

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, 2018

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

Commission File Number 001-38538

electroCore, Inc.

(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

20-3454976

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

150 Allen Road, Suite 201, Basking Ridge, NJ 07920
(Address of principal executive offices, including zip code)

(973) 290-0097

(Registrant's telephone number, including area code)

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes No

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input checked="" type="checkbox"/>		

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

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

As of August 6, 2018, the registrant had 29,450,034 shares of common stock outstanding.

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In this Quarterly Report on Form 10-Q, unless otherwise stated or the context otherwise requires references to the “Company,” “electroCore,” “we,” “us” and “our” following the date of the Corporate Conversion (June 21, 2018) refer to electroCore, Inc. a Delaware corporation, and its subsidiaries and affiliate; references to the “Company,” “electroCore,” “we,” “us” and “our” prior to the date of the Corporate Conversion refer to ElectroCore, LLC, a Delaware limited liability company, and its subsidiaries and affiliate; and references to the “Corporate Conversion” or “corporate conversion” refer to all of the transactions related to the statutory conversion of ElectroCore, LLC from a Delaware limited liability company to a Delaware corporation and the change of its name to electroCore, Inc., effected on June 21, 2018.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed in the forward-looking statements. The statements contained in this report that are not purely historical are forward-looking statements within the meaning of 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”). Forward-looking statements are often identified by the use of words such as, but not limited to, “anticipate,” “believe,” “can,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “project,” “seek,” “should,” “strategy,” “target,” “will,” “would” and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those included in our prospectus dated June 21, 2018, filed with the SEC described under “Risk Factors” and in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in this Quarterly Report and elsewhere in this Quarterly Report on Form 10-Q. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

The electroCore logo, gammaCore and other trademarks of electroCore, Inc. appearing in this Quarterly Report on Form 10-Q are the property of electroCore, Inc. All other trademarks, service marks and trade names in this Quarterly Report on Form 10-Q are the property of their respective owners. We have omitted the ® and ™ designations, as applicable, for the trademarks used in this Quarterly Report on Form 10-Q.

ELECTROCORE, INC. SUBSIDIARIES AND AFFILIATE

Consolidated Balance Sheets

	<u>June 30,</u> <u>2018</u>	<u>December 31,</u> <u>2017</u>
	(Unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	\$ 88,357,844	\$ 13,224,194
Debt securities and other investments available for sale	7,468,710	23,950,566
Accounts receivable, net	298,237	103,209
Inventories	751,949	327,787
Prepaid expenses and other current assets	2,857,358	570,755
Deferred financing costs	—	856,895
Total current assets	<u>99,734,098</u>	<u>39,033,406</u>
Property and equipment – net	377,357	168,646
Security deposits	30,604	30,604
Total assets	<u>\$ 100,142,059</u>	<u>\$ 39,232,656</u>
Liabilities, Convertible Preferred Units and Stockholders' and Members' Equity/(Deficit)		
Current liabilities:		
Accounts payable and accrued expenses	\$ 6,885,486	\$ 3,879,775
Warrant liability	—	2,239,544
Other current liabilities	28,341	—
Total current liabilities	<u>6,913,827</u>	<u>6,119,319</u>
Noncurrent liabilities:		
Deferred rent	279,362	306,886
Total liabilities	<u>7,193,189</u>	<u>6,426,205</u>
Commitments and contingencies (Note 17)		
Convertible preferred units:		
Series A Preferred Units, 0 Units authorized at June 30, 2018 and 71,050,860 at December 31, 2017; 0 Units issued and outstanding at June 30, 2018 and 70,918,506 at December 31, 2017	—	53,518,463
Series B Preferred Units, 0 Units authorized at June 30, 2018 and 123,000,000 at December 31, 2017; 0 Units issued and outstanding at June 30, 2018 and 105,186,020 at December 31, 2017	—	68,755,544
Series B-1 Preferred Units, 0 Units authorized at June 30, 2018 and December 31, 2017; 0 Units issued and outstanding at June 30, 2018 and December 31, 2017	—	—
Total convertible preferred units	<u>—</u>	<u>122,274,007</u>
Stockholders'/members' equity/(deficit):		
Common Units, 0 Units authorized at June 30, 2018 and 600,000,000 December 31, 2017; 0 Units issued and outstanding at June 30, 2018 and 218,982,140 December 31, 2017	—	40,180,619
Preferred Stock, par value \$0.001 per share; 10,000,000 shares authorized at June 30, 2018, 0 shares authorized at December 31, 2017; 0 shares issued and outstanding at June 30, 2018 and December 31, 2017	—	—
Common stock, par value \$0.001 per share; 500,000,000 shares authorized at June 30, 2018, 0 shares authorized at December 31, 2017; 29,450,034 shares issued and outstanding at June 30, 2018 and 0 at December 31, 2017	29,450	—
Additional paid-in capital	102,033,462	22,596,485
Accumulated deficit	(9,791,391)	(152,928,928)
Accumulated other comprehensive income	41,740	80,213
Total equity/(deficit) attributable to electroCore, Inc., subsidiaries and affiliate	<u>92,313,261</u>	<u>(90,071,611)</u>
Noncontrolling interest	635,609	604,055
Total stockholders' equity/members' /(deficit)	<u>92,948,870</u>	<u>(89,467,556)</u>
Total liabilities, convertible preferred units and stockholders' equity/members' equity	<u>\$ 100,142,059</u>	<u>\$ 39,232,656</u>

See accompanying notes to consolidated financial statements.

ELECTROCORE, INC. SUBSIDIARIES AND AFFILIATE

Consolidated Statements of Operations
(Unaudited)

	Three months ended June 30,		Six months ended June 30,	
	2018	2017	2018	2017
Net sales	\$ 393,226	\$ 176,555	\$ 474,413	\$ 293,488
Cost of goods sold	240,488	38,749	289,435	111,495
Gross profit	152,738	137,806	184,978	181,993
Operating expenses:				
Research and development	4,367,070	2,771,439	6,673,405	4,497,996
Selling, general and administrative	12,007,206	4,797,604	18,832,020	7,856,866
Total operating expenses	16,374,276	7,569,043	25,505,425	12,354,862
Loss from operations	(16,221,538)	(7,431,237)	(25,320,447)	(12,172,869)
Other expense/(income)				
Interest expense	—	3,433,663	—	4,473,756
Amortization of debt issuance costs	—	293,375	—	562,537
Change in fair value of warrant liability	1,625,069	196,678	1,870,923	374,654
Change in fair value of derivative instrument related to convertible bridge notes	—	220,100	—	348,163
Interest and other income, net	(115,327)	(3,222)	(224,610)	(3,222)
Other expense	50,818	2,185	258,871	2,185
Total other expense/(income)	1,560,560	4,142,779	1,905,184	5,758,073
Net loss	(17,782,098)	(11,574,016)	(27,225,631)	(17,930,942)
Less: Net income/(loss) attributable to noncontrolling interest	—	(6,045)	55,005	(6,045)
Total net loss attributable to Electrocore LLC and electroCore, Inc.	\$ (17,782,098)	\$ (11,567,971)	\$ (27,280,636)	\$ (17,924,897)
Net loss attributable to Electrocore, LLC subsidiaries and affiliate	\$ (11,619,799)	\$ (11,567,971)	\$ (21,118,337)	\$ (17,924,897)
Net loss attributable to electroCore, Inc. subsidiaries and affiliate	\$ (6,162,299)	\$ —	\$ (6,162,299)	\$ —
Net loss per share of common stock - Basic and Diluted (see Note 11)	\$ (0.21)	\$ —	\$ (0.21)	\$ —
Weighted average and potential shares outstanding - Basic and Diluted (see Note 11)	29,261,942	—	29,261,942	—

See accompanying notes to consolidated financial statements.

ELECTROCORE, INC. SUBSIDIARIES AND AFFILIATE

Consolidated Statements of Comprehensive Loss
(Unaudited)

	Three months ended June 30,		Six months ended June 30,	
	2018	2017	2018	2017
Net loss	(17,782,098)	(11,574,016)	\$ (27,225,631)	\$ (17,930,942)
Other comprehensive (loss) income:				
Foreign currency translation adjustment	61,680	(54,682)	(52,649)	(40,915)
Amount reclassified from accumulated OCI	11,025	—	11,025	—
Unrealized gains on securities, net of taxes as applicable	28,083	—	3,151	—
Other comprehensive (loss) income	100,788	(54,682)	(38,473)	(40,915)
Comprehensive loss	(17,681,310)	(11,628,698)	(27,264,104)	(17,971,857)
Less: Net comprehensive (loss)/income attributable to noncontrolling interest	—	(3,399)	5,085	4,535
Comprehensive loss attributable to electroCore, Inc. subsidiaries and affiliates	<u>\$ (17,681,310)</u>	<u>\$ (11,625,299)</u>	<u>\$ (27,269,189)</u>	<u>\$ (17,976,392)</u>
Comprehensive loss attributable to Electrocore, LLC subsidiaries and affiliate	(11,530,087)	(11,625,299)	(21,118,056)	(17,976,392)
Comprehensive loss attributable to electroCore, Inc. subsidiaries and affiliate	(6,151,223)	—	(6,151,133)	—

See accompanying notes to consolidated financial statements.

ELECTROCORE, INC. SUBSIDIARIES AND AFFILIATE

Consolidated Statements of Changes in Convertible Preferred Units, Members' (Deficit) and Stockholders' Equity
(Unaudited)

	Convertible Preferred Units				Electrocore LLC at December 31, 2017 and electroCore, Inc. at June 30, 2018									
	Series A Preferred Units		Series B Preferred Units		Common Units		Common Stock		Additional paid-in	Accumulated	Accumulated other comprehensive	Deficit attributable to electroCore, Inc. subsidiaries	Noncontrolling	Total stockholders'/ members' equity/
	Units	Amount	Units	Amount	Units	Amount	Shares	Amount	capital	deficit	income	and affiliates	interest	(deficit)
Balances as of January 1, 2017	70,918,506	\$ 53,518,463	—	\$ —	90,711,018	\$ 30,912,091	—	\$ —	\$ 8,126,416	\$ (100,706,419)	\$ 214,006	\$ (61,453,906)	\$ 400,421	\$ (61,053,485)
Net loss										(35,792,423)		(35,792,423)	(236,358)	(36,028,781)
Other comprehensive income											(133,793)	(133,793)		(133,793)
Issuance of Series B Preferred Units, net			105,186,020	68,755,544	18,340,000	4,074,447			(2,012,611)			2,061,836		2,061,836
Noncontrolling interest contributions													439,992	439,992
Unit-based compensation									462,329			462,329		462,329
Common Units issued in connection with convertible bridge notes, net					36,565,948	5,194,081			(409,735)			4,784,346		4,784,346
Common Units issued in exchange for elimination of preference					73,365,174									
Common Units issued for initial funding of Series B Preferred Units									16,430,086	(16,430,086)				
Balances as of December 31, 2017	<u>70,918,506</u>	<u>\$ 53,518,463</u>	<u>105,186,020</u>	<u>\$ 68,755,544</u>	<u>218,982,140</u>	<u>\$ 40,180,619</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 22,596,485</u>	<u>\$ (152,928,928)</u>	<u>\$ 80,213</u>	<u>\$ (90,071,611)</u>	<u>\$ 604,055</u>	<u>\$ (89,467,556)</u>
Net loss attributable to Electrocore, LLC subsidiaries and affiliates										(21,118,337)	(5,085)	(21,123,422)	60,090	(21,063,332)
Reclass of accumulated deficit to APIC									(174,047,265)	174,047,265				
Other comprehensive income											(33,388)	(33,388)	(5,085)	(38,473)
Conversion of Series A preferred units to common stock	(70,918,506)	(53,518,463)					3,939,917	3,940	53,514,523			53,518,463		53,518,463
Conversion of Series B preferred units to common stock			(105,186,020)	(68,755,544)			5,843,668	5,844	68,749,700			68,755,544		68,755,544
Conversion of members common units to common stock					(218,982,140)	(40,180,619)	12,099,280	12,099	40,168,520					
Stock dividend issued to Series A preferred holders							241,939	242	3,628,850	(3,629,092)				
Common stock issued related to initial public offering							5,980,000	5,980	89,692,675			89,698,655		89,698,655
Issuance costs related to initial public offering									(12,012,086)			(12,012,086)		(12,012,086)
Reclass of warrant liability to equity									4,110,467			4,110,467		4,110,467
Noncontrolling interest distributions													(23,451)	(23,451)
Stock issued upon conversion of profit interests							1,345,230	1,345				1,345		1,345
Stock and Unit-based compensation									5,631,593			5,631,593		5,631,593
Net loss attributable to electroCore, Inc. subsidiaries and affiliates										(6,162,299)		(6,162,299)		(6,162,299)
Balances as of June 30, 2018	<u>—</u>	<u>\$ —</u>	<u>—</u>	<u>\$ —</u>	<u>—</u>	<u>—</u>	<u>29,450,034</u>	<u>\$ 29,450</u>	<u>\$ 102,033,462</u>	<u>\$ (9,791,391)</u>	<u>\$ 41,740</u>	<u>\$ 92,313,261</u>	<u>\$ 635,609</u>	<u>\$ 92,948,870</u>

See accompanying notes to consolidated financial statements

ELECTROCORE, INC SUBSIDIARIES AND AFFILIATE

Consolidated Statements of Cash Flows
(Unaudited)

	Six months ended June 30,	
	2018	2017
Cash flows from operating activities:		
Net loss	\$ (27,225,631)	\$ (17,930,942)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization of debt discount and debt issuance costs	—	4,328,900
Change in fair value of warrants and embedded derivative	1,870,923	722,817
Non-cash interest expense on convertible bridge notes	—	707,393
Stock/unit-based compensation	5,631,593	116,574
Depreciation and amortization	21,064	14,718
Other	19,062	(47,556)
Changes in operating assets and liabilities:		
Accounts receivable, net	(195,028)	(144,344)
Inventories	(424,162)	(239,243)
Prepaid expenses and other current assets	(2,286,602)	(60,291)
Accounts payable and accrued expenses	1,647,468	1,833,146
Deferred rent	(27,524)	(21,315)
Net cash used in operating activities	<u>(20,968,837)</u>	<u>(10,720,143)</u>
Cash flows from investing activities:		
Purchase of debt securities and other investments available for sale	(10,434,519)	—
Proceeds from maturities of debt securities and other investments available for sale	26,916,375	—
Purchases of property and equipment	(229,774)	(61,737)
Net cash provided by (used in) investing activities	<u>16,252,082</u>	<u>(61,737)</u>
Cash flows from financing activities:		
Sale of common stock, net of related expenses	79,895,818	—
Proceeds from issuance of convertible bridge notes	—	19,965,692
Financing costs related to the issuance of convertible bridge notes	—	(1,030,490)
Net cash provided by financing activities	<u>79,895,818</u>	<u>18,935,202</u>
Effect of changes in exchange rates on cash and cash equivalents	(45,413)	(5,602)
Net increase in cash and cash equivalents	75,133,650	8,147,720
Cash and cash equivalents – beginning of period	13,224,194	416,336
Cash and cash equivalents – end of period	<u>\$ 88,357,844</u>	<u>\$ 8,564,056</u>
Supplemental schedule of noncash financing activity:		
Series A preferred units converted to common stock	\$ 53,518,463	\$ —
Series B preferred units converted to common stock	68,755,544	—
Members common units converted to common stock	40,180,619	—
Reclass of warrant liability to additional paid in capital	4,110,467	—
Reclass of deferred financing costs to additional paid in capital	856,985	—
Deferred financing costs included in accounts payable and accrued expenses	1,358,244	—
Stock dividend distribution in connection with IPO	3,629,092	—
Series B warrants issued in connection with convertible bridge notes	—	2,620,681
Debt issuance cost included in accounts payable	—	140,459
Common units issued in connection with convertible bridge notes	—	5,194,081

See accompanying notes to consolidated financial statements.

ELECTROCORE, INC. SUBSIDIARIES AND AFFILIATE

Notes to Consolidated Financial Statements

(Unaudited)

Note 1. Corporate Organization and Company Overview

Company Overview

electroCore, Inc. is a bioelectronic medicine company, engaged in the commercialization and development of a range of patient-administered non-invasive Vagus Nerve Stimulation (“nVNS”) therapies initially focused on the treatment of multiple conditions in neurology, rheumatology and other fields. electroCore was founded in 2005 and its focus currently is on primary headache (migraine and cluster headache), with trials continuing in other neurological and inflammatory disorders.

electroCore, headquartered in New Jersey, has wholly owned subsidiaries which include: electroCore Bermuda, Ltd., electroCore Germany GmbH, and electroCore UK Ltd. In addition, an affiliate, electroCore (Aust) Pty Limited, is subject to electroCore’s control on bases other than voting interests and is a variable interest entity (“VIE”), for which electroCore is the primary beneficiary.

In January 2018, the U.S. Food and Drug Administration (“FDA”) released the use of gammaCore, the Company's first generation disposable non-invasive vagus nerve stimulator therapy for the treatment of pain associated with migraine headache in adult patients. Previously in April 2017, the FDA released the use of gammaCore for the acute treatment of pain associated with episodic cluster headache in adult patients. In December 2017, gammaCore’s successor, Sapphire was FDA released. gammaCore Sapphire is a rechargeable and reloadable version of our product for multi-year use. Effective August 1, 2018, the Company announced gammaCore Sapphire was available in the United States. In general, the Company will no longer market the disposable version of gammaCore in markets where the gammaCore Sapphire has launched.

Corporate Conversion and Initial Public Offering

Effective June 21, 2018, the Company converted into a Delaware corporation pursuant to a statutory conversion and changed its name to electroCore, Inc. Previously, the Company operated as a Delaware limited liability company under the name Electrocore, LLC. As a result of the corporate conversion, the holders of the different series of units of Electrocore, LLC, or Units, became holders of common stock and options to purchase common stock of electroCore, Inc. Warrants to purchase Units were converted to warrants to purchase common stock of electroCore, Inc. The number of shares of common stock, options to purchase common stock, and warrants to purchase common stock that holders of Units and warrants to purchase Units were entitled to receive in the corporate conversion was determined in accordance with a plan of conversion, which was based upon the terms of the Third Amended and Restated Limited Liability Company Agreement, dated November 21, 2017 (the “Operating Agreement”), and varied depending on which class and series of Units a holder owned, and the terms of the applicable warrants. See “Corporate Conversion and Equity, Note 12.”

In June 2018, the Company completed its initial public offering (“IPO”) and issued 5,980,000 shares of common stock, including the underwriter’s exercise of their right to purchase additional shares, at an initial offering price to the public of \$15.00. We received net proceeds from the IPO of approximately \$77.7 million, after deducting underwriting discounts and commissions and offering costs of approximately \$12.0 million. The underwriters were Evercore Group L.L.C., Cantor Fitzgerald & Co., JMP Securities, LLC, and BTIG, LLC.

Shares of common stock began trading on the Nasdaq Global Market on June 22, 2018, and began trading on the Nasdaq Global Select Market on June 25, 2018, under the symbol “ECOR”. The shares were registered under the Securities Act, on a registration statement on Form S-1, which was declared effective by the Securities and Exchange Commission (“SEC”), on June 21, 2018.

The Company expects to use the proceeds from the IPO (i) to hire additional territory business managers and expand marketing programs to prepare for the full commercial launch of the gammaCore products; (ii) to fund the research and development of gammaCore products for other indications in headache and rheumatology; (iii) to fund the build out of a specialty distribution channel for the launch of gammaCore Sapphire in the third quarter of 2018; and (iv) the remainder to fund working capital and general corporate purposes.

Note 2. Basis of Presentation

The accompanying unaudited consolidated financial statements were prepared in conformity with U.S. generally accepted accounting principles (“U.S. GAAP”) and with Article 10 of Regulation S-X for interim financial reporting. In compliance with those rules, certain information and footnote disclosures normally included in annual consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted. These consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and related notes for the fiscal year ended December 31, 2017 included in our prospectus dated June 21, 2018 filed with the SEC, pursuant to Rule 424(b) under the Securities Act. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair statement of the results of interim periods have been included. The results of operations and cash flows reported in these consolidated financial statements should not be regarded as necessarily indicative of results that may be expected for the entire fiscal year.

Note 3. Summary of Significant Accounting Policies**(a) Principles of Consolidation**

The accompanying consolidated financial statements include the accounts of electroCore, Inc. and its wholly owned subsidiaries. electroCore (Aust) Pty Limited, a VIE for which electroCore is the primary beneficiary, is also consolidated with the non-controlled equity presented as non-controlling interest. All intercompany balances and transactions have been eliminated in consolidation.

(b) Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of these consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include the useful lives of fixed assets, allowances for doubtful accounts, valuation of inventory, warrants, stock compensation, vouchers for gammaCore, valuation of deferred taxes, and contingencies.

(c) Recently Adopted Accounting Pronouncements

In May 2014, the FASB issued Accounting Standard Update (ASU) 2014-09, Revenue from Contracts with Customers (“ASC 606”). ASC 606 provides a comprehensive framework under which revenue is recognized when an entity transfers promised goods and services to a customer in an amount that reflects the consideration an entity is entitled to receive in exchange for those goods and services. Furthermore, ASC 606 contains expanded disclosure requirements to enable users of the financial statements to better understand the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers.

The Company adopted ASC 606 effective January 1, 2018, using the full retrospective method. The adoption of ASC 606 did not have a material impact on the consolidated balance sheet, statements of operations, or cash flows for the three and six months ended June 30, 2017. The primary impact of adoption related to the enhancement of the disclosures is provided in Note 5 – Revenue Recognition.

In June 2018, the FASB issued ASU 2018-07, Compensation-Stock Compensation, Topic 718. The amendments in this Update expand the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The amendments specify that Topic 718 applies to all share-based payment transactions in which a grantor acquires goods or services to be used or consumed in a grantor’s own operations by issuing share-based payment awards. The Company adopted this guidance in the second quarter of 2018, which had no material impact on the balance sheet, statement of operations or cash flows.

In January 2016, the FASB issued ASU 2016-01, Recognition and Measurement of Financial Assets and Financial Liabilities (Subtopic 825-10). The ASU revises the measurement and presentation of investments in certain financial assets and liabilities and enhances disclosures about those investments. The Company adopted this guidance on January 1, 2018, which had no material impact on the balance sheet, statement of operations or cash flows.

In August 2016, the FASB issued ASU No. 2016-15, Statement of Cash Flows: Classification of Certain Cash Receipts and Cash Payments, (Topic 230). This ASU makes eight targeted changes to how cash receipts and cash payments are presented and classified in the statement of cash flows. The Company adopted this guidance on January 1, 2018, which had no material impact on the statement of cash flows.

(d) Recent Accounting Pronouncements Not Yet Adopted

In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842), which requires lessees to recognize most leases on the balance sheet. The provisions of this guidance are effective for annual periods beginning after December 15, 2018, and interim periods within those years, with early adoption permitted. The Company is assessing ASU No. 2016-02's impact and will adopt it when effective.

The Company reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a material impact on the financial statements.

Note 4. Risks and Uncertainties

The Company's budgeted cash requirements for 2018 and beyond include expenses related to continuing development and clinical evaluation of its products and therapies, as well as preparing for related commercialization of our products. As of June 30, 2018 and December 31, 2017, we had working capital (current assets less current liabilities) of \$92.8 million and \$32.9 million, respectively.

On June 21, 2018, the Company closed the IPO of 5,980,000 shares of common stock at a price of \$15.00 per share with net proceeds of \$77.7 million, net of underwriting discount and other offering expenses. As a public company, additional future liquidity needs will include costs to comply with the requirements of a public company and tax payments to Federal and State governments.

The Company believes that its sales and cash on hand are adequate to meet its operating, investing, and financing needs for at least the next twelve months. To the extent additional funds are necessary to meet long-term liquidity needs as the Company continues to execute its business strategy, the Company anticipates that they will be obtained through the incurrence of indebtedness, equity financings or a combination of these potential sources of funds, although the Company can provide no assurance that these sources of funding will be available on reasonable terms.

In addition to the FDA release received by the Company for two indications (see Note 1), the Company is seeking approvals and clearances by the FDA for additional indications. In connection therewith, the Company will incur additional time and costs and will require additional funding to obtain such approvals and clearances. The additional time, costs, and funding is expected to be substantial.

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

The Company deals primarily with one specialty pharmaceutical distributor in the United States. At June 30, 2018 and December 31, 2017, the accounts receivable related to this distributor was \$185,150 and \$31,740, respectively.

Note 5. Revenue Recognition

Performance Obligations

Revenue, net of specialty pharmaceutical distribution discounts, vouchers, rebates, and co-payments assistance is solely generated from the sales of the gammaCore product. Sales are made to a specialty pharmaceutical distributor ("customer") and revenue is recognized when delivery of the product is completed. The Company deems control to have transferred upon the completion of delivery because that is the point in which (1) it has a present right to payment for the product, (2) it has transferred the physical possession of the product, (3) the customer has legal title to the product, (4) the customer has risks and rewards of ownership and (5) the customer has accepted the product. After the products have been delivered and control has transferred, the Company has no remaining unsatisfied performance obligations.

Revenue is measured based on the consideration that the Company expects to receive in exchange for gammaCore, which represents the transaction price. The transaction price includes the fixed per-unit price of the product and variable

consideration in the form of trade credits, vouchers, rebates, and co-payment assistance. The per-unit price is based on the Company established wholesale acquisition cost less a contractually agreed upon distributor discount with the customer. Trade credits are discounts that are contingent upon a timely remittance of payment and is estimated based on historical experience. Vouchers are redeemable by select new patients for an initial 31-day therapy (i.e. one gammaCore device) free of charge. For the three months ended June 30, 2018, the Company recognized actual vouchers redeemed as contra-revenue. The transaction price of the devices estimated to be redeemed through vouchers was also recognized as contra-revenue. All other costs for units related to the voucher program and any other redemption costs due to the specialty pharmacy were included as promotional expenses in selling, general and administrative expense. Subsequent to June 30, 2018, units designated for the voucher program are provided to the distributor at no cost and we will not recognize revenue for the free product. Any vouchers redeemed after June 30, 2018 will utilize inventory designated for voucher redemption. All costs for the free units, including any processing fees, will be included as promotional expenses in selling, general and administrative expense.

For the three and six months ended June 30, 2018, contra-revenue and promotional expenses related to the vouchers redeemed and estimated to be redeemed were \$939,780 and \$1,263,780, respectively. In addition, reimbursement for co-payments made by patients is also considered variable consideration. For the three and six months ended June 30, 2018, net sales reflect a reduction of \$10,518 and \$39,725 for payments made in conjunction with the co-payment program. For the three and six months periods ended June 30, 2017, the reimbursement for co-payments was not considered material.

In accordance with Company policy, allowance for product returns has been provided. Damaged or defective products are replaced at no charge under the Company's standard warranty. For the three and six months ended June 30, 2018 and 2017, the replacement costs were immaterial.

Payment for products is due in accordance with the terms agreed upon with customers, generally within 31 days of shipment to the customer. Accordingly, contracts with customers do not include a significant financing component.

Disaggregation of Net Sales

The following table provides additional information pertaining to net sales disaggregated by geographic market for the three and six months ended June 30, 2018 and 2017:

Geographic Market	For the three months ended		For the six months ended	
	June 30,		June 30,	
	2018	2017	2018	2017
United States	\$ 320,242	\$ 1,580	\$ 329,848	\$ 3,795
United Kingdom	50,781	57,350	115,763	122,306
Germany	16,654	108,036	17,459	152,459
Other	5,549	9,589	11,343	14,928
Total Net Sales	<u>\$ 393,226</u>	<u>\$ 176,555</u>	<u>\$ 474,413</u>	<u>\$ 293,488</u>

Contract Balances

The Company generally invoices the customer and recognizes revenue once its performance obligations are satisfied, at which point payment is unconditional. Accordingly, under ASC 606, the contracts do not give rise to contract assets or liabilities.

Note 6. Cash, Cash Equivalents, Debt Securities and other Investments Available for Sale

The following tables summarizes the Company's cash, cash equivalents and debt securities and other investments available for sale as of June 30, 2018 and December 31, 2017.

As of June 30, 2018

	<u>Amortized Cost</u>	<u>Unrealized Gain</u>	<u>Unrealized (Loss)</u>	<u>Fair Value</u>
Cash and cash equivalents	\$ 88,357,844	\$ —	\$ —	\$ 88,357,844
Corporate Debt Securities	\$ 1,499,091	\$ —	\$ (1,101)	\$ 1,497,990
Commercial Paper	1,982,833	—	(2,343)	1,980,490
U.S. Government Sponsored Agencies	2,995,715	—	(2,265)	2,993,450
U.S. Treasury Bonds	997,196	—	(416)	996,780
Total debt securities and other investments available for sale	<u>\$ 7,474,835</u>	<u>\$ —</u>	<u>\$ (6,125)</u>	<u>\$ 7,468,710</u>
Total cash, cash equivalents, debt securities and other investments available for sale	<u>\$ 95,832,679</u>	<u>\$ —</u>	<u>\$ (6,125)</u>	<u>\$ 95,826,554</u>

As of December 31, 2017

	<u>Amortized Cost</u>	<u>Unrealized Gain</u>	<u>Unrealized (Loss)</u>	<u>Fair Value</u>
Cash and cash equivalents	\$ 13,224,280	\$ —	\$ (86)	\$ 13,224,194
Corporate Debt Securities	\$ 19,014,590	\$ 923	\$ (17,827)	\$ 18,997,686
Commercial Paper	2,979,367	—	(1,227)	2,978,140
U.S. Government Sponsored Agencies	1,496,824	—	(2,029)	1,494,795
Certificate of Deposits	480,000	—	(55)	479,945
Total debt securities and other investments available for sale	<u>\$ 23,970,781</u>	<u>\$ 923</u>	<u>\$ (21,138)</u>	<u>\$ 23,950,566</u>
Total cash, cash equivalents, debt securities and other investments available for sale	<u>\$ 37,195,061</u>	<u>\$ 923</u>	<u>\$ (21,224)</u>	<u>\$ 37,174,760</u>

The Company's debt securities, commercial paper, corporate debt securities and U.S. government sponsored agency securities have the following maturities:

	<u>Fair Value At</u>	
	<u>June 30, 2018</u>	<u>December 31, 2017</u>
Due within one year	\$ 7,468,710	\$ 23,950,566
Due after one year through five years	—	—
	<u>\$ 7,468,710</u>	<u>\$ 23,950,566</u>

Note 7. Fair Value Measurements

Certain assets and liabilities are reported on a recurring basis at fair value. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. Financial assets and liabilities carried at fair value are to be classified and disclosed in one of the following three levels of the fair value hierarchy, of which the first two are considered observable and the last is considered unobservable:

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

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

June 30, 2018	Total	Fair Value Hierarchy		
		(Level 1)	(Level 2)	(Level 3)
Assets				
Cash and cash equivalents	\$ 88,357,844	\$ 88,357,844	\$ —	\$ —
Debt Securities and other Investments Available for Sale:				
Corporate Debt Securities	1,497,990	1,497,990	—	—
Commercial Paper	1,980,490	1,980,490	—	—
U.S. Government Sponsored Agencies	2,993,450	2,993,450	—	—
U.S. Treasury Bonds	996,780	996,780	—	—
Total	<u>\$ 95,826,554</u>	<u>\$ 95,826,554</u>	<u>\$ —</u>	<u>\$ —</u>
December 31, 2017				
Assets				
Cash and cash equivalents	\$ 13,224,194	\$ 13,224,194	\$ —	\$ —
Debt Securities and other Investments Available for Sale:				
Corporate Debt Securities	18,997,686	18,997,686	—	—
Commercial Paper	2,978,140	2,978,140	—	—
U.S. Government Sponsored Agencies	1,494,795	1,494,795	—	—
Certificate of Deposits	479,945	479,945	—	—
Total	<u>\$ 37,174,760</u>	<u>\$ 37,174,760</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities				
Warrant liabilities	<u>\$ 2,239,544</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2,239,544</u>

During the periods ended June 30, 2018 and December 31, 2017, the Company has not changed the manner in which it values assets and liabilities that are measured at fair value using Level 3 inputs. The Company recognizes transfers between levels of the fair value hierarchy as of the end of the reporting period. There were no transfers within the hierarchy during the six months ended June 30, 2018 and 2017.

Cash and cash equivalents consisted of cash in bank checking and savings accounts, money market funds and U.S. treasury notes and are classified within Level 1 of the fair value hierarchy because they are valued using quoted market prices in active markets.

Marketable securities classified as debt securities available for sale consist of investments in corporate debt securities, commercial paper, U.S. government sponsored agencies and certificate of deposits. The Company's marketable securities are valued using quoted prices in active markets and therefore these securities were classified as Level 1.

The warrant liability was recorded at fair value until the initial public offering on June 21, 2018 at which time it was determined that the warrant should be reclassified to equity as the warrant no longer met the criterion to be recognized as a liability. Until June 20, 2018, the Company determined the fair value of the liability by using the probability weighted expected return method and option pricing models. This method of valuation involved using inputs such as the fair value of the Company's Common Units, unit price volatility, the contractual term of the warrant, risk free interest rates and dividend yields. Due to the nature of these inputs, the valuation of the warrant liability was considered a Level 3 measurement.

As of June 20, 2018 and December 31, 2017, the estimated fair values of the warrant liability were computed using the following assumptions:

	June 20, 2018	December 31, 2017
Stock price volatility	67.8%	65.3%
Risk-free interest rates	2.68%	1.59%
Annual dividend yield	0%	0%
Expected life (years)	3.09	0.65

A roll-forward of the recurring fair value measurements of the liabilities categorized with Level 3 inputs are as follows:

	Warrant liabilities
Opening Balance as of January 1, 2017	\$ 480,636
Additions	2,620,681
Settlements	—
Changes in fair value recognized	(861,773)
Closing Balance as of December 31, 2017	2,239,544
Additions	—
Settlements	—
Changes in fair value recognized	1,870,923
Reclassified to equity	(4,110,467)
Closing Balance as of June 30, 2018	\$ —

During the period ended June 30, 2018, the warrant liability increased due to the change in fair value of the warrants and was subsequently reclassified to equity as addressed above.

The carrying amount of the Company's receivables and payables approximate their fair values due to their short maturities.

Note 8. Inventories

Inventories are stated at the lower of cost or net realizable value. Cost is determined on a first-in first-out basis.

	June 30, 2018	December 31, 2017
Raw materials	\$ 407,637	\$ 116,909
Work in process	21,277	17,115
Finished goods	323,035	193,763
	<u>\$ 751,949</u>	<u>\$ 327,787</u>

Note 9. Property and Equipment – Net

Property and equipment, net as of June 30, 2018 and December 31, 2017 consisted of the following:

	June 30, 2018	December 31, 2017
Machinery and equipment	\$ 489,499	\$ 452,614
Furniture and fixture	268,460	156,512
Computer equipment	112,588	138,534
Construction in process	79,684	—
Property and equipment - gross	950,231	747,660
Less accumulated depreciation and amortization	(572,874)	(579,014)
Property and equipment - net	<u>\$ 377,357</u>	<u>\$ 168,646</u>

During the six months ended June 30, 2018, there was a write-off of \$27,204 for fully depreciated assets in the Company's Bermuda and Australian subsidiaries. Depreciation and amortization expense for the three months ended June 30, 2018 and 2017 was \$10,668 and \$8,098, respectively. Depreciation and amortization expense for the six months ended June 30, 2018 and June 30, 2017 were \$21,064 and \$14,718, respectively.

Note 10. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses as of June 30, 2018 and December 31, 2017 consisted of the following:

	June 30, 2018	December 31, 2017
Accounts payable	\$ 1,686,959	\$ 840,383
Accrued professional fees	2,843,957	2,288,020
Promotional expenses	1,004,859	—
Due to employees	923,698	659,333
Other accrued expenses	426,013	92,039
	<u>\$ 6,885,486</u>	<u>\$ 3,879,775</u>

Note 11. Net Loss Per Share

Basic earnings/(loss) per share is computed by dividing net income (loss) available to electroCore, Inc. by the weighted-average number of shares of common stock outstanding during the period. Diluted earnings per share is computed by dividing net income available to electroCore, Inc. by the weighted-average number of shares of common stock outstanding adjusted to give effect to potentially dilutive securities. Stock options have not been included in the diluted earnings per share calculation as they have been determined to be anti-dilutive under the treasury stock method. As described in Note 12, Corporate Conversion and Equity, on June 21, 2018, electroCore, Inc. completed a Corporate Conversion as well as its initial public offering to, among other things, provide for a single class of common stock of electroCore Inc., in exchange for the previous Convertible Preferred Units and Common Units of the Company. This conversion changed the relative ownership of electroCore, Inc. such that retroactive application of the conversion to periods prior to the IPO for the purposes of calculating earnings (loss) per share would not be meaningful.

Prior to the Corporate Conversion, the Company's ownership structure included several different types of LLC interests including preferred stock, common units and Profits Interests (see Note 12, Corporate Conversion and Equity). The Company analyzed the calculation of earnings per unit for periods prior to the Corporate Conversion and determined that it resulted in values that would not be meaningful to the users of these consolidated financial statements. Therefore, earnings per share information has not been presented for periods prior to the Corporate Conversion on June 21, 2018. Additionally, net loss attributable to electroCore, Inc. subsidiaries and affiliate shown below includes only the loss attributable to the period from June 21, 2018 to June 30, 2018. In addition, the basic and diluted weighted average shares outstanding calculation is based on the actual days in which the shares were outstanding from June 21, 2018 to June 30, 2018.

The following table sets forth the numerators and denominators used to compute basic and diluted earnings per share of the common stock:

	For the period from June 21 to June 30, 2018
Numerator – Basic and Diluted	
Net loss attributable to electroCore, Inc. subsidiaries and affiliate	\$ (6,162,299)
Denominator – Basic and Diluted	
Weighted average shares of common stock outstanding	29,261,942
Net loss per common share, Basic and Diluted	\$ (0.21)

Note 12. Corporate Conversion and Equity

On June 21, 2018, the Company completed the Corporate Conversion. Pursuant to the certificate of incorporation effected in connection with the Corporate Conversion, the Company's authorized capital stock consists of 500 million shares of common stock, par value \$0.001 per share and 10 million shares of preferred stock, par value \$0.001 per share. As of June 30, 2018, 29,450,034 and 0 shares of the common stock and preferred stock, respectively, were issued and outstanding. On June 22, 2018, the common stock began trading on the Nasdaq Global Market and on June 25, 2018 began trading on the Nasdaq Global Select Market under the symbol "ECOR". Prior to the Corporate Conversion of the Company, the Operating Agreement permitted the issuance of four classes of Units - Series A Preferred Units, Series B Preferred Units, Series B-1 Preferred Units and Common Units. Each member was entitled to one vote for each Unit held and the Units of all classes and series voted together as a single class on all matters (on an as converted to Common Unit basis).

Upon the Corporate Conversion, all Units were converted into an aggregate of 23,470,034 shares of our common stock and options to purchase 2,141,748 shares of common stock as follows:

- holders of common units, or Common Units, other than Common Units that were originally issued as "profits interests" (as such term is used for purposes of the Internal Revenue Code), or Profits Interests, received an aggregate of 12,099,280 shares of common stock;
- holders of Series A Preferred Units received an aggregate of 4,181,856 shares of common stock, which included 241,939 shares of common stock as payment in full of the approximately \$3.6 million accrued and unpaid preferred return that was payable in respect of the Series A Preferred Units;
- holders of Series B Preferred Units received an aggregate of 5,843,668 shares of common stock;
- holders of Profits Interests received an aggregate of 1,345,230 shares of common stock.
- holders of Profits Interests who were employees or consultants at the time of the corporate conversion received options to purchase an aggregate of 2,141,748 shares of common stock, with an exercise price of \$15.00 which was equal to the initial public offering price.

Additionally, upon the conversion, the accumulated deficit of Electrocore LLC, subsidiaries and affiliates was reclassified to additional paid in capital in accordance with SEC SAB Topic 4B.

Series A Preferred Units

The Series A Preferred Units were entitled to a preference on distributions, ahead of the Common Units but behind Series B Preferred Units, in the amount of \$54,923,430 plus the Series A Preferred Return (as described below), as of June 20, 2018.

The Series A Preferred Units were entitled to a return in an annual non-compounded amount with respect to each outstanding Series A Preferred Unit equal to the product of the Series A Preferred Return Percentage and the Series A Unreturned Capital Value for each Unit, which accrued to the extent not paid. The Series A Preferred Return Percentage was 4% and could be reduced to 2% if certain requirements were met as outlined in the amended and restated Operating Agreement. Upon an IPO, the payment of the Series A Preferred Return was at the sole discretion of the Board of Managers. As of June 20, 2018, the Series A Preferred Return payable, following the 2017 amendments to the Operating Agreement, upon a public offering of

the Company's common stock was fixed at \$3,629,092. This amount was paid with the issuance of 241,939 shares of common stock upon the IPO.

The Series A Preferred Units were convertible into common stock mandatorily upon the occurrence of an initial public offering as outlined in the amended and restated Operating Agreement, subsequent to an 18:1 stock conversion.

As of June 20, 2018, warrants issued in connection with Series A Preferred Units financing rounds have expired and no new warrants related to Series A Preferred Units were issued in 2018.

As of June 21, 2018, warrants to purchase 221,766, Series A Preferred Units issued in connection with the term loan that remain outstanding were converted to warrants to purchase common stock at an exercise price of \$15.30.

Series B Preferred Units

In 2017, the Company entered into a Series B Preferred Unit Purchase Agreement with, among others, CV II, Merck GHI and AIH. Under the terms of the Purchase Agreement, as amended, through December 31, 2017, the Company received cash proceeds of \$46,911,300 and converted \$26,718,910 of Bridge Notes and related accrued and unpaid interest for an aggregate amount of \$73,630,210 (inclusive of amounts mentioned in Note 14 related to conversion of Bridge Notes and related accrued and unpaid interest) through the sale of Series B Preferred Units at an initial closing and several additional closings.

Each Series B Preferred Unit was converted into one share of common stock mandatorily upon the occurrence of the Corporate Conversion as outlined in the amended and restated Operating Agreement, subsequent to an 18:1 stock conversion pursuant to the terms of the plan of conversion for the Corporate Conversion. In connection with all Series B Preferred Unit closings, the Company issued warrants for the purchase of 35,452,084 Common Units at an exercise price of \$1.25 per Unit, which expired upon the closing of the IPO. The Company also issued warrants to advisors for the purchase of 2,724,549 common units at an exercise price of \$0.70 per Unit. The Company also issued 72,000 warrants to purchase common units with an exercise price of \$1.25 per Unit, which expired upon the closing of the IPO. The fair value of these warrants to purchase common units were recorded within additional-paid-in-capital. In connection with the Corporate Conversion, the 2,724,549 warrants issued to advisors were converted to warrants to purchase common stock at an exercise price of \$12.60 per share of common stock.

As of June 21, 2018, the Series B warrants that were issued to purchasers of our Bridge Notes were converted to (i) warrants to purchase 429,948 shares of common stock at an exercise price of \$12.60 per share (see Note 14) and (ii) the Series B Preferred warrants that were issued to financial advisors were converted to 101,119 warrants to purchase common stock at an exercise price of \$12.60 per share.

Note 13. Income Taxes

There is no provision for income taxes for the six months ended June 30, 2018 as the Company has incurred operating losses since inception. Further, prior to the corporate conversion on June 21, 2018, the Company was a limited liability company in the U.S., which is treated as a partnership for Federal and state income tax purposes. Accordingly, the Company was not subject to U.S. income taxes until its conversion.

The Company has evaluated the available evidence supporting the realization of its deferred tax assets, including the amount and timing of future taxable income, and has determined that it is more likely than not that its net deferred tax assets will not be realized in the U.S. and certain foreign jurisdictions. Due to uncertainties surrounding the realization of the deferred tax assets, the Company maintains a full valuation allowance against substantially all of its net deferred tax assets. When the Company determines that it will be able to realize some portion or all of its deferred tax assets, an adjustment to its valuation allowance on its deferred tax assets would have the effect of increasing net income in the period such determination is made.

As of June 30, 2018, the Company has adopted ASC 740 principles of accounting for uncertain tax positions and has determined that it does not have any uncertain positions that would result in a tax reserve. Accordingly, no interest or penalties related to uncertain tax positions has been accrued. The Company's policy is to recognize interest and penalties related to uncertain tax positions in income tax expense. The Company is subject to U.S. federal tax authority and U.S. state tax authority examinations for all years with the net operating loss and credit carryforwards.

On December 22, 2017, the President of the United States signed into law the Tax Cuts and Jobs Act, or the Act. The Act amends the Internal Revenue Code of 1986, as amended, or the Code, to reduce tax rates and modify policies, credits and

deductions for individuals and businesses. For businesses, the Act reduces the corporate tax rate from a maximum of 35% to a flat 21% rate. The rate reduction is effective on January 1, 2018, and thus was effective for the Company upon its corporate conversion. The Act also changes various domestic provisions beginning in 2018, which the Company has reviewed and factored into its quarterly tax provision as necessary. The overall impact of the Act on the accounts is zero given the history of pass through tax treatment coupled with current period losses.

On December 22, 2017, Staff Accounting Bulletin No. 118, or SAB 118, was issued to address the application of GAAP in situations when a registrant does not have the necessary information available, prepared, or analyzed (including computations) in reasonable detail to complete the accounting for certain income tax effects of the Act. In accordance with SAB 118, additional analysis of the law and the impact to the Company will be performed and any impact will be recorded in the respective quarters, within the available measurement period in 2018.

Further to the Act, beginning in 2018 U.S. shareholders are subject to tax on global intangible low-taxed income (GILTI) earned by certain foreign subsidiaries. The FASB Staff Q&A, Topic 740, No. 5, *Accounting for Global Intangible Low-Taxed Income*, states that an entity can make an accounting policy election to either recognize deferred taxes for temporary basis differences expected to reverse as GILTI in future years or provide for the tax expense related to GILTI in the year the tax is incurred. We are still evaluating the effects of the GILTI provisions and have not yet determined our accounting policy. The impact of the policy election is not expected to have a material effect on the amounts reported for the current year.

Note 14. Convertible Bridge Notes

For the six months ended June 30, 2017, the Company issued Bridge Notes aggregating \$19,965,692 including warrant coverage.

Since the Bridge Note Warrants entitled the holders to purchase securities in the Qualified Equity Round at the purchase price payable for the related equity securities, the exercise price of the warrants was undetermined at the time of their issuance. Also, because the terms of redemption of the Series B Preferred Units were unknown at the time of their issuance as well as the deemed liquidation terms discussed in Note 12, the warrants were recorded as liabilities. In connection with the Bridge Note closings, at the time of the Qualified Equity Round, the Company issued 7,739,092 Bridge Note Warrants all of which are outstanding as of June 30, 2018. As stated above, these warrants were converted to warrants to purchase common stock at an exercise price of \$12.60 and were reclassified to equity upon the determination that they no longer met the criteria to be classified as liabilities.

As of December 31, 2017, all Bridge Notes were converted to Series B Preferred Units, see Note 12, Corporate Conversion and Equity.

Note 15. Stock Based Compensation and Unit-Based Compensation

The granting of common stock and options to purchase common stock to prior holders of Profits Interests in connection with the corporate conversion is accounted for as a type-1 modification of the old awards. Under the previous LLC structure, in connection with employment and service provider agreements, the Company had awarded grantees Units that constitute profits interests for income tax purposes, subject to certain restrictions defined in each Unit forfeiture agreement. The Company maintained a Unit award account for each of the grantees. Generally, the Units vested 25% on the one-year anniversary of the employment start date or agreement date and the balance ratably per quarter thereafter over an additional three-year period. After the restrictions lapsed, the grantees became fully vested in such Units. In 2018, the Company granted 19,447,218 Profits Interests to its employees and had forfeitures of 110,354 Profits Interests.

In connection with the Corporate Conversion, the holders of 62,765,605 Common Units that were issued as "Profits Interests" that were outstanding immediately prior to the IPO were converted, in the aggregate, into (i) 1,345,230 shares of common stock, and (ii) with respect to Profits Interests that were held by current employees and consultants at the time of the conversion, options to purchase 2,141,748 shares of electroCore, Inc. common stock at an initial exercise price of \$15.00 per share.

The number of shares of common stock and the number of options issued for the outstanding Profits Interests was determined based upon the appreciation in value of the company after the date of grant of the applicable Profits Interests through the completion of the IPO.

The number of shares of common stock issued for each Profits Interest (the "Conversion Shares") was equal to (x) the percentage of the capital account balance associated with such Profits Interest as it related to the total value of the company as the IPO pre-money valuation (the "PI Capital Account Percentage"), divided by (y) the percentage interest in the company represented by such Profits Interest on a Unit basis based on the total outstanding Units in the company immediately prior to the IPO (the "PI Unit Percentage"), multiplied by (z) the total number of Units represented by the applicable Profits Interest. Of the shares of common stock issued for the Profits Interests, 1,157,138 vested immediately and 188,092 are subject to vesting of 25% on January 1, 2019 and the balance over the next succeeding 10 calendar quarters.

The number of options issued in respect of each Profits Interest (the "Conversion Options") was equal to (i) the total number of Units represented by such Profits Interest prior to the corporate conversion minus (ii) the Conversion Shares issued in respect of such Profits Interest. Of the options issued for the Profit Interests, 228,954 will vest 100% on January 1, 2019 and 1,912,797 will vest 25% on January 1, 2019 and the balance will vest over the next succeeding 14 calendar quarters. The options have an exercise price of \$15.00.

Stock compensation expense for the Profits Interests not recognized prior to the conversion was \$2.8 million. This expense was allocated to the common stock and options to purchase common stock awards based on their relative fair value on the date of the IPO. For the common stock awards that vest at the time of issuance, the Company recognized \$1.2 million immediately. For the common stock awards and the options to purchase common stock that did not vest immediately, the Company will recognize \$0.2 million and \$1.5 million, respectively, using graded vesting over their respective vesting periods.

The incremental stock compensation expense to be recognized was \$7.8 million. This expense was allocated to the common stock and the options to purchase common stock based on their fair value on the date of the awards. For the common stock that vested at the time of issuance, the Company recognized \$3.8 million. For the common stock awards and the options to purchase common stock that did not vest immediately, the Company will recognize \$0.3 million and \$3.7 million, respectively, over their respective vesting periods.

For the three and six months ended June 30, 2018, stock compensation expense reported as a component of selling, general and administrative was \$2.7 million and \$2.8 million, respectively. For the same period, stock compensation expense reported as a component of research and development expense was \$2.3 million and \$2.4 million, respectively. For both the three and six months ended June 30, 2018, stock compensation expense reported as a component of cost of goods sold was \$0.2 million and included in inventory was \$0.2 million.

The Company utilized the Black Scholes option pricing model for estimating the fair value of the options to purchase common stock. The fair value of the options was estimated on the date of the grant.

The assumptions for the determination of the fair value of the options issued upon the corporate conversion are provided in the following table:

	Options vesting on January 1, 2019	Options vesting 25% on January 1, 2019, remaining vesting over the next 14 quarters
Valuation assumptions:		
Expected dividend yield	0%	0%
Expected volatility	74.80%	74.30%
Expected term (years)	5.25	6.00
Risk-free interest rate	2.77%	2.82%

The risk-free interest rate is the average U.S. Treasury rate with a term that most closely resembles the expected life of the award. The expected term of the award was calculated using the simplified method. For volatility, the Company uses comparable public companies as a basis for its expected volatility. The Company does not pay regular dividends on its common stock and does not anticipate paying any dividends in the foreseeable future.

Note 16. Variable Interest Entity

As discussed in Note 1, electroCore is the primary beneficiary of electroCore (Aust) Pty Limited. electroCore has contributed certain intellectual property rights, all rights to distribute, market and sell specified products in Australia and New Zealand,

and other rights outlined in the shareholders' deed of electroCore (Aust) Pty Limited in return for 50% of the shares of such entity. In addition, electroCore can also appoint two of the four directors and can exercise significant influence. This along with the fact that electroCore is electroCore (Aust) Pty Limited's only supplier causes electroCore, for accounting purposes, to be the primary beneficiary of electroCore (Aust) Pty Limited. The activities related to electroCore (Aust) Pty Limited are not material to the consolidated financial statements.

Note 17. Commitments and Contingencies

(a) Operating Lease

The Company leases office space under operating leases through April 2022. For the three and six months ended June 30, 2018, rental expense related to the leases for each period was \$125,102 and \$247,920, respectively.

(b) Legal Proceedings

From time to time, the Company may become involved in various legal proceedings, including those that may arise in the ordinary course of business. Although the outcomes of these legal proceedings cannot be predicted with certainty, other than as set forth below, the Company is not subject to any material legal proceedings.

In May 2018, a former financial advisor to the Company filed a complaint against the Company seeking additional compensation in connection with the Company's 2017 Series B Preferred Unit financing (See Note 12). The Company believes that it has substantial legal and factual defenses to the claims in such lawsuit and intends to vigorously defend the case. Based on our best estimate of this matter, we have established a legal reserve relative to this matter. The Company does not believe resolution of this matter would have a material adverse effect on its financial position or operations.

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

You should read this section in conjunction with our unaudited interim consolidated financial statements and related notes included in Part I. Item 1 of this Quarterly Report on Form 10-Q and our audited consolidated financial statements and related notes thereto and management's discussion and analysis of financial condition and results of operations for the years ended December 31, 2017 and 2016 included in our prospectus dated June 21, 2018, filed with the SEC, pursuant to Rule 424(b) under the Securities Act. As discussed in the section titled "Cautionary Note Regarding Forward-Looking Statements," the following discussion and analysis contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those under the caption "Risk Factors" in the aforementioned prospectus.

Overview

We are a commercial-stage bioelectronic medicine company with a platform non-invasive vagus nerve stimulation therapy initially focused on neurology and rheumatology. Our therapy, gammaCore, has pharmacologic effects on the peripheral and central nervous systems, which modulate neurotransmitters and immune function. gammaCore is FDA-cleared for the acute treatment of pain associated with migraine and episodic cluster headache. Based on our clinical data, we are pursuing label expansions for the prevention of migraine, migraine in adolescents and post-traumatic headache, and are also engaging in clinical development for potential new labeling claims in rheumatology, including Sjögren's syndrome and rheumatoid arthritis.

Since our inception in 2005, we have devoted substantially all of our resources to the development of vagus nerve stimulation, or VNS, and the commercialization of our gammaCore therapy. Following our initial FDA clearance, our commercial strategy has been to establish gammaCore as a first-line treatment option for episodic cluster headache patients, who have few alternative treatment options available to them. This strategy is supported by a product registry initiated in July 2017 to build advocacy among key opinion leaders in 55 leading headache centers in the United States, and to generate patient demand in the form of prescriptions submitted to payors. We intend to leverage this advocacy as we expand into the broader headache market for both migraine and cluster headache in the future. We anticipate a full commercial launch of gammaCore for the acute treatment of pain associated with episodic cluster headache and migraine in adult patients in the third quarter of 2018.

We have never been profitable and have incurred net losses in each year since our inception. Our net loss for the six months ended June 30, 2018 and 2017 was \$27.3 million and \$17.9 million, respectively. As of June 30, 2018, our accumulated deficit was \$9.8 million. We expect to continue to incur substantial net losses and negative cash flows from operations for at least the next several years as we commercialize gammaCore for the acute treatment of pain associated with migraine and episodic cluster headache in adults. We intend to make a significant investment in building our U.S. commercial infrastructure and in recruiting and training our territory business managers. We also intend to continue to make significant investments in research and development to expand our gammaCore therapy for the treatment of other indications, including additional headache conditions and rheumatology.

We face a variety of challenges and risks, which we will need to address and manage as we pursue our strategy, including our ability to develop and retain an effective sales force, achieve market acceptance of gammaCore among physicians, patients and third-party payors, and expand the use of gammaCore to additional therapeutic indications.

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

As of June 30, 2018, we had cash and cash equivalents, debt securities and other investments available for sale, of \$95.8 million. Our current cash resources will enable us to fund our operating expenses and capital expenditure requirements for at least the next 12 months. See "—Liquidity and Capital Resources."

Critical Accounting Policies and Estimates

The Company's significant accounting policies are described in Note 1 of the Company's consolidated financial statements included elsewhere in this filing and our audited consolidated financial statements and related notes thereto for the years ended December 31, 2017 and 2016 included in our prospectus dated June 21, 2018. The Company's consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States. Certain accounting policies involve significant judgments, assumptions, and estimates by management that could have a material impact on the carrying value of certain assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Recent Developments

Initial Public Offering

As discussed more fully in Note 1 in the accompanying Notes to the Consolidated Financial Statements contained in Item 1, we completed our IPO in June 2018, in which we sold 5,980,000 shares of common stock to the public at a price of \$15.00 per share. We received net proceeds of \$77.7 million, net of underwriting discount and other offering expenses.

Corporate Conversion

Effective June 21, 2018, we converted into a Delaware corporation pursuant to a statutory conversion and changed our name to electroCore, Inc. Previously, we operated as a Delaware limited liability company under the name Electrocore, LLC. As a result of the Corporate Conversion, the holders of the different classes and series of units of Electrocore, LLC became holders of common stock and options to purchase common stock of electroCore, Inc. Our Common Units, other than Common Units issued as profits interests under the Code, or Profits Interests, Series A Preferred Units and Series B Preferred Units converted into shares of our common stock on a one-for-one basis in the Corporate Conversion. Our Profits Interests converted into (i) shares of our common stock, and (ii) with respect to Profits Interests that are held by our current employees and consultants at the time of the Corporate Conversion, options to purchase our common stock. The number of shares of common stock and the number of options issued in respect of the Profits Interests was determined based upon the appreciation in the value of the Company after the date of grant of the applicable Profits Interest through the completion of the IPO. The exercise price of these options was equal to our IPO price of \$15.00. All of the conversions were subject to an 18:1 stock conversion. Other than warrants that expired in connection with the IPO, holders of warrants to purchase units of ElectroCore, LLC became holders of warrants to purchase shares of common stock of electroCore, Inc.

The purpose of the Corporate Conversion was to reorganize our corporate structure so that the entity that offered our common stock to the public would be a corporation rather than a limited liability company and so that our existing investors would own our common stock rather than equity interests in a limited liability company.

Our conversion from a Delaware limited liability company to a Delaware corporation did not have a material effect on our consolidated financial statements at the time of the Corporate Conversion.

Components of Our Results of Operations

Net Sales

We expect to generate the majority of our net sales in the United States. In April 2017, we received FDA clearance for gammaCore for the acute treatment of pain associated with episodic cluster headache. In July 2017, we began a product registry for episodic cluster headache in the United States and as a result generated our first U.S. revenue relative to this FDA clearance. Through this registry, we are seeking to establish a base of advocacy among key opinion leaders in the headache field and to generate patient demand through prescriptions submitted to the payors. We believe that choosing to enter the market with a targeted product registry that prioritized early development of advocacy and reimbursement best positioned us for commercial launch in the United States in the third quarter of 2018. In January 2018, we received FDA clearance for gammaCore for the acute treatment of pain associated with migraine headaches. In July 2017, we implemented a co-payment assistance program whereby we assumed responsibility for a fixed amount of copayment for the patient. Costs for this program were immaterial for the year ended 2017. For the three and six months ended June 30, 2018 costs for this program are reflected as a reduction of the transaction price of units sold within our net sales.

In February 2018 we began a formal physician training program highlighting the clinical evidence and benefits of gammaCore for the acute treatment of pain associated with migraine and episodic cluster headache. Concurrently, we began a

voucher program for trained physicians to provide new patients with a one-time 31-day therapy at no charge to the patient. While the voucher program has increased demand for gammaCore, the transaction price is reduced by the 31-day therapy at no charge which offsets the increased demand. Our revenue reflects only gammaCore units sold either for new patients, or existing patients refills, that are not related to our voucher program. For the three months ended June 30, 2018, the Company recognized actual vouchers redeemed as contra-revenue. Any vouchers redeemed after June 30, 2018 would utilize inventory designated for voucher redemption. The transaction price of the devices estimated to be redeemed through vouchers was recognized as contra-revenue. All other costs for units related to the voucher program and any other redemption costs due to the specialty pharmacy were included as promotional expenses in selling, general and administrative expense. All costs for the free units, including any processing fees, will be included as promotional expenses in selling, general and administrative expense.

Prior to December 31, 2017, we generated the majority of our revenue from the European CE Mark approval for gammaCore that we obtained in 2011 for five different indications, including primary headache. This allowed us to commercialize gammaCore in the European Economic Area and other countries that recognize the European CE Mark. Following receipt of our CE marks beginning in 2011 and prior to receipt of our FDA clearance in the United States, we limited our commercialization effort outside the United States to Germany and the United Kingdom. Revenue, however, was minimal primarily due to limited published pivotal clinical data to support reimbursement in these countries. Now that our pivotal trials (ACT 1, ACT 2 and PRESTO) have been completed, our PRESTO data has been published. The published data will be provided to reimbursement authorities in Germany and the United Kingdom for review for reimbursement consideration. We intend to explore select international markets to commercialize our gammaCore therapy based on reimbursement outcomes and as our resources permit, using direct, dealer and distributor sales models as the targeted market best dictates.

We expect net sales of gammaCore to increase in the future as a result of new FDA clearances for indications for our therapy and as we expand our sales, marketing and distribution capabilities to support growth in the United States and in select markets internationally.

Cost of Goods Sold

Cost of goods sold consists primarily of direct material, direct labor and overhead costs. A significant portion of our cost of goods sold consists of overhead costs such as quality assurance, warehousing and shipment, facilities, depreciation on equipment and operations supervision and management. Due to our relatively low production volumes compared to our available assembling capacity, a large portion of our costs for our gammaCore therapy consists of overhead expense. If our production volumes increase as expected in the future, we anticipate that our per unit production costs will decrease.

Research and Development

Since our inception, we have focused significant resources on our research and development activities, including preclinical studies and clinical trials, activities related to regulatory filings, and manufacturing development efforts. Significant expenses also included in research and development are personnel costs, which includes compensation, benefits and stock-based compensation. We expense research and development costs as they are incurred.

Selling, General and Administrative

Our selling, general and administrative expenses consist primarily of personnel related costs (including compensation, benefits, and stock based compensation) for executive, finance, administrative and field based personnel, costs for commercial related infrastructure, and market development. As a result of clearance from the FDA and commencement of commercial sales in the United States, we incurred a significant increase in compensation costs as additional personnel were hired to oversee the execution of the commercial plan in the United States and Europe. Significant expenses include costs associated with marketing and advertising, salesforce, professional fees for legal services, including legal services associated with our efforts to obtain and maintain broad protection for the intellectual property related to our products, rent, compliance, payor reimbursement development, accounting services, and consulting fees.

We expect selling, general and administrative expenses to continue to grow as we seek to execute our commercial and research and development plans. We also expect other non-employee-related costs, including outside services and accounting and legal costs to increase. The timing of these increased expenditures and their magnitude are primarily dependent on the commercial success and sales growth of gammaCore and gammaCore Sapphire. In addition, we expect to incur increased selling, general and administrative expenses in connection with being a public company, which may further increase when we are no longer able to rely on certain "emerging growth company" exemptions we are afforded under the JOBS Act.

Amortization of Debt Issuance Costs

Amortization of debt issuance costs consisted primarily of the amortization of costs, including cash, warrants and common units issued to advisors and bankers, in conjunction with our issuance of Bridge Notes. These items were recorded as a discount on the Bridge Notes and were amortized on a straight-line basis over the term of the Bridge Notes until their conversion to Series B Preferred Units in August 2017.

Interest Expense

Interest expense consisted of interest on our term loans and Bridge Notes. Interest includes both the stated fixed rate of interest on the term loans and Bridge Notes, as well as the amortization of debt discount over the term of the Bridge Notes. The debt discount relates to the warrants, embedded derivative, and Common Units issued in conjunction with our Bridge Notes.

Change in Fair Value of Warrant Liability and Derivative Instrument related to Convertible Bridge Notes

The change in fair value of the warrant liability and derivative instrument is based on revaluation of those instruments occurring during the six and three months ended June 30, 2018 and 2017.

Income Taxes

We use the asset and liability method of accounting for income taxes. Under this method, deferred taxes are recognized based on the differences between financial statement and income tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized. We provide a full valuation allowance on substantially all deferred tax assets. The provision for income taxes represents the current tax payable for the period and the change during the period in deferred tax assets and liabilities. We anticipate an immaterial provision given we are reporting losses in all our taxable jurisdictions and are recording a full valuation allowance on the net deferred tax asset. We recognize the effect of an income tax position only if, based on its merits, the position is more likely than not to be sustained on audit by the taxing authorities. Interest and penalties related to uncertain tax positions are recorded as income tax expense.

Net Income (Loss) Attributable to Non-Controlling Interest

From our inception through June 30, 2018, we consolidated the financial results of our affiliate, electroCore (Aust) Pty Limited. Although we did not have a controlling ownership interest in electroCore (Aust) Pty Limited during that period, we determined that electroCore (Aust) Pty Limited was a variable interest entity, of which we were the primary beneficiary.

Results of Operations

Comparison of the three months ended June 30, 2018 to three months ended June 30, 2017

The following table sets forth amounts from our consolidated statements of operations for the three months ended June 30, 2018 and 2017 with the changes in those items in dollars.

	Three months ended June 30,		Change
	2018	2017	
	(in thousands)		
Consolidated statements of operations:			
Net sales	\$ 393.2	\$ 176.6	\$ 216.7
Cost of goods sold	240.5	38.7	201.7
Gross profit	152.7	137.8	14.9
Operating expenses			
Research and development	4,367.1	2,771.4	1,595.6
Selling, general and administrative	12,007.2	4,797.6	7,209.6
Total operating expenses	16,374.3	7,569.0	8,805.2
Loss from operations	(16,221.5)	(7,431.2)	(8,790.3)
Interest expense	—	3,433.7	(3,433.7)
Amortization of debt issuance costs	—	293.4	(293.4)
Change in fair value of warrant liability	1,625.1	196.7	1,428.4
Change in fair value of derivative instrument related to convertible bridge notes	—	220.1	(220.1)
Interest and other income, net	(115.3)	(3.2)	(112.1)
Other	50.8	2.2	48.6
Total other expense/(income)	1,560.6	4,142.8	(2,582.22)
Net loss	(17,782.1)	(11,574.0)	(6,208.1)
Less: Net income/(loss) attributable to noncontrolling interest	—	(6.0)	6.0
Total net loss attributable to Electrocore LLC and electroCore, Inc.	\$ (17,782.1)	\$ (11,568.0)	\$ (6,214.1)

Net Sales

Net sales were approximately \$393.2 thousand and \$176.6 thousand for three months ended June 30, 2018 and 2017, respectively. The increase of \$216.7 thousand is due increased selling efforts following FDA releases of our product for the acute treatment of pain associated with episodic cluster headache in adult patients. Part of our increased selling efforts was to use a new distributor to sell our product in the United States (an increase of \$313.0 thousand), discontinued use of a distributor for our product in Germany (a decrease of \$106.0 thousand) and implementing a voucher program and rebate program to encourage patient use of gammaCore. Although the sales of our product under the voucher program are netted against the cost of the product distributed under the program, we believe that the use of this program and other programs such as additional rebates and co-payment assistance programs will continue to result in additional sales increases.

Costs of Goods Sold

Cost of goods sold was approximately \$240.5 thousand and \$38.7 thousand for the three months ended June 30, 2018 and 2017, respectively. This increase of \$201.7 thousand was the result of an increase in stock compensation expense as a result of the corporate conversion of \$167.1 thousand and the remainder of \$34.7 thousand is consistent with the increase in sales for the comparable periods.

Research and Development

Research and development expense was approximately \$4.4 million and \$2.8 million for three months ended June 30, 2018 and 2017, respectively. The increase of \$1.6 million was the result of an increase in stock compensation expense as a result of the corporate conversion of \$2.3 million, increase in headcount and increased personnel costs of \$0.2 million, offset by decreases in consulting fees of \$0.5 million and clinical studies of \$0.5 million and a decrease in other related expenses.

Selling, General and Administrative

Selling, general and administrative expense was approximately \$12.0 million and \$4.8 million for three months ended June 30, 2018 and 2017, respectively. The increase of \$7.2 million is a result of an increase in costs related to newly hired personnel of \$1.7 million, increase in stock compensation expense as a result of the corporate conversion of \$2.6 million, increase in professional fees of \$0.2 million, increase in marketing related costs of \$2.1 million, increase in travel and entertainment costs of \$0.3 million, and increase in other related expenses of \$0.3 million.

Interest Expense

Interest expense was approximately \$0 and \$3.4 million for the three months ended June 30, 2018 and 2017, respectively. We had no debt outstanding during the three months ended June 30, 2018 as a result of the conversion of the Bridge Notes into Series B Preferred Units in August 2017.

Amortization of Debt Issuance Costs

Amortization of debt issuance costs, which relate to the Bridge Notes issued during 2017 and 2016, was approximately \$0 and \$293.4 thousand for three months ended June 30, 2018 and 2017, respectively. There was no amortization of debt issuance costs for the three months ended June 30, 2018 as a result of the conversion of the Bridge Notes into Series B Preferred Units in August 2017.

Change in Fair Value of Warrant Liability and Derivative Instrument related to Convertible Bridge Notes

The change in fair value of the warrant liability is based on revaluation of the warrants during the three months ended June 30, 2018. The effect of the revaluation of the warrant liability through June 30, 2018 was an increase of \$1.4 million compared to the three months ended June 30, 2017. The effect of the revaluation of the embedded derivative liability was \$0.2 million for the three months ended June 30, 2017. There was no embedded derivative liability as of June 30, 2018 as a result of the conversion of the related Bridge Notes into Series B Preferred Units in August 2017.

Interest and Other Income, Net

Interest and other income, net was \$115.3 thousand and \$3.2 thousand for the three months ended June 30, 2018 and 2017, respectively, which resulted from returns on our debt securities and other investments available for sale.

Net Income/(Loss) Attributable to Non-Controlling Interest

Net loss attributable to non-controlling interest was \$0 and \$6.0 thousand for the three months ended June 30, 2018 and 2017, respectively. This was due to the loss related to our joint venture entity in Australia.

Comparison of the six months ended June 30, 2018 to six months ended June 30, 2017

The following table sets forth amounts from our condensed consolidated statements of operations for the six months ended June 30, 2018 and 2017 with the changes in those items in dollars:

	Six Months ended June 30,		Change
	2018	2017	
(in thousands)			
Consolidated statements of operations:			
Net sales	\$ 474.4	\$ 293.5	\$ 180.9
Cost of goods sold	289.4	111.5	177.9
Gross profit	185.0	182.0	3.0
Operating expenses			
Research and development	6,673.4	4,498.0	2,175.4
Selling, general and administrative	18,832.0	7,856.9	10,975.2
Total operating expenses	25,505.4	12,354.9	13,150.6
Loss from operations	(25,320.4)	(12,172.9)	(13,147.6)
Interest expense	—	4,473.8	(4,473.8)
Amortization of debt issuance costs	—	562.5	(562.5)
Change in fair value of warrant liability	1,870.9	374.7	1,496.3
Change in fair value of derivative instrument related to convertible bridge notes	—	348.2	(348.2)
Interest and other income, net	(224.6)	(3.2)	(221.4)
Other	258.9	2.2	256.7
Total other expense/(income)	1,905.2	5,758.1	(3,852.9)
Net loss	(27,225.6)	(17,930.9)	(9,294.7)
Less: Net income/(loss) attributable to noncontrolling interest	55.0	(6.0)	61.1
Total net loss attributable to Electrocore LLC and electroCore, Inc.	\$ (27,280.6)	\$ (17,924.9)	(9,355.7)

Net Sales

Net sales were approximately \$474.4 thousand and \$293.5 thousand for the six months ended June 30, 2018 and 2017, respectively. The increase of \$180.9 thousand was due to increased selling efforts following FDA releases of our product for the acute treatment of pain associated with episodic cluster headache in adult patients of \$318.0 thousand, offset by \$147.0 thousand for the discontinued use of a distributor in Germany and implementing new programs to encourage patient use of our product. Although the sales of our product under the voucher program are netted against the cost of the product under the program, we believe the use of this program and other programs such as additional rebates and co-payment assistance programs will continue to result in additional sales increases.

Costs of Goods Sold

Cost of goods sold was approximately \$289.4 thousand and \$111.5 thousand for the six months ended June 30, 2018 and 2017, respectively. The increase of \$177.9 thousand was the result of an increase in stock compensation expense as a result of the corporate conversion of \$167.1 thousand and the remainder reflects the increase in sales for the comparable six-month period.

Research and Development

Research and development expenses was approximately \$6.7 million and \$4.5 million for the six months ended June 30, 2018 and 2017, respectively. The \$2.2 million increase was the result of an increase in stock compensation expense as a result of the corporate conversion of \$2.4 million, an increase in headcount and compensation expenses related to personnel of \$0.7 million offset by a decrease in consulting fees of \$0.7 million and clinical site costs of \$0.5 million.

Selling, General and Administrative

Selling, general and administrative expense was approximately \$18.8 million and \$7.8 million for the six months ended June 30, 2018 and 2017, respectively. The \$11.0 million increase is a result of increased personnel costs of \$2.6 million related to newly hired personnel, an increase in stock compensation expense as a result of the corporate conversion of \$2.7 million, increase in consulting fees of \$2.4 million, an increase in legal and compliance costs of \$0.7 million, an increase in market preparation, medical education, materials, samples, and studies of \$0.8 million, costs for the voucher program of \$0.4 million and increased travel related expenses of \$0.6 million.

Interest Expense

Interest expense decreased to \$0 for the six months ended June 30, 2018 from \$4.5 million for the six months ended June 30, 2017. This decrease is due to the Bridge Notes and any related accrued interest being converted to Series B Preferred Units in August 2017.

Amortization of Debt Issuance Costs

Amortization of debt issuance costs, which relate to the Bridge Notes issued during 2017 and 2016 was written off as a result of the conversion of the debt to Series B Preferred Units in August 2017.

Change in Fair Value of Warrant Liability and Derivative Instrument related to Convertible Bridge Notes

The change in the fair value of the warrant liability is based on the revaluation of the warrants during the six months ended June 30, 2018. The effect of the revaluation through June 30, 2018 was an increase of \$1.5 million compared to the six months ended June 30, 2017. The effect of the revaluation of the embedded derivative liability was \$0.3 million for the six months ended June 30, 2017. There was no embedded derivative liability as of June 30, 2018 as a result of the conversion of the related Bridge Notes into Series B Preferred Units in August 2017.

Interest and Other Income, Net

Interest and other income, net was \$224.6 thousand and \$3.2 thousand for the six months ended June 30, 2018 and 2017, respectively, which resulted from returns on our debt securities and other investments available for sale. The increase was due to the increase in investments and debt securities during the six months ended June 30, 2018.

Net Income/(Loss) Attributable to Non-Controlling Interest

Net income attributable to non-controlling interest increased by \$61.0 thousand to \$55.0 thousand for the six months ended June 30, 2018 when compared to a loss of \$6.0 thousand for the six months ended June 30, 2017. The change is due to the write-off of the previous liability from our joint venture entity in Australia.

Liquidity and Capital Resources

Historically, our primary sources of liquidity have been from borrowings and equity contributions. As of June 30, 2018 and December 31, 2017, our cash and cash equivalents were \$88.4 million and \$13.2 million respectively. As of June 30, 2018, we had no outstanding debt.

In June 2018, we closed our IPO of 5,980,000 shares of common stock at a price of \$15.00 per share with net proceeds of \$77.7 million, after underwriting discount and other offering expenses. As a public company, additional future liquidity needs will include costs to comply with the requirements of a public company and tax payments to Federal and State governments.

We believe that our investing and financing cash flows and cash on hand will be adequate to meet our operating, investing, and financing needs for at least the next 12 months. To the extent additional funds are necessary to meet long-term liquidity needs as we continue to execute our business strategy, we anticipate that they will be obtained through the incurrence of additional indebtedness, additional equity financings or a combination of these potential sources of funds, although we can provide no assurance that these sources of funding will be available on reasonable terms.

Until we can generate a sufficient amount of cash from operations, we expect to finance future cash needs through public or private equity or debt offerings. Additional capital may not be available on reasonable terms, if at all. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may have to significantly scale back our operations

or delay, scale back or discontinue the continuing development of gammaCore. If we raise additional funds through the issuance of additional debt or equity securities, it could result in dilution to our existing stockholders and increased fixed payment obligations, and these securities may have rights senior to those of our common stock. If we incur indebtedness, we could become subject to covenants that would restrict our operations, such as limitations on our ability to incur additional debt, limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. Any of these events could significantly harm our business, financial condition and prospects.

Cash Flows

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

	Six months ended June 30,	
	2018	2017
	(in millions)	
Net cash (used in) provided by		
Operating activities	\$ (21.0)	\$ (10.7)
Investing activities	16.3	(0.1)
Financing activities	79.9	18.9

Operating Activities

Net cash used in operating activities was \$21.0 million for the six months ended June 30, 2018 compared to \$10.7 million for the six months ended June 30, 2017. This increase in net cash used in operating activities of \$10.3 million was associated with net changes in working capital of \$2.7 million, an increase in net loss of \$9.3 million, which was primarily the result of a \$11.0 million increase in expenditures for selling, general and administrative items and an increase in research and development costs of \$2.2 million.

Investing Activities

Net cash provided by investing activities was \$16.3 million for the six months ended June 30, 2018 compared to \$0.1 million used in investing activities for the six months ended June 30, 2017 and primarily reflects the net proceeds from the purchase, sale and maturities of debt securities and other investments held for sale of \$16.5 million.

Financing Activities

Net cash from financing activities was \$79.9 million for the six months ended June 30, 2018, which was the result of the issuance of common stock of \$79.9 million, net of underwriting discount and other offering expenses, in connection with our initial public offering. Net cash from financing activities was \$18.9 million for the six months ended June 30, 2017, which was the result of the issuance of convertible bridge notes, net of financing costs.

Future Funding Requirements

Contractual Obligations and Commitments

In the normal course of business, we enter into obligations and commitments that require future contractual payments. The commitments result primarily from lease for office space and leased equipment. The Company has also entered into commitments for the purchase of component parts of inventory related to its gammaCore Sapphire launch as well as additional marketing related initiatives.

Our operating lease commitment relates to the facility leased for our corporate headquarters in Basking Ridge, New Jersey. There are no material changes to the contractual obligations and commercial commitments that were disclosed in the December 31, 2017 audited consolidated financial statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not have any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

Foreign Currency Exchange Risk

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

If the U.S. dollar uniformly increased or decreased in strength by 10% relative to the currencies in which our sales were denominated, our net income would have correspondingly increased or decreased by an immaterial amount for the three and six months ended June 30, 2018.

Our exposure to market interest rate risk is confined to our cash and cash equivalents and debt securities and other investments available for sales. As of June 30, 2018, we had cash and cash equivalents of \$88.4 million, and debt securities and other investments available for sale of \$7.5 million. The goals of our investment policy are preservation of capital, fulfillment of liquidity needs and fiduciary control of cash and investments. We also seek to maximize income from our investments without assuming significant risk. To achieve our goals, we may maintain a portfolio of cash equivalents and investments in a variety of securities of high credit quality. The securities in our investment portfolio, if any, are not leveraged, are classified as either available for sale or held-to-maturity and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our cash equivalents, we do not believe that an increase in market rates would have any material negative impact on interest income recognized in our statement of operations. We have no investments denominated in foreign currencies and therefore our investments are not subject to foreign currency exchange risk.

All of the potential changes noted above are based on sensitivity analyses performed on our financial position as of June 30, 2018.

Item 4: Controls and Procedures

Evaluation of Disclosure Controls and Procedures

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

As required by Rule 13a-15(b) of the Exchange Act, an evaluation as of June 30, 2018 was conducted under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act). Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures, as of June 30, 2018, were effective for the purposes stated above.

Internal Control Over Financial Reporting

Due to a transition period established by SEC rules applicable to newly public companies, our management is not required to evaluate the effectiveness of our internal control over financial reporting until after the filing of our Annual Report on Form 10-K for the year ended December 31, 2018. As a result, this Quarterly Report on Form 10-Q does not address whether there have been any changes in our internal control over financial reporting.

Notwithstanding the foregoing, electroCore's management continues to remediate the material weakness related to its internal control over financial reporting related to accounting for complex transactions that was disclosed in our prospectus dated June 21, 2018, filed with the SEC, pursuant to Rule 424(b) under the Securities Act and expects full remediation by the year end 2018.

Inherent Limitation on Effectiveness of Controls

Our management, including the Chief Executive Officer and Chief Financial Officer, believe that any disclosure controls and procedures or internal controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute assurance that the objectives of the control system are met. 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, they cannot provide absolute assurance that all control issues and instances of fraud, if any, within electroCore have been prevented or detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple errors or mistakes. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by unauthorized override of the control. The design of any system of controls also is 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. Accordingly, because of the inherent limitations in a cost effective control system, misstatements due to error or fraud may occur and may not be detected.

Emerging Growth Company Status

In April 2012, the JOBS Act was enacted by the federal government. Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected to "opt out" of this provision and, as a result, we will comply with new or revised accounting standards when they are required to be adopted by public companies that are not emerging growth companies.

For so long as we are an emerging growth company, we will not be required to provide an auditor's attestation report on our internal control over financial reporting in future annual reports on Form 10-K as otherwise required by Section 404(b) of the Sarbanes-Oxley Act.

Item 1. LEGAL PROCEEDINGS

In May 2018, Madison Global Partners, a division of Trident Partners, Ltd., or Madison Global, filed a complaint against the Company in the Supreme Court of the State of New York, County of New York (Index No. 652329/2018). The Company is a party to an engagement letter, as amended, with Madison Global pursuant to which it acted as the Company's non-exclusive financial advisor. Madison Global has claimed that under the terms of the engagement letter, as amended, it is owed \$575,000 plus warrants to purchase additional shares of capital stock beyond those the Company agreed to issue to it. The Company believes it has paid all amounts due to Madison Global under the terms of the engagement letter, as amended. The Company filed counterclaims against Madison Global, alleging that among other things it breached the terms of the engagement letter. Discovery in the case is ongoing. While the Company believes that it has substantial legal and factual defenses to the claims in this lawsuit and intends to vigorously defend the case and prosecute its counterclaims against Madison Global, the outcome of the litigation is difficult to predict and quantify at this time.

Item 1A. RISK FACTORS

There have been no material changes during the three months ended June 30, 2018 to the risk factors discussed in our prospectus dated June 21, 2018, filed with the SEC, pursuant to Rule 424(b) under the Securities Act.

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

In June 2018, we completed our IPO and issued 5,980,000 shares of our common stock, including pursuant to the underwriter's exercise of their right to purchase additional shares, at an initial offering price to the public of \$15.00. We received net proceeds from the IPO of approximately \$77.7 million, after deducting underwriting discounts, commissions and offering costs of approximately \$12.0 million. The underwriters for the IPO were Evercore Group L.L.C., Cantor Fitzgerald & Co., JMP Securities, LLC, and BTIG, LLC.

The shares were registered under the Securities Act (File Nos. 333-225084 and 333-225804), on a registration statement on Form S-1, which was declared effective by the SEC, on June 21, 2018.

We expect to use the proceeds from the IPO (i) to hire additional territory business managers and expand marketing programs to prepare for the full commercial launch of our gammaCore products; (ii) to fund the research and development of our gammaCore products for other indications in headache and rheumatology; (iii) to fund the build out of a specialty distribution channel for the launch of gammaCore Sapphire in the third quarter of 2018; and (iv) the remainder to fund working capital and general corporate purposes.

Item 3. DEFAULTS UPON SENIOR SECURITIES

None.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

Item 5. OTHER INFORMATION

- (a) None.
- (b) Not applicable.

Item 6. EXHIBITS

Furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

Exhibit Number	Description
3.1*	Certificate of Incorporation of electroCore, Inc. effective June 21, 2018
3.2*	Bylaws of electroCore, Inc. effective June 21, 2018
10.7†*	electroCore, Inc. 2018 Omnibus Equity Incentive Plan effective June 21, 2018
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.

† Indicates management compensatory plan.

** Furnished herewith.

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.

Company Name

Date: August 14, 2018

By: _____ /s/ FRANCIS R. AMATO
Francis R. Amato
Chief Executive Officer

Date: August 14, 2018

By: _____ /s/ GLENN S. VRANIAK
Glenn S. Vraniak
Chief Financial Officer

**CERTIFICATE OF INCORPORATION
OF
ELECTROCORE, INC.**

**Article I.
Name**

The name of the corporation is electroCore, Inc. (the "**Corporation**").

**Article II.
Registered Office and Agent**

The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808, and the name of the registered agent of the Corporation in the State of Delaware at such address is Corporation Service Company.

**Article III.
Purpose**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware ("**DGCL**").

**Article IV.
Capital Stock**

A. Authorized Capital Stock. The Corporation is authorized to issue two classes of capital stock to be designated, respectively, "**Common Stock**" and "**Preferred Stock**." The total number of shares of capital stock which the Corporation is authorized to issue is Five Hundred Ten Million (510,000,000) shares. Five Hundred Million (500,000,000) shares shall be Common Stock, each having a par value of one-tenth of one cent (\$0.001). Ten Million (10,000,000) shares shall be Preferred Stock, each having a par value of one-tenth of one cent (\$0.001).

B. Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the "**Board of Directors**") is hereby expressly authorized to provide for the issue of all or any of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, if any, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation entitled to vote thereon, without a separate vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

C. Common Stock.

1. Voting. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock). There shall be no cumulative voting.
2. Dividends. Subject to the preferential rights of the Preferred Stock, the holders of the Common Stock are entitled to receive, to the extent permitted by law, such dividends as may be declared from time to time by the Board of Directors.
3. No Preemptive Rights. The holders of Common Stock shall have no preemptive rights to subscribe for any shares of any class of capital stock of the Corporation whether now or hereafter authorized.
4. No Conversion Rights. Common Stock shall not be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same class of the Corporation's capital stock.
5. Liquidation Rights. In the event of the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of Preferred Stock, holders of Common Stock shall be entitled to receive all of the remaining assets of the Corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively. The Board of Directors may distribute in kind to the holders of Common Stock such remaining assets of the Corporation or may sell, transfer or otherwise dispose of all or any part of such remaining assets to any other corporation, trust or other entity and receive payment therefor in cash, stock or obligations of such other corporation, trust or other entity, or any combination thereof, and may sell all or any part of the consideration so received and distribute any balance thereof in kind to holders of Common Stock. The merger or consolidation of the Corporation into or with any other corporation, or the merger of any other corporation into it, or any purchase or redemption of shares of capital stock of the Corporation of any class, shall not be deemed to be a dissolution, liquidation or winding up of the Corporation for the purposes of this paragraph.

Article V.
Board of Directors

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. General Powers. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors.

B. Number of Directors; Election of Directors. The number of directors constituting the Board of Directors shall be fixed, from time to time, exclusively by resolutions adopted by the Board of Directors. The directors of the Corporation need not be elected by written ballot unless the Bylaws of the Corporation so provide.

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

D. Removal. Subject to the rights of any series of Preferred Stock to elect additional directors under specified circumstances, neither the Board of Directors nor any individual director may be removed without cause. Subject to any limitation imposed by law, any individual director or directors may be removed with cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the voting power of all then-outstanding shares of capital stock of the Corporation entitled to vote generally at an election of directors, voting together as a single class.

E. Vacancies and Newly Created Directorships. Subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, except as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

**Article VI.
Amendment of Bylaws**

The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, *provided, further*, that if the Board of Directors recommends that stockholders approve such adoption, amendment or repeal at a meeting of stockholders, such adoption, amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class.

**Article VII.
Stockholder Actions**

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

B. Stockholder Nominations and Introduction of Business, Etc. Advance notice of stockholder nominations for the election of directors and of other business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation. Only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders of the Corporation.

C. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the directors then in office, the Chief Executive Officer (of if there is no Chief Executive Officer, the President) or the Chairperson of the Board of Directors, and may not be called by any other person or persons.

Article VIII.
Limitation on Director Liability; Indemnification

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated to the fullest extent permitted by the DGCL, as so amended.

B. In furtherance and not in limitation of the rights, powers, privileges, and discretionary authority granted or conferred by Title 8 of the DGCL or other statutes or laws of the State of Delaware, the Board of Directors is expressly authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees, and agents of the Corporation (and any other persons to which applicable law permits the Corporation to provide indemnification) to the fullest extent permitted by law through bylaw provisions, agreements with indemnitees, vote of stockholders or disinterested directors or otherwise.

C. Any repeal, amendment or modification of this Article VIII shall be prospective and shall not affect the rights under this Article VIII in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

Article IX.
Choice of Forum

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware), to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (3) any action asserting a claim arising pursuant to any provision of the DGCL or this Certificate of Incorporation or the Bylaws of the Corporation, (4) any action to interpret, apply, enforce or determine the validity of this Certificate of Incorporation or the Bylaws of the Corporation, or (5) any action asserting a claim governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation will be deemed to have notice of and consented to the provisions of this Article IX.

Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Certificate of Incorporation.

Article X.
Incorporator

The incorporator of the Corporation is Francis R. Amato, whose mailing address is c/o electroCore, Inc., 150 Allen Road, Suite 201, Basking Ridge, New Jersey 07920.

Article XI.
Initial Board of Directors

The powers of the incorporator are to terminate upon the filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware. The names of the persons who are to serve as the initial directors of the Corporation until the first annual meeting of stockholders of the Corporation, or until their successors are duly elected and qualified, are:

	<u>Names</u>	<u>Class</u>
1.	Francis R. Amato	Class I
2.	Michael G. Atieh	Class I
3.	Stephen L. Ondra, M.D.	Class I
4.	Joseph P. Errico	Class II
5.	Trevor J. Moody	Class II
6.	James L.L. Tullis	Class II
7.	Nicholas Colucci	Class III
8.	Carrie S. Cox	Class III
9.	Thomas J. Errico, M.D.	Class III

The mailing address of each such director is: c/o electroCore, Inc., 150 Allen Road, Suite 201, Basking Ridge, New Jersey 07920.

Article XII.
Amendment of Certificate of Incorporation

A. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in paragraph B. of this Article XII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Corporation required by law or by this Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 ²/₃%) of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, VII, VIII, IX and XII.

[Signature Page Follows]

I, The Undersigned, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 21st day of June, 2018.

By: /s/ Francis R. Amato
Francis R. Amato, Incorporator

BYLAWS
OF
ELECTROCORE, INC.
(A DELAWARE CORPORATION)
JUNE 21, 2018

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**ELECTROCORE, INC.
BYLAWS**

ARTICLE I

OFFICES

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

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

ARTICLE II

CORPORATE SEAL

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

ARTICLE III

STOCKHOLDERS' MEETINGS

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

Section 5. Annual Meetings.

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

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

(1) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(3) and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class and number of shares of each class of capital stock of the corporation which are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, and (5) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 5(b)(4). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

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

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

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

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

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

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

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

(g) For purposes of Sections 5 and 6,

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

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

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

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

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

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

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

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

Section 6. Special Meetings.

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

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

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

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

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

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the voting power of the outstanding shares of stock entitled to vote shall constitute

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

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

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

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

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

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

Section 14. Organization.

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

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof,

limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

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

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

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

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

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

Section 20. Removal.

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

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

Section 21. Meetings.

- (a) **Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.
- (b) **Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairperson of the Board, the Chief Executive Officer or a majority of the total number of authorized directors.
- (c) **Meetings by Electronic Communications Equipment.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.
- (d) **Notice of Special Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be given orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.
- (e) **Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 22. Quorum and Voting.

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

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

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

Section 25. Committees.

- (a) **Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the

management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

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

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

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

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

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

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

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

ARTICLE V

OFFICERS

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

Section 29. Tenure and Duties of Officers.

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

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

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

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

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

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

The President may direct the Treasurer, if any, or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

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

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

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

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

ARTICLE VI

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

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

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

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

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

ARTICLE VII

SHARES OF STOCK

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

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

Section 37. Transfers.

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

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

Section 38. Fixing Record Dates.

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

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date,

which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

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

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

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

ARTICLE IX

DIVIDENDS

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

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

ARTICLE X

FISCAL YEAR

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

ARTICLE XI

INDEMNIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XII

NOTICES

Section 45. Notices.

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

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

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

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

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

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

ARTICLE XIII

AMENDMENTS

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

ARTICLE XIV

LOANS TO OFFICERS OR EMPLOYEES

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

**ELECTROCORE, INC.
2018 OMNIBUS EQUITY INCENTIVE PLAN
(Effective June 21, 2018)**

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ELECTROCORE, INC.

2018 OMNIBUS EQUITY INCENTIVE PLAN

Article 1. Effective Date, Objectives and Duration

1.1 Effective Date of the Plan. The Board of Directors of electroCore, Inc., a Delaware corporation (the "Company") formed upon the statutory conversion of ElectroCore, LLC from a Delaware limited liability company (the "LLC") into a Delaware corporation, adopted the 2018 Omnibus Equity Incentive Plan (the "Plan") effective as of June 21, 2018 (the "Effective Date").__

1.2 Objectives of the Plan. The Plan is intended (a) to allow selected employees of and consultants to the Company and its Affiliates to acquire or increase equity ownership in the Company, thereby strengthening their commitment to the success of the Company and stimulating their efforts on behalf of the Company, and to assist the Company and its Affiliates in attracting new employees, officers and consultants and retaining existing employees and consultants, (b) to optimize the profitability and growth of the Company and its Affiliates through incentives which are consistent with the Company's goals, (d) to provide Grantees with an incentive for excellence in individual performance, (e) to promote teamwork among employees, consultants and Non-Employee Directors, and (f) to attract and retain highly qualified persons to serve as Non-Employee Directors and to promote ownership by such Non-Employee Directors of a greater proprietary interest in the Company, thereby aligning such Non-Employee Directors' interests more closely with the interests of the Company's stockholders.

1.3 Duration of the Plan. The Plan shall commence on the Effective Date and shall remain in effect, subject to the right of the Board to amend or terminate the Plan at any time pursuant to Article 15 hereof, until the earlier of the tenth anniversary of the Effective Date, or the date all Shares subject to the Plan shall have been purchased or acquired and the restrictions on all Restricted Shares granted under the Plan shall have lapsed, according to the Plan's provisions.

Article 2. Definitions

Whenever used in the Plan, the following terms shall have the meanings set forth below:

2.1 "Affiliate" means any corporation or other entity, including but not limited to partnerships, limited liability companies and joint ventures, with respect to which the Company, directly or indirectly, owns as applicable (a) stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote, or more than fifty percent (50%) of the total value of all shares of all classes of stock of such corporation, or (b) an aggregate of more than fifty percent (50%) of the profits interest or capital interest of a non-corporate entity.

2.2 "Award" means Options (including non-qualified options and Incentive Stock Options), SARs, Restricted Shares, Performance Units (which may be paid in cash), Performance Shares, Deferred Stock, Restricted Stock Units, Dividend Equivalents, Bonus Shares or Other Stock-Based Awards granted under the Plan.

2.3 "Award Agreement" means either (a) a written agreement entered into by the Company and a Grantee setting forth the terms and provisions applicable to an Award granted under this Plan, or (b) a written statement issued by the Company to a Grantee describing the terms and provisions of such Award, including any amendment or modification thereof. The Committee may provide for the use of electronic, internet or other non-paper Award Agreements and the use of electronic, internet or other non-paper means for the acceptance thereof and actions thereunder by the Grantee.

2.4 “Board” means the Board of Directors of the Company.

2.5 “Bonus Shares” means Shares that are awarded to a Grantee with or without cost and without restrictions either in recognition of past performance (whether determined by reference to another employee benefit plan of the Company or otherwise), as an inducement to become an Eligible Person or, with the consent of the Grantee, as payment in lieu of any cash remuneration otherwise payable to the Grantee.

2.6 “Cause” means, except as otherwise defined in an Award Agreement:

(a) the commission of any act by a Grantee constituting a felony or crime of moral turpitude (or their equivalent in a non-United States jurisdiction);

(b) an act of dishonesty, fraud, intentional misrepresentation, or harassment which, as determined in good faith by the Committee, would: (i) materially adversely affect the business or the reputation of the Company or any of its Affiliates with their respective current or prospective customers, suppliers, lenders and/or other third parties with whom such entity does or might do business; or (ii) expose the Company or any of its Affiliates to a risk of civil or criminal legal damages, liabilities or penalties;

(c) any material misconduct in violation of the Company’s or an Affiliate’s written policies; or

(d) willful and deliberate non-performance of the Grantee’s duties in connection with the business affairs of the Company or its Affiliates;

provided, however, that if the Grantee has a written employment or consulting agreement with the Company or any of its Affiliates or participates in any severance plan established by the Company that includes a definition of “cause,” Cause shall have the meaning set forth in such employment or consulting agreement or severance plan.

2.7 “CEO” means the Chief Executive Officer of the Company.

2.8 “Change in Control” shall have the meaning set forth in Section 16.4(e).

2.9 “Code” means the Internal Revenue Code of 1986, as amended from time to time. References to a particular section of the Code include references to regulations and rulings thereunder and to successor provisions.

2.10 “Committee” or “Incentive Plan Committee” has the meaning set forth in Section 3.1(a).

2.11 “Compensation Committee” means the compensation committee of the Board.

2.12 “Common Stock” means the common stock, \$0.001 par value, of the Company.

2.13 “Corporate Transaction” shall have the meaning set forth in Section 4.2(b).

2.14 “Deferred Stock” means a right, granted under Article 10, to receive Shares at the end of a specified deferral period.

2.15 “Disability” or “Disabled” means, unless otherwise defined in an Award Agreement, or as otherwise determined under procedures established by the Committee for purposes of the Plan:

(a) Except as provided in (b) below, a disability within the meaning of Section 22(e)(3) of the Code; and

(b) In the case of any Award that constitutes deferred compensation within the meaning of Section 409A of the Code, a disability as defined in regulations under Code Section 409A. For purpose of Code Section 409A, a Grantee will be considered Disabled if:

(i) the Grantee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or

(ii) the Grantee is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the Grantee's employer.

2.16 "Dividend Equivalent" means a right to receive payments equal to dividends or property, if and when paid or distributed, on a specified number of Shares.

2.17 "Effective Date" has the meaning set forth in Section 1.1.

2.18 "Eligible Person" means any individual who is an employee (including any officer) of, a non-employee consultant to, or a Non-Employee Director of, the Company or any Affiliate; provided, however, that solely with respect to the grant of an Incentive Stock Option, an Eligible Person shall be any employee (including any officer) of the Company or any Subsidiary Corporation. Notwithstanding the foregoing, an Eligible Person shall also include an individual who is expected to become an employee to, non-employee consultant of or Non-Employee Director of the Company or any Affiliate within a reasonable period of time after the grant of an Award (other than an Incentive Stock Option); provided that any Award granted to any such individual shall be automatically terminated and cancelled without consideration if the individual does not begin performing services for the Company or any Affiliate within twelve (12) months after the Grant Date. Solely for purposes of Section 5.6(b), current or former employees or non-employee directors of, or consultants to, of an Acquired Entity who receive Substitute Awards in substitution for Acquired Entity Awards shall be considered Eligible Persons under this Plan with respect to such Substitute Awards.

2.19 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time. References to a particular section of the Exchange Act include references to successor provisions.

2.20 "Exercise Price" means (a) with respect to an Option, the price at which a Share may be purchased by a Grantee pursuant to such Option or (b) with respect to an SAR, the price established at the time an SAR is granted pursuant to Article 7, which is used to determine the amount, if any, of the payment due to a Grantee upon exercise of the SAR.

2.21 "Fair Market Value" of a Share means a price that is based on the opening, closing, actual, high, low, or the arithmetic mean of selling prices of a Share reported on an established stock exchange which is the principal exchange upon which the Shares are traded on the applicable date or the preceding trading day. Unless the Committee determines otherwise, if the Shares are traded over the counter at the time a determination of its Fair Market Value is required to be made hereunder, Fair Market Value shall be deemed to be equal to the arithmetic mean between the reported high and low or closing bid and asked prices of a Share on the applicable date, or if no such trades were made that day then the most recent date on which Shares were publicly traded. In the event Shares are not publicly traded at the time a determination of their value is required to be made hereunder, the determination of their Fair Market Value shall be made by the Committee in such manner as it deems appropriate provided such manner is consistent with Treasury Regulation Section 1.409A-1(b)(5)(iv)(B).

- 2.22 “Grant Date” means the date on which an Award is granted or such later date as specified in advance by the Committee.
- 2.23 “Grantee” means a person who has been granted an Award.
- 2.24 “Incentive Stock Option” means an Option that is intended to meet the requirements of Section 422 of the Code.
- 2.25 “Including” or “includes” means “including, without limitation,” or “includes, without limitation,” respectively.
- 2.26 “Management Committee” has the meaning set forth in Section 3.1(b).
- 2.27 “Non-Employee Director” means a member of the Board who is not an employee of the Company or any Affiliate.
- 2.28 “Option” means an option granted under Article 6 of the Plan.
- 2.29 “Other Stock-Based Award” means a right, granted under Article 13 hereof, that relates to or is valued by reference to Shares or other Awards relating to Shares.
- 2.30 “Performance Period” means, with respect to an Award of Performance Shares or Performance Units, the period of time during which the performance vesting conditions applicable to such Award must be satisfied.
- 2.31 “Performance Share” and “Performance Unit” have the respective meanings set forth in Article 9.
- 2.32 “Period of Restriction” means the period during which Restricted Shares are subject to forfeiture if the conditions specified in the Award Agreement are not satisfied.
- 2.33 “Person” means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, entity or government instrumentality, division, agency, body or department.
- 2.34 “Restricted Shares” means Shares, granted under Article 8, that are both subject to forfeiture and are nontransferable if the Grantee does not satisfy the conditions specified in the Award Agreement applicable to such Shares.
- 2.35 “Restricted Stock Units” are rights, granted under Article 10, to receive Shares if the Grantee satisfies the conditions specified in the Award Agreement applicable to such rights.
- 2.36 “Rule 16b-3” means Rule 16b-3 promulgated by the SEC under the Exchange Act, as amended from time to time, together with any successor rule.
- 2.37 “SEC” means the United States Securities and Exchange Commission, or any successor thereto.
- 2.38 “Section 16 Non-Employee Director” means a member of the Board who satisfies the requirements to qualify as a “non-employee director” under Rule 16b-3.
- 2.39 “Section 16 Person” means a person who is subject to potential liability under Section 16(b) of the Exchange Act with respect to transactions involving equity securities of the Company.

2.40 “Separation from Service” means, with respect to any Award that constitutes deferred compensation within the meaning of Code Section 409A, a “separation from service” as defined in Treasury Regulation Section 1.409A-1(h). For this purpose, a “separation from service” is deemed to occur on the date that the Company and the Grantee reasonably anticipate that the level of bona fide services the Grantee would perform for the Company and/or any Affiliates after that date (whether as an employee, Non-Employee Director or consultant or independent contractor) would permanently decrease to a level that, based on the facts and circumstances, would constitute a separation from service; provided that a decrease to a level that is 50% or more of the average level of bona fide services provided over the prior 36 months shall not be a separation from service, and a decrease to a level that is 20% or less of the average level of such bona fide services shall be a separation from service. The Committee retains the right and discretion to specify, and may specify, whether a separation from service occurs with respect to those individuals who are performing services for the Company or an Affiliate immediately prior to an asset purchase transaction in which the Company or an Affiliate is the seller and who continue to perform services for the buyer (or an affiliate thereof) immediately following such asset purchase transaction; provided, such specification is made in accordance with the requirements of Treasury Regulation Section 1.409A-1(h)(4).

2.41 “Share” means a share of Common Stock, and such other securities of the Company, as may be substituted or resubstituted for Shares pursuant to Section 4.2 hereof.

2.42 “Stock Appreciation Right” or “SAR” means an Award granted under Article 7 of the Plan.

2.43 “Subsidiary Corporation” means a corporation other than the Company in an unbroken chain of corporations beginning with the Company if, at the time of granting the Option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

2.44 “Surviving Company” means (a) the surviving corporation in any merger, consolidation or similar transaction, involving the Company (including the Company if the Company is the surviving corporation), (b) or the direct or indirect parent company of such surviving corporation or (c) the direct or indirect parent company of the Company following a sale of substantially all of the outstanding stock of the Company.

2.45 “Term” of any Option or SAR means the period beginning on the Grant Date of an Option or SAR and ending on the date such Option or SAR expires, terminates or is cancelled. No Option or SAR granted under this Plan shall have a Term exceeding 10 years

2.46 “Termination of Affiliation” occurs on the first day on which an individual is for any reason no longer performing services for the Company or any Affiliate in the capacity of an employee of, a non-employee consultant to, or a Non-Employee Director of, the Company or any Affiliate or with respect to an individual who is an employee of, a non-employee consultant to or a Non-Employee Director of an Affiliate, the first day on which such entity ceases to be an Affiliate of the Company unless such individual continues to perform Services for the Company or another Affiliate without interruption after such entity ceases to be an Affiliate. Notwithstanding the foregoing, if an Award constitutes deferred compensation within the meaning of Code Section 409A, Termination of Affiliation with respect to such Award shall mean the Grantee’s Separation from Service.

Article 3. Administration

3.1 Committee.

(a) Subject to Article 14, and to Section 3.2, the Plan shall be administered by a Committee (the “Incentive Plan Committee” or the “Committee”) of directors of the Company appointed by the Board from time to time. Notwithstanding the foregoing, either the Board or the

Compensation Committee may at any time and in one or more instances reserve administrative powers to itself as the Committee or exercise any of the administrative powers of the Committee. The number of members of the Committee may from time to time be increased or decreased as the Board or Compensation Committee deems appropriate. To the extent the Board or Compensation Committee considers it desirable to comply with Rule 16b-3, the Committee shall consist of two or more directors of the Company, all of whom qualify as Section 16 Non-Employee Directors.

(b) The Board or the Compensation Committee may appoint and delegate to another committee ("Management Committee"), or to the CEO, any or all of the authority of the Board or the Committee, as applicable, with respect to Awards to Grantees other than Grantees who are executive officers, Non-Employee Directors, or Section 16 Persons at the time any such delegated authority is exercised.

(c) Unless the context requires otherwise, any references herein to "Committee" include references to the Incentive Plan Committee, the Board or the Compensation Committee to the extent Incentive Plan Committee, the Board or the Compensation Committee, as applicable, has assumed or exercises administrative powers itself as the Committee pursuant to subsection (a), and to the Management Committee or the CEO to the extent either has been delegated authority pursuant to subsection (b), as applicable; provided that (i) for purposes of Awards to Non-Employee Directors, "Committee" shall include only the full Board, and (ii) for purposes of Awards intended to comply with Rule 16b-3, the "Committee" shall include only the Incentive Plan Committee or the Compensation Committee.

3.2 Powers of Committee. Subject to and consistent with the provisions of the Plan (including Article 14), the Committee has full and final authority and sole discretion as follows; provided that any such authority or discretion exercised with respect to a specific Non-Employee Director shall be approved by the affirmative vote of a majority of the members of the Board, even if not a quorum, but excluding the Non-Employee Director with respect to whom such authority or discretion is exercised:

(a) to determine when, to whom and in what types and amounts Awards should be granted;

(b) to grant Awards to Eligible Persons in any number and to determine the terms and conditions applicable to each Award (including the number of Shares or the amount of cash or other property to which an Award will relate, any Exercise Price or purchase price, any limitation or restriction, any schedule for or performance conditions relating to the earning of the Award or the lapse of limitations, forfeiture restrictions, restrictions on exercisability or transferability, any performance goals including those relating to the Company and/or an Affiliate and/or any division thereof and/or an individual, and/or vesting based on the passage of time, based in each case on such considerations as the Committee shall determine);

(c) to determine the benefit payable under any Performance Unit, Performance Share, Dividend Equivalent, Other Stock-Based Award or Cash Incentive Award and to determine whether any performance or vesting conditions have been satisfied;

(d) to determine whether or not specific Awards shall be granted in connection with other specific Awards, and if so, whether they shall be exercisable cumulatively with, or alternatively to, such other specific Awards and all other matters to be determined in connection with an Award;

(e) to determine the Term of any Option or SAR;

- (f) to determine the amount, if any, that a Grantee shall pay for Restricted Shares, whether to permit or require the payment of cash dividends thereon to be deferred and the terms related thereto, when Restricted Shares (including Restricted Shares acquired upon the exercise of an Option) shall be forfeited and whether such shares shall be held in escrow;
- (g) to determine whether, to what extent and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Shares, other Awards or other property, or an Award may be accelerated, vested, canceled, forfeited or surrendered or any terms of the Award may be waived, and to accelerate the exercisability of, and to accelerate or waive any or all of the terms and conditions applicable to, any Award or any group of Awards for any reason and at any time;
- (h) to determine with respect to Awards granted to Eligible Persons whether, to what extent and under what circumstances cash, Shares, other Awards, other property and other amounts payable with respect to an Award will be deferred, either at the election of the Grantee or automatically pursuant to the terms of the Award Agreement;
- (i) to offer to exchange or buy out any previously granted Award for a payment in cash, Shares or other Award;
- (j) to construe and interpret the Plan and to make all determinations, including factual determinations, necessary or advisable for the administration of the Plan;
- (k) to make, amend, suspend, waive and rescind rules and regulations relating to the Plan;
- (l) to appoint such agents as the Committee may deem necessary or advisable to administer the Plan;
- (m) to determine the terms and conditions of all Award Agreements applicable to Eligible Persons (which need not be identical) and, with the consent of the Grantee, to amend any such Award Agreement at any time, among other things, to permit transfers of such Awards to the extent permitted by the Plan; provided that the consent of the Grantee shall not be required for any amendment (i) which does not adversely affect the rights of the Grantee, or (ii) which is necessary or advisable (as determined by the Committee) to carry out the purpose of the Award as a result of any new applicable law or change in an existing applicable law, or (iii) to the extent the Award Agreement specifically permits amendment without consent;
- (n) to cancel, with the consent of the Grantee, outstanding Awards and to grant new Awards in substitution therefor;
- (o) to impose such additional terms and conditions upon the grant, exercise or retention of Awards as the Committee may, before or concurrently with the grant thereof, deem appropriate, including limiting the percentage of Awards which may from time to time be exercised by a Grantee;
- (p) to make adjustments in the terms and conditions of, and the criteria in, Awards in recognition of unusual or nonrecurring events (including events described in Section 4.2) affecting the Company or an Affiliate or the financial statements of the Company or an Affiliate, or in response to changes in applicable laws, regulations or accounting principles;
- (q) to correct any defect or supply any omission or reconcile any inconsistency, and to construe and interpret the Plan, the rules and regulations, and Award Agreement or any other instrument entered into or relating to an Award under the Plan; and

(r) to take any other action with respect to any matters relating to the Plan for which it is responsible and to make all other decisions and determinations as may be required under the terms of the Plan or as the Committee may deem necessary or advisable for the administration of the Plan.

Any action of the Committee with respect to the Plan shall be final, conclusive and binding on all persons, including the Company, its Affiliates, any Grantee, any person claiming any rights under the Plan from or through any Grantee, and stockholders, except to the extent the Committee may subsequently modify, or take further action not consistent with, its prior action. If not specified in the Plan, the time at which the Committee must or may make any determination shall be determined by the Committee, and any such determination may thereafter be modified by the Committee. The express grant of any specific power to the Committee, and the taking of any action by the Committee, shall not be construed as limiting any power or authority of the Committee. Subject to Section 3.1(b), the Committee may delegate to officers of the Company or any Affiliate the authority, subject to such terms as the Committee shall determine, to perform specified functions under the Plan.

3.3 No Repricings. Notwithstanding any provision in Section 3.2 to the contrary, the terms of any outstanding Option or SAR may not be amended to reduce the Exercise Price of such Option or SAR or cancel any outstanding Option or SAR in exchange for other Options or SARs with an Exercise Price that is less than the Exercise Price of the cancelled Option or SAR or for any cash payment (or Shares having with a Fair Market Value) in an amount that exceeds the excess of the Fair Market Value of the Shares underlying such cancelled Option or SAR over the aggregate Exercise Price of such Option or SAR or for any other Award, without stockholder approval; provided, however, that the restrictions set forth in this Section 3.3, shall not apply (i) unless the Company has a class of stock that is registered under Section 12 of the Exchange Act or (ii) to any adjustment allowed under to Section 4.2.

Article 4. Shares Subject to the Plan

4.1 Number of Shares Available for Grants. Subject to adjustment as provided in Section 4.2 and except as provided in Section 5.6(b), the maximum number of Shares hereby reserved for delivery under the Plan shall be:

(a) 6,200,000 Shares, plus

(b) an annual increase to be added as of the first day of the Company's fiscal year, beginning in 2019 and occurring each year thereafter through 2028, equal to the 4% of the total number of Shares of Common Stock issued and outstanding on a fully-diluted basis as of the end of the Company's immediately preceding fiscal year (or such lesser number of shares, including no shares, determined by the Board in its sole discretion); provided, however, that the aggregate number of additional Shares available for issuance pursuant to this paragraph (b) shall not exceed a total of 45,000,000 Shares.

Up to a maximum of 40,000,000 Shares may be delivered pursuant to the exercise of Incentive Stock Options granted hereunder.

If any Shares subject to an Award granted hereunder (other than a Substitute Award granted pursuant to Section 5.6(b)) are forfeited or such Award otherwise terminates without payment or delivery of such Shares, the Shares subject to such Award, to the extent of any such forfeiture or termination, shall again be available for grant under the Plan. For avoidance of doubt, however, if any Shares subject to an Award granted hereunder are withheld or applied as payment in connection with the exercise of an Award or the withholding or payment of taxes related thereto ("Returned Shares"), such Returned Shares will be treated as having been delivered for purposes of determining the maximum number of Shares available for grant under the Plan and shall not again be treated as available for grant under the Plan. Moreover, the number of Shares available for issuance under the Plan may not be increased through the

Company's purchase of Shares on the open market with the proceeds obtained from the exercise of any Options granted hereunder. Upon settlement of an SAR, the number of Shares underlying the portion of the SAR that is exercised will be treated as having been delivered for purposes of determining the maximum number of Shares available for grant under the Plan and shall not again be treated as available for issuance under the Plan.

Shares delivered pursuant to the Plan may be, in whole or in part, authorized and unissued Shares, or treasury Shares, including Shares repurchased by the Company for purposes of the Plan.

4.2 Adjustments in Authorized Shares and Awards; Corporate Transaction, Liquidation or Dissolution.

(a) Adjustment in Authorized Shares and Awards. In the event that the Committee determines that any dividend or other distribution (whether in the form of cash, Shares, or other property), recapitalization, forward or reverse stock split, subdivision, consolidation or reduction of capital, reorganization, merger, consolidation, scheme of arrangement, split-up, spin-off or combination involving the Company or repurchase or exchange of Shares or other securities of the Company or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event affects the Shares such that any adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares (or other securities or property) with respect to which Awards may be granted, (ii) the number and type of Shares (or other securities or property) subject to outstanding Awards, (iii) the Exercise Price with respect to any Option or SAR or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding Award, and (iv) the number and kind of Shares of outstanding Restricted Shares, or the Shares underlying any other form of Award. Notwithstanding the foregoing, no such adjustment shall be authorized with respect to any Options or SARs to the extent that such adjustment would cause the Option or SAR to violate Section 424(a) of the Code or otherwise subject any Grantee to taxation under Section 409A of the Code; and *provided further* that the number of Shares subject to any Award denominated in Shares shall always be a whole number.

(b) Merger, Consolidation or Similar Corporate Transaction. In the event of a merger or consolidation of the Company with or into another corporation or a sale of substantially all of the stock of the Company (a "Corporate Transaction"), unless an outstanding Award is assumed by the Surviving Company or replaced with an equivalent Award granted by the Surviving Company in substitution for such outstanding Award, the Committee shall cancel any outstanding Awards that are not vested and nonforfeitable as of the consummation of such Corporate Transaction (unless the Committee accelerates the vesting of any such Awards) and with respect to any vested and nonforfeitable Awards, the Committee may either (i) allow all Grantees to exercise such Awards of Options and SARs within a reasonable period prior to the consummation of the Corporate Transaction and cancel any outstanding Options or SARs that remain unexercised upon consummation of the Corporate Transaction, or (ii) cancel any or all of such outstanding Awards in exchange for a payment (in cash, or in securities or other property) in an amount equal to the amount that the Grantee would have received (net of the Exercise Price with respect to any Options or SARs) if such vested Awards were settled or distributed or such vested Options and SARs were exercised immediately prior to the consummation of the Corporate Transaction. Notwithstanding the foregoing, if an Option or SAR is not assumed by the Surviving Company or replaced with an equivalent Award issued by the Surviving Company and the Exercise Price with respect to any outstanding Option or SAR exceeds the Fair Market Value of the Shares immediately prior to the consummation of the Corporation Transaction, such Awards shall be cancelled without any payment to the Grantee.

(c) Liquidation or Dissolution of the Company. In the event of the proposed dissolution or liquidation of the Company, each Award will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Committee. Additionally, the Committee may, in the exercise of its sole discretion, cause Awards to be vested and non-forfeitable and cause any conditions on any such Award to lapse, as to all or any part of such Award, including Shares as to which the Award would not otherwise be exercisable or non-forfeitable and allow all Grantees to exercise such Awards of Options and SARs within a reasonable period prior to the consummation of such proposed action. Any Awards that remain unexercised upon consummation of such proposed action shall be cancelled.

(d) Deferred Compensation. Notwithstanding the forgoing provisions of this Section 4.2, if an Award constitutes deferred compensation within the meaning of Code Section 409A, no payment or settlement of such Award shall be made pursuant to Section 4.2(b) or (c), unless the Corporate Transaction or the dissolution or liquidation of the Company, as applicable, constitutes a Change in Control.

Article 5. Eligibility and General Conditions of Awards

5.1 Eligibility. The Committee may in its discretion grant Awards to any Eligible Person, whether or not he or she has previously received an Award; provided, however, that all Awards made to Non-Employee Directors shall be determined by the Board in its sole discretion.

5.2 Award Agreement. To the extent not set forth in the Plan, the terms and conditions of each Award shall be set forth in an Award Agreement.

5.3 General Terms and Termination of Affiliation. The Committee may impose on any Award or the exercise or settlement thereof, at the date of grant or, subject to the provisions of Section 15.2, thereafter, such additional terms and conditions not inconsistent with the provisions of the Plan as the Committee shall determine, including terms requiring forfeiture, acceleration or pro-rata acceleration of Awards in the event of a Termination of Affiliation by the Grantee. Except as may be required under the Delaware General Corporation Law, Awards may be granted for no consideration other than prior and future services. Except as set forth in an Award Agreement or as otherwise determined by the Committee, (a) all Options and SARs that are not vested and exercisable at the time of a Grantee's Termination of Affiliation, and any other Awards that remain subject to a risk of forfeiture or which are not otherwise vested at the time of the Grantee's Termination of Affiliation shall be forfeited to the Company and (b) all outstanding Options and SARs not previously exercised shall expire three months after the Grantee's Termination of Affiliation.

5.4 Nontransferability of Awards.

(a) Each Award and each right under any Award shall be exercisable only by the Grantee during the Grantee's lifetime, or, if permissible under applicable law, by the Grantee's guardian or legal representative or by a transferee receiving such Award pursuant to a qualified domestic relations order (a "QDRO") as defined in the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended, or the rules thereunder.

(b) No Award (prior to the time, if applicable, Shares are delivered in respect of such Award), and no right under any Award, may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Grantee otherwise than by will or by the laws of descent and distribution (or in the case of Restricted Shares, to the Company) or pursuant to a QDRO, and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any Affiliate; provided that the designation of a beneficiary to receive benefits in the event of the Grantee's death shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

(c) Notwithstanding subsections (a) and (b) above, to the extent provided in the Award Agreement or as otherwise approved by the Committee, Options (other than Incentive Stock Options) and Restricted Shares, may be transferred, without consideration, to a Permitted Transferee. For this purpose, a "Permitted Transferee" in respect of any Grantee means any member of the Immediate Family of such Grantee, any trust of which all of the primary beneficiaries are such Grantee or members of his or her Immediate Family, or any partnership (including limited liability companies and similar entities) of which all of the partners or members are such Grantee or members of his or her Immediate Family; and the "Immediate Family" of a Grantee means the Grantee's spouse, children, stepchildren, grandchildren, parents, stepparents, siblings, grandparents, nieces and nephews. Such Option may be exercised by such transferee in accordance with the terms of the Award Agreement. If so determined by the Committee, a Grantee may, in the manner established by the Committee, designate a beneficiary or beneficiaries to exercise the rights of the Grantee, and to receive any distribution with respect to any Award upon the death of the Grantee. A transferee, beneficiary, guardian, legal representative or other person claiming any rights under the Plan from or through any Grantee shall be subject to and consistent with the provisions of the Plan and any applicable Award Agreement, except to the extent the Plan and Award Agreement otherwise provide with respect to such persons, and to any additional restrictions or limitations deemed necessary or appropriate by the Committee.

(d) Nothing herein shall be construed as requiring the Committee to honor a QDRO except to the extent required under applicable law.

5.5 Cancellation and Rescission of Awards. Unless the Award Agreement specifies otherwise, the Committee may cancel, rescind, suspend, withhold, or otherwise limit or restrict any unexercised Award at any time if the Grantee is not in compliance with all applicable provisions of the Award Agreement and the Plan or if the Grantee has a Termination of Affiliation.

5.6 Stand-Alone, Tandem and Substitute Awards.

(a) Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution for, any other Award granted under the Plan unless such tandem or substitution Award would subject the Grantee to tax penalties imposed under Section 409A of the Code. If an Award is granted in substitution for another Award or any non-Plan award or benefit, the Committee shall require the surrender of such other Award or non-Plan award or benefit in consideration for the grant of the new Award. Awards granted in addition to or in tandem with other Awards or non-Plan awards or benefits may be granted either at the same time as or at a different time from the grant of such other Awards or non-Plan awards or benefits; provided, however, that if any SAR is granted in tandem with an Incentive Stock Option, such SAR and Incentive Stock Option must have the same Grant Date, Term and the Exercise Price of the SAR may not be less than the Exercise Price of the Incentive Stock Option.

(b) The Committee may, in its discretion and on such terms and conditions as the Committee considers appropriate in the circumstances, grant Awards under the Plan ("Substitute Awards") in substitution for stock and stock-based awards ("Acquired Entity Awards") held by current or former employees or non-employee directors of, or consultants to, another corporation or entity who become Eligible Persons as the result of a merger or consolidation of the employing corporation or other entity (the "Acquired Entity") with the Company or an Affiliate or the acquisition by the Company or an Affiliate of property or stock of the Acquired Entity immediately prior to such merger, consolidation or acquisition in order to preserve for the Grantee the economic value of all or a portion of such Acquired Entity Award at such price as the Committee determines necessary to achieve preservation of economic value. The limitations in Section 4.1 on the number of Shares reserved or available for grants shall not apply to Substitute Awards granted under this Section 5.6(b).

5.7 Compliance with Rule 16b-3. The provisions of this Section 5.7 will not apply unless and until the Company has a class of stock that is registered under Section 12 of the Exchange Act.

(a) Six-Month Holding Period Advice. Unless a Grantee could otherwise dispose of or exercise a derivative security or dispose of Shares delivered under the Plan without incurring liability under Section 16(b) of the Exchange Act, the Committee may advise or require a Grantee to comply with the following in order to avoid incurring liability under Section 16(b) of the Exchange Act: (i) at least six months must elapse from the date of acquisition of a derivative security under the Plan to the date of disposition of the derivative security (other than upon exercise or conversion) or its underlying equity security, and (ii) Shares granted or awarded under the Plan other than upon exercise or conversion of a derivative security must be held for at least six months from the date of grant of an Award.

(b) Reformation to Comply with Exchange Act Rules. To the extent the Committee determines that a grant or other transaction by a Section 16 Person should comply with applicable provisions of Rule 16b-3 (except for transactions exempted under alternative Exchange Act rules), the Committee shall take such actions as necessary to make such grant or other transaction so comply, and if any provision of this Plan or any Award Agreement relating to a given Award does not comply with the requirements of Rule 16b-3 as then applicable to any such grant or transaction, such provision will be construed or deemed amended, if the Committee so determines, to the extent necessary to conform to the then applicable requirements of Rule 16b-3.

(c) Rule 16b-3 Administration. Any function relating to a Section 16 Person shall be performed solely by the Committee or the Board if necessary to ensure compliance with applicable requirements of Rule 16b-3, to the extent the Committee determines that such compliance is desired. Each member of the Committee or person acting on behalf of the Committee shall be entitled to, in good faith, rely or act upon any report or other information furnished to him by any officer, manager or other employee of the Company or any Affiliate, the Company's independent certified public accountants or any executive compensation consultant or attorney or other professional retained by the Company to assist in the administration of the Plan.

5.8 Deferral of Award Payouts. The Committee may permit a Grantee to defer, or if and to the extent specified in an Award Agreement require the Grantee to defer, receipt of the payment of cash or the delivery of Shares that would otherwise be due by virtue of the lapse or waiver of restrictions with respect to Restricted Stock Units, the satisfaction of any requirements or goals with respect to Performance Units or Performance Shares, the lapse or waiver of the deferral period for Deferred Stock, or the lapse or waiver of restrictions with respect to Other Stock-Based Awards or Cash Incentive Awards. If the Committee permits such deferrals, the Committee shall establish rules and procedures for making such deferral elections and for the payment of such deferrals, which shall conform in form and substance with applicable regulations promulgated under Section 409A of the Code and Article 16 to ensure that the Grantee is not subjected to tax penalties under Section 409A of the Code with respect to such deferrals. Except as otherwise provided in an Award Agreement, any payment or any Shares that are subject to such deferral shall be made or delivered to the Grantee as specified in the Award Agreement or pursuant to the Grantee's deferral election.

Article 6. Stock Options

6.1 Grant of Options. Subject to and consistent with the provisions of the Plan, Options may be granted to any Eligible Person in such number, and upon such terms, and at any time and from time to time as shall be determined by the Committee.

6.2 Award Agreement. Each Option grant shall be evidenced by an Award Agreement that shall specify the Exercise Price, the Term of the Option, the number of Shares to which the Option pertains, the time or times at which such Option shall be exercisable and such other provisions as the Committee shall determine.

6.3 Option Exercise Price. The Exercise Price of an Option under this Plan shall be determined in the sole discretion of the Committee but may not be less than 100% of the Fair Market Value of a Share on the Grant Date.

6.4 Grant of Incentive Stock Options. At the time of the grant of any Option, the Committee may in its discretion designate that such Option shall be made subject to additional restrictions to permit it to qualify as an Incentive Stock Option. Any Option designated as an Incentive Stock Option:

(a) shall be granted only to an employee of the Company or a Subsidiary Corporation;

(b) shall have an Exercise Price of not less than 100% of the Fair Market Value of a Share on the Grant Date, and, if granted to a person who owns capital stock (including stock treated as owned under Section 424(d) of the Code) possessing more than 10% of the total combined voting power of all classes of capital stock of the Company or any Subsidiary Corporation (a "More Than 10% Owner"), have an Exercise Price not less than 110% of the Fair Market Value of a Share on its Grant Date;

(c) shall be for a period of not more than 10 years (five years if the Grantee is a More Than 10% Owner) from its Grant Date, and shall be subject to earlier termination as provided herein or in the applicable Award Agreement;

(d) shall not have an aggregate Fair Market Value (as of the Grant Date) of the Shares with respect to which Incentive Stock Options (whether granted under the Plan or any other stock option plan of the Grantee's employer or any parent or Subsidiary Corporation ("Other Plans")) are exercisable for the first time by such Grantee during any calendar year ("Current Grant"), determined in accordance with the provisions of Section 422 of the Code, which exceeds \$100,000 (the "\$100,000 Limit");

(e) shall, if the aggregate Fair Market Value of the Shares (determined on the Grant Date) with respect to the Current Grant and all Incentive Stock Options previously granted under the Plan and any Other Plans which are exercisable for the first time during a calendar year ("Prior Grants") would exceed the \$100,000 Limit, be, as to the portion in excess of the \$100,000 Limit, exercisable as a separate option that is not an Incentive Stock Option at such date or dates as are provided in the Current Grant;

(f) shall require the Grantee to notify the Committee of any disposition of any Shares delivered pursuant to the exercise of the Incentive Stock Option under the circumstances described in Section 421(b) of the Code (relating to holding periods and certain disqualifying dispositions) ("Disqualifying Disposition") within 10 days of such a Disqualifying Disposition;

(g) shall by its terms not be assignable or transferable other than by will or the laws of descent and distribution and may be exercised, during the Grantee's lifetime, only by the Grantee; provided, however, that the Grantee may, to the extent provided in the Plan in any manner specified by the Committee, designate in writing a beneficiary to exercise his or her Incentive Stock Option after the Grantee's death; and

(h) shall, if such Option nevertheless fails to meet the foregoing requirements, or otherwise fails to meet the requirements of Section 422 of the Code for an Incentive Stock Option, be treated for all purposes of this Plan, except as otherwise provided in subsections (d) and (e) above, as an Option that is not an Incentive Stock Option.

Notwithstanding the foregoing and Section 3.2, the Committee may, without the consent of the Grantee, at any time before the exercise of an Option (whether or not an Incentive Stock Option), take any action necessary to prevent such Option from being treated as an Incentive Stock Option.

6.5 Payment of Exercise Price. Except as otherwise provided in an Award Agreement, Options shall be exercised by the delivery of a written notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares made by any one or more of the following means:

(a) cash, personal check or wire transfer;

(b) with the approval of the Committee, delivery of Common Stock owned by the Grantee prior to exercise, valued at Fair Market Value on the date of exercise;

(c) with the approval of the Committee, Shares acquired upon the exercise of such Option, such Shares valued at Fair Market Value on the date of exercise;

(d) with the approval of the Committee, Restricted Shares held by the Grantee prior to the exercise of the Option, valued at Fair Market Value on the date of exercise; or

(e) subject to applicable law (including the prohibited loan provisions of Section 402 of the Sarbanes Oxley Act of 2002), through the sale of the Shares acquired on exercise of the Option through a broker-dealer to whom the Grantee has submitted an irrevocable notice of exercise and irrevocable instructions to deliver promptly to the Company the amount of sale proceeds sufficient to pay for such Shares, together with, if requested by the Company, the amount of federal, state, local or foreign withholding taxes payable by Grantee by reason of such exercise.

The Committee may in its discretion specify that, if any Restricted Shares ("Tendered Restricted Shares") are used to pay the Exercise Price, (x) all the Shares acquired on exercise of the Option shall be subject to the same restrictions as the Tendered Restricted Shares, determined as of the date of exercise of the Option, or (y) a number of Shares acquired on exercise of the Option equal to the number of Tendered Restricted Shares shall be subject to the same restrictions as the Tendered Restricted Shares, determined as of the date of exercise of the Option.

Article 7. Stock Appreciation Rights

7.1 Issuance. Subject to and consistent with the provisions of the Plan, the Committee, at any time and from time to time, may grant SARs to any Eligible Person either alone or in addition to other Awards granted under the Plan. Such SARs may, but need not, be granted in connection with a specific Option granted under Article 6. The Committee may impose such conditions or restrictions on the exercise of any SAR as it shall deem appropriate.

7.2 Award Agreements. Each SAR grant shall be evidenced by an Award Agreement in such form as the Committee may approve and shall contain such terms and conditions not inconsistent with other provisions of the Plan as shall be determined from time to time by the Committee.

7.3 SAR Exercise Price. The Exercise Price of a SAR shall be determined by the Committee in its sole discretion; provided that the Exercise Price shall not be less than 100% of the Fair Market Value of a Share on the date of the grant of the SAR.

7.4 Exercise and Payment. Upon the exercise of an SAR, a Grantee shall be entitled to receive payment from the Company in an amount determined by multiplying:

- (a) The excess of the Fair Market Value of a Share on the date of exercise over the Exercise Price; by
- (b) The number of Shares with respect to which the SAR is exercised.

SARs shall be deemed exercised on the date written notice of exercise in a form acceptable to the Committee is received by the Secretary of the Company. The Company shall make payment in respect of any SAR within five (5) days of the date the SAR is exercised. Any payment by the Company in respect of a SAR may be made in cash, Shares, other property, or any combination thereof, as the Committee, in its sole discretion, shall determine or, to the extent permitted under the terms of the applicable Award Agreement, at the election of the Grantee.

Article 8. Restricted Shares

8.1 Grant of Restricted Shares. Subject to and consistent with the provisions of the Plan, the Committee, at any time and from time to time, may grant Restricted Shares to any Eligible Person in such amounts as the Committee shall determine.

8.2 Award Agreement. Each grant of Restricted Shares shall be evidenced by an Award Agreement that shall specify the Period(s) of Restriction, the number of Restricted Shares granted, and such other provisions as the Committee shall determine. The Committee may impose such conditions and/or restrictions on any Restricted Shares granted pursuant to the Plan as it may deem advisable, including restrictions based upon the achievement of specific performance goals, time-based restrictions on vesting following the attainment of the performance goals, and/or restrictions under applicable securities laws; provided that such conditions and/or restrictions may lapse, if so determined by the Committee, in the event of the Grantee's Termination of Affiliation due to death, Disability, or involuntary termination by the Company or an Affiliate without Cause.

8.3 Consideration for Restricted Shares. The Committee shall determine the amount, if any, that a Grantee shall pay for Restricted Shares.

8.4 Effect of Forfeiture. If Restricted Shares are forfeited, and if the Grantee was required to pay for such shares or acquired such Restricted Shares upon the exercise of an Option, the Grantee shall be deemed to have resold such Restricted Shares to the Company at a price equal to the lesser of (x) the amount paid by the Grantee for such Restricted Shares, or (y) the Fair Market Value of a Share on the date of such forfeiture. The Company shall pay to the Grantee the deemed sale price as soon as is administratively practical. Such Restricted Shares shall cease to be outstanding and shall no longer confer on the Grantee thereof any rights as a stockholder of the Company, from and after the date of the event causing the forfeiture, whether or not the Grantee accepts the Company's tender of payment for such Restricted Shares.

8.5 Escrow; Legends. The Committee may provide that the certificates for any Restricted Shares (x) shall be held (together with a stock power executed in blank by the Grantee) in escrow by the Secretary of the Company until such Restricted Shares become nonforfeitable or are forfeited and/or (y) shall bear an appropriate legend restricting the transfer of such Restricted Shares under the Plan. If any Restricted Shares become nonforfeitable, the Company shall cause certificates for such shares to be delivered without such legend.

Article 9.
Performance Units and Performance Shares

9.1 Grant of Performance Units and Performance Shares. Subject to and consistent with the provisions of the Plan, Performance Units or Performance Shares may be granted to any Eligible Person in such amounts and upon such terms, and at any time and from time to time, as shall be determined by the Committee.

9.2 Value/Performance Goals. The Committee shall set performance goals in its discretion which, depending on the extent to which they are met, will determine the number or value of Performance Units or Performance Shares that will be paid to the Grantee.

(a) Performance Unit. Each Performance Unit shall have an initial value that is established by the Committee at the time of grant.

(b) Performance Share. Each Performance Share shall have an initial value equal to the Fair Market Value of a Share on the date of grant.

9.3 Earning of Performance Units and Performance Shares. After the applicable Performance Period has ended, the holder of Performance Units or Performance Shares shall be entitled to payment based on the level of achievement of performance goals set by the Committee.

At the discretion of the Committee, the settlement of Performance Units or Performance Shares may be in cash, Shares of equivalent value, or in some combination thereof, as set forth in the Award Agreement.

If a Grantee is promoted, demoted or transferred to a different business unit of the Company during a Performance Period, then, to the extent the Committee determines that the Award, the performance goals, or the Performance Period are no longer appropriate, the Committee may adjust, change, eliminate or cancel the Award, the performance goals, or the applicable Performance Period, as it deems appropriate in order to make them appropriate and comparable to the initial Award, the performance goals, or the Performance Period.

At the discretion of the Committee, a Grantee may be entitled to receive any dividends or Dividend Equivalents declared with respect to Shares deliverable in connection with vested Performance Shares which have been earned, but not yet delivered to the Grantee.

Article 10.
Deferred Stock and Restricted Stock Units

10.1 Grant of Deferred Stock and Restricted Stock Units. Subject to and consistent with the provisions of the Plan, the Committee, at any time and from time to time, may grant Deferred Stock and/or Restricted Stock Units to any Eligible Person, in such amount and upon such terms as the Committee shall determine. Deferred Stock must conform in form and substance with applicable regulations promulgated under Section 409A of the Code and with Article 16 to ensure that the Grantee is not subjected to tax penalties under Section 409A of the Code with respect to such Deferred Stock.

10.2 Vesting and Delivery.

(a) Delivery with Respect to Deferred Stock. Delivery of Shares subject to a Deferred Stock grant will occur upon expiration of the deferral period or upon the occurrence of one or more of the distribution events described in Section 409A(a)(2) of the Code as specified by the Committee in the Grantee's Award Agreement for the Award of Deferred Stock. An Award of Deferred Stock may be subject to such substantial risk of forfeiture conditions as the Committee may impose, which conditions may lapse at such times or upon the achievement of such

objectives as the Committee shall determine at the time of grant or thereafter. Unless otherwise determined by the Committee, to the extent that the Grantee has a Termination of Affiliation while the Deferred Stock remains subject to a substantial risk of forfeiture, such Deferred Shares shall be forfeited, unless the Committee determines that such substantial risk of forfeiture shall lapse in the event of the Grantee's Termination of Affiliation due to death, Disability, or involuntary termination by the Company or an Affiliate without "cause."

(b) Delivery with Respect to Restricted Stock Units. Delivery of Shares subject to a grant of Restricted Stock Units shall occur no later than the 15th day of the third month following the end of the taxable year of the Grantee or the fiscal year of the Company in which the Grantee's rights under such Restricted Stock Units are no longer subject to a substantial risk of forfeiture as defined in final regulations under Section 409A of the Code. Unless otherwise determined by the Committee, to the extent that the Grantee has a Termination of Affiliation while the Restricted Stock Units remains subject to a substantial risk of forfeiture, such Restricted Stock Units shall be forfeited, unless the Committee determines that such substantial risk of forfeiture shall lapse in the event of the Grantee's Termination of Affiliation due to death, Disability, or involuntary termination by the Company or an Affiliate without "cause."

10.3 Voting and Dividend Equivalent Rights Attributable to Deferred Stock and Restricted Stock Units. A Grantee awarded Deferred Stock or Restricted Stock Units will have no voting rights with respect to such Deferred Stock or Restricted Stock Units prior to the delivery of Shares in settlement of such Deferred Stock and/or Restricted Stock Units. Unless otherwise determined by the Committee, a Grantee will have the rights to receive Dividend Equivalents in respect of Deferred Stock and/or Restricted Stock Units, which Dividend Equivalents shall be deemed reinvested in additional Shares of Deferred Stock or Restricted Stock Units, as applicable, which shall remain subject to the same forfeiture conditions applicable to the Deferred Stock or Restricted Stock Units to which such Dividend Equivalents relate.

Article 11. Dividend Equivalents

The Committee is authorized to grant Awards of Dividend Equivalents alone or in conjunction with other Awards. The Committee may provide that Dividend Equivalents shall be paid or distributed when accrued or shall be deemed to have been reinvested in additional Shares or additional Awards or otherwise reinvested subject to distribution at the same time and subject to the same conditions as the Award to which it relates; provided, however, that any Dividend Equivalents granted in conjunction with any Award that is subject to forfeiture conditions shall remain subject to the same forfeiture conditions applicable to the Award to which such Dividend Equivalents relate and any payments in respect of any Dividend Equivalents granted in conjunction with any Options or SARs may not be conditioned, directly or indirectly, on the Grantee's exercise of the Options or SARs or paid at the same time that the Options or SARs are exercised. The timing of payment or distribution of Dividend Equivalents must comply with the requirements of Section 409A of the Code.

Article 12. Bonus Shares

Subject to the terms of the Plan, the Committee may grant Bonus Shares to any Eligible Person, in such amount and upon such terms and at any time and from time to time as shall be determined by the Committee.

Article 13.
Other Stock-Based Awards

The Committee is authorized, subject to limitations under applicable law, to grant such other Awards that are denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Shares, as deemed by the Committee to be consistent with the purposes of the Plan, including Shares awarded which are not subject to any restrictions or conditions, convertible or exchangeable debt securities or other rights convertible or exchangeable into Shares, and Awards valued by reference to the value of securities of or the performance of specified Affiliates. Subject to and consistent with the provisions of the Plan, the Committee shall determine the terms and conditions of such Awards. Except as provided by the Committee, Shares delivered pursuant to a purchase right granted under this Article 13 shall be purchased for such consideration, paid for by such methods and in such forms, including cash, Shares, outstanding Awards or other property, as the Committee shall determine.

Article 14.
Non-Employee Director Awards

Subject to the terms of the Plan, the Board may grant Awards to any Non-Employee Director, in such amount and upon such terms and at any time and from time to time as shall be determined by the full Board in its sole discretion. Except as otherwise provided in Section 5.6(b), a Non-Employee Director may not be granted Awards with respect to Shares that have a Fair Market Value (determined as of the date of grant) in excess of \$500,000 in a single calendar year.

Article 15.
Amendment, Modification, and Termination

15.1 Amendment, Modification, and Termination. Subject to Section 15.2, the Board may, at any time and from time to time, alter, amend, suspend, discontinue or terminate the Plan in whole or in part without the approval of the Company's stockholders, except that (a) any amendment or alteration shall be subject to the approval of the Company's stockholders if such stockholder approval is required by any federal or state law or regulation or the rules of any stock exchange or automated quotation system on which the Shares may then be listed or quoted, and (b) the Board may otherwise, in its discretion, determine to submit other such amendments or alterations to stockholders for approval.

15.2 Awards Previously Granted. Except as otherwise specifically permitted in the Plan or an Award Agreement, no termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Grantee of such Award.

Article 16.
Compliance with Code Section 409A

16.1 Awards Subject to Code Section 409A. The provisions of this Article 16 shall apply to any Award or portion thereof that is or becomes deferred compensation subject to Code Section 409A (a "409A Award"), notwithstanding any provision to the contrary contained in the Plan or the Award Agreement applicable to such Award.

16.2 Deferral and/or Distribution Elections. Except as otherwise permitted or required by Code Section 409A, the following rules shall apply to any deferral and/or elections as to the form or timing of distributions (each, an "Election") that may be permitted or required by the Committee with respect to a 409A Award:

(a) Any Election must be in writing and specify the amount being deferred, and the time and form of distribution (i.e., lump sum or installments) as permitted by this Plan. An Election may but need not specify whether payment will be made in cash, Shares or other property.

(b) Any Election shall become irrevocable as of the deadline specified by the Committee, which shall not be later than December 31 of the year preceding the year in which services relating to the Award commence; provided, however, that if the Award qualifies as "performance-based compensation" for purposes of Code Section 409A and is based on services performed over a period of at least twelve (12) months, then the deadline may be no later than six (6) months prior to the end of such Performance Period.

(c) Unless otherwise provided by the Committee, an Election shall continue in effect until a written election to revoke or change such Election is received by the Committee, prior to the last day for making an Election for the subsequent year.

16.3 Subsequent Elections. Except as otherwise permitted or required by Code Section 409A, any 409A Award which permits a subsequent Election to further defer the distribution or change the form of distribution shall comply with the following requirements:

(a) No subsequent Election may take effect until at least twelve (12) months after the date on which the subsequent Election is made;

(b) Each subsequent Election related to a distribution upon separation from service, a specified time, or a Change in Control must result in a delay of the distribution for a period of not less than five (5) years from the date such distribution would otherwise have been made; and

(c) No subsequent Election related to a distribution to be made at a specified time or pursuant to a fixed schedule shall be made less than twelve (12) months prior to the date the first scheduled payment would otherwise be made.

16.4 Distributions Pursuant to Deferral Elections. Except as otherwise permitted or required by Code Section 409A, no distribution in settlement of a 409A Award may commence earlier than:

(a) Separation from Service;

(b) The date the Participant becomes Disabled (as defined in Section 2.15(b));

(c) The Participant's death;

(d) A specified time (or pursuant to a fixed schedule) that is either (i) specified by the Committee upon the grant of the Award and set forth in the Award Agreement or (ii) specified by the Grantee in an Election complying with the requirements of Section 16.2 and/or 16.3, as applicable; or

(e) A change in ownership of the Company or a substantial portion of its assets within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(v) or (vii) or a change in effective control of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vi) (a "Change in Control").

16.5 Six Month Delay. Notwithstanding anything herein or in any Award Agreement or Election to the contrary, to the extent that distribution of a 409A Award is triggered by a Grantee's Separation from Service, if the Grantee is then a "specified employee" (as defined in Treasury Regulation Section 1.409A-1(i)), no distribution may be made before the date which is six (6) months after such Grantee's Separation from Service, or, if earlier, the date of the Grantee's death.

16.6 Death or Disability. Unless the Award Agreement otherwise provides, if a Grantee dies or becomes Disabled before complete distribution of amounts payable upon settlement of a 409A Award, such undistributed amounts, to the extent vested, shall be distributed as provided in the Participants Election. If the Participant has made no Election with respect to distributions upon death or Disability, all such distributions shall be paid in a lump sum within 90 days following the date of the Participant's death or Disability.

16.7 No Acceleration of Distributions. This Plan does not permit the acceleration of the time or schedule of any distribution under a 409A Award, except as provided by Code Section 409A and/or applicable regulations or rulings issued thereunder.

Article 17. Withholding

17.1 Required Withholding.

(a) The Committee in its sole discretion may provide that when taxes are to be withheld in connection with the exercise of an Option or SAR, or upon the lapse of restrictions on Restricted Shares, or upon the transfer of Shares, or upon payment of any other benefit or right under this Plan (the date on which such exercise occurs or such restrictions lapse or such payment of any other benefit or right occurs hereinafter referred to as the "Tax Date"), the Grantee may elect to make payment for the withholding of federal, state and local taxes, including Social Security and Medicare ("FICA") taxes by one or a combination of the following methods:

(i) payment of an amount in cash equal to the amount to be withheld (including cash obtained through the sale of the Shares acquired on exercise of an Option or SAR, upon the lapse of restrictions on Restricted Shares, or upon the transfer of Shares, through a broker-dealer to whom the Grantee has submitted an irrevocable instructions to deliver promptly to the Company, the amount to be withheld);

(ii) delivering part or all of the amount to be withheld in the form of Common Stock valued at its Fair Market Value on the Tax Date;

(iii) requesting the Company to withhold from those Shares that would otherwise be received upon exercise of the Option or SAR, upon the lapse of restrictions on Restricted Stock, or upon the transfer of Shares, a number of Shares having a Fair Market Value on the Tax Date equal to the amount to be withheld; or

(iv) withholding from any compensation otherwise due to the Grantee.

The Committee in its sole discretion may provide that the maximum amount of tax withholding upon exercise of an Option or SARs, upon the lapse of restrictions on Restricted Shares, or upon the transfer of Shares, to be satisfied by withholding Shares upon exercise of such Option or SAR, upon the lapse of restrictions on Restricted Shares, or upon the transfer of Shares, pursuant to clause (iii) above shall not exceed the minimum amount of taxes, including FICA taxes, required to be withheld under federal, state and local law. An election by Grantee under this subsection is irrevocable. Any fractional share amount and any additional withholding not paid by the withholding or surrender of Shares must be paid in cash. If no timely election is made, the Grantee must deliver cash to satisfy all tax withholding requirements.

(b) Any Grantee who makes a Disqualifying Disposition (as defined in Section 6.4(f)) or an election under Section 83(b) of the Code shall remit to the Company an amount sufficient to satisfy all resulting tax withholding requirements in the same manner as set forth in subsection (a).

17.2 Notification under Code Section 83(b). If the Grantee, in connection with the exercise of any Option, or the grant of Restricted Shares, makes the election permitted under Section 83(b) of the Code to include in such Grantee's gross income in the year of transfer the amounts specified in Section 83(b) of the Code, then such Grantee shall notify the Company of such election within 10 days of filing the notice of the election with the Internal Revenue Service, in addition to any filing and notification required pursuant to regulations issued under Section 83(b) of the Code. The Committee may, in connection with the grant of an Award or at any time thereafter, prohibit a Grantee from making the election described above.

Article 18. Additional Provisions

18.1 Successors. Subject to Section 4.2(b), all obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise of all or substantially all of the business and/or assets of the Company.

18.2 Severability. If any part of the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any other part of the Plan. Any Section or part of a Section so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

18.3 Requirements of Law. The granting of Awards and the delivery of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required. Notwithstanding any provision of the Plan or any Award, Grantees shall not be entitled to exercise, or receive benefits under, any Award, and the Company (and any Affiliate) shall not be obligated to deliver any Shares or deliver benefits to a Grantee, if such exercise or delivery would constitute a violation by the Grantee or the Company of any applicable law or regulation.

18.4 Securities Law Compliance.

(a) If the Committee deems it necessary to comply with any applicable securities law, or the requirements of any stock exchange upon which Shares may be listed, the Committee may impose any restriction on Awards or Shares acquired pursuant to Awards under the Plan as it may deem advisable. In addition, if requested by the Company and any underwriter engaged by the Company, Shares acquired pursuant to Awards may not be sold or otherwise transferred or disposed of for such period following the effective date of any registration statement of the Company filed under the Securities Act as the Company or such underwriter shall specify reasonably and in good faith, not to exceed 180 days in the case of the Company's initial public offering or 90 days in the case of any other public offering. All certificates for Shares delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the SEC, any stock exchange upon which Shares are then listed, any applicable securities law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. If so requested by the Company, the Grantee shall make a written representation to the Company that he or she will not sell or offer to sell any Shares unless a registration statement shall be in effect with respect to such Shares under the Securities Act of 1933, as amended, and any applicable state securities law or unless he or she shall have furnished to the Company, in form and substance satisfactory to the Company, that such registration is not required.

(b) If the Committee determines that the exercise or nonforfeiture of, or delivery of benefits pursuant to, any Award would violate any applicable provision of securities laws or the

listing requirements of any national securities exchange or national market system on which are listed any of the Company's equity securities, then the Committee may postpone any such exercise, nonforfeitability or delivery, as applicable, but the Company shall use all reasonable efforts to cause such exercise, nonforfeitability or delivery to comply with all such provisions at the earliest practicable date.

18.5 Forfeiture Events. Notwithstanding any provisions herein to the contrary, the Committee shall have the authority to determine (and may so provide in any Award Agreement) that a Grantee's (including his or her estate's, beneficiary's or transferee's) rights (including the right to exercise any Option or SAR), payments and benefits with respect to any Award shall be subject to reduction, cancellation, forfeiture or recoupment (to the extent permitted by applicable law) in the event of the Participant's termination for Cause; serious misconduct; violation of the Company's or an Affiliate's policies; breach of fiduciary duty; unauthorized disclosure of any trade secret or confidential information of the Company or an Affiliate; breach of applicable noncompetition, nonsolicitation, confidentiality or other restrictive covenants; or other conduct or activity that is in competition with the business of the Company or an Affiliate, or otherwise detrimental to the business, reputation or interests of the Company and/or an Affiliate; or upon the occurrence of certain events specified in the applicable Award Agreement (in any such case, whether or not the Grantee is then an Employee or Non-Employee Director). The determination of whether a Grantee's conduct, activities or circumstances are described in the immediately preceding sentence shall be made by the Committee in its discretion, and pending any such determination, the Committee shall have the authority to suspend the exercise, payment, delivery or settlement of all or any portion of such Grantee's outstanding Awards pending any investigation of the matter.

18.6 No Rights as a Stockholder. No Grantee shall have any rights as a stockholder of the Company with respect to the Shares (other than Restricted Shares) which may be deliverable upon exercise or payment of such Award until such Shares have been delivered to him or her. Restricted Shares, whether held by a Grantee or in escrow by the Secretary of the Company, shall confer on the Grantee all rights of a stockholder of the Company, except as otherwise provided in the Plan or Award Agreement. At the time of a grant of Restricted Shares, the Committee may require the payment of cash dividends thereon to be deferred and, if the Committee so determines, reinvested in additional Restricted Shares. Stock dividends and deferred cash dividends issued with respect to Restricted Shares shall be subject to the same restrictions and other terms as apply to the Restricted Shares with respect to which such dividends are issued. The Committee may in its discretion provide for payment of interest on deferred cash dividends.

18.7 Nature of Payments. Unless otherwise specified in the Award Agreement, Awards shall be special incentive payments to the Grantee and shall not be taken into account in computing the amount of salary or compensation of the Grantee for purposes of determining any pension, retirement, death or other benefit under (a) any pension, retirement, profit sharing, bonus, insurance or other employee benefit plan of the Company or any Affiliate, except as such plan shall otherwise expressly provide, or (b) any agreement between (i) the Company or any Affiliate and (ii) the Grantee, except as such agreement shall otherwise expressly provide.

18.8 Non-Exclusivity of Plan. Neither the adoption of the Plan by the Board nor its submission to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt such other compensatory arrangements for employees or Non-Employee Directors as it may deem desirable.

18.9 Governing Law. The Plan, and all agreements hereunder, shall be construed in accordance with and governed by the laws of the State of Delaware, other than its laws respecting choice or conflicts of law rule or principles that might otherwise refer construction or interpretation of the Plan to the substantive law of another jurisdiction. Unless otherwise provided in the Award Agreement, Participants are deemed to submit to the exclusive jurisdiction and venue of the federal or state courts of the State of Delaware, to resolve any and all issues that may arise out of or relate to the Plan or any related Award Agreement.

18.10 Unfunded Status of Awards; Creation of Trusts. The Plan is intended to constitute an “unfunded” plan for incentive and deferred compensation. With respect to any payments not yet made to a Grantee pursuant to an Award, nothing contained in the Plan or any Award Agreement shall give any such Grantee any rights that are greater than those of a general creditor of the Company; provided, however, that the Committee may authorize the creation of trusts or make other arrangements to meet the Company’s obligations under the Plan to deliver cash, Shares or other property pursuant to any Award which trusts or other arrangements shall be consistent with the “unfunded” status of the Plan unless the Committee otherwise determines.

18.11 Affiliation. Nothing in the Plan or an Award Agreement shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Grantee’s employment or consulting contract at any time, nor confer upon any Grantee the right to continue in the employ of or as an officer of or as a consultant to or Non-Employee Director of the Company or any Affiliate.

18.12 Participation. No employee or officer shall have the right to be selected to receive an Award under this Plan or, having been so selected, to be selected to receive a future Award.

18.13 Military Service. Awards shall be administered in accordance with Section 414(u) of the Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

18.14 Construction. The following rules of construction will apply to the Plan: (a) the word “or” is disjunctive but not necessarily exclusive, and (b) words in the singular include the plural, words in the plural include the singular, and words in the neuter gender include the masculine and feminine genders and words in the masculine or feminine gender include the other neuter genders.

18.15 Headings. The headings of articles and sections are included solely for convenience of reference, and if there is any conflict between such headings and the text of this Plan, the text shall control.

18.16 Obligations. Unless otherwise specified in the Award Agreement, the obligation to deliver, pay or transfer any amount of money or other property pursuant to Awards under this Plan shall be the sole obligation of a Grantee’s employer; provided that the obligation to deliver or transfer any Shares pursuant to Awards under this Plan shall be the sole obligation of the Company.

18.17 No Right to Continue as Director. Nothing in the Plan or any Award Agreement shall confer upon any Non-Employee Director the right to continue to serve as a director of the Company.

18.18 Stockholder Approval. All Incentive Stock Options granted on or after the Effective Date and prior to the date the Company’s stockholders approve the Plan are expressly conditioned upon and subject to approval of the Plan by the Company’s stockholders.

CERTIFICATION

I, Francis R. Amato, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of electroCore, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) [Omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a);]
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2018

/s/ FRANCIS R. AMATO

Francis R. Amato
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Glenn S. Vraniak, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of electroCore, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) [Omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a);]
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2018

/s/ GLENN S. VRANIAK

Glenn S. Vraniak
Chief Financial Officer
(Principal Financial Officer)

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

In connection with the Quarterly Report on Form 10-Q of electroCore, Inc, (the "Company") for the period ended June 30, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Francis R. Amato, as Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that to the best of my knowledge:

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

Date: August 14, 2018

/s/ FRANCIS R. AMATO

Francis R. Amato
Chief Executive Officer
(Principal Executive Officer)

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

In connection with the Quarterly Report on Form 10-Q of electroCore, Inc. (the "Company") for the period ended June 30, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Glenn S. Vraniak, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that to the best of my knowledge:

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

Date: August 14, 2018

/s/ GLENN S. VRANIAK

Glenn S. Vraniak
Chief Financial Officer
(Principal Financial Officer)