the employment of the Company and its Affiliates in the event of a potential Change in Control (as defined below) or potential involuntary terminations, the Company desires to enter into this Change in Control Severance Agreement (the "Agreement") to provide the Executive with certain benefits if the Executive's employment is terminated in connection with or following the occurrence of a Change in Control or upon certain qualifying terminations. This Agreement amends and restates and supersedes in its entirety that certain Change in Control Severance Agreement by and between the Company and Executive, dated as of October 5, 2020 (the "Prior Agreement"), and upon Executive's signature hereto, the Prior Agreement shall be of no further force or effect.

NOW, THEREFORE, in consideration of the respective agreements of the parties contained herein, it is agreed as follows:

**SECTION 1. Definitions**

For purposes of this Agreement, the following terms have the meanings set forth below:

"Affiliate" means, with respect to any individual or entity, any other individual or entity who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such individual or entity.

"Annual Base Salary." means the Executive's annual base salary in effect immediately before his or her Severance.

"Annual Target Bonus Opportunity" means the amount of the annual cash incentive payable to an Executive under a Company or Affiliate annual incentive plan with respect to a given fiscal year of the Company or Affiliate, as applicable, assuming that the target level of performance under the plan was achieved.

"Board" means the Board of Directors of the Company.

"Cause" shall mean:



(a) the Executive's willful and continued failure to attempt in good faith (other than as a result of incapacity due to mental or physical impairment) to substantially perform the duties of his or her position, and such failure is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(b) the Executive's failure to attempt in good faith to carry out, or comply with, in any material respect any lawful and reasonable directive of the Board or the Chief Executive Officer consistent with the duties of his or her position, which is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(c) a material breach by the Executive of the Company's code of ethics, which is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(d) the Executive's conviction, plea of no contest or plea of *nolo contendere*, or imposition of unadjudicated probation for any felony (other than a traffic violation or arising purely as a result of the Executive's position with the Company or an Affiliate and not in connection with any act or omission of the Executive);

(e) the Executive's knowing unlawful use (including being under the influence) or possession of illegal drugs; or

(f) the Executive's commission of a material bad faith act of fraud, embezzlement, misappropriation, willful misconduct, gross negligence, or breach of fiduciary duty, in each case against the Company or any Affiliate.

For the purposes of this definition, no act (or omission) that is (i) taken in good faith and (ii) not adverse to the best interests of the Company or its Affiliates shall be considered to be willful.

"Change in Control" shall have the same meaning as assigned to that term in the Company's 2021 Incentive Award Plan (or any successor to or replacement of such plan); *provided*, that such transaction must also constitute a "change in control event" within the meaning of Treasury Regulation Section 1.409A-3(i)(5).

"Change in Control Period" shall mean the period of time commencing three months prior to the closing of a Change in Control and ending 18 months following the closing of such Change in Control.

"Code" means the Internal Revenue Code of 1986, as amended.

"Disability" means a disability within the meaning of Code section 409A(a)(2)(C) and U.S. Treasury Regulations section 1.409A-3(i)(4) (or any successor provision).

“Effective Date” shall mean the date first set forth above.

“Good Reason” means the occurrence of any of the following events, unless the Executive otherwise consents in writing to such event:

- (a) a material reduction in the Executive’s Annual Base Salary (other than a reduction that is applicable to all similarly situated employees generally and that occurs outside a Change in Control Period);
- (b) with respect to a Change in Control Period only, a material reduction in the Executive’s Annual Target Bonus Opportunity as compared to his or her Annual Target Bonus Opportunity for the fiscal year of the Company in which the Change in Control occurred;
- (c) requiring the Executive to relocate his or her principal place of employment to a location more than fifty (50) miles from the Executive’s current principal place of employment; or
- (d) the failure or refusal by a successor or acquiring company, upon the consummation of a Change in Control, to (i) assume the obligations of the Company under this Agreement or (ii) assume obligations to Executive that are substantially equivalent to or more favorable than the obligations under this Agreement.

The Executive shall provide the Company with a written notice of resignation within ninety (90) days following the occurrence of the event constituting Good Reason and the Company (or its Affiliate, if applicable) shall have a period of thirty (30) days following its receipt of such notice in which to cure such event without such event constituting Good Reason. If the Company (or its Affiliate, if applicable) does not cure the condition or conditions by the end of such thirty (30) day period, the Executive may voluntarily terminate employment within thirty (30) days after the last day of the thirty (30) day cure period. The Executive’s voluntary termination of employment other than in accordance with the requirements of this definition shall not constitute termination for Good Reason.

“Release” means a general release of claims against the Company and the other persons specified therein in the form attached hereto as Exhibit A, or in such other form as is required to comply with applicable law.

“Separation from Service” means a “separation from service” with the Company within the meaning of Section 409A of the Code and the Department of Treasury regulations and other guidance promulgated thereunder.

“Severance” means (a) the involuntary termination of the Executive’s employment by the Company or any Affiliate thereof, other than for Cause, death or Disability or (b) a termination of the Executive’s employment with the Company and its Affiliates by the Executive for Good Reason in each case that, to the extent necessary, constitutes a Separation from Service.

“Severance Date” means the date on which the Executive incurs a Severance.

“Severance Period” means the period following the Executive’s Severance pursuant to which the Company owes payments and/or benefits to the Executive pursuant to this Agreement.

“Treasury Regulations” means the final, temporary or proposed regulations issued by the Treasury Department and/or Internal Revenue Service as modified in Title 26 of The United States Code of Federal Regulations. Any references made in this Agreement to specific Treasury Regulations shall also refer to any successor or replacement regulations thereto.

**SECTION 2. *Term of Agreement.*** The term of this Agreement (the “Term”) will commence on the Effective Date, and will continue until (a) in the event the Executive’s employment is terminated for any reason other than the Executive’s Severance, the date of such termination of employment, or (b) in the event the Executive incurs a Severance, the date on which the Company has fulfilled all obligations owed to the Executive pursuant to this Agreement.

**SECTION 3. *Severance Benefits***

3.1 Generally. Subject to Sections 3.6, 5 and 7.2 of this Agreement, the Executive shall be entitled to the severance payments and benefits described below.

3.2 Payment of Accrued Obligations. The Company shall pay to the Executive upon the Executive’s Severance a lump sum payment in cash, paid in accordance with applicable law, as soon as practicable but no later than ten (10) days after the Severance Date, equal to the sum of (a) the Executive’s accrued annual base salary and any accrued vacation pay through the Severance Date, and (b) any annual bonus earned by the Executive from the year preceding the Severance Date but not yet paid as of the Severance Date.

3.3 Severance Payments and Benefits Outside of a Change in Control Period. Subject to Section 3.6, upon the Executive’s Severance that occurs outside of a Change in Control Period, then in addition to the payments and benefits set forth in Section 3.2 above, the Company shall provide Executive with the following:

(a) During the period of time commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date, the Company shall continue to pay Executive his/her Annual Base Salary. Such payments shall be made in accordance with the Company’s standard payroll practices, less applicable withholdings, beginning on the first payroll date following the date the Release becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below, and with the first installment including any amounts that would have been paid had the Release been effective and irrevocable on the Severance Date.

(b) Executive shall be entitled to receive an amount equal to 100% percent of Executive’s Annual Target Bonus Opportunity (pro-rated based on the number of days Executive was employed by the Company during the calendar year in which the Severance Date occurs), payable at the same time annual bonuses are paid generally to other executives

of the Company for the relevant year, less applicable withholdings and deductions, but in no event later than March 15<sup>th</sup> of the year immediately following that in which the Severance Date occurs.

(c) The Company shall directly pay Executive's total COBRA premiums for the period commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date of COBRA continuation coverage under the Company's health benefit plan (i.e., medical, dental and vision coverage) (the "Non-CiC COBRA Period"). To the extent permitted by applicable law, Executive shall have the right to change Executive's coverage elections under the Company's health benefit plan during the COBRA continuation period and any such change in elections shall not reduce or eliminate the Company's obligation to pay applicable premiums. Notwithstanding Section 3.3(c), in the event that (i) the direct COBRA payment arrangement described in Section 3.3(c) would result in adverse tax consequences for the Executive under Code Section 105(h) (or similar law), (ii) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A of the Code under Treasury Regulation Section 1.409A-1(a)(5), or (iii) the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), the Company shall pay to the Executive an amount equal to one hundred and twenty five percent (125%) of the total premiums the Executive would be required to pay for the remaining Non-CiC COBRA Period under the Company's health benefit plan, determined using the COBRA premium rate in effect for the level of coverage that the Executive has in place immediately prior to the Severance Date (the "COBRA Payment"). The Company shall pay the COBRA Payment in substantially equal monthly installments over the remaining Non-CiC COBRA Period. In the event that the Company makes a payment pursuant to this Section 3.3(c), the Executive shall not be required to purchase COBRA continuation coverage in order to receive the COBRA Payment nor shall the Executive be required to apply the COBRA Payment to payment of applicable premiums for COBRA continuation coverage.

(d) In addition, to the extent permitted by applicable law and the Company's applicable benefit plans, during the Non-CiC COBRA Period the Company shall permit the Executive (and his or her eligible dependents) to participate in any optional life insurance and optional personal accident plans of the Company for which senior executives of the Company are eligible, to the same extent and at the same premium rates as if the Executive had continued to be an employee of the Company during such period.

3.4 Outplacement Services. Subject to Section 3.6, in addition to the benefits provided in Sections 3.3 and 3.5, upon Executive's Severance (whether during or outside a Change in Control Period), the Executive shall be entitled to receive outplacement services of up to \$10,000 for the period ending on the first anniversary of the Executive's Severance Date.

3.5 Severance Payments and Benefits During a Change in Control Period. Subject to Section 3.6, upon the Executive's Severance that occurs during a Change in Control Period, then, in

lieu of the severance payments and benefits set forth in Section 3.3 above and in addition to the payments and benefits set forth in Section 3.2 above, the Company shall provide Executive with the following:

(a) During the period of time commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date, the Company shall continue to pay Executive his/her Annual Base Salary. Such payments shall be made in accordance with the Company's standard payroll practices, less applicable withholdings, beginning on the first payroll date following the date the Release becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below, and with the first installment including any amounts that would have been paid had the Release been effective and irrevocable on the Severance Date.

(b) Executive shall be entitled to receive an amount equal to one hundred (100%) of Executive's Annual Target Bonus Opportunity, payable in a cash lump sum, less applicable withholdings, on the first payroll date following the date the Release becomes effective and irrevocable becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below.

(c) The Company shall directly pay Executive's total COBRA premiums for the period commencing on the Severance Date and ending on the eighteen (18) month anniversary of the Severance Date of COBRA continuation coverage under the Company's health benefit plan (i.e., medical, dental and vision coverage) (the "CiC COBRA Period"). To the extent permitted by applicable law, Executive shall have the right to change Executive's coverage elections under the Company's health benefit plan during the COBRA continuation period and any such change in elections shall not reduce or eliminate the Company's obligation to pay applicable premiums. Notwithstanding Section 3.5(c), in the event that (i) the direct COBRA payment arrangement described in Section 3.5(c) would result in adverse tax consequences for the Executive under Code Section 105(h) (or similar law), (ii) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A of the Code under Treasury Regulation Section 1.409A-1(a)(5), or (iii) the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), the Company shall pay to the Executive an amount equal to one hundred and twenty five percent (125%) of the total premiums the Executive would be required to pay for the remaining CiC COBRA Period under the Company's health benefit plan, determined using the COBRA premium rate in effect for the level of coverage that the Executive has in place immediately prior to the Severance Date (the "COBRA Payment"). The Company shall pay the COBRA Payment shall be paid in substantially equal monthly installments over the remaining CiC COBRA Period. In the event that the Company makes a payment pursuant to this Section 3.5(c), the Executive shall not be required to purchase COBRA continuation coverage in order to receive the COBRA Payment nor shall the Executive be required to apply the COBRA Payment to payment of applicable premiums for COBRA continuation coverage.

(d) In addition, to the extent permitted by applicable law and the Company's applicable benefit plans, during the CiC COBRA Period the Company shall permit the Executive (and his or her eligible dependents) to participate in any optional life insurance and optional personal accident plans of the Company for which senior executives of the Company are eligible, to the same extent and at the same premium rates as if the Executive had continued to be an employee of the Company during such period.

(e) In addition, each outstanding and unvested equity award (excluding any such awards that vest in whole or in part based on the attainment of performance-vesting conditions), including, without limitation, each restricted stock, stock option, restricted stock unit and stock appreciation right, held by Executive shall be subject to the accelerated vesting as set forth in the Plan (or, with respect to awards granted under the Company's 2014 Stock Plan (the "Prior Plan"), any accelerated vesting upon a Change in Control provided under the Prior Plan).

3.6 Release and Restrictive Covenant Agreement. The Executive shall be eligible to receive the payments and other benefits under this Agreement (other than payments under Section 3.2) only if after the Severance Date (a) the Executive first executes the Release in favor of the Company and others attached hereto as Exhibit A and the Release has not been revoked by the Executive, by the sixtieth (60th) day following the Severance Date (or such short time specified by the Company) (such date, the "Release Expiration Date"), and (b) the Executive provides the Company written attestation that the Confidentiality, Non-Competition, Non-Solicitation and Inventions Agreement attached hereto as Exhibit B (the "Restrictive Covenants Agreement") is in effect and enforceable. If the Executive does not execute and return the Release and attestation such that either or both agreements do not become effective (or, in the case of the Release, is revoked) before the Release Expiration Date immediately following the Severance Date, the Executive shall not be entitled to any payments or benefits under this Agreement (other than payments under Section 3.2).

3.7 Forfeiture. If the Executive is found in a judgment no longer subject to review or appeal to have breached the obligations set forth in the Restrictive Covenants Agreement, then the Executive shall immediately forfeit any amounts payable or benefits to be received and shall promptly reimburse the Company any amounts actually paid to the Executive pursuant to this Agreement (other than payments made pursuant to Section 3.2).

3.8 No Duplication of Benefits. Except as otherwise noted herein, during the Term of this Agreement the compensation to be paid to the Executive hereunder will be in lieu of any similar severance or termination compensation (compensation based directly on the Executive's annual salary or annual salary and bonus) to which the Executive may be entitled under any other Company or Affiliate severance or termination agreement, plan, program, policy, practice or arrangement (collectively, "Severance Plans"). The Executive affirmatively waives any rights he or she may have to payments or benefits provided under the Severance Plans to the extent the Executive receives similar payments or benefits under this Agreement. The Executive's entitlement to any compensation or benefits of a type not provided in this Agreement will be determined in accordance

with the Company's or its Affiliates' employee benefit plans and other applicable programs, policies and practices as in effect from time to time.

3.9 No Mitigation or Offset. In the event of any termination of the Executive's employment, the Executive shall not be required to seek other employment to mitigate damages, and any income earned by the Executive from other employment or self-employment shall not be offset against any obligations of the Company and its Affiliates to Executive under this Agreement.

**SECTION 4. Golden Parachute Tax.** It is the intention of the Company and the Executive that the Executive receive the full benefits available under this Agreement and any other agreement, plan, program, policy or similar arrangement providing for compensation or benefits in the event of a Change in Control. If a Change of Control occurs and a determination is made by legislation, regulation, ruling directed to the Executive or the Company, or court decision that the aggregate amount of any payment made to the Executive hereunder, or pursuant to any plan, program, policy or similar arrangement of the Company (or any subsidiary or affiliate or successor thereto) in connection with, on account of, or as a result of, such Change in Control constitutes "excess parachute payments" as defined in Code Section 280G (as well as any successor or similar sections thereof), subject to the excise tax provisions of Code Section 4999 (as well as any successor or similar sections thereof), the Executive shall be entitled to receive from the Company, in addition to any other amounts payable hereunder, a lump sum payment equal to 100% of such excise tax, plus an amount equal to the federal and state income tax, FICA, and Medicare taxes (based upon Executive's projected marginal income tax rates) on such lump sum payment. The amounts under this Section 4 shall be paid to Executive as soon as may be practicable after such final determination is made and in all events shall be made no later than the end of the Executive's taxable year next following his taxable year in which he remitted the related taxes. The Executive and the Company shall mutually and reasonably determine whether or not such determination has occurred or whether any appeal to such determination should be made.

**SECTION 5. Death During the Severance Period.** If the Executive dies during the Severance Period, any unpaid amounts shall be paid to the Executive's estate within ten (10) days following the Executive's death. The Executive's right to outplacement services described in Section 3.4 and continued participation in the life insurance and accident plans described in Sections 3.3 or 3.5 shall terminate as of the date of the Executive's death.

**SECTION 6. Amendments; Waiver.** This Agreement contains the entire agreement of the parties with respect to severance payments and benefits payable in connection with a Severance. No amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto. No waiver by either party of any breach by the other party of any provision or condition of this Agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

## **SECTION 7. General Provisions.**

7.1 Except as otherwise provided herein or by law, no right or interest of the Executive under this Agreement shall be assignable or transferable, in whole or in part, either directly or by operation of law or otherwise, including without limitation by execution, levy, garnishment, attachment, pledge or in any manner; no attempted assignment or transfer thereof shall be effective; and no right or interest of the Executive under this Agreement shall be liable for, or subject to, any obligation or liability of such Executive. When a payment is due under this Agreement to the Executive and the Executive is unable to care for his or her affairs, payment may be made directly to his or her guardian or personal representative.

7.2 If the Company or any Affiliate thereof is obligated by law or by contract to pay severance pay, a termination indemnity, notice pay, or the like, or if the Company or any Affiliate thereof is obligated by law or by contract to provide advance notice of separation ("Notice Period"), then any severance pay under this Agreement shall be reduced by the amount of any such severance pay, termination indemnity, notice pay or the like, as applicable, and by the amount of any compensation received during any Notice Period. If the Executive is entitled to benefits under the Workers Adjustment Retraining Notification Act of 1988, or any similar state or local statute or ordinance (collectively the "WARN Act"), severance pay under this Agreement shall be reduced dollar-for-dollar by any benefits received pursuant to the WARN Act.

7.3 Neither this Agreement, nor any modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving the Executive, or any person whomsoever, the right to be retained in the service of the Company or any Affiliate thereof, and the Executive shall remain subject to discharge to the same extent as if this Agreement had never existed.

7.4 If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed and enforced as if such provisions had not been included.

7.5 This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties, including the Executive, present and future, and any successor to the Company.

7.6 The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Agreement, and shall not be employed in the construction of this Agreement.

7.7 The Agreement shall not be required to be funded unless such funding is authorized by the Board. Regardless of whether the Agreement is funded, the Executive shall not have any right to, or interest in, any assets of any Company which may be applied by the Company to the payment of benefits or other rights under this Agreement. For purposes of clarity, nothing in this Section 7.7 shall be construed to relieve the Company or its Affiliates from their obligations to the Executive pursuant to this Agreement.



7.8 All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next-day delivery, with written verification of receipt. All communications shall be sent:

(i) To the Executive, at:

Last address in records of the Company

(ii) To the Company, at:

Treace Medical Concepts, Inc.  
203 Fort Wade Rd., Suite 150  
Ponte Vedra, FL 32081  
Attention: Chief Legal & Compliance Officer

7.9 This Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of Florida, without reference to principles of conflicts or choice of law under which the law of any other jurisdiction would apply.

7.10 The Company may withhold from any payments due to the Executive hereunder such amounts as are required to be withheld under applicable federal, state and local tax laws.

7.11 Notwithstanding anything to the contrary contained herein, nothing in this Agreement or the Restrictive Covenants Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (A) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (B) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

**SECTION 8. Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements, if any, understandings and arrangements, oral

or written, between the parties hereto with respect to severance, including, without limitation, the Prior Agreement, except for any equity acceleration provided in the Prior Plan and/or the Plan.

#### **SECTION 9. *Disputes.***

9.1 Except as provided in the Restrictive Covenants Agreement, any dispute or controversy arising under, out of, in connection with or in relation to this Agreement shall, at the election and upon written demand of any party to this Agreement, be finally determined and settled by arbitration in Jacksonville, Florida in accordance with the rules and procedures of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof.

9.2 If, with respect to any alleged failure by the Company or its Affiliates to comply with any of the terms of this Agreement, the Executive hires legal counsel with respect to this Agreement or institutes any negotiations or institutes or responds to legal action to assert or defend the validity of, enforce his rights under, or recover damages for breach of this Agreement, and thereafter the Company or its Affiliates are found in a judgment no longer subject to review or appeal to have breached this Agreement in any material respect, then the Company or its Affiliates (but not both) shall reimburse the Executive for his actual expenses for attorneys' fees and disbursements within thirty (30) days following receipt of any invoice for such expenses.

#### **SECTION 10. *Section 409A of the Code.***

10.1 It is intended that this Agreement shall comply with or be exempt from the provisions of Section 409A of the Code and the Treasury Regulations relating thereto, so as not to subject the Executive to the payment of additional taxes and interest under Section 409A of the Code. This Agreement shall be interpreted, operated, and administered in a manner consistent with and in furtherance of this intent.

10.2 Any payment required under this Agreement that is payable in installment payments shall be deemed to be a separate payment for purposes of Section 409A of the Code and the Treasury Regulations thereunder.

10.3 Notwithstanding any provision to the contrary in this Agreement, no payment or distribution under this Agreement which constitutes an item of deferred compensation under Section 409A of the Code and becomes payable by reason of the Executive's termination of employment with the Company or its Affiliates or an Executive's resignation for Good Reason will be made unless the Executive's termination of employment or resignation (as applicable) constitutes a Separation from Service. In addition and solely to the extent required by Code Section 409A, no such payment or distribution will be made to the Executive prior to the earlier of (a) the expiration of the six (6)-month period measured from the date of the Executive's "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A of the Code) or (b) the date of the Executive's death, if the Executive is deemed at the time of such separation from service to be a "specified employee" within the meaning of that term under Section 409A(a)(2) of the Code and to the extent such delayed commencement is otherwise required in order to avoid a prohibited

distribution under Section 409A(a)(2) of the Code. All payments and benefits which had been delayed pursuant to the immediately preceding sentence shall be paid (without interest) to the Executive in a lump sum upon expiration of such six-month period (or if earlier upon the Executive's death).

10.4 Notwithstanding anything to the contrary in this Agreement, to the extent that any payments due under this Agreement as a result of Executive's termination of employment are subject to Executive's execution and delivery of a Release, in any case where Executive's Severance Date and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are conditioned on the Release and are treated as nonqualified deferred compensation for purposes of Section 409A of the Code shall be made in the later taxable year. To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of Executive's termination of employment are delayed pursuant to this Section 10.4, such amounts shall be paid in a lump sum on the first payroll date to occur in the subsequent taxable year.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**TREACE MEDICAL CONCEPTS, INC.**

/s/ John T. Treace

John T. Treace

Chief Executive Officer

**EXECUTIVE**

/s/ Dipak A. Rajhansa

Dipak A. Rajhansa

**EXHIBIT A**  
**RELEASE AGREEMENT**  
(To be signed after the Severance Date) <sup>1</sup>

In return for payment of severance benefits pursuant to the Change in Control Severance Agreement between Treace Medical Concepts, Inc., and me (the "CIC Severance Agreement"), I hereby generally and completely release Treace Medical Concepts, Inc. ("Treace"), its parent and subsidiary entities (collectively the "Company"), and its or their directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, insurers, affiliates, and assigns (collectively "Released Parties"), from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release Agreement (the "Agreement"). This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all claims related to my compensation or benefits from the Company, including wages, salary, bonuses, commissions, vacation pay, expense reimbursements (to the extent permitted by applicable law), severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including without limitation claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including without limitation claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("ADEA"), the federal Worker Adjustment and Retraining Notification Act (as amended) and similar laws in other jurisdictions, the Employee Retirement Income Security Act of 1974 (as amended), the Family and Medical Leave Act of 1993, and any similar laws in other jurisdictions; provided, however, that this Release does not waive, release or otherwise discharge any claim or cause of action arising after the date I sign this Agreement.

This Agreement includes a release of claims of discrimination or retaliation on the basis of workers' compensation status, but does not include workers' compensation claims. Excluded from this Agreement are any claims which by law cannot be waived in a private agreement between employer and employee, including but not limited to the right to file a charge with or participate in an investigation conducted by the Equal Employment Opportunity Commission ("EEOC") or any state or local fair employment practices agency. I waive, however, any right to any monetary recovery or other relief should the EEOC or any other agency pursue a claim on my behalf.

I acknowledge and represent that I have not suffered any age or other discrimination, harassment, retaliation, or wrongful treatment by any Released Party. I also acknowledge and represent that I have not been denied any rights including, but not limited to, rights to a leave or reinstatement from a leave under the Family and Medical Leave Act of 1993, the Uniformed Services Employment and Reemployment Rights Act of 1994, or any similar law of any jurisdiction.

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<sup>1</sup> To be updated for any changes in applicable law.

I agree that I am voluntarily executing this Agreement. I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA, as amended by the Older Workers Benefit Protection Act of 1990, and that the consideration given for this Release is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release specified in this paragraph does not apply to any rights or claims that may arise after the date I sign this Agreement; (b) I have been advised to consult with an attorney prior to signing this Agreement; (c) if a "Severance" (as defined in the CIC Severance Agreement) involves an employment termination program, I have received a disclosure from the Company that includes a description of the class, unit or group of individuals covered by the program, the eligibility factors for such program, and any time limits applicable to such program and a list of job titles and ages of all employees selected for this group termination and ages of those individuals in the same job classification or organizational unit who were not selected for termination; (d) I have at least twenty-one (21) or forty-five (45) days, depending on the circumstances of my Severance, from the date that I receive this Release (although I may choose to sign it any time on or after my Severance Date (as defined in the CIC Severance Agreement)) to consider the release; (e) I have seven (7) calendar days after I sign this Release to revoke it ("Revocation Period") by sending my revocation to the Human Resources Manager in writing at 203 Fort Wade Rd., Suite 150, Ponte Vedra, FL 32081; and (f) this Agreement will not be effective until I have signed it and returned it to the Company's Corporate Secretary and the Revocation Period has expired.

I UNDERSTAND THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

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Dipak A. Rajhansa

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Date

**EXHIBIT B**  
**RESTRICTIVE COVENANTS AGREEMENT**

See attached Employee Confidentiality, Nonsolicitation and Noncompete Agreement between Executive and the Company dated July 25, 2017.

**CHANGE IN CONTROL  
SEVERANCE AGREEMENT**

This CHANGE IN CONTROL SEVERANCE AGREEMENT is dated as of 5/23/2021, by and between TREACE MEDICAL CONCEPTS, INC., a Delaware corporation (the "Company"), and SEAN F. SCANLAN (the "Executive").

**PURPOSE**

In order to induce the Executive to remain in the employment of the Company and its Affiliates in the event of a potential Change in Control (as defined below) or potential involuntary terminations, the Company desires to enter into this Change in Control Severance Agreement (the "Agreement") to provide the Executive with certain benefits if the Executive's employment is terminated in connection with or following the occurrence of a Change in Control or upon certain qualifying terminations. This Agreement amends and restates and supersedes in its entirety that certain Change in Control Severance Agreement by and between the Company and Executive, dated as of October 5, 2020 (the "Prior Agreement"), and upon Executive's signature hereto, the Prior Agreement shall be of no further force or effect.

NOW, THEREFORE, in consideration of the respective agreements of the parties contained herein, it is agreed as follows:

**SECTION 1. Definitions**

For purposes of this Agreement, the following terms have the meanings set forth below:

"Affiliate" means, with respect to any individual or entity, any other individual or entity who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such individual or entity.

"Annual Base Salary." means the Executive's annual base salary in effect immediately before his or her Severance.

"Annual Target Bonus Opportunity" means the amount of the annual cash incentive payable to an Executive under a Company or Affiliate annual incentive plan with respect to a given fiscal year of the Company or Affiliate, as applicable, assuming that the target level of performance under the plan was achieved.

"Board" means the Board of Directors of the Company.

"Cause" shall mean:



(a) the Executive's willful and continued failure to attempt in good faith (other than as a result of incapacity due to mental or physical impairment) to substantially perform the duties of his or her position, and such failure is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(b) the Executive's failure to attempt in good faith to carry out, or comply with, in any material respect any lawful and reasonable directive of the Board or the Chief Executive Officer consistent with the duties of his or her position, which is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(c) a material breach by the Executive of the Company's code of ethics, which is not remedied within 30 days after receipt of written notice from the Board or the Chief Executive Officer specifying such failure;

(d) the Executive's conviction, plea of no contest or plea of *nolo contendere*, or imposition of unadjudicated probation for any felony (other than a traffic violation or arising purely as a result of the Executive's position with the Company or an Affiliate and not in connection with any act or omission of the Executive);

(e) the Executive's knowing unlawful use (including being under the influence) or possession of illegal drugs; or

(f) the Executive's commission of a material bad faith act of fraud, embezzlement, misappropriation, willful misconduct, gross negligence, or breach of fiduciary duty, in each case against the Company or any Affiliate.

For the purposes of this definition, no act (or omission) that is (i) taken in good faith and (ii) not adverse to the best interests of the Company or its Affiliates shall be considered to be willful.

"Change in Control" shall have the same meaning as assigned to that term in the Company's 2021 Incentive Award Plan (or any successor to or replacement of such plan); *provided*, that such transaction must also constitute a "change in control event" within the meaning of Treasury Regulation Section 1.409A-3(i)(5).

"Change in Control Period" shall mean the period of time commencing three months prior to the closing of a Change in Control and ending 18 months following the closing of such Change in Control.

"Code" means the Internal Revenue Code of 1986, as amended.

"Disability" means a disability within the meaning of Code section 409A(a)(2)(C) and U.S. Treasury Regulations section 1.409A-3(i)(4) (or any successor provision).

“Effective Date” shall mean the date first set forth above.

“Good Reason” means the occurrence of any of the following events, unless the Executive otherwise consents in writing to such event:

- (a) a material reduction in the Executive’s Annual Base Salary (other than a reduction that is applicable to all similarly situated employees generally and that occurs outside a Change in Control Period);
- (b) with respect to a Change in Control Period only, a material reduction in the Executive’s Annual Target Bonus Opportunity as compared to his or her Annual Target Bonus Opportunity for the fiscal year of the Company in which the Change in Control occurred;
- (c) requiring the Executive to relocate his or her principal place of employment to a location more than fifty (50) miles from the Executive’s current principal place of employment; or
- (d) the failure or refusal by a successor or acquiring company, upon the consummation of a Change in Control, to (i) assume the obligations of the Company under this Agreement or (ii) assume obligations to Executive that are substantially equivalent to or more favorable than the obligations under this Agreement.

The Executive shall provide the Company with a written notice of resignation within ninety (90) days following the occurrence of the event constituting Good Reason and the Company (or its Affiliate, if applicable) shall have a period of thirty (30) days following its receipt of such notice in which to cure such event without such event constituting Good Reason. If the Company (or its Affiliate, if applicable) does not cure the condition or conditions by the end of such thirty (30) day period, the Executive may voluntarily terminate employment within thirty (30) days after the last day of the thirty (30) day cure period. The Executive’s voluntary termination of employment other than in accordance with the requirements of this definition shall not constitute termination for Good Reason.

“Release” means a general release of claims against the Company and the other persons specified therein in the form attached hereto as Exhibit A, or in such other form as is required to comply with applicable law.

“Separation from Service” means a “separation from service” with the Company within the meaning of Section 409A of the Code and the Department of Treasury regulations and other guidance promulgated thereunder.

“Severance” means (a) the involuntary termination of the Executive’s employment by the Company or any Affiliate thereof, other than for Cause, death or Disability or (b) a termination of the Executive’s employment with the Company and its Affiliates by the Executive for Good Reason in each case that, to the extent necessary, constitutes a Separation from Service.

“Severance Date” means the date on which the Executive incurs a Severance.

“Severance Period” means the period following the Executive’s Severance pursuant to which the Company owes payments and/or benefits to the Executive pursuant to this Agreement.

“Treasury Regulations” means the final, temporary or proposed regulations issued by the Treasury Department and/or Internal Revenue Service as modified in Title 26 of The United States Code of Federal Regulations. Any references made in this Agreement to specific Treasury Regulations shall also refer to any successor or replacement regulations thereto.

**SECTION 2. *Term of Agreement.*** The term of this Agreement (the “Term”) will commence on the Effective Date, and will continue until (a) in the event the Executive’s employment is terminated for any reason other than the Executive’s Severance, the date of such termination of employment, or (b) in the event the Executive incurs a Severance, the date on which the Company has fulfilled all obligations owed to the Executive pursuant to this Agreement.

**SECTION 3. *Severance Benefits***

3.1 Generally. Subject to Sections 3.6, 5 and 7.2 of this Agreement, the Executive shall be entitled to the severance payments and benefits described below.

3.2 Payment of Accrued Obligations. The Company shall pay to the Executive upon the Executive’s Severance a lump sum payment in cash, paid in accordance with applicable law, as soon as practicable but no later than ten (10) days after the Severance Date, equal to the sum of (a) the Executive’s accrued annual base salary and any accrued vacation pay through the Severance Date, and (b) any annual bonus earned by the Executive from the year preceding the Severance Date but not yet paid as of the Severance Date.

3.3 Severance Payments and Benefits Outside of a Change in Control Period. Subject to Section 3.6, upon the Executive’s Severance that occurs outside of a Change in Control Period, then in addition to the payments and benefits set forth in Section 3.2 above, the Company shall provide Executive with the following:

(a) During the period of time commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date, the Company shall continue to pay Executive his/her Annual Base Salary. Such payments shall be made in accordance with the Company’s standard payroll practices, less applicable withholdings, beginning on the first payroll date following the date the Release becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below, and with the first installment including any amounts that would have been paid had the Release been effective and irrevocable on the Severance Date.

(b) Executive shall be entitled to receive an amount equal to 100% percent of Executive’s Annual Target Bonus Opportunity (pro-rated based on the number of days Executive was employed by the Company during the calendar year in which the Severance Date occurs), payable at the same time annual bonuses are paid generally to other executives

of the Company for the relevant year, less applicable withholdings and deductions, but in no event later than March 15<sup>th</sup> of the year immediately following that in which the Severance Date occurs.

(c) The Company shall directly pay Executive's total COBRA premiums for the period commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date of COBRA continuation coverage under the Company's health benefit plan (i.e., medical, dental and vision coverage) (the "Non-CiC COBRA Period"). To the extent permitted by applicable law, Executive shall have the right to change Executive's coverage elections under the Company's health benefit plan during the COBRA continuation period and any such change in elections shall not reduce or eliminate the Company's obligation to pay applicable premiums. Notwithstanding Section 3.3(c), in the event that (i) the direct COBRA payment arrangement described in Section 3.3(c) would result in adverse tax consequences for the Executive under Code Section 105(h) (or similar law), (ii) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A of the Code under Treasury Regulation Section 1.409A-1(a)(5), or (iii) the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), the Company shall pay to the Executive an amount equal to one hundred and twenty five percent (125%) of the total premiums the Executive would be required to pay for the remaining Non-CiC COBRA Period under the Company's health benefit plan, determined using the COBRA premium rate in effect for the level of coverage that the Executive has in place immediately prior to the Severance Date (the "COBRA Payment"). The Company shall pay the COBRA Payment in substantially equal monthly installments over the remaining Non-CiC COBRA Period. In the event that the Company makes a payment pursuant to this Section 3.3(c), the Executive shall not be required to purchase COBRA continuation coverage in order to receive the COBRA Payment nor shall the Executive be required to apply the COBRA Payment to payment of applicable premiums for COBRA continuation coverage.

(d) In addition, to the extent permitted by applicable law and the Company's applicable benefit plans, during the Non-CiC COBRA Period the Company shall permit the Executive (and his or her eligible dependents) to participate in any optional life insurance and optional personal accident plans of the Company for which senior executives of the Company are eligible, to the same extent and at the same premium rates as if the Executive had continued to be an employee of the Company during such period.

3.4 Outplacement Services. Subject to Section 3.6, in addition to the benefits provided in Sections 3.3 and 3.5, upon Executive's Severance (whether during or outside a Change in Control Period), the Executive shall be entitled to receive outplacement services of up to \$10,000 for the period ending on the first anniversary of the Executive's Severance Date.

3.5 Severance Payments and Benefits During a Change in Control Period. Subject to Section 3.6, upon the Executive's Severance that occurs during a Change in Control Period, then, in

lieu of the severance payments and benefits set forth in Section 3.3 above and in addition to the payments and benefits set forth in Section 3.2 above, the Company shall provide Executive with the following:

(a) During the period of time commencing on the Severance Date and ending on the twelve (12) month anniversary of the Severance Date, the Company shall continue to pay Executive his/her Annual Base Salary. Such payments shall be made in accordance with the Company's standard payroll practices, less applicable withholdings, beginning on the first payroll date following the date the Release becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below, and with the first installment including any amounts that would have been paid had the Release been effective and irrevocable on the Severance Date.

(b) Executive shall be entitled to receive an amount equal to one hundred (100%) of Executive's Annual Target Bonus Opportunity, payable in a cash lump sum, less applicable withholdings, on the first payroll date following the date the Release becomes effective and irrevocable becomes effective and irrevocable in accordance with Sections 3.6 and 10.4 below.

(c) The Company shall directly pay Executive's total COBRA premiums for the period commencing on the Severance Date and ending on the eighteen (18) month anniversary of the Severance Date of COBRA continuation coverage under the Company's health benefit plan (i.e., medical, dental and vision coverage) (the "CiC COBRA Period"). To the extent permitted by applicable law, Executive shall have the right to change Executive's coverage elections under the Company's health benefit plan during the COBRA continuation period and any such change in elections shall not reduce or eliminate the Company's obligation to pay applicable premiums. Notwithstanding Section 3.5(c), in the event that (i) the direct COBRA payment arrangement described in Section 3.5(c) would result in adverse tax consequences for the Executive under Code Section 105(h) (or similar law), (ii) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A of the Code under Treasury Regulation Section 1.409A-1(a)(5), or (iii) the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), the Company shall pay to the Executive an amount equal to one hundred and twenty five percent (125%) of the total premiums the Executive would be required to pay for the remaining CiC COBRA Period under the Company's health benefit plan, determined using the COBRA premium rate in effect for the level of coverage that the Executive has in place immediately prior to the Severance Date (the "COBRA Payment"). The Company shall pay the COBRA Payment shall be paid in substantially equal monthly installments over the remaining CiC COBRA Period. In the event that the Company makes a payment pursuant to this Section 3.5(c), the Executive shall not be required to purchase COBRA continuation coverage in order to receive the COBRA Payment nor shall the Executive be required to apply the COBRA Payment to payment of applicable premiums for COBRA continuation coverage.

(d) In addition, to the extent permitted by applicable law and the Company's applicable benefit plans, during the CiC COBRA Period the Company shall permit the Executive (and his or her eligible dependents) to participate in any optional life insurance and optional personal accident plans of the Company for which senior executives of the Company are eligible, to the same extent and at the same premium rates as if the Executive had continued to be an employee of the Company during such period.

(e) In addition, each outstanding and unvested equity award (excluding any such awards that vest in whole or in part based on the attainment of performance-vesting conditions), including, without limitation, each restricted stock, stock option, restricted stock unit and stock appreciation right, held by Executive shall be subject to the accelerated vesting as set forth in the Plan (or, with respect to awards granted under the Company's 2014 Stock Plan (the "Prior Plan"), any accelerated vesting upon a Change in Control provided under the Prior Plan).

3.6 Release and Restrictive Covenant Agreement. The Executive shall be eligible to receive the payments and other benefits under this Agreement (other than payments under Section 3.2) only if after the Severance Date (a) the Executive first executes the Release in favor of the Company and others attached hereto as Exhibit A and the Release has not been revoked by the Executive, by the sixtieth (60th) day following the Severance Date (or such short time specified by the Company) (such date, the "Release Expiration Date"), and (b) the Executive provides the Company written attestation that the Confidentiality, Non-Competition, Non-Solicitation and Inventions Agreement attached hereto as Exhibit B (the "Restrictive Covenants Agreement") is in effect and enforceable. If the Executive does not execute and return the Release and attestation such that either or both agreements do not become effective (or, in the case of the Release, is revoked) before the Release Expiration Date immediately following the Severance Date, the Executive shall not be entitled to any payments or benefits under this Agreement (other than payments under Section 3.2).

3.7 Forfeiture. If the Executive is found in a judgment no longer subject to review or appeal to have breached the obligations set forth in the Restrictive Covenants Agreement, then the Executive shall immediately forfeit any amounts payable or benefits to be received and shall promptly reimburse the Company any amounts actually paid to the Executive pursuant to this Agreement (other than payments made pursuant to Section 3.2).

3.8 No Duplication of Benefits. Except as otherwise noted herein, during the Term of this Agreement the compensation to be paid to the Executive hereunder will be in lieu of any similar severance or termination compensation (compensation based directly on the Executive's annual salary or annual salary and bonus) to which the Executive may be entitled under any other Company or Affiliate severance or termination agreement, plan, program, policy, practice or arrangement (collectively, "Severance Plans"). The Executive affirmatively waives any rights he or she may have to payments or benefits provided under the Severance Plans to the extent the Executive receives similar payments or benefits under this Agreement. The Executive's entitlement to any compensation or benefits of a type not provided in this Agreement will be determined in accordance

with the Company's or its Affiliates' employee benefit plans and other applicable programs, policies and practices as in effect from time to time.

3.9 No Mitigation or Offset. In the event of any termination of the Executive's employment, the Executive shall not be required to seek other employment to mitigate damages, and any income earned by the Executive from other employment or self-employment shall not be offset against any obligations of the Company and its Affiliates to Executive under this Agreement.

**SECTION 4. Golden Parachute Tax.** It is the intention of the Company and the Executive that the Executive receive the full benefits available under this Agreement and any other agreement, plan, program, policy or similar arrangement providing for compensation or benefits in the event of a Change in Control. If a Change of Control occurs and a determination is made by legislation, regulation, ruling directed to the Executive or the Company, or court decision that the aggregate amount of any payment made to the Executive hereunder, or pursuant to any plan, program, policy or similar arrangement of the Company (or any subsidiary or affiliate or successor thereto) in connection with, on account of, or as a result of, such Change in Control constitutes "excess parachute payments" as defined in Code Section 280G (as well as any successor or similar sections thereof), subject to the excise tax provisions of Code Section 4999 (as well as any successor or similar sections thereof), the Executive shall be entitled to receive from the Company, in addition to any other amounts payable hereunder, a lump sum payment equal to 100% of such excise tax, plus an amount equal to the federal and state income tax, FICA, and Medicare taxes (based upon Executive's projected marginal income tax rates) on such lump sum payment. The amounts under this Section 4 shall be paid to Executive as soon as may be practicable after such final determination is made and in all events shall be made no later than the end of the Executive's taxable year next following his taxable year in which he remitted the related taxes. The Executive and the Company shall mutually and reasonably determine whether or not such determination has occurred or whether any appeal to such determination should be made.

**SECTION 5. Death During the Severance Period.** If the Executive dies during the Severance Period, any unpaid amounts shall be paid to the Executive's estate within ten (10) days following the Executive's death. The Executive's right to outplacement services described in Section 3.4 and continued participation in the life insurance and accident plans described in Sections 3.3 or 3.5 shall terminate as of the date of the Executive's death.

**SECTION 6. Amendments; Waiver.** This Agreement contains the entire agreement of the parties with respect to severance payments and benefits payable in connection with a Severance. No amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto. No waiver by either party of any breach by the other party of any provision or condition of this Agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

## **SECTION 7. General Provisions.**

7.1 Except as otherwise provided herein or by law, no right or interest of the Executive under this Agreement shall be assignable or transferable, in whole or in part, either directly or by operation of law or otherwise, including without limitation by execution, levy, garnishment, attachment, pledge or in any manner; no attempted assignment or transfer thereof shall be effective; and no right or interest of the Executive under this Agreement shall be liable for, or subject to, any obligation or liability of such Executive. When a payment is due under this Agreement to the Executive and the Executive is unable to care for his or her affairs, payment may be made directly to his or her guardian or personal representative.

7.2 If the Company or any Affiliate thereof is obligated by law or by contract to pay severance pay, a termination indemnity, notice pay, or the like, or if the Company or any Affiliate thereof is obligated by law or by contract to provide advance notice of separation ("Notice Period"), then any severance pay under this Agreement shall be reduced by the amount of any such severance pay, termination indemnity, notice pay or the like, as applicable, and by the amount of any compensation received during any Notice Period. If the Executive is entitled to benefits under the Workers Adjustment Retraining Notification Act of 1988, or any similar state or local statute or ordinance (collectively the "WARN Act"), severance pay under this Agreement shall be reduced dollar-for-dollar by any benefits received pursuant to the WARN Act.

7.3 Neither this Agreement, nor any modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving the Executive, or any person whomsoever, the right to be retained in the service of the Company or any Affiliate thereof, and the Executive shall remain subject to discharge to the same extent as if this Agreement had never existed.

7.4 If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed and enforced as if such provisions had not been included.

7.5 This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties, including the Executive, present and future, and any successor to the Company.

7.6 The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Agreement, and shall not be employed in the construction of this Agreement.

7.7 The Agreement shall not be required to be funded unless such funding is authorized by the Board. Regardless of whether the Agreement is funded, the Executive shall not have any right to, or interest in, any assets of any Company which may be applied by the Company to the payment of benefits or other rights under this Agreement. For purposes of clarity, nothing in this Section 7.7 shall be construed to relieve the Company or its Affiliates from their obligations to the Executive pursuant to this Agreement.



7.8 All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next-day delivery, with written verification of receipt. All communications shall be sent:

(i) To the Executive, at:

Last address in records of the Company

(ii) To the Company, at:

Treace Medical Concepts, Inc.  
203 Fort Wade Rd., Suite 150  
Ponte Vedra, FL 32081  
Attention: Chief Legal & Compliance Officer

7.9 This Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of Florida, without reference to principles of conflicts or choice of law under which the law of any other jurisdiction would apply.

7.10 The Company may withhold from any payments due to the Executive hereunder such amounts as are required to be withheld under applicable federal, state and local tax laws.

7.11 Notwithstanding anything to the contrary contained herein, nothing in this Agreement or the Restrictive Covenants Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (A) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (B) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

**SECTION 8. Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements, if any, understandings and arrangements, oral

or written, between the parties hereto with respect to severance, including, without limitation, the Prior Agreement, except for any equity acceleration provided in the Prior Plan and/or the Plan.

#### **SECTION 9. *Disputes.***

9.1 Except as provided in the Restrictive Covenants Agreement, any dispute or controversy arising under, out of, in connection with or in relation to this Agreement shall, at the election and upon written demand of any party to this Agreement, be finally determined and settled by arbitration in Jacksonville, Florida in accordance with the rules and procedures of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof.

9.2 If, with respect to any alleged failure by the Company or its Affiliates to comply with any of the terms of this Agreement, the Executive hires legal counsel with respect to this Agreement or institutes any negotiations or institutes or responds to legal action to assert or defend the validity of, enforce his rights under, or recover damages for breach of this Agreement, and thereafter the Company or its Affiliates are found in a judgment no longer subject to review or appeal to have breached this Agreement in any material respect, then the Company or its Affiliates (but not both) shall reimburse the Executive for his actual expenses for attorneys' fees and disbursements within thirty (30) days following receipt of any invoice for such expenses.

#### **SECTION 10. *Section 409A of the Code.***

10.1 It is intended that this Agreement shall comply with or be exempt from the provisions of Section 409A of the Code and the Treasury Regulations relating thereto, so as not to subject the Executive to the payment of additional taxes and interest under Section 409A of the Code. This Agreement shall be interpreted, operated, and administered in a manner consistent with and in furtherance of this intent.

10.2 Any payment required under this Agreement that is payable in installment payments shall be deemed to be a separate payment for purposes of Section 409A of the Code and the Treasury Regulations thereunder.

10.3 Notwithstanding any provision to the contrary in this Agreement, no payment or distribution under this Agreement which constitutes an item of deferred compensation under Section 409A of the Code and becomes payable by reason of the Executive's termination of employment with the Company or its Affiliates or an Executive's resignation for Good Reason will be made unless the Executive's termination of employment or resignation (as applicable) constitutes a Separation from Service. In addition and solely to the extent required by Code Section 409A, no such payment or distribution will be made to the Executive prior to the earlier of (a) the expiration of the six (6)-month period measured from the date of the Executive's "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A of the Code) or (b) the date of the Executive's death, if the Executive is deemed at the time of such separation from service to be a "specified employee" within the meaning of that term under Section 409A(a)(2) of the Code and to the extent such delayed commencement is otherwise required in order to avoid a prohibited

distribution under Section 409A(a)(2) of the Code. All payments and benefits which had been delayed pursuant to the immediately preceding sentence shall be paid (without interest) to the Executive in a lump sum upon expiration of such six-month period (or if earlier upon the Executive's death).

10.4 Notwithstanding anything to the contrary in this Agreement, to the extent that any payments due under this Agreement as a result of Executive's termination of employment are subject to Executive's execution and delivery of a Release, in any case where Executive's Severance Date and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are conditioned on the Release and are treated as nonqualified deferred compensation for purposes of Section 409A of the Code shall be made in the later taxable year. To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of Executive's termination of employment are delayed pursuant to this Section 10.4, such amounts shall be paid in a lump sum on the first payroll date to occur in the subsequent taxable year.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**TREACE MEDICAL CONCEPTS, INC.**

/s/ John T. Treace

John T. Treace

Chief Executive Officer

**EXECUTIVE**

/s/ Sean F. Scanlan

Sean F. Scanlan

**EXHIBIT A**  
**RELEASE AGREEMENT**  
(To be signed after the Severance Date) <sup>1</sup>

In return for payment of severance benefits pursuant to the Change in Control Severance Agreement between Treace Medical Concepts, Inc., and me (the "CIC Severance Agreement"), I hereby generally and completely release Treace Medical Concepts, Inc. ("Treace"), its parent and subsidiary entities (collectively the "Company"), and its or their directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, insurers, affiliates, and assigns (collectively "Released Parties"), from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release Agreement (the "Agreement"). This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all claims related to my compensation or benefits from the Company, including wages, salary, bonuses, commissions, vacation pay, expense reimbursements (to the extent permitted by applicable law), severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including without limitation claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including without limitation claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("ADEA"), the federal Worker Adjustment and Retraining Notification Act (as amended) and similar laws in other jurisdictions, the Employee Retirement Income Security Act of 1974 (as amended), the Family and Medical Leave Act of 1993, and any similar laws in other jurisdictions; provided, however, that this Release does not waive, release or otherwise discharge any claim or cause of action arising after the date I sign this Agreement.

This Agreement includes a release of claims of discrimination or retaliation on the basis of workers' compensation status, but does not include workers' compensation claims. Excluded from this Agreement are any claims which by law cannot be waived in a private agreement between employer and employee, including but not limited to the right to file a charge with or participate in an investigation conducted by the Equal Employment Opportunity Commission ("EEOC") or any state or local fair employment practices agency. I waive, however, any right to any monetary recovery or other relief should the EEOC or any other agency pursue a claim on my behalf.

I acknowledge and represent that I have not suffered any age or other discrimination, harassment, retaliation, or wrongful treatment by any Released Party. I also acknowledge and represent that I have not been denied any rights including, but not limited to, rights to a leave or reinstatement from a leave under the Family and Medical Leave Act of 1993, the Uniformed Services Employment and Reemployment Rights Act of 1994, or any similar law of any jurisdiction.

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<sup>1</sup> To be updated for any changes in applicable law.

I agree that I am voluntarily executing this Agreement. I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA, as amended by the Older Workers Benefit Protection Act of 1990, and that the consideration given for this Release is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release specified in this paragraph does not apply to any rights or claims that may arise after the date I sign this Agreement; (b) I have been advised to consult with an attorney prior to signing this Agreement; (c) if a "Severance" (as defined in the CIC Severance Agreement) involves an employment termination program, I have received a disclosure from the Company that includes a description of the class, unit or group of individuals covered by the program, the eligibility factors for such program, and any time limits applicable to such program and a list of job titles and ages of all employees selected for this group termination and ages of those individuals in the same job classification or organizational unit who were not selected for termination; (d) I have at least twenty-one (21) or forty-five (45) days, depending on the circumstances of my Severance, from the date that I receive this Release (although I may choose to sign it any time on or after my Severance Date (as defined in the CIC Severance Agreement)) to consider the release; (e) I have seven (7) calendar days after I sign this Release to revoke it ("Revocation Period") by sending my revocation to the Human Resources Manager in writing at 203 Fort Wade Rd., Suite 150, Ponte Vedra, FL 32081; and (f) this Agreement will not be effective until I have signed it and returned it to the Company's Corporate Secretary and the Revocation Period has expired.

I UNDERSTAND THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

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Sean F. Scanlan

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Date

**EXHIBIT B**  
**RESTRICTIVE COVENANTS AGREEMENT**

See attached Employee Confidentiality, Nonsolicitation and Noncompete Agreement between Executive and the Company dated November 24, 2014.

**CERTIFICATION 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**

I, John T. Treace, certify that:

1. I have reviewed this Form 10-Q of Treace Medical Concepts, 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(s) 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)) 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, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) [Reserved];
  - (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(s) 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: August 5, 2021

By: \_\_\_\_\_ /s/ John T. Treace

**John T. Treace**  
**Chief Executive Officer (Principal Executive Officer)**



**CERTIFICATION 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**

I, Mark L. Hair, certify that:

1. I have reviewed this Form 10-Q of Treace Medical Concepts, 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(s) 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)) 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 is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) [Reserved];
  - (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(s) 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: August 5, 2021

By: \_\_\_\_\_ /s/ Mark L. Hair  
**Mark L. Hair**  
**Chief Financial Officer**  
**(Principal Financial and Accounting Officer)**



