

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Amendment No. 1

to

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

**Cognition Therapeutics, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**2836**  
(Primary Standard Industrial  
Classification Code Number)

**13-4365359**  
(I.R.S. Employer  
Identification Number)

2500 Westchester Ave.

Purchase, NY 10577

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Lisa Ricciardi

President and Chief Executive Officer

Cognition Therapeutics, Inc.

2500 Westchester Ave.

Purchase, NY 10577

(412) 481-2210

(Name, address, including zip code, and telephone number, including area code, of agent for service)

**Copies to:**

**Rachael M. Bushey**  
**Joseph Walsh**  
Troutman Pepper Hamilton Sanders LLP  
3000 Two Logan Square  
Philadelphia, Pennsylvania 19103  
(215) 981-4331

**Stephen Older**  
**Rakesh Gopalan**  
**David S. Wolpa**  
McGuireWoods LLP  
1251 Avenue of the Americas, 20<sup>th</sup> Floor  
New York, New York 10020  
(212) 548-2100

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

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

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

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

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Proposed maximum aggregate offering price <sup>(1)</sup>	Amount of registration fee <sup>(2)</sup>
Common Stock, \$0.001 par value per share	\$50,000,000	\$5,455 <sup>(3)</sup>

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

(2) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

(3) Previously paid.

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

#### **EXPLANATORY NOTE**

Cognition Therapeutics, Inc. is filing this Amendment No. 1 (this “Amendment”) to its Registration Statement on Form S-1 (File No. 333-257999) (the “Registration Statement”) solely to file certain exhibits as indicated in Part II of this Amendment. This Amendment does not modify any provision of the preliminary prospectus that forms a part of the Registration Statement. Accordingly, a preliminary prospectus has been omitted.

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## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### Item 13. Other expenses of issuance and distribution.

The following table sets forth the costs and expenses, other than the underwriting discounts and commissions, payable by Cognition Therapeutics, Inc., or the Registrant, in connection with the sale of our common stock being registered. All amounts are estimates except for the SEC registration fee, FINRA filing fee and Nasdaq Stock Market listing fee.

Item	Amount
SEC registration fee	\$ 5,455
FINRA filing fee	8,000
Nasdaq Stock Market listing fee	*
Printing expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue Sky, qualification fees and expenses	*
Transfer agent fees and expenses	*
Miscellaneous expenses	*
Total	\$ *

\* To be filed by amendment.

#### Item 14. Indemnification of directors and officers.

As permitted by Section 102 of the Delaware General Corporation Law, our third amended and restated certificate of incorporation and amended and restated bylaws to be in effect immediately prior to the closing of this offering will limit or eliminate the personal liability of our directors for a breach of their fiduciary duty of care as a director. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. Our third amended and restated certificate of incorporation will authorize us to indemnify our officers, directors and other agents to the fullest extent permitted under Delaware law.

As permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws will provide that:

- we may indemnify our directors, officers and employees to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions;
- we may advance expenses to our directors, officers and employees in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and

- the rights provided in our amended and restated bylaws are not exclusive.

Our amended and restated certificate of incorporation and our amended and restated bylaws will provide for the indemnification provisions described above and elsewhere herein. We have entered into, and intend to continue to enter into, separate indemnification agreements with our directors and officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements generally require us, among other things, to indemnify our officers and directors against certain liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also generally require us to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of our officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

We have purchased and currently intend to maintain insurance on behalf of each and every person who is or was a director or officer of the company against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

The form of underwriting agreement for this initial public offering provides for indemnification by the underwriters of us and our officers and directors who sign this registration statement for specified liabilities, including matters arising under the Securities Act.

#### **Item 15. Recent sales of unregistered securities.**

Set forth below is information regarding all unregistered securities sold by us since January 1, 2018. Also included is the consideration received by us for such securities and information relating to the section of the Securities Act, or rule of the SEC, under which exemption from registration was claimed.

##### ***Convertible Notes***

From March 2018 to July 2020, we issued convertible promissory notes in the aggregate principal amount of \$13.0 million with an interest rate of 8.0% per annum, pursuant to note purchase agreements entered into with certain holders of our capital stock. On May 1, 2021, the holders of all of our outstanding convertible promissory notes agreed to an acceleration of the date of the automatic conversion from June 30, 2021 to May 1, 2021 for all convertible promissory notes. Accordingly, on May 1, 2021, all of our outstanding convertible promissory notes were converted into 10,926,089 shares of our Series B-1 convertible preferred stock at a conversion price equal to \$1.385 per share. As of the date of this prospectus, no notes are outstanding. Pursuant to the terms of our Series B-1 convertible preferred stock all shares will automatically convert into shares of our common stock upon the closing of this offering on a one-for-one basis.

##### ***SAFE Financing***

In March 2021, we entered into simple agreements for future equity, or SAFEs, with various investors, pursuant to which we received gross proceeds in an aggregate amount equal to \$8.9 million. The amount invested by the investors in the SAFEs is automatically convertible into shares of our common stock upon the closing of our initial public offering at a conversion price equal to 80% of the initial public offering price.

##### ***Equity Awards***

Since January 1, 2018, we have granted stock options to employees, officers, directors and consultants, covering an aggregate of 7,270,239 shares of our common stock, having a weighted average exercise price of \$0.36 per share, in connection with services provided to us by such parties.

Since January 1, 2018, we have issued an aggregate of 141,848 shares of our common stock to employees, officers, directors and consultants upon their exercise of stock options, for aggregate cash consideration of approximately \$0.031 million.

Unless otherwise stated, the issuances of the above securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder, or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. Individuals who purchased securities as described above represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates issued in such transactions.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions or any public offering.

**Item 16. Exhibits and financial statement schedules.**

(a) Exhibits.

The exhibits listed below are filed as part of this registration statement.

Exhibit number	Exhibit description
1.1†	Form of Underwriting Agreement.
3.1*	<a href="#"><u>Second Amended and Restated Certificate of Incorporation, as filed with the Delaware Secretary of State on dated November 14, 2016, as currently in effect.</u></a>
3.2*	<a href="#"><u>Amendment to Second Amended and Restated Certificate of Incorporation, as filed with the Delaware Secretary of State on dated January 10, 2017.</u></a>
3.3*	<a href="#"><u>Second Amendment to Second Amended and Restated Certificate of Incorporation, as filed with the Delaware Secretary of State on dated February 2, 2017.</u></a>
3.4*	<a href="#"><u>Third Amendment to Second Amended and Restated Certificate of Incorporation, as filed with the Delaware Secretary of State on dated July 29, 2020.</u></a>
3.5*	<a href="#"><u>Fourth Amendment to Second Amended and Restated Certificate of Incorporation, as filed with the Delaware Secretary of State on dated April 30, 2021.</u></a>
3.6	<a href="#"><u>Form of Third Amended and Restated Certificate of Incorporation, which will become effective immediately prior to the closing of this offering.</u></a>
3.7*	<a href="#"><u>Bylaws, dated August 21, 2007, as currently in effect.</u></a>
3.8	<a href="#"><u>Form of Amended and Restated Bylaws, which will become effective immediately prior to the closing of this offering.</u></a>
4.1†	Specimen Common Stock Certificate of Registrant.
5.1†	Opinion of Troutman Pepper Hamilton Sanders LLP.
10.1•	<a href="#"><u>Form of Indemnification Agreement by and between the Registrant and its individual directors and officers.</u></a>
10.2*	<a href="#"><u>Third Amended and Restated Investor Rights Agreement dated as of March 20, 2014, by and among the Registrant and the investors listed therein.</u></a>
10.3*	<a href="#"><u>First Amendment dated as of March 23, 2020, to the Third Amended and Restated Investor Rights Agreement dated as March 20, 2014, by and among the Registrant and the investors listed therein.</u></a>
10.4*	<a href="#"><u>Office Lease dated July 1, 2017, by and between the Registrant and RJ Equities LP.</u></a>
10.5*	<a href="#"><u>First Amendment to Office Lease dated July 1, 2017, by and between the Registrant and RJ Equities LP.</u></a>
10.6*	<a href="#"><u>Office Lease dated July 1, 2021, by and between the Registrant and 2500/2700 Westchester Avenue Owner SPE LLC.</u></a>
10.7•*	<a href="#"><u>Amended and Restated 2007 Equity Incentive Plan.</u></a>
10.8•*	<a href="#"><u>2017 Equity Incentive Plan.</u></a>

Exhibit number	Exhibit description
10.9•*	<a href="#"><u>Amendment to 2017 Equity Incentive Plan.</u></a>
10.10•*	<a href="#"><u>Second Amendment to 2017 Equity Incentive Plan.</u></a>
10.11•	<a href="#"><u>2021 Equity Incentive Plan.</u></a>
10.12•	<a href="#"><u>2021 Employee Stock Purchase Plan.</u></a>
10.13•*	<a href="#"><u>Form of Restricted Stock Award Agreement.</u></a>
10.14•*	<a href="#"><u>Form of Stock Option Grant Notice and Award Agreement.</u></a>
10.15•*	<a href="#"><u>Employment Agreement dated June 1, 2020 by and between the Registrant and Lisa Ricciardi.</u></a>
10.16•	<a href="#"><u>Form of Amended and Restated Employment Agreement by and between the Registrant and Lisa Ricciardi, which will become effective immediately prior to the closing of this offering.</u></a>
10.17•*	<a href="#"><u>Separation and Release Agreement dated April 21, 2020 by and between the Registrant and Kenneth Moch.</u></a>
10.18•*	<a href="#"><u>Advisor Services Agreement dated March 17, 2020 by and between the Registrant and Kenneth Moch.</u></a>
10.19•*	<a href="#"><u>Letter Agreement dated October 7, 2019, by and between the Registrant and James M. O'Brien.</u></a>
10.20•	<a href="#"><u>Form of Employment Agreement by and between the Registrant and James M. O'Brien, which will become effective immediately prior to the closing of this offering.</u></a>
10.21•	<a href="#"><u>Form of Restrictive Covenant Agreement.</u></a>
10.22•	<a href="#"><u>Option Agreements for Directors</u></a>
10.23•	<a href="#"><u>Letter Agreement between the Registrant and Brett P. Monia, Ph.D.</u></a>
10.24•	<a href="#"><u>Letter Agreement between the Registrant and Jack A. Khattar.</u></a>
10.25*	<a href="#"><u>Grant Agreement dated August 14, 2016 by and between the Registrant and the National Institute of Aging.</u></a>
10.26*	<a href="#"><u>Grant Agreement dated September 12, 2017 by and between the Registrant and the National Institute of Aging.</u></a>
10.27*	<a href="#"><u>Grant Agreement dated April 18, 2018 by and between the Registrant and the National Institute of Aging.</u></a>
10.28*	<a href="#"><u>Grant Agreement dated September 8, 2018 by and between the Registrant and the National Institute of Aging.</u></a>
10.29*	<a href="#"><u>Grant Agreement dated August 28, 2020 by and between the Registrant and the National Institute of Aging.</u></a>
10.30*	<a href="#"><u>Grant Agreement dated September 5, 2020 by and between the Registrant and the National Institute of Aging.</u></a>
10.31*	<a href="#"><u>Grant Agreement dated September 18, 2020 by and between the Registrant and the National Institute of Aging.</u></a>
10.32*	<a href="#"><u>Grant Agreement dated February 3, 2021 by and between the Registrant and the National Institute of Aging.</u></a>
10.33*	<a href="#"><u>Grant Agreement dated April 30, 2021 by and between the Registrant and the National Institute of Aging.</u></a>
10.34*	<a href="#"><u>Grant Agreement dated May 6, 2021 by and between the Registrant and the National Institute of Aging.</u></a>
10.35*	<a href="#"><u>Grant Agreement dated May 10, 2021 by and between the Registrant and the National Institute of Aging</u></a>
23.1*	<a href="#"><u>Consent of Ernst &amp; Young LLP, an Independent Registered Public Accounting Firm.</u></a>

Exhibit number	Exhibit description
23.2†	Consent of Troutman Pepper Hamilton Sanders LLP (included in Exhibit 5.1).
24.1*	<a href="#">Power of Attorney (included on the signature page to this registration statement).</a>

† To be filed by amendment.

• Indicates management contract or compensatory plan.

\* Previously filed.

(b) *Financial statement schedules.*

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the consolidated financial statements or notes thereto.

**Item 17. Undertakings.**

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

1. For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.
2. For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

### Signatures

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Purchase, State of New York on July 29, 2021.

#### COGNITION THERAPEUTICS, INC.

By: /s/ Lisa Ricciardi

Lisa Ricciardi  
President and Chief Executive Officer  
(Principal Executive Officer)

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement on Form S-1 has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Lisa Ricciardi</u> Lisa Ricciardi	Chief Executive Officer, President and Director (Principal Executive Officer)	July 29, 2021
<u>/s/ James M. O'Brien</u> James M. O'Brien	Chief Financial Officer (Principal Financial and Accounting Officer)	July 29, 2021
<u>*</u> Jack A. Khattar	Director (Chairman of the Board)	July 29, 2021
<u>*</u> Mark H. Breedlove	Director	July 29, 2021
<u>*</u> Susan Catalano, Ph.D.	Director	July 29, 2021
<u>*</u> Aaron Fletcher, Ph.D.	Director	July 29, 2021
<u>*</u> Brett P. Monia, Ph.D.	Director	July 29, 2021
<u>*</u> Stephen Sands	Director	July 29, 2021
<u>*</u> Peggy Wallace	Director	July 29, 2021

\*By: /s/ Lisa Ricciardi

Lisa Ricciardi  
Attorney-in-fact



**THIRD AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
COGNITION THERAPEUTICS, INC.**

Cognition Therapeutics, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is Cognition Therapeutics, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was August 21, 2007. The Original Certificate, as amended, was amended and restated by the Amended and Restated Certificate of Incorporation (the "First Restated Certificate") filed with the Delaware Secretary of State on January 16, 2009. The First Restated Certificate, as amended, was further amended and restated by the Second Amended and Restated Certificate of Incorporation (the "Second Restated Certificate") filed with the Delaware Secretary of State on November 14, 2016. The Second Restated Certificate was amended by Certificates of Amendment filed with the Delaware Secretary of State on each of January 10, 2017, July 28, 2020 and April 27, 2021 (the "Amended Second A&R Certificate of Incorporation").

2. This Third Amended and Restated Certificate of Incorporation (the "Certificate") amends, restates and integrates the provisions of the Amended Second A&R Certificate of Incorporation, and was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").

3. This Certificate was approved by the holders of the requisite number of shares of this Corporation in accordance with Section 228 of the DGCL.

4. The text of the Amended Second A&R Certificate of Incorporation is hereby amended and restated in its entirety to provide as herein set forth in full.

ARTICLE I

The name of the Corporation is Cognition Therapeutics, Inc.

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 2140 South DuPont Highway, in the City of Camden, County of Kent, 19934. The name of its registered agent at such address is Paracorp Incorporated.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL, as the same exists or as may hereafter be amended from time to time.

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ARTICLE IV

Capital Stock

The total number of shares of capital stock which the Corporation shall have authority to issue is 260,000,000 of which (i) 250,000,000 shares shall be a class designated as common stock, par value \$0.001 per share (the "Common Stock"), and (ii) 10,000,000 shares shall be a class designated as undesignated preferred stock, par value \$0.001 per share (the "Undesignated Preferred Stock").

Except as otherwise provided in any certificate of designations of any series of Undesignated Preferred Stock, the number of authorized shares of the class of Common Stock or Undesignated Preferred Stock may from time to time be increased or decreased (but not below the number of shares of such class outstanding) by the affirmative vote of the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation irrespective of the provisions of Section 242(b)(2) of the DGCL.

The powers, preferences and rights of, and the qualifications, limitations and restrictions upon, each class or series of stock shall be determined in accordance with, or as set forth below in, this Article IV.

(A) COMMON STOCK

Subject to all the rights, powers and preferences of the Undesignated Preferred Stock and except as provided by law or in this Certificate (or in any certificate of designations of any series of Undesignated Preferred Stock):

(a) the holders of the Common Stock shall have the exclusive right to vote for the election of directors of the Corporation (the "Directors") and on all other matters requiring stockholder action, each outstanding share entitling 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, as such, shall not be entitled to vote on any amendment to this Certificate (or on any amendment to a certificate of designations of any series of Undesignated Preferred Stock) that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of Undesignated Preferred Stock if the holders of such affected series of Undesignated Preferred Stock are entitled to vote, either separately or together with the holders of one or more other such series, on such amendment pursuant to this Certificate (or pursuant to a certificate of designations of any series of Undesignated Preferred Stock) or pursuant to the DGCL;

(b) dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the Corporation legally available for the payment of dividends, but only when and as declared by the Board of Directors or any authorized committee thereof, subject to the requirements of applicable law; and

(c) upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the net assets of the Corporation shall be distributed pro rata to the holders of the Common Stock.

(B) UNDESIGNATED PREFERRED STOCK

The Board of Directors or any authorized committee thereof is expressly authorized, to the fullest extent permitted by law, to provide by resolution or resolutions for, out of the unissued shares of Undesignated Preferred Stock, the issuance of the shares of Undesignated Preferred Stock in one or more series of such stock, and by filing a certificate of designations pursuant to the DGCL, to establish or change from time to time the number of shares of each such series, and to fix the designations, powers, including voting powers, full or limited, or no voting powers, preferences and the relative, participating, optional or other special rights of the shares of each series and any qualifications, limitations and restrictions thereof.

ARTICLE V

Stockholder Action

1. Action Without Meeting. Any action required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders and may not be taken or effected by a written consent of stockholders in lieu thereof.

2. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock, special meetings of the stockholders of the Corporation may be called only by (i) the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office, (ii) the Chairperson of the Board, or (iii) the Chief Executive Officer of the Corporation, and special meetings of stockholders may not be called by any other person or persons. 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.

3. Advance Notice. Advance notice of stockholder nominations for the election of directors and of 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 (the "Bylaws").

4. Cumulative Voting. There shall be no cumulative voting.

ARTICLE VI

Directors

1. General. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided herein or required by law.

2. Election of Directors. Election of Directors need not be by written ballot unless the Bylaws shall so provide.

3. Number of Directors; Term of Office. The number of Directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The Directors, other than those who may be elected by the holders of any series of Undesignated Preferred Stock, shall be classified, with respect to the term for which they severally hold office, into three classes. Such classes shall be as nearly equal in number of Directors as reasonably possible. The Board of Directors shall assign Directors into classes at the time the classification becomes effective. The initial Class I Directors shall serve for a term expiring at the first annual meeting of stockholders to be held after the filing of this Certificate, the initial Class II Directors shall serve for a term expiring at the second annual meeting of stockholders to be held after the filing of this Certificate, and the initial Class III Directors shall serve for a term expiring at the third annual meeting of stockholders to be held after the filing of this Certificate. At each annual meeting of stockholders, Directors elected to succeed those Directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. Notwithstanding the foregoing, the Directors elected to each class shall hold office until their successors are duly elected and qualified or until their earlier resignation, death or removal.

Notwithstanding the foregoing, whenever, pursuant to the provisions of Article IV of this Certificate, the holders of any one or more series of Undesignated Preferred Stock shall have the right, voting separately as a series or together with holders of other such series, to elect Directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate and any certificate of designations applicable to such series.

4. Vacancies. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors and to fill vacancies in the Board of Directors relating thereto, any and all vacancies in the Board of Directors, however occurring, including, without limitation, by reason of an increase in the size of the Board of Directors, or the death, resignation, disqualification or removal of a Director, shall be filled solely and exclusively by the affirmative vote of a majority of the remaining Directors then in office, even if less than a quorum of the Board of Directors, and not by the stockholders. Any Director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been duly elected and qualified or until his or her earlier resignation, death or removal. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors, when the number of Directors is increased or decreased, the Board of Directors shall, subject to Article VI.3 hereof, determine the class or classes to which the increased or decreased number of Directors shall be apportioned; provided, however, that no decrease in the number of Directors shall shorten the term of any incumbent Director. In the event of a vacancy in the Board of Directors, the remaining Directors, except as otherwise provided by law, shall exercise the powers of the full Board of Directors until the vacancy is filled.

5. Removal. Subject to the rights, if any, of any series of Undesignated Preferred Stock to elect Directors and to remove any Director whom the holders of any such series have the right to elect, any Director (including persons elected by Directors to fill vacancies in the Board of Directors) may be removed from office only with cause. Subject to the rights, if any, of any series of Undesignated Preferred Stock and any limitations imposed by law, any individual director or the entire Board of Directors may be removed from office with cause by the affirmative vote of the holders of at least 66 2/3% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote on the election of such directors.

## ARTICLE VII

### Limitation Of Liability

A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL or (d) for any transaction from which the Director derived an improper personal benefit. If the DGCL is amended after the effective date of this Certificate 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 or limited to the fullest extent permitted by the DGCL, as so amended.

As more fully set forth in the Bylaws, the Corporation may indemnify to the fullest extent permitted by the DGCL any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative, arbitrative or investigative, by reason of the fact that he, she, his or her testator or intestate is or was a Director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation or serves or served at any other legal entity as a Director, officer, employee or agent at the request of the Corporation.

Any amendment, repeal or modification of this Article VII by either of (i) the stockholders of the Corporation or (ii) an amendment to the DGCL, shall not adversely affect any right or protection existing at the time of such amendment, repeal or modification with respect to any acts or omissions occurring before such amendment, repeal or modification of a person serving as a Director at the time of such amendment, repeal or modification.

## ARTICLE VIII

### Amendment Of Bylaws

1. Amendment by Directors. Except as otherwise provided by law, the Bylaws of the Corporation, or any provision or provisions thereof, may be amended or repealed by the Board of Directors by the affirmative vote of a majority of the Directors then in office.

2. Amendment by Stockholders. The Bylaws of the Corporation may be amended or repealed at any annual meeting of stockholders, or special meeting of stockholders called for such purpose, by the affirmative vote of at least 66 2/3% of the outstanding shares of capital stock entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares of capital stock entitled to vote on such amendment or repeal, voting together as a single class.

ARTICLE IX

Exclusive Forum

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, 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) and any appellate court therefrom shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative claim or cause of action brought on behalf of the Corporation; (ii) any claim or cause of action for breach of fiduciary duty owed by any current or former director, officer or other employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders; (iii) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, arising out of or pursuant to any provision of the DGCL, this Certificate or the Bylaws of the Corporation (as each may be amended from time to time); (iv) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of this Certificate or the Bylaws of the Corporation (as each may be amended from time to time, including any right, obligation or remedy thereunder); (v) any claim or cause of action as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; and (vi) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, governed by the internal affairs doctrine or otherwise related to the corporation's internal affairs, in all cases to the fullest extent permitted by law and subject to the court having personal jurisdiction over the indispensable parties named as defendants. Article IX shall not apply to claims or causes of action brought to enforce a duty or liability created by the Securities Act of 1933, as amended (the "1933 Act") Act or the Securities Exchange Act of 1934, as amended or any other claim for which the federal courts have exclusive jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, 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 1933 Act.

ARTICLE X

Amendment Of Certificate Of Incorporation

The Corporation reserves the right to amend or repeal this Certificate in the manner now or hereafter prescribed by statute and this Certificate, and all rights conferred upon stockholders herein are granted subject to this reservation. Whenever any vote of the holders of capital stock of the Corporation is required to amend or repeal any provision of this Certificate, and in addition to any other vote of holders of capital stock that is required by this Certificate or by law, such amendment or repeal shall require the affirmative vote of the majority of the outstanding shares of capital stock entitled to vote on such amendment or repeal, and the affirmative vote of the majority of the outstanding shares of each class entitled to vote thereon as a class, at a duly constituted meeting of stockholders called expressly for such purpose; provided, however, that the affirmative vote of not less than 66 2/3% of the outstanding shares of capital stock entitled to vote on such amendment or repeal shall be required to amend or repeal any provision of Article V, Article VI, Article VII, Article VIII, Article IX or Article X of this Certificate.

THIS AMENDED AND RESTATED CERTIFICATE OF INCORPORATION is executed as of this [ \_\_ ] day of [ \_\_\_\_\_ ], 2021.

COGNITION THERAPEUTICS, INC.

By: \_\_\_\_\_  
Name: Lisa Ricciardi  
Title: President, Chief Executive Officer and Director

[SIGNATURE PAGE TO THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION]

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**AMENDED AND RESTATED**  
**BYLAWS**  
**OF**  
**COGNITION THERAPEUTICS, INC.**

(the "Corporation")

ARTICLE I  
Stockholders

Section 1.1. Annual Meeting. The annual meeting of stockholders (any such meeting being referred to in these Bylaws as an "Annual Meeting") shall be held at the hour, date and place within or without the United States which is fixed by the Corporation's Board of Directors (the "Board of Directors"), which time, date and place may subsequently be changed at any time by vote of the Board of Directors; provided that 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 pursuant to as authorized by Section 211(a) of the General Corporation Law of the State of Delaware (the "DGCL") and Section 6.11 of these Bylaws. If no Annual Meeting has been held for a period of thirteen (13) months after the Corporation's last Annual Meeting, a special meeting in lieu thereof may be held, and such special meeting shall have, for the purposes of these Bylaws or otherwise, all the force and effect of an Annual Meeting. Any and all references hereafter in these Bylaws to an Annual Meeting or Annual Meetings also shall be deemed to refer to any special meeting(s) in lieu thereof.

Section 1.2. Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be brought before an Annual Meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who was a stockholder of record at the time of giving notice provided for in this Bylaw, who is entitled to vote at the meeting, who is present (in person or by proxy) at the meeting and who complies with the notice procedures set forth in this Bylaw as to such nomination or business. For the avoidance of doubt, the foregoing clause (ii) shall be the exclusive means for a stockholder to bring nominations or business properly before an Annual Meeting (other than matters properly brought under Rule 14a-8 (or any successor rule) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), and such stockholder must comply with the notice and other procedures set forth in Section 1.2(a)(2) and (3) of this Bylaw to bring such nominations or business properly before an Annual Meeting. In addition to the other requirements set forth in this Bylaw, for any proposal of business to be considered at an Annual Meeting, it must be a proper subject for action by stockholders of the Corporation under Delaware law.

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(2) For nominations or other business to be properly brought before an Annual Meeting by a stockholder pursuant to clause (ii) of Section 1.2(a)(1) of this Bylaw, the stockholder must (i) have given Timely Notice (as defined below) thereof in writing to the Secretary of the Corporation, (ii) have provided any updates or supplements to such notice at the times and in the forms required by this Bylaw and (iii) together with the beneficial owner(s), if any, on whose behalf the nomination or business proposal is made, have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) required by this Bylaw. To be timely, a stockholder's written notice shall 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 one-year anniversary of the preceding year's Annual Meeting; provided, however, that in the event the Annual Meeting is first convened more than thirty (30) days before or more than sixty (60) days after such anniversary date, or if no Annual Meeting were held in the preceding year, notice by the stockholder to be timely must be received by the Secretary of the Corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made (such notice within such time periods shall be referred to as "Timely Notice"). Notwithstanding anything to the contrary provided herein, for the first Annual Meeting following the initial public offering of common stock of the Corporation, a stockholder's notice shall be timely if 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 the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such Annual Meeting is first made or sent by the Corporation. Such stockholder's Timely Notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event such business includes a proposal to amend these Bylaws, the language of the proposed amendment) the reasons for conducting such business at the meeting, and any material interest in such business of each Proposing Person (as defined below);

(C) (i) the name and address of the stockholder giving the notice, as they appear on the Corporation's books, and the names and addresses of the other Proposing Persons (if any) and (ii) as to each Proposing Person, the following information: (a) the class or series and number of all shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially or of record by such Proposing Person or any of its affiliates or associates (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), including any shares of any class or series of capital stock of the Corporation as to which such Proposing Person or any of its affiliates or associates has a right to acquire beneficial ownership at any time in the future, (b) all Synthetic Equity Interests (as defined below) in which such Proposing Person or any of its affiliates or associates, directly or indirectly, holds an interest including a description of the material terms of each such Synthetic Equity Interest, including without limitation, identification of the counterparty to each such Synthetic Equity Interest and disclosure, for each such Synthetic Equity Interest, as to (x) whether or not such Synthetic Equity Interest conveys any voting rights, directly or indirectly, in such shares to such Proposing Person, (y) whether or not such Synthetic Equity Interest is required to be, or is capable of being, settled through delivery of such shares and (z) whether or not such Proposing Person and/or, to the extent known, the counterparty to such Synthetic Equity Interest has entered into other transactions that hedge or mitigate the economic effect of such Synthetic Equity Interest, (c) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to, directly or indirectly, vote any shares of any class or series of capital stock of the Corporation, (d) any rights to dividends or other distributions on the shares of any class or series of capital stock of the Corporation, directly or indirectly, owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, and (e) any performance-related fees (other than an asset based fee) that such Proposing Person, directly or indirectly, is entitled to, based on any increase or decrease in the value of shares of any class or series of capital stock of the Corporation or any Synthetic Equity Interests (the disclosures to be made pursuant to the foregoing clauses (a) through (e) are referred to, collectively, as "Material Ownership Interests") and (iii) a description of the material terms of all agreements, arrangements or understandings (whether or not in writing) entered into by any Proposing Person or any of its affiliates or associates with any other person for the purpose of acquiring, holding, disposing or voting of any shares of any class or series of capital stock of the Corporation;

(D) (i) a description of all agreements, arrangements or understandings by and among any of the Proposing Persons, or by and among any Proposing Persons and any other person (including with any proposed nominee(s)), pertaining to the nomination(s) or other business proposed to be brought before the meeting of stockholders (which description shall identify the name of each other person who is party to such an agreement, arrangement or understanding), and (ii) identification of the names and addresses of other stockholders (including beneficial owners) known by any of the Proposing Persons to support such nominations or other business proposal(s), and to the extent known the class and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s); and

(E) a statement whether or not the stockholder giving the notice and/or the other Proposing Person(s), if any, will deliver a proxy statement and form of proxy to holders of, in the case of a business proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to approve the proposal or, in the case of a nomination or nominations, at least the percentage of voting power of all of the shares of capital stock of the Corporation reasonably believed by such Proposing Person to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder (such statement, the "Solicitation Statement").

For purposes of this Article I of these Bylaws, the term “Proposing Person” shall mean the following persons: (i) the stockholder of record providing the notice of nominations or business proposed to be brought before a stockholders’ meeting, and (ii) the beneficial owner(s), if different, on whose behalf the nominations or business proposed to be brought before a stockholders’ meeting is made. For purposes of this Section 1.2 of these Bylaws, the term “Synthetic Equity Interest” shall mean any transaction, agreement or arrangement (or series of transactions, agreements or arrangements), including, without limitation, any derivative, swap, hedge, repurchase or so-called “stock borrowing” agreement or arrangement, the purpose or effect of which is to, directly or indirectly: (a) give a person or entity economic benefit and/or risk similar to ownership of shares of any class or series of capital stock of the Corporation, in whole or in part, including due to the fact that such transaction, agreement or arrangement provides, directly or indirectly, the opportunity to profit or avoid a loss from any increase or decrease in the value of any shares of any class or series of capital stock of the Corporation, (b) mitigate loss to, reduce the economic risk of or manage the risk of share price changes for, any person or entity with respect to any shares of any class or series of capital stock of the Corporation, (c) otherwise provide in any manner the opportunity to profit or avoid a loss from any decrease in the value of any shares of any class or series of capital stock of the Corporation, or (d) increase or decrease the voting power of any person or entity with respect to any shares of any class or series of capital stock of the Corporation.

(3) To be eligible to be a nominee of any stockholder for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for nominations of persons for election to the Board of Directors by stockholders under this Section 1.2) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such individual and the background of any other person or entity on whose behalf, directly or indirectly, the nomination is being made (which questionnaire shall be provided by the Secretary upon written request), all information relating to such person that would be required to be disclosed in solicitations of proxies by the Corporation for election of such person as a director in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, and a written representation and agreement (in the form provided by the Secretary upon written request) that such individual (a) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation and (2) any Voting Commitment that could limit or interfere with such individual’s ability to comply, if elected as a director of the Corporation, with such individual’s fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (c) in such individual’s personal capacity and on behalf of any person or entity on whose behalf, directly or indirectly, the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply, with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation publicly disclosed from time to time and (d) consents to being named as a nominee in the Corporation’s proxy statement pursuant to Rule 14a-4(d) under the Exchange Act and any associated proxy card of the Corporation and agrees to serve if elected as a director.

(4) A stockholder providing Timely Notice of nominations or business proposed to be brought before an Annual Meeting and any person providing information pursuant to Section 1.2(a)(3) shall, in each case, further update and supplement such notice and information, if necessary, so that the information (including, without limitation, the Material Ownership Interests information) provided or required to be provided therein pursuant to this Bylaw shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to such Annual Meeting, and such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the fifth (5th) business day after the record date for the Annual Meeting (in the case of the update and supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the Annual Meeting (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting).

(5) Notwithstanding anything in the second sentence of Section 1.2(a)(2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with the second sentence of Section 1.2(a)(2), a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary 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.

(b) General.

(1) Only such persons who are nominated in accordance with the provisions of this Bylaw shall be eligible for election and to serve as directors and only such business shall be conducted at an Annual Meeting as shall have been brought before the meeting in accordance with the provisions of this Bylaw or in accordance with Rule 14a-8 under the Exchange Act. The Board of Directors or a designated committee thereof shall have the power to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the provisions of this Bylaw. If neither the Board of Directors nor such designated committee makes a determination as to whether any stockholder proposal or nomination was made in accordance with the provisions of this Bylaw, the presiding officer of the Annual Meeting shall have the power and duty to determine whether the stockholder proposal or nomination was made in accordance with the provisions of this Bylaw. If the Board of Directors or a designated committee thereof or the presiding officer, as applicable, determines that any stockholder proposal or nomination was not made in accordance with the provisions of this Bylaw, such proposal or nomination shall be disregarded and shall not be presented for action at the Annual Meeting.

(2) Except as otherwise required by law, nothing in this Section 1.2 shall obligate the Corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the Corporation or the Board of Directors information with respect to any nominee for director or any other matter of business submitted by a stockholder.

(3) Notwithstanding the foregoing provisions of this Section 1.2, if the nominating or proposing stockholder (or a qualified representative of the stockholder) does not appear at the Annual Meeting to present a nomination or any business, such nomination or business shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.2, to be considered a qualified representative of the proposing stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, to the presiding officer at the meeting of stockholders.

(4) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press 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 Exchange Act.

(5) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of (i) stockholders to have proposals included in the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor rule), as applicable, under the Exchange Act and, to the extent required by such rule, have such proposals considered and voted on at an Annual Meeting or (ii) the holders of any series of Undesignated Preferred Stock (as defined in the Certificate (as defined below)) to elect directors under specified circumstances.

Section 1.3. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock, special meetings of the stockholders of the Corporation may be called only by (i) the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office, (ii) the Chairperson of the Board (as defined below) or (iii) the Chief Executive Officer of the Corporation. The Board of Directors may postpone or reschedule any previously scheduled special meeting of stockholders. 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. Nominations of persons for election to the Board of Directors of the Corporation and stockholder proposals of other business shall not be brought before a special meeting of stockholders to be considered by the stockholders unless such special meeting is held in lieu of an annual meeting of stockholders in accordance with Section 1.1 of these Bylaws, in which case such special meeting in lieu thereof shall be deemed an Annual Meeting for purposes of these Bylaws and the provisions of Section 1.2 of these Bylaws shall govern such special meeting.

Section 1.4. Notice of Meetings; Adjournments.

(a) A notice of each Annual Meeting stating the hour, date and place, if any, of such Annual Meeting and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given not less than ten (10) days nor more than sixty (60) days before the Annual Meeting, to each stockholder entitled to vote thereat by delivering such notice to such stockholder or by mailing it, postage prepaid, addressed to such stockholder at the address of such stockholder as it appears on the Corporation's stock transfer books. Without limiting the manner by which notice may otherwise be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

(b) Notice of all special meetings of stockholders shall be given in the same manner as provided for Annual Meetings, except that the notice of all special meetings shall state the purpose or purposes for which the meeting has been called.

(c) Notice of an Annual Meeting or special meeting of stockholders need not be given to a stockholder if a waiver of notice is executed, or waiver of notice by electronic transmission is provided, before or after such meeting by such stockholder or if such stockholder attends such meeting, unless such attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

(d) The Board of Directors may postpone and reschedule any previously scheduled Annual Meeting or special meeting of stockholders and any record date with respect thereto, regardless of whether any notice or public disclosure with respect to any such meeting has been sent or made pursuant to Section 1.2 of these Bylaws or otherwise. In no event shall the public announcement of an adjournment, postponement or rescheduling of any previously scheduled meeting of stockholders commence a new time period for the giving of a stockholder's notice under this Article I of these Bylaws.

(e) When any meeting is convened, the presiding officer may adjourn the meeting if (i) no quorum is present for the transaction of business, (ii) the Board of Directors determines that adjournment is necessary or appropriate to enable the stockholders to consider fully information which the Board of Directors determines has not been made sufficiently or timely available to stockholders, or (iii) the Board of Directors determines that adjournment is otherwise in the best interests of the Corporation. When any Annual Meeting or special meeting of stockholders is adjourned to another hour, date or place, notice need not be given of the adjourned meeting other than an announcement at the meeting at which the adjournment is taken of the hour, date and place, if any, to which the meeting is adjourned and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting; provided, however, that if the adjournment is for more than thirty (30) days from the meeting date, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting shall be given to each stockholder of record entitled to vote thereat and each stockholder who, by law or under the Certificate of Incorporation of the Corporation (as the same may hereafter be amended and/or restated, the "Certificate") or these Bylaws, is entitled to such notice.

Section 1.5. Quorum. The presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting. If less than a quorum is present at a meeting, the holders of voting stock representing a majority of the voting power present at the meeting or the presiding officer may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice, except as provided in Section 1.4. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. The stockholders present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 1.6. Voting and Proxies. Stockholders shall have one vote for each share of stock entitled to vote owned by them of record according to the stock ledger of the Corporation as of the record date, unless otherwise provided by law or by the Certificate. Stockholders may vote either (i) in person, (ii) by written proxy or (iii) by a transmission permitted by Section 212 of the DGCL. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission permitted by Section 212 of the DGCL may be substituted for or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. Proxies shall be filed in accordance with the procedures established for the meeting of stockholders. Except as otherwise limited therein or as otherwise provided by law, proxies authorizing a person to vote at a specific meeting shall entitle the persons authorized thereby to vote at any adjournment of such meeting, but they shall not be valid after final adjournment of such meeting. A proxy with respect to stock held in the name of two or more persons shall be valid if executed by or on behalf of any one of them unless at or prior to the exercise of the proxy the Corporation receives a specific written notice to the contrary from any one of them.

Section 1.7. Action at Meeting. When a quorum is present at any meeting of stockholders, subject to the rights of the holders of one or more series of preferred stock of the Corporation, any matter before any such meeting (other than an election of a director or directors) shall be decided by a majority of the votes properly cast for and against such matter, except where a larger vote is required by law, by the Certificate or by these Bylaws. Any election of directors by stockholders shall be determined by a plurality of the votes properly cast on the election of directors.

Section 1.8. Stockholder Lists. The Secretary or an Assistant Secretary (or the Corporation's transfer agent or other person authorized by these Bylaws or by law) shall prepare and make, at least ten (10) days before every Annual Meeting or special meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting in the manner provided by law. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 1.9. Presiding Officer. The Board of Directors shall designate a representative to preside over all Annual Meetings or special meetings of stockholders; provided that if the Board of Directors does not so designate such a presiding officer, then the Chairperson of the Board of Directors (the "Chairperson of the Board"), if one is elected, shall preside over such meetings. If the Board of Directors does not so designate such a presiding officer and there is no Chairperson of the Board or the Chairperson of the Board is unable to so preside or is absent, then the Chief Executive Officer, if one is elected, shall preside over such meetings, provided further that if there is no Chief Executive Officer or the Chief Executive Officer is unable to so preside or is absent, then the President shall preside over such meetings. The presiding officer at any Annual Meeting or special meeting of stockholders shall have the power, among other things, to adjourn such meeting at any time and from time to time, subject to Sections 1.4 and 1.5 of this Article I. The order of business and all other matters of procedure at any meeting of the stockholders shall be determined by the presiding officer.

Section 1.10. Inspectors of Elections. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the presiding officer shall appoint one or more inspectors to act at the meeting. Any inspector may, but need not, be an officer, employee or agent of the Corporation. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall perform such duties as are required by the DGCL, including the counting of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. The presiding officer may review all determinations made by the inspectors, and in so doing the presiding officer shall be entitled to exercise his or her sole judgment and discretion and he or she shall not be bound by any determinations made by the inspectors. All determinations by the inspectors and, if applicable, the presiding officer, shall be subject to further review by any court of competent jurisdiction.



## ARTICLE II

### Directors

Section 2.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided by the Certificate or required by law.

Section 2.2. Number and Terms. The number of directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The directors shall hold office in the manner provided in the Certificate.

Section 2.3. Qualification. No director need be a stockholder of the Corporation.

Section 2.4. Vacancies. Vacancies in the Board of Directors shall be filled in the manner provided in the Certificate.

Section 2.5. Removal. Directors may be removed from office only in the manner provided in the Certificate.

Section 2.6. Resignation. A director may resign at any time by giving written notice to the Chairperson of the Board, if one is elected, the Chief Executive Officer, the President or the Secretary. A resignation shall be effective upon receipt, unless the resignation otherwise provides.

Section 2.7. Regular Meetings. The regular annual meeting of the Board of Directors may be held, without notice other than this Section 2.7, on the same date and at the same place as the Annual Meeting following the close of such meeting of stockholders. Other regular meetings of the Board of Directors may be held at such hour, date and place as the Board of Directors may by resolution from time to time determine and publicize by means of reasonable notice given to any director who is not present at the meeting at which such resolution is adopted.

Section 2.8. Special Meetings. Special meetings of the Board of Directors may be called, orally or in writing, by or at the request of a majority of the directors, the Chairperson of the Board, if one is elected, or the President or Chief Executive Officer. The person calling any such special meeting of the Board of Directors may fix the hour, date and place thereof.

Section 2.9. Notice of Meetings. Notice of the hour, date and place of all special meetings of the Board of Directors shall be given to each director by the Secretary or an Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the Chairperson of the Board, if one is elected, or the President, Chief Executive Officer or such other officer designated by the Chairperson of the Board, if one is elected, or the President or Chief Executive Officer. Notice of any special meeting of the Board of Directors shall be given to each director in person, by telephone, or by electronic mail or other form of electronic communication, sent to his or her business or home address, at least forty-eight (48) hours in advance of the meeting. Such notice shall be deemed to be delivered when hand-delivered to such address, read to such director by telephone, or dispatched or transmitted if sent by electronic mail or other form of electronic communications. A written waiver of notice signed before or after a meeting by a director and filed with the records of the meeting shall be deemed to be equivalent to notice of the meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because such meeting is not lawfully called or convened. Except as otherwise required by law, by the Certificate or by these Bylaws, neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 2.10. Quorum. At any meeting of the Board of Directors, a majority of the total number of directors shall constitute a quorum for the transaction of business, but if less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice. Any business which might have been transacted at the meeting as originally noticed may be transacted at such adjourned meeting at which a quorum is present. For purposes of this section, the total number of directors includes any unfilled vacancies on the Board of Directors.

Section 2.11. Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of the directors present shall constitute action by the Board of Directors, unless otherwise required by law, by the Certificate or by these Bylaws.

Section 2.12. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the records of the meetings of the Board of Directors. 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. Such consent shall be treated as a resolution of the Board of Directors for all purposes.

Section 2.13. Manner of Participation. Unless otherwise restricted by the Certificate or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of teleconference, virtual conference or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this Bylaw shall constitute presence in person at the meeting.

Section 2.14. Presiding Director. The Chairperson of the Board shall preside over all meetings of the Board of Directors and the chairperson of each committee of the Board of Directors shall preside over all meetings of the respective committee. If the Chairperson of the Board or chairperson of such committee of the Board of Directors is unable to preside or is absent, the Board of Directors shall designate an alternate representative to preside over a meeting of the Board of Directors, or committee meeting, as applicable.

Section 2.15. Committees. The Board of Directors, by vote of a majority of the directors then in office, may elect one or more committees, including, without limitation, a Compensation Committee, a Nominating & Corporate Governance Committee and an Audit Committee, and may delegate thereto some or all of its powers except those which by law, by the Certificate or by these Bylaws may not be delegated. Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but unless otherwise provided by the Board of Directors or in such rules, its business shall be conducted so far as possible in the same manner as is provided by these Bylaws for the Board of Directors; provided that for the avoidance of doubt, any meeting of a committee of the Board shall follow the notice procedures set forth in Section 2.9. All members of such committees shall hold such offices at the pleasure of the Board of Directors. The Board of Directors may abolish any such committee at any time. Any committee to which the Board of Directors delegates any of its powers or duties shall keep records of its meetings and shall report its action to the Board of Directors.

Section 2.16. Compensation of Directors. Directors shall receive such compensation for their services as shall be determined by a majority of the Board of Directors, or a designated committee thereof, provided that directors who are serving the Corporation as employees and who receive compensation for their services as such, shall not receive any salary or other compensation for their services as directors of the Corporation.

### ARTICLE III Officers

Section 3.1. Enumeration. The officers of the Corporation shall consist of a President, a Chief Executive Officer, a Secretary and such other officers, including, without limitation, a Chairperson of the Board of Directors, a Treasurer and one or more Vice Presidents, Assistant Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board of Directors may determine.

Section 3.2. Election. The Board of Directors shall elect, from time to time at a regular or special meeting of the Board of Directors, the President, the Chief Executive Officer, and the Secretary. Other officers may be elected by the Board of Directors at any regular or special meeting of the Board of Directors.

Section 3.3. Qualification. No officer need be a stockholder or a director. Any person may occupy more than one office of the Corporation at any time.

Section 3.4. Tenure. Except as otherwise provided by the Certificate or by these Bylaws, each of the officers of the Corporation shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 3.5. Resignation. Any officer may resign by delivering his or her written resignation to the Corporation addressed to the President or the Secretary, and such resignation shall be effective upon receipt, unless the resignation otherwise provides.

Section 3.6. Removal. Except as otherwise provided by law, the Board of Directors may remove any officer with or without cause by the affirmative vote of a majority of the directors then in office.

Section 3.7. Absence or Disability. In the event of the absence or disability of any officer, the Board of Directors may designate another officer to act temporarily in place of such absent or disabled officer.

Section 3.8. Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

Section 3.9. President; Chief Executive Officer. Unless the Board of Directors has designated another person as the corporation's Chief Executive Officer, the President shall be the Chief Executive Officer of the corporation. The Chief Executive Officer shall have general charge and supervision of the business of the corporation subject to the direction of the Board of Directors, and shall perform all duties and have all powers that are commonly incident to the office of the chief executive or that are delegated to such officer by the Board of Directors. The President shall perform such other duties and shall have such other powers as the Board of Directors or the Chief Executive Officer (if the President is not the Chief Executive Officer) may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President (if the President is not the Chief Executive Officer), the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the Chief Executive Officer and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

Section 3.10. Chairperson of the Board. Subject to the provisions of Section 2.14 of these Bylaws, the Chairperson of the Board shall have the power to preside at all meetings of the Board and shall have such other powers and duties as provided in these Bylaws and as the Board may from time to time prescribe. The Chairperson of the Board may or may not be an officer of the Corporation.

Section 3.11. Vice Presidents and Assistant Vice Presidents. Any Vice President and any Assistant Vice President shall have such powers and shall perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 3.12. Treasurer and Assistant Treasurers. The Treasurer shall, subject to the direction of the Board of Directors and except as the Board of Directors or the Chief Executive Officer may otherwise provide, have general charge of the financial affairs of the Corporation and shall cause to be kept accurate books of account. The Treasurer shall have custody of all funds, securities, and valuable documents of the Corporation. He or she shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. Any Assistant Treasurer shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 3.13. Secretary and Assistant Secretaries. The Secretary shall record all the proceedings of the meetings of the stockholders and the Board of Directors (including committees of the Board of Directors) in books kept for that purpose. In his or her absence from any such meeting, a temporary secretary chosen at the meeting shall record the proceedings thereof. The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the Corporation). The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary shall have authority to affix it to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or that of an Assistant Secretary. The Secretary shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. In the absence of the Secretary, any Assistant Secretary may perform his or her duties and responsibilities. Any Assistant Secretary shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 3.14. Other Powers and Duties. Subject to these Bylaws and to such limitations as the Board of Directors may from time to time prescribe, the officers of the Corporation shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as from time to time may be conferred by the Board of Directors or the Chief Executive Officer.

ARTICLE IV  
Capital Stock

Section 4.1. Certificates of Stock. Each stockholder shall be entitled to a certificate of the capital stock of the Corporation in such form as may from time to time be prescribed by the Board of Directors. Such certificate shall be signed by any two authorized officers of the Corporation. The Corporation's seal and the signatures by the Corporation's officers, the transfer agent or the registrar may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law. Notwithstanding anything to the contrary provided in these Bylaws, the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares (except that the foregoing shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation), and by the approval and adoption of these Bylaws the Board of Directors has determined that all classes or series of the Corporation's stock may be uncertificated, whether upon original issuance, re-issuance, or subsequent transfer.

Section 4.2. Transfers. Subject to any restrictions on transfer and unless otherwise provided by the Board of Directors, shares of stock that are represented by a certificate may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate theretofore properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Shares of stock that are not represented by a certificate may be transferred on the books of the Corporation by submitting to the Corporation or its transfer agent such evidence of transfer and following such other procedures as the Corporation or its transfer agent may require.

Section 4.3. Record Holders. Except as may otherwise be required by law, by the Certificate or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

Section 4.4. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix 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: (a) in the case of determination of stockholders entitled to vote at any meeting of stockholders, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting and (b) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (i) 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; and (ii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 4.5. Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock of the Corporation, a duplicate certificate may be issued in place thereof, upon such terms as the Board of Directors may prescribe.

#### ARTICLE V Indemnification

Section 5.1. Definitions. For purposes of this Article:

(a) "Corporate Status" describes the status of a person who is serving or has served (i) as a Director of the Corporation, (ii) as an Officer of the Corporation, (iii) as a Non-Officer Employee of the Corporation, or (iv) as a director, partner, trustee, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, foundation, association, organization or other legal entity which such person is or was serving at the request of the Corporation. For purposes of this Section 5.1(a), a Director, Officer or Non-Officer Employee of the Corporation who is serving or has served as a director, partner, trustee, officer, employee or agent of a Subsidiary shall be deemed to be serving at the request of the Corporation. Notwithstanding the foregoing, "Corporate Status" shall not include the status of a person who is serving or has served as a director, officer, employee or agent of a constituent corporation absorbed in a merger or consolidation transaction with the Corporation with respect to such person's activities prior to said transaction, unless specifically authorized by the Board of Directors or the stockholders of the Corporation;

(b) “Director” means any person who serves or has served the Corporation as a director on the Board of Directors;

(c) “Disinterested Director” means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director of the Corporation who is not and was not a party to such Proceeding;

(d) “Expenses” means all attorneys’ fees, retainers, court costs, transcript costs, fees of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), travel expenses, duplicating costs, printing and binding costs, costs of preparation of demonstrative evidence and other courtroom presentation aids and devices, costs incurred in connection with document review, organization, imaging and computerization, telephone charges, postage, delivery service fees, and all other disbursements, costs or expenses of the type customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or otherwise participating in, a Proceeding;

(e) “Liabilities” means judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement;

(f) “Non-Officer Employee” means any person who serves or has served as an employee or agent of the Corporation, but who is not or was not a Director or Officer;

(g) “Officer” means any person who serves or has served the Corporation as an officer of the Corporation appointed by the Board of Directors;

(h) “Proceeding” means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, inquiry, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative, arbitral or investigative; and

(i) “Subsidiary” shall mean any corporation, partnership, limited liability company, joint venture, trust or other entity of which the Corporation owns (either directly or through or together with another Subsidiary of the Corporation) either (i) a general partner, managing member or other similar interest or (ii) (A) fifty percent (50%) or more of the voting power of the voting capital equity interests of such corporation, partnership, limited liability company, joint venture or other entity, or (B) fifty percent (50%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other entity.

Section 5.2. Indemnification of Directors and Officers.

(a) Subject to the operation of Section 5.4 of these Bylaws, each Director and Officer shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), and to the extent authorized in this Section 5.2.

(1) Actions, Suits and Proceedings Other than By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses and Liabilities that are incurred or paid by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein (other than an action by or in the right of the Corporation), which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(2) Actions, Suits and Proceedings By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses that are incurred by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein by or in the right of the Corporation, which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made under this Section 5.2(a)(2) in respect of any claim, issue or matter as to which such Director or Officer shall have been finally adjudged by a court of competent jurisdiction to be liable to the Corporation, unless, and only to the extent that, the Court of Chancery or another court in which such Proceeding was brought shall determine upon application that, despite adjudication of liability, but in view of all the circumstances of the case, such Director or Officer is fairly and reasonably entitled to indemnification for such Expenses that such court deems proper.

(3) Survival of Rights. The rights of indemnification provided by this Section 5.2 shall continue as to a Director or Officer after he or she has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors, administrators and personal representatives.

(4) Actions by Directors or Officers. Notwithstanding the foregoing, the Corporation shall indemnify any Director or Officer seeking indemnification in connection with a Proceeding initiated by such Director or Officer only if such Proceeding (including any parts of such Proceeding not initiated by such Director or Officer) was authorized in advance by the Board of Directors of the Corporation, unless such Proceeding was brought to enforce such Officer's or Director's rights to indemnification or, in the case of Directors, advancement of Expenses under these Bylaws in accordance with the provisions set forth herein.

Section 5.3. Indemnification of Non-Officer Employees. Subject to the operation of Section 5.4 of these Bylaws, each Non-Officer Employee may, in the discretion of the Board of Directors, be indemnified by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against any or all Expenses and Liabilities that are incurred by such Non-Officer Employee or on such Non-Officer Employee's behalf in connection with any threatened, pending or completed Proceeding, or any claim, issue or matter therein, which such Non-Officer Employee is, or is threatened to be made, a party to or participant in by reason of such Non-Officer Employee's Corporate Status, if such Non-Officer Employee acted in good faith and in a manner such Non-Officer Employee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 5.3 shall exist as to a Non-Officer Employee after he or she has ceased to be a Non-Officer Employee and shall inure to the benefit of his or her heirs, personal representatives, executors and administrators. Notwithstanding the foregoing, the Corporation may indemnify any Non-Officer Employee seeking indemnification in connection with a Proceeding initiated by such Non-Officer Employee only if such Proceeding was authorized in advance by the Board of Directors.



Section 5.4. Determination. Unless ordered by a court, no indemnification shall be provided pursuant to this Article V to a Director, to an Officer or to a Non-Officer Employee unless a determination shall have been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal Proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made by (a) a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (b) a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum), (c) if there are no such Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

Section 5.5. Advancement of Expenses to Directors Prior to Final Disposition.

(a) The Corporation shall advance all Expenses incurred by or on behalf of any Director in connection with any Proceeding in which such Director is involved by reason of such Director's Corporate Status within thirty (30) days after the receipt by the Corporation of a written statement from such Director requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Director and shall be preceded or accompanied by an undertaking by or on behalf of such Director to repay any Expenses so advanced if it shall ultimately be determined that such Director is not entitled to be indemnified against such Expenses. Notwithstanding the foregoing, the Corporation shall advance all Expenses incurred by or on behalf of any Director seeking advancement of expenses hereunder in connection with a Proceeding initiated by such Director only if such Proceeding (including any parts of such Proceeding not initiated by such Director) was (i) authorized by the Board of Directors or (ii) brought to enforce such Director's rights to indemnification or advancement of Expenses under these Bylaws.

(b) If a claim for advancement of Expenses hereunder by a Director is not paid in full by the Corporation within thirty (30) days after receipt by the Corporation of documentation of Expenses and the required undertaking, such Director may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and if successful in whole or in part, such Director shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such advancement of Expenses under this Article V shall not be a defense to an action brought by a Director for recovery of the unpaid amount of an advancement claim and shall not create a presumption that such advancement is not permissible. The burden of proving that a Director is not entitled to an advancement of expenses shall be on the Corporation.

(c) In any suit brought by the Corporation to recover an advancement of Expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such Expenses upon a final adjudication that the Director has not met any applicable standard for indemnification set forth in the DGCL.

Section 5.6. Advancement of Expenses to Officers and Non-Officer Employees Prior to Final Disposition.

(a) The Corporation may, at the discretion of the Board of Directors, advance any or all Expenses incurred by or on behalf of any Officer or any Non-Officer Employee in connection with any Proceeding in which such person is involved by reason of his or her Corporate Status as an Officer or Non-Officer Employee upon the receipt by the Corporation of a statement or statements from such Officer or Non-Officer Employee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Officer or Non-Officer Employee and shall be preceded or accompanied by an undertaking by or on behalf of such person to repay any Expenses so advanced if it shall ultimately be determined that such Officer or Non-Officer Employee is not entitled to be indemnified against such Expenses.

(b) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Officer or Non-Officer Employee has not met any applicable standard for indemnification set forth in the DGCL.

Section 5.7. Contractual Nature of Rights.

(a) The provisions of this Article V shall be deemed to be a contract between the Corporation and each Director and Officer entitled to the benefits hereof at any time while this Article V is in effect, in consideration of such person's past or current and any future performance of services for the Corporation. Neither amendment, repeal or modification of any provision of this Article V nor the adoption of any provision of the Certificate of Incorporation inconsistent with this Article V shall eliminate or reduce any right conferred by this Article V in respect of any act or omission occurring, or any cause of action or claim that accrues or arises or any state of facts existing, at the time of or before such amendment, repeal, modification or adoption of an inconsistent provision (even in the case of a proceeding based on such a state of facts that is commenced after such time), and all rights to indemnification and advancement of Expenses granted herein or arising out of any act or omission shall vest at the time of the act or omission in question, regardless of when or if any proceeding with respect to such act or omission is commenced. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article V shall continue notwithstanding that the person has ceased to be a Director or Officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

(b) If a claim for indemnification hereunder by a Director or Officer is not paid in full by the Corporation within sixty (60) days after receipt by the Corporation of a written claim for indemnification, such Director or Officer may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, such Director or Officer shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such indemnification under this Article V shall not be a defense to an action brought by a Director or Officer for recovery of the unpaid amount of an indemnification claim and shall not create a presumption that such indemnification is not permissible. The burden of proving that a Director or Officer is not entitled to indemnification shall be on the Corporation.

(c) In any suit brought by a Director or Officer to enforce a right to indemnification hereunder, it shall be a defense that such Director or Officer has not met any applicable standard for indemnification set forth in the DGCL.

Section 5.8. Non-Exclusivity of Rights. The rights to indemnification and to advancement of Expenses set forth in this Article V shall not be exclusive of any other right which any Director, Officer, or Non-Officer Employee may have or hereafter acquire under any statute, provision of the Certificate or these Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise.

Section 5.9. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, Officer or Non-Officer Employee against any liability of any character asserted against or incurred by the Corporation or any such Director, Officer or Non-Officer Employee, or arising out of any such person's Corporate Status, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL or the provisions of this Article V.

Section 5.10. Other Indemnification. The Corporation's obligation, if any, to indemnify or provide advancement of Expenses to any person under this Article V as a result of such person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or enterprise (the "Primary Indemnitor"). Any indemnification or advancement of Expenses under this Article V owed by the Corporation as a result of a person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall only be in excess of, and shall be secondary to, the indemnification or advancement of Expenses available from the applicable Primary Indemnitor(s) and any applicable insurance policies.

ARTICLE VI  
Miscellaneous Provisions

Section 6.1. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

Section 6.2. Seal. The Board of Directors shall have power to adopt and alter the seal of the Corporation.

Section 6.3. Execution of Instruments. All deeds, leases, transfers, contracts, bonds, notes and other obligations to be entered into by the Corporation in the ordinary course of its business without director action may be executed on behalf of the Corporation by the Chairperson of the Board, if one is elected, the Chief Executive Officer, the President or the Treasurer or any other officer, employee or agent of the Corporation as the Board of Directors or a committee of the Board of Directors may authorize.

Section 6.4. Voting of Securities. Unless the Board of Directors otherwise provides, the Chairperson of the Board, if one is elected, the Chief Executive Officer, the President or the Treasurer may waive notice of and act on behalf of the Corporation, or appoint another person or persons to act as proxy or attorney in fact for the Corporation with or without discretionary power and/or power of substitution, at any meeting of stockholders or shareholders of any other corporation or organization, any of whose securities are held by the Corporation.

Section 6.5. Resident Agent. The Board of Directors may appoint a resident agent upon whom legal process may be served in any action or proceeding against the Corporation.

Section 6.6. Corporate Records. The original or attested copies of the Certificate, Bylaws and records of all meetings of the incorporators, stockholders and the Board of Directors and the stock transfer books, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, may be kept outside the State of Delaware and shall be kept at the principal office of the Corporation, at an office of its counsel, at an office of its transfer agent or at such other place or places as may be designated from time to time by the Board of Directors.

Section 6.7. Certificate. All references in these Bylaws to the Certificate shall be deemed to refer to the Third Amended and Restated Certificate of Incorporation of the Corporation, as amended and/or restated and in effect from time to time.

Section 6.8. Exclusive Jurisdiction of Delaware Courts. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, 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) and any appellate court therefrom shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative claim or cause of action brought on behalf of the Corporation; (ii) any claim or cause of action for breach of fiduciary duty owed by any current or former director, officer or other employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders; (iii) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, arising out of or pursuant to any provision of the DGCL, the Certificate or these Bylaws (as each may be amended from time to time); (iv) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of the Certificate or these Bylaws (as each may be amended from time to time, including any right, obligation or remedy thereunder); (v) any claim or cause of action as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; and (vi) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, governed by the internal affairs doctrine or otherwise related to the corporation's internal affairs, in all cases to the fullest extent permitted by law and subject to the court having personal jurisdiction over the indispensable parties named as defendants. This Section 6.8 shall not apply to claims or causes of action brought to enforce a duty or liability created by the Securities Act of 1933, as amended (the "1933 Act") Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, 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 1933 Act.

Section 6.9. Amendment of Bylaws.

(a) Amendment by Directors. Except as provided otherwise by law, these Bylaws may be amended or repealed by the Board of Directors by the affirmative vote of a majority of the directors then in office.

(b) Amendment by Stockholders. These Bylaws may be amended or repealed at any Annual Meeting, or special meeting of stockholders called for such purpose in accordance with these Bylaws, by the affirmative vote of at least sixty-six and two thirds percent (66 2/3%) of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such 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. Notwithstanding the foregoing, stockholder approval shall not be required unless mandated by the Certificate, these Bylaws, or other applicable law.

Section 6.10. Notices. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 6.11. Meeting Attendance via Remote Communication Equipment. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders entitled to vote at an Annual Meeting or special meeting of stockholders and proxy holders not physically present at an Annual Meeting or special meeting of stockholders may, by means of remote communication:

(a) participate in a meeting of stockholders; and

(b) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

Section 6.12. Waivers. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in such a waiver.

Adopted [ \_\_\_\_\_ ], 2021 and effective as of [ \_\_\_\_\_ ], 2021.

## INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the “**Agreement**”) is made and entered into effective as of \_\_\_\_, 2021 between Cognition Therapeutics, Inc., a Delaware corporation (the “**Company**”), and \_\_\_\_ (“**Indemnitee**”).

## WITNESSETH THAT:

**WHEREAS**, highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

**WHEREAS**, the Board of Directors of the Company (the “**Board**”) has determined that, in order to attract and retain qualified individuals to serve on the Board, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may not be available to it on terms that the Company considers to be commercially reasonable or, if available to it on commercially reasonable terms during some period of time, may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Amended and Restated Bylaws (as the same may be amended and/or restated from time to time, the “**Bylaws**”) and Third Amended and Restated Certificate of Incorporation (as the same may be amended and/or restated from time to time, the “**Certificate of Incorporation**”) of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“**DGCL**”). The Bylaws, the Certificate of Incorporation and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

**WHEREAS**, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons to serve on the Board;

**WHEREAS**, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company’s stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

**WHEREAS**, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

**WHEREAS**, this Agreement is a supplement to and in furtherance of the Bylaws and Certificate of Incorporation of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

**WHEREAS**, Indemnitee does not regard the protection available under the Company's Bylaws and Certificate of Incorporation and insurance as adequate in the present circumstances, and may not be willing to serve as a director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified;

**WHEREAS**, Indemnitee may have certain rights to indemnification and/or insurance provided by Indemnitee's employer or other third parties and certain of their affiliates which is intended to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board; and

**WHEREAS**, certain capitalized terms used herein are defined in Section 13 hereof.

**NOW, THEREFORE**, in consideration of Indemnitee's agreement to serve or continue to serve, as applicable, as a director of the Company from and after the date hereof, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Indemnity of Indemnitee.** The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) **Proceedings Other Than Proceedings by or in the Right of the Company.** Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of Indemnitee's Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful.

(b) **Proceedings by or in the Right of the Company.** Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of Indemnitee's Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware (or such other court in which the Proceeding is properly brought) shall determine that Indemnitee is fairly and reasonably entitled to indemnification.



(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, Indemnitee shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 1 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(d) Indemnification of Appointing Stockholder. Without diminishing or impairing the obligations of the Company set forth in the Bylaws and the Certificate of Incorporation, if (i) Indemnitee is or was affiliated with one (1) or more venture capital funds or other investment entities that has invested in the Company (an "**Appointing Stockholder**") and (ii) the Appointing Stockholder is, or is threatened to be made, a party to or a participant in any Proceeding relating to or arising by reason of Appointing Stockholder's appointment of or affiliation with Indemnitee or any other director, including, without limitation, any alleged misappropriation of a Company asset or corporate opportunity, any claim of misappropriation or infringement of intellectual property relating to the Company, any alleged false or misleading statement or omission made by the Company (or on its behalf) or its employees or agents, or any allegation of inappropriate control or influence over the Company or its Board members, officers, equity holders or debt holders, then the Appointing Stockholder will be entitled to indemnification hereunder for Expenses to the same extent as Indemnitee, and the terms of this Agreement as they relate to procedures for indemnification of Indemnitee and advancement of Expenses shall apply to any such indemnification of Appointing Stockholder. The rights provided to the Appointing Stockholder under this Section 1(d) shall (i) be suspended during any period during which the Appointing Stockholder does not have a representative on the Company's Board, and (ii) terminate on an initial public offering of the Company's Common Stock; provided, however, that in the event of any such suspension or termination, the Appointing Stockholder's rights to indemnification will not be suspended or terminated with respect to any Proceeding based in whole or in part on facts and circumstances occurring at any time prior to such suspension or termination regardless of whether the Proceeding arises before or after such suspension or termination. The Company and Indemnitee agree that the Appointing Stockholder is an express third party beneficiary of the terms of this Section 1(d).

(e) Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on Indemnitee's behalf if, by reason of Indemnitee's Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

3. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), to the fullest extent permitted under applicable law, the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in Section 3(a) above, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), to the fullest extent permitted under applicable law, the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) To the fullest extent permitted under applicable law, the Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors, or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses actually and reasonably incurred, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses actually and reasonably incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses actually and reasonably incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Advances shall be made without regard to Indemnitee's ability to repay Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free. This Section 5 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 9.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under applicable law, including, without limitation, the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Chief Executive Officer, President, Secretary or other appropriate officer of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company, its affiliates and subsidiaries. The Company will be entitled to participate in the Proceeding at its own Expense.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board: (i) by a majority vote of the Disinterested Directors, even though less than a quorum, (ii) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, (iii) if there are no Disinterested Directors or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (iv) if so directed by the Board, by the stockholders of the Company.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board and written notice of such selection shall be given to Indemnitee. Indemnitee may, within ten (10) days after such written notice of selection of Independent Counsel shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "**Independent Counsel**" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by Indemnitee to the Board's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incurred by the Company and the Indemnitee incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) To the fullest extent permitted by applicable law, including the Bylaws and Certificate of Incorporation, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. The provisions of this Section 6(e) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent permitted by applicable law, including the Bylaws and Certificate of Incorporation, be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration thereof at the next annual meeting of the stockholders to be held within seventy five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and at which such determination is made.

(g) Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) In the event that any action, suit or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, suit or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 1(c), 1(e), 4 or the last sentence of Section 6(g) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) payment of indemnification is not made pursuant to Sections 1(a), 1(b) and 2 of this Agreement within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, or (vi) the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within one hundred eighty (180) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a); provided, however, that the foregoing clause shall not apply in respect of any proceeding brought by Indemnitee to enforce Indemnitee's rights under Section 4 of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of Indemnitee's rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on Indemnitee's behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by Indemnitee in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, if, in the case of indemnification, Indemnitee is wholly successful on the underlying claims; if Indemnitee is not wholly successful on the underlying claims, then such indemnification shall be only to the extent Indemnitee is successful on such underlying claims or otherwise as permitted by law, whichever is greater.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification and the right to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders, a resolution of directors of the Company, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification or advancement of expenses than would be afforded currently under the Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company or its affiliates or subsidiaries maintain an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.



(c) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by Indemnitee's employer or other third parties and certain of their affiliates (collectively, the "**Other Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (*i.e.*, its obligations to Indemnitee are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Certificate of Incorporation or Bylaws of the Company (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Other Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Other Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Section 8(c).

(d) Except as provided in Section 8(c) above, in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Other Indemnitors), who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) Except as provided in Section 8(c) above, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise and has no obligation to return or repay such funds.

(f) Except as provided in Section 8(c) above, the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise. The Company shall not adopt any amendment to the Bylaws or the Certificate of Incorporation, the effect of which would be to deny, diminish or encumber Indemnitee's right to indemnification under this Agreement.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision, provided, that the foregoing shall not affect the rights of Indemnitee or the Other Indemnitors set forth in Section 8(c) above; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law, (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act;

(c) except as provided in Section 7(e) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, (ii) such payment arises in connection with any mandatory counterclaim or cross claim brought or raised by Indemnitee in any Proceeding (or any part of any Proceeding) or (iii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law; or

(d) for Expenses determined by the Company to have arisen out of Indemnitee’s breach or violation of Indemnitee’s obligations under (i) any employment agreement between the Indemnitee and the Company or (ii) the Company’s Code of Business Conduct and Ethics (as amended from time to time).

10. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is a director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of Indemnitee’s Corporate Status, whether or not Indemnitee is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by reorganization, purchase, merger, consolidation or otherwise to all or substantially all of the business, stock or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

11. Security. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company’s obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

12. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto, including any predecessor of the Company, with respect to the subject matter hereof.

(c) The Company shall not seek from a court, or agree to, a “bar order” which would have the effect of prohibiting or limiting Indemnitee’s rights to receive advancement of expenses under this Agreement.

13. Definitions. For purposes of this Agreement:

(a) **“Corporate Status”** means the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the request of the Company.

(b) **“Disinterested Director”** means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) **“Enterprise”** shall mean the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary.

(d) **“Expenses”** shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent (ii) Expenses incurred in connection with recovery under any directors’ and officers’ liability insurance policies maintained by the Company, regardless of whether Indemnitee is ultimately determined to be entitled to such indemnification, advancement or Expenses or insurance recovery, as the case may be, and (iii) for purposes of Section 7(e) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, the Certificate of Incorporation, the Bylaws or under any directors’ and officers’ liability insurance policies maintained by the Company, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(e) **“Independent Counsel”** means a law firm, or a member of a law firm, or a solo practitioner that is experienced and licensed in matters of corporation law in the relevant jurisdiction and neither at present is, nor in the past five (5) years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) **“Proceeding”** includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of Indemnitee’s Corporate Status, by reason of any action taken by Indemnitee, or of any inaction on Indemnitee’s part, while acting in Indemnitee’s Corporate Status; in each case whether or not Indemnitee is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification, reimbursement or advancement of expenses can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce Indemnitee’s rights under this Agreement.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Further, the invalidity or unenforceability of any provision hereof as to either Indemnitee or Appointing Stockholder shall in no way affect the validity or enforceability of any provision hereof as to the other. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee and Appointing Stockholder indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnatee. Indemnatee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnatee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnatee at the address set forth below Indemnatee signature hereto.

(b) To the Company at:

Cognition Therapeutics, Inc.  
2500 Westchester Avenue  
Suite 215  
Purchase, New York 10577  
Attention: Chief Executive Officer

or to such other address as may have been furnished to Indemnatee by the Company or to the Company by Indemnatee, as the case may be.

18. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement as of the date set forth above.

**COMPANY**

COGNITION THERAPEUTICS, INC.

By: \_\_\_\_\_

Name: Lisa Ricciardi

Title: Chief Executive Officer

Date: \_\_\_\_\_

**INDEMNITEE**

\_\_\_\_\_  
Name:

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE PAGE TO INDEMNIFICATION AGREEMENT

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## COGNITION THERAPEUTICS, INC.

## 2021 EQUITY INCENTIVE PLAN

**Section 1. Purpose; Definitions.** The purposes of the Cognition Therapeutics, Inc. 2021 Equity Incentive Plan (as amended from time to time, the “Plan”) are to: (a) enable Cognition Therapeutics, Inc. (the “Company”) and its affiliated companies to recruit and retain highly qualified employees, directors and consultants; (b) provide those employees, directors and consultants with an incentive for productivity; and (c) provide those employees, directors and consultants with an opportunity to share in the growth and value of the Company.

For purposes of the Plan, the following terms will have the meanings defined below, unless the context clearly requires a different meaning:

- (a) “Affiliate” means, with respect to a Person, a Person that directly or indirectly controls, is controlled by, or is under common control with such Person.
  - (b) “Applicable Law” means the legal requirements relating to the administration of and issuance of securities under stock incentive plans, including, without limitation, the requirements of state corporations law, federal, state and foreign securities law, federal, state and foreign tax law, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted.
  - (c) “Award” means an award of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units or Cash or Other Stock Based Awards made under this Plan.
  - (d) “Award Agreement” means, with respect to any particular Award, the written document that sets forth the terms of that particular Award.
  - (e) “Board” means the Board of Directors of the Company, as constituted from time to time.
  - (f) “Cash or Other Stock Based Award” means an award that is granted under Section 10.
  - (g) “Cause” means (i) the Participant’s refusal to comply with any lawful directive or policy of the Company which refusal is not cured by the Participant within ten (10) days of such written notice from the Company; (ii) the Company’s determination that the Participant has committed any act of dishonesty, embezzlement, unauthorized use or disclosure of confidential information or other intellectual property or trade secrets, common law fraud or other fraud against the Company or any Subsidiary or Affiliate; (iii) a material breach by the Participant of any written agreement with or any fiduciary duty owed to any Company or any Subsidiary or Affiliate; (iv) the Participant’s conviction (or the entry of a plea of a nolo contendere or equivalent plea) of a felony or any misdemeanor involving material dishonesty or moral turpitude; or (v) the Participant’s habitual or repeated misuse of, or habitual or repeated performance of Participant’s duties under the influence of, alcohol, illegally obtained prescription controlled substances or non-prescription controlled substances. Notwithstanding the foregoing, if a Participant and the Company (or any of its Affiliates) have entered into an employment agreement, consulting agreement or other similar agreement that specifically defines “cause,” then with respect to such Participant, “Cause” shall have the meaning defined in such other agreement.
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(h) “Change in Control” shall mean the occurrence of any of the following events: (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes a “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the total power to vote for the election of directors of the Company; (ii) during any twelve month period, individuals who at the beginning of such period constitute the Board and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Section 1(h)(i), Section 1(h)(iii), Section 1(h)(iv) or Section 1(h)(v) hereof) whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of the period of whose election or nomination for election was previously approved, cease for any reason to constitute a majority thereof; (iii) the merger or consolidation of the Company with another corporation where the stockholders of the Company, immediately prior to the merger or consolidation, will not beneficially own, immediately after the merger or consolidation, shares entitling such stockholders to 50% or more of all votes to which all stockholders of the surviving corporation would be entitled in the election of directors (without consideration of the rights of any class of stock to elect directors by a separate class vote); (iv) the sale or other disposition of all or substantially all of the assets of the Company; (v) a liquidation or dissolution of the Company; or (vi) such other event deemed to constitute a “Change in Control” by the Board.

Notwithstanding anything in the Plan or an Award Agreement to the contrary, to the extent necessary to comply with Section 409A of the Code, no event that, but for the application of this paragraph, would be a Change in Control as defined in the Plan or the Award Agreement, as applicable, shall be a Change in Control unless such event is also a “change in control event” as defined in Section 409A of the Code.

(i) “Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

(j) “Committee” means the committee designated by the Board to administer the Plan under Section 2. To the extent required under Applicable Law, the Committee shall have at least two members and each member of the Committee shall be a Non-Employee Director.

(k) “Director” means a member of the Board.

(l) “Disability” means a condition rendering a Participant Disabled.



(m) “Disabled” will have the same meaning as set forth in Section 22(e)(3) of the Code.

(n) “Effective Time” has the meaning defined below in Section 18.

(o) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(p) “Fair Market Value” means, as of any date, the value of a Share determined as follows: (i) if the Shares are listed on any established stock exchange or a national market system, including, without limitation, the Nasdaq Global Market, the Fair Market Value of a Share will be the closing sales price for such stock as quoted on that system or exchange (or the system or exchange with the greatest volume of trading in Shares) at the close of regular hours trading on the day of determination; (ii) if the Shares are regularly quoted by recognized securities dealers but selling prices are not reported, the Fair Market Value of a Share will be the mean between the high bid and low asked prices for Shares at the close of regular hours trading on the day of determination; or (iii) if Shares are not traded as set forth above, the Fair Market Value will be determined in good faith by the Committee taking into consideration such factors as the Committee considers appropriate, such determination by the Committee to be final, conclusive and binding. Notwithstanding the foregoing, (1) with respect to any Award that is effective upon the execution of an underwriting agreement with respect to the Company’s initial public offering of Shares, the Fair Market Value shall mean the initial public offering price of a Share as set forth in that underwriting agreement or (2) in connection with a Change in Control, Fair Market Value shall be determined in good faith by the Committee, such determination by the Committee to be final conclusive and binding.

(q) “Incentive Stock Option” means any Option intended to be an “Incentive Stock Option” within the meaning of Section 422 of the Code.

(r) “Non-Employee Director” will have the meaning set forth in Rule 16b-3(b)(3)(i) promulgated by the Securities and Exchange Commission under the Exchange Act, or any successor definition adopted by the Securities and Exchange Commission.

(s) “Non-Qualified Stock Option” means any Option that is not an Incentive Stock Option.

(t) “Option” means any option to purchase Shares (including an option to purchase Restricted Stock, if the Committee so determines) granted pursuant to Section 5 hereof.

(u) “Parent” means, in respect of the Company, a “parent corporation” as defined in Section 424(e) of the Code.

(v) “Participant” means an employee, consultant, Director, or other service provider of or to the Company or any of its respective Affiliates to whom an Award is granted.

(w) “Person” means an individual, partnership, corporation, limited liability company, trust, joint venture, unincorporated association, or other entity or association.

- (x) “Restricted Stock” means Shares that are subject to restrictions pursuant to Section 8 hereof.
- (y) “Restricted Stock Unit” means a right granted under and subject to restrictions pursuant to Section 9 hereof.
- (z) “Shares” means shares of the Company’s common stock, par value \$.001, subject to substitution or adjustment as provided in Section 3(e) hereof.
- (aa) “Stock Appreciation Right” means a right granted under and subject to Section 6 hereof.
- (bb) “Subsidiary” means, in respect of the Company, a subsidiary company as defined in Sections 424(f) and (g) of the Code.

**Section 2. Administration.** The Plan shall be administered by the Committee; provided that, notwithstanding anything to the contrary herein, in its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Applicable Law are required to be determined in the sole discretion of the Committee. Any action of the Committee in administering the Plan shall be final, conclusive and binding on all persons, including the Company, its Subsidiaries, Affiliates, their respective employees, the Participants, persons claiming rights from or through Participants and stockholders of the Company.

The Committee will have full authority to grant Awards under this Plan and determine the terms of such Awards. Such authority will include the right to:

- (a) select the individuals to whom Awards are granted (consistent with the eligibility conditions set forth in Section 4);
- (b) determine the type of Award to be granted;
- (c) determine the number of Shares, if any, to be covered by each Award;
- (d) establish the other terms and conditions of each Award;
- (e) approve forms of agreements (including Award Agreements) for use under the Plan; and
- (f) modify or amend each Award, subject to the Participant’s consent if such modification or amendment would materially impair such Participant’s rights.

The Committee will have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it, from time to time, deems advisable; to interpret the terms and provisions of the Plan and any Award issued under the Plan (and any Award Agreement); and to otherwise take any action that may be necessary or desirable to facilitate the administration of the Plan. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or in any Award Agreement in the manner and to the extent it deems necessary to carry out the intent of the Plan.

To the extent permitted by Applicable Law, the Committee may delegate to one or more officers of the Company the authority to grant Awards to Participants who are not subject to the requirements of Section 16 of the Exchange Act and the rules and regulations thereunder. The Committee may revoke any such allocation or delegation at any time for any reason with or without prior notice.

No Director will be liable for any good faith determination, act or omission in connection with the Plan or any Award.

**Section 3. Shares Subject to the Plan.**

(a) Shares Subject to the Plan. Subject to adjustment as provided in this Section 3(a), Section 3(d), and in Section 3(e) of the Plan, the maximum number of Shares that may be issued in respect of Awards under the Plan is the sum of: (i) \_\_\_\_\_<sup>1</sup> Shares and (ii) an annual increase on January 1, 2022 and each anniversary of such date thereafter prior to the termination of the Plan, equal to the lesser of (A) 5 % of the Shares issued and outstanding on the last day of the immediately preceding fiscal year and (B) such smaller number of Shares as determined by the Board (collectively, the "Plan Limit"). If any award granted under either the Cognition Therapeutics, Inc. 2017 Equity Incentive Plan, as amended, or the Cognition Therapeutics, Inc. Amended and Restated 2007 Equity Incentive Plan (each a "Prior Plan"), expires, terminates, is canceled or is forfeited for any reason after the Effective Time, the Shares subject to that award will be added to the Plan Limit and become available for issuance hereunder, provided that the number of Shares added to the Plan Limit pursuant to this sentence and the second sentence of Section 3(d) below (relating to Shares withheld in satisfaction of the exercise price or tax withholding obligations associated with Prior Plan awards) will not exceed \_\_\_\_\_<sup>2</sup>. Any Shares issued hereunder may consist, in whole or in part, of authorized and unissued Shares or treasury shares. Any Shares issued by the Company through the assumption or substitution of outstanding grants in connection with the acquisition of another entity shall not reduce the maximum number of Shares available for delivery under the Plan.

(b) Incentive Stock Option Limit. Subject to adjustment as provided in Section 3(e) of the Plan, the maximum aggregate number of Shares that may be issued under the Plan in respect of Incentive Stock Options is \_\_\_\_\_<sup>3</sup>.

(c) Effect of the Expiration or Termination of Awards. If and to the extent that an Option or a Stock Appreciation Right expires, terminates or is canceled or forfeited for any reason without having been exercised in full, the Shares associated with that Award will again become available for grant under the Plan. Similarly, if and to the extent an Award of Restricted Stock or Restricted Stock Units is canceled or forfeited for any reason, the Shares subject to that Award will again become available for grant under the Plan.

(d) Shares Withheld in Satisfaction of Taxes or Exercise Price. Shares withheld in settlement of a tax withholding obligation associated with an Award, or in satisfaction of the exercise price payable upon exercise of an Option, will again become available for grant under the Plan. Similarly, Shares withheld following the Effective Time in settlement of a tax withholding obligation associated with an award granted under the Prior Plans, or in satisfaction of the exercise price payable upon exercise of an option granted under the Prior Plans, will be added to the Plan Limit and become available for issuance hereunder.

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<sup>1</sup> Initial share reserve will be 12% of the total shares outstanding at the closing of the initial public offering.

<sup>2</sup> Total number of shares underlying 2007 Plan and 2017 Plan awards that may be recycled into the 2021 Plan will be the number of shares underlying 2007 Plan and 2017 Plan awards as of the effective date of the 2021 Plan.

<sup>3</sup> Total number of shares issuable as Incentive Stock Options will be 3x the initial share reserve.

(e) Other Adjustment. In the event of any corporate event or transaction such as a merger, consolidation, reorganization, recapitalization, stock split, reverse stock split, split up, spin-off, combination of shares, exchange of shares, stock dividend, dividend in kind, or other like change in capital structure (other than ordinary cash dividends) to stockholders of the Company, or other similar corporate event or transaction affecting the Shares, the Committee, to prevent dilution or enlargement of Participants' rights under the Plan, shall, in such manner as it deems equitable, substitute or adjust, in its sole discretion, the number and kind of shares that may be issued under the Plan or under any outstanding Awards, the number and kind of shares subject to outstanding Awards, the exercise price, grant price or purchase price applicable to outstanding Awards, and/or any other affected terms and conditions of this Plan or outstanding Awards.

(f) Change in Control. Notwithstanding anything to the contrary set forth in the Plan, upon or in anticipation of any Change in Control, the Committee may, in its sole and absolute discretion and without the need for the consent of any Participant, take one or more of the following actions contingent upon the occurrence of that Change in Control:

- (i) cause any or all outstanding Awards to become vested and immediately exercisable (as applicable), in whole or in part;
- (ii) cause any outstanding Option or Stock Appreciation Right to become fully vested and immediately exercisable for a reasonable period in advance of the Change in Control and, to the extent not exercised prior to that Change in Control, cancel that Option or Stock Appreciation Right upon closing of the Change in Control;
- (iii) cancel any unvested Award or unvested portion thereof, with or without consideration;
- (iv) cancel any Award in exchange for a substitute award;
- (v) redeem any Restricted Stock or Restricted Stock Unit for cash and/or other substitute consideration with value equal to the Fair Market Value of an unrestricted Share on the date of the Change in Control;
- (vi) cancel any Option or Stock Appreciation Right in exchange for cash and/or other substitute consideration with a value equal to: (A) the number of Shares subject to that Option or Stock Appreciation Right, multiplied by (B) the difference, if any, between the Fair Market Value on the date of the Change in Control and the exercise price of that Option or the base price of the Stock Appreciation Right; *provided*, that if the Fair Market Value on the date of the Change in Control does not exceed the exercise price of any such Option or the base price of any such Stock Appreciation Right, the Committee may cancel that Option or Stock Appreciation Right without any payment of consideration therefor; and/or

(vii) take such other action as the Committee determines to be appropriate under the circumstances.

In the discretion of the Committee, any cash or substitute consideration payable upon cancellation of an Award may be subjected to (i) vesting terms substantially identical to those that applied to the cancelled Award immediately prior to the Change in Control, or (ii) earn-out, escrow, holdback or similar arrangements, to the extent such arrangements are applicable to any consideration paid to stockholders in connection with the Change in Control.

Notwithstanding any provision of this Section 3(f), in the case of any Award subject to Section 409A of the Code, the Committee shall only be permitted to take actions under this Section 3(f) to the extent that such actions would be consistent with the intended treatment of such Award under Section 409A of the Code.

(g) Foreign Holders. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in countries other than the United States in which the Company and its Subsidiaries operate or have employees, directors and consultants, or in order to comply with the requirements of any foreign securities exchange or other Applicable Law, the Committee, in its sole discretion, shall have the power and authority to: (i) modify the terms and conditions of any Award granted to employees, directors and consultants outside the United States to comply with Applicable Law (including, without limitation, applicable foreign laws or listing requirements of any foreign securities exchange); (ii) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable; provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Section 3; and (iii) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any foreign securities exchange.

(h) Annual Compensation Limitations for Non-Employee Directors. Beginning with the calendar year following the year in which the Effective Time occurs, the aggregate amount of equity and cash compensation (collectively "Compensation") payable to a Non-Employee Director with respect to a calendar year, whether under the Plan or otherwise, for services as a Non-Employee Director, shall not exceed \$500,000; provided however, that such amount shall be \$750,000 for the calendar year in which the applicable Non-Employee Director is initially elected or appointed to the Board (collectively, the "Director Limit"). Equity incentive awards shall be counted towards the Director Limit in the year in which they are granted, based on the grant date fair value of such awards for financial reporting purposes (but excluding the impact of estimated forfeitures related to service-based vesting provisions). Cash fees shall be counted towards the Director Limit in the year for which they are reported as compensation in the Company's director compensation disclosures pursuant to Item 402 of Regulation S-K under the US Securities Act of 1933, or a successor provision. The Director Limit shall not apply to (i) Compensation earned by a Non-Employee Director solely in his or her capacity as chairman of the Board or lead independent director; (ii) Compensation earned with respect to services a Non-Employee Director provides in a capacity other than as a Non-Employee Director, such as an advisor or consultant to the Company; and (iii) Compensation awarded by the Board to a Non-Employee Director in extraordinary circumstances, as determined by the Board in its discretion, in each case provided that the Non-Employee Director receiving such additional Compensation does not participate in the decision to award such Compensation.

**Section 4. Eligibility.** Employees, Directors, consultants, and other individuals who provide services to the Company or its Affiliates are eligible to be granted Awards under the Plan; *provided, however*, that only employees of the Company, any Parent or a Subsidiary are eligible to be granted Incentive Stock Options.

**Section 5. Options.** Options granted under the Plan may be of two types: (i) Incentive Stock Options or (ii) Non-Qualified Stock Options. The Award Agreement shall state whether such grant is an Incentive Stock Option or a Non-Qualified Stock Option.

The Award Agreement evidencing any Option will incorporate the following terms and conditions and will contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Committee deems appropriate in its sole and absolute discretion:

(a) **Option Price.** The exercise price per Share under an Option will be determined by the Committee and will not be less than 100% of the Fair Market Value on the date of the grant. However, any Incentive Stock Option granted to any Participant who, at the time the Option is granted, owns, either directly and/or within the meaning of the attribution rules contained in Section 424(d) of the Code, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company, will have an exercise price per Share of not less than 110% of Fair Market Value on the date of the grant.

(b) **Option Term.** The term of each Option will be fixed by the Committee, but no Option will be exercisable more than 10 years after the date the Option is granted. However, any Incentive Stock Option granted to any Participant who, at the time such Option is granted, owns, either directly and/or within the meaning of the attribution rules contained in Section 424(d) of the Code, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company, may not have a term of more than 5 years. No Option may be exercised by any Person after expiration of the term of the Option.

(c) **Exercisability.** Options will vest and be exercisable at such time or times and subject to such terms and conditions as determined by the Committee. Such terms and conditions may include the continued employment or service of the Participant, the attainment of specified individual or corporate performance goals, or such other factors as the Committee may determine in its sole discretion (the "Vesting Conditions"). The Committee may provide in the terms of an Award Agreement that the Participant may exercise the unvested portion of an Option in whole or in part in exchange for shares of Restricted Stock subject to the same vesting terms as the portion of the Option so exercised. Restricted Stock acquired upon the exercise of an unvested Option shall be subject to such additional terms and conditions as determined by the Committee.

(d) Method of Exercise. Subject to the terms of the applicable Award Agreement, the exercisability provisions of Section 5(c) and the termination provisions of Section 7, Options may be exercised in whole or in part from time to time during their term by the delivery of written notice to the Company specifying the number of Shares to be purchased. Such notice will be accompanied by payment in full of the purchase price and any taxes required to be withheld in connection with such exercise, either by certified or bank check, or such other means as the Committee may accept. The Committee may, in its sole discretion, permit payment of the exercise price of an Option in the form of previously acquired Shares based on the Fair Market Value of the Shares on the date the Option is exercised or by means of a "net settlement," whereby the Option exercise price will not be due in cash and where the number of Shares issued upon such exercise will be equal to: (A) the product of (i) the number of Shares as to which the Option is then being exercised, and (ii) the excess, if any, of (a) the then current Fair Market Value over (b) the Option exercise price, divided by (B) the then current Fair Market Value.

An Option will not confer upon the Participant any of the rights or privileges of a stockholder in the Company unless and until the Participant exercises the Option in accordance with the paragraph above and is issued Shares pursuant to such exercise.

(e) Incentive Stock Option Limitations. In the case of an Incentive Stock Option, the aggregate Fair Market Value (determined as of the time of grant) of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Participant during any calendar year under the Plan and/or any other plan of the Company, its Parent or any Subsidiary will not exceed \$100,000. For purposes of applying the foregoing limitation, Incentive Stock Options will be taken into account in the order granted. To the extent any Option does not meet such limitation, that Option will be treated for all purposes as a Non-Qualified Stock Option.

(f) Termination of Service. Unless otherwise specified in the applicable Award Agreement or as otherwise provided by the Committee at or after the time of grant, Options will be subject to the terms of Section 7 with respect to exercise upon or following termination of employment or other service.

**Section 6. Stock Appreciation Right**. Subject to the other terms of the Plan, the Committee may grant Stock Appreciation Rights to eligible individuals. Each Stock Appreciation Right shall represent the right to receive, upon exercise, an amount equal to the number of Shares subject to the Award that is being exercised multiplied by the excess of (i) the Fair Market Value on the date the Award is exercised, over (ii) the base price specified in the applicable Award Agreement. Distributions may be made in cash, Shares, or a combination of both, at the discretion of the Committee. The Award Agreement evidencing each Stock Appreciation Right shall indicate the base price, the term and the Vesting Conditions for such Award. A Stock Appreciation Right base price may never be less than the Fair Market Value of the underlying common stock of the Company on the date of grant of such Stock Appreciation Right. The term of each Stock Appreciation Right will be fixed by the Committee, but no Stock Appreciation Right will be exercisable more than 10 years after the date the Stock Appreciation Right is granted. Subject to the terms and conditions of the applicable Award Agreement, Stock Appreciation Rights may be exercised in whole or in part from time to time during their term by the delivery of written notice to the Company specifying the portion of the Award to be exercised. Unless otherwise specified in the applicable Award Agreement or as otherwise provided by the Committee at or after the time of grant, Stock Appreciation Rights will be subject to the terms of Section 7 with respect to exercise upon or following termination of employment or other service.

**Section 7. Termination of Service.** Unless otherwise specified with respect to a particular Option or Stock Appreciation Right in the applicable Award Agreement or otherwise determined by the Committee, any portion of an Option or Stock Appreciation Right that is not exercisable upon termination of service will expire immediately and automatically upon such termination and any portion of an Option or Stock Appreciation Right that is exercisable upon termination of service will expire on the date it ceases to be exercisable in accordance with this Section 7.

(a) Termination by Reason of Death. If a Participant's service with the Company or any Affiliate terminates by reason of death, any Option or Stock Appreciation Right held by such Participant may thereafter be exercised, to the extent it was exercisable at the time of his or her death or on such accelerated basis as the Committee may determine at or after grant, by the legal representative of the estate or by the legatee of the Participant, for a period expiring (i) at such time as may be specified by the Committee at or after grant, or (ii) if not specified by the Committee, then 12 months from the date of death, or (iii) if sooner than the applicable period specified under (i) or (ii) above, upon the expiration of the stated term of such Option or Stock Appreciation Right.

(b) Termination by Reason of Disability. If a Participant's service with the Company or any Affiliate terminates by reason of Disability, any Option or Stock Appreciation Right held by such Participant may thereafter be exercised by the Participant or his or her personal representative, to the extent it was exercisable at the time of termination, or on such accelerated basis as the Committee may determine at or after grant, for a period expiring (i) at such time as may be specified by the Committee at or after grant, or (ii) if not specified by the Committee, then 12 months from the date of termination of service, or (iii) if sooner than the applicable period specified under (i) or (ii) above, upon the expiration of the stated term of such Option or Stock Appreciation Right.

(c) Cause. If a Participant's service with the Company or any Affiliate is terminated for Cause or if a Participant resigns at a time that there was a Cause basis for such Participant's termination: (i) any Option or Stock Appreciation Right, or portion thereof, not already exercised will be immediately and automatically forfeited as of the date of such termination, and (ii) any Shares for which the Company has not yet delivered share certificates will be immediately and automatically forfeited and the Company will refund to the Participant the Option exercise price paid for such Shares, if any.

(d) Other Termination. If a Participant's service with the Company or any Affiliate terminates for any reason other than death, Disability or Cause, any Option or Stock Appreciation Right held by such Participant may thereafter be exercised by the Participant, to the extent it was exercisable at the time of such termination, or on such accelerated basis as the Committee may determine at or after grant, for a period expiring (i) at such time as may be specified by the Committee at or after grant, or (ii) if not specified by the Committee, then 90 days from the date of termination of service, or (iii) if sooner than the applicable period specified under (i) or (ii) above, upon the expiration of the stated term of such Option or Stock Appreciation Right.



**Section 8. Restricted Stock.**

(a) Issuance. Restricted Stock may be issued either alone or in conjunction with other Awards. The Committee will determine the time or times within which Restricted Stock may be subject to forfeiture, and all other conditions of such Awards. The purchase price for Restricted Stock may, but need not, be zero.

(b) Certificates. Upon the Award of Restricted Stock, the Committee may direct that a certificate or certificates representing the number of Shares subject to such Award be issued to the Participant or placed in a restricted stock account (including an electronic account) with the transfer agent and in either case designating the Participant as the registered owner. The certificate(s), if any, representing such shares shall be physically or electronically legended, as applicable, as to sale, transfer, assignment, pledge or other encumbrances during the Restriction Period. If physical certificates are issued, they will be held in escrow by the Company or its designee during the Restriction Period. As a condition to any Award of Restricted Stock, the Participant may be required to deliver to the Company a share power, endorsed in blank, relating to the Shares covered by such Award.

(c) Restrictions and Conditions. The Award Agreement evidencing the grant of any Restricted Stock will incorporate the following terms and conditions and such additional terms and conditions, not inconsistent with the terms of the Plan, as the Committee deems appropriate in its sole and absolute discretion:

(i) During a period commencing with the date of an Award of Restricted Stock and ending at such time or times as specified by the Committee (the "Restriction Period"), the Participant will not be permitted to sell, transfer, pledge, assign or otherwise encumber Restricted Stock awarded under the Plan. The Committee may condition the lapse of restrictions on Restricted Stock upon one or more Vesting Conditions.

(ii) While any Share of Restricted Stock remains subject to restriction, the Participant will have, with respect to the Restricted Stock, the right to vote the Shares. If any cash distributions or dividends are payable with respect to the Restricted Stock, the Committee, in its sole discretion, may require the cash distributions or dividends to be subjected to the same Restriction Period as is applicable to the Restricted Stock with respect to which such amounts are paid, or, if the Committee so determines, reinvested in additional Restricted Stock to the extent Shares are available under Section 3 of the Plan. A Participant shall not be entitled to interest with respect to any dividends or distributions subjected to the Restriction Period. Any distributions or dividends paid in the form of securities with respect to Restricted Stock will be subject to the same terms and conditions as the Restricted Stock with respect to which they were paid, including, without limitation, the same Restriction Period.

(iii) Subject to the provisions of the applicable Award Agreement or as otherwise determined by the Committee, if a Participant's service with the Company and its Affiliates terminates prior to the expiration of the applicable Restriction Period, the Participant's Restricted Stock that then remains subject to forfeiture will then be forfeited automatically.

**Section 9. Restricted Stock Units.** Subject to the other terms of the Plan, the Committee may grant Restricted Stock Units to eligible individuals and may impose one or more Vesting Conditions on such units. Each Restricted Stock Unit will represent a right to receive from the Company, upon fulfillment of any applicable conditions, an amount equal to the Fair Market Value (at the time of the distribution). Distributions may be made in cash, Shares, or a combination of both, at the discretion of the Committee. The Award Agreement evidencing a Restricted Stock Unit shall set forth the Vesting Conditions and time and form of payment with respect to such Award. The Participant shall not have any stockholder rights with respect to the Shares subject to a Restricted Stock Unit Award until that Award vests and the Shares are actually issued thereunder; provided, however, that an Award Agreement may provide for the inclusion of dividend equivalent payments or unit credits with respect to the Award in the discretion of the Committee. Subject to the provisions of the applicable Award Agreement or as otherwise determined by the Committee, if a Participant's service with the Company terminates prior to the Restricted Stock Unit Award vesting in full, any portion of the Participant's Restricted Stock Units that then remain subject to forfeiture will then be forfeited automatically.

**Section 10. Cash or Other Stock Based Awards.** Subject to the other terms of the Plan, the Committee may grant Cash or Other Stock Based Awards (including Awards to receive unrestricted Shares or immediate cash payments) to eligible individuals. The Award Agreement evidencing a Cash or Other Stock Based Award shall set forth the terms and conditions of such Cash or Other Stock Based Award, including, as applicable, the term, any exercise or purchase price, performance goals, Vesting Conditions and other terms and conditions. Payment in respect of a Cash or Other Stock Based Award may be made in cash, Shares, or a combination of cash and Shares, as determined by the Committee.

**Section 11. Amendments and Termination.** Subject to any stockholder approval that may be required under Applicable Law, the Plan may be amended or terminated at any time or from time to time by the Board.

**Section 12. Prohibition on Repricing Programs.** Neither the Committee nor the Board shall (i) implement any cancellation/re-grant program pursuant to which outstanding Options or Stock Appreciation Rights under the Plan are cancelled and new Options or Stock Appreciation Rights are granted in replacement with a lower exercise or base price per share, (ii) cancel outstanding Options or Stock Appreciation Rights under the Plan with exercise prices or base prices per share in excess of the then current Fair Market Value for consideration payable in equity securities of the Company or cash or (iii) otherwise directly reduce the exercise price or base price in effect for outstanding Options or Stock Appreciation Rights under the Plan, without in each such instance obtaining stockholder approval.

**Section 13. Conditions Upon Grant of Awards and Issuance of Shares.**

(a) The implementation of the Plan, the grant of any Award and the issuance of Shares in connection with the issuance, exercise or vesting of any Award made under the Plan shall be subject to the Company's procurement of all approvals and permits required by regulatory authorities having jurisdiction over the Plan, the Awards made under the Plan and the Shares issuable pursuant to those Awards.

(b) No Shares or other assets shall be issued or delivered under the Plan unless and until there shall have been compliance with all applicable requirements of Applicable Law.

**Section 14. Limits on Transferability; Beneficiaries.** No Award or other right or interest of a Participant under the Plan shall be pledged, encumbered, or hypothecated to, or in favor of, or subject to any lien, obligation, or liability of such Participant to, any party, other than the Company, any Subsidiary or Affiliate, or assigned or transferred by such Participant other than by will or the laws of descent and distribution, and such Awards and rights shall be exercisable during the lifetime of the Participant only by the Participant or his or her guardian or legal representative. Notwithstanding the foregoing, the Committee may, in its discretion, provide that Awards or other rights or interests of a Participant granted pursuant to the Plan (other than an Incentive Stock Option) be transferable, without consideration, to immediate family members (i.e., children, grandchildren or spouse), to trusts for the benefit of such immediate family members and to partnerships in which such family members are the only partners. The Committee may attach to such transferability feature such terms and conditions as it deems advisable. In addition, a Participant may, in the manner established by the Committee, designate a beneficiary (which may be a person or a trust) to exercise the rights of the Participant, and to receive any distribution, with respect to any Award upon the death of the Participant. A beneficiary, guardian, legal representative or other person claiming any rights under the Plan from or through any Participant shall be subject to all terms and conditions of the Plan and any Award Agreement applicable to such Participant, except as otherwise determined by the Committee, and to any additional restrictions deemed necessary or appropriate by the Committee.

**Section 15. Withholding of Taxes.** No later than the date as of which an amount first becomes includible in the gross income of the Participant for federal income tax purposes with respect to any Award under the Plan, the Participant will pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any federal, state or local taxes of any kind required by law to be withheld with respect to such amount. To the extent authorized by the Committee, the required tax withholding may be satisfied by the withholding of Shares subject to the Award based on the Fair Market Value on the date of withholding, but in any case not in excess of the amount determined based on the maximum statutory tax rate in the applicable jurisdiction. The obligations of the Company under the Plan will be conditioned on such payment or arrangements and the Company will have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant.

**Section 16. Liability of Company.**

(a) Inability to Obtain Authority. If the Company cannot, by the exercise of commercially reasonable efforts, obtain authority from any regulatory body having jurisdiction for the sale of any Shares under this Plan, and such authority is deemed by the Company's counsel to be necessary to the lawful issuance of those Shares, the Company will be relieved of any liability for failing to issue or sell those Shares.

(b) Rights of Participants and Beneficiaries. The Company will pay all amounts payable under this Plan only to the applicable Participant, or beneficiaries entitled thereto pursuant to this Plan. The Company will not be liable for the debts, contracts, or engagements of any Participant or his or her beneficiaries, and rights to cash payments under this Plan may not be taken in execution by attachment or garnishment, or by any other legal or equitable proceeding while in the hands of the Company.

**Section 17. General Provisions.**

(a) The Committee may require each Participant to represent to and agree with the Company in writing that the Participant is acquiring securities of the Company for investment purposes and without a view to distribution thereof and as to such other matters as the Committee believes are appropriate.

(b) The Awards shall be subject to the Company's stock ownership policies, as in effect from time to time.

(c) All certificates for Shares or other securities delivered under the Plan will be subject to such share-transfer orders and other restrictions as the Board may deem advisable under the rules, regulations and other requirements of the Securities Act of 1933, as amended, the Exchange Act, any stock exchange upon which the Shares are then listed, and any other Applicable Law, and the Board may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

(d) Nothing contained in the Plan will prevent the Company from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required.

(e) Neither the adoption of the Plan nor the execution of any document in connection with the Plan will: (i) confer upon any employee or other service provider of the Company or an Affiliate any right to continued employment or engagement with the Company or such Affiliate, or (ii) interfere in any way with the right of the Company or such Affiliate to terminate the employment or engagement of any of its employees or other service providers at any time.

(f) The Awards (whether vested or unvested) shall be subject to rescission, cancellation or recoupment, in whole or in part, under any current or future "clawback" or similar policy of the Company that is applicable to the Participant. Notwithstanding any other provisions in this Plan, any Award which is subject to recovery under any law, government regulation or stock exchange listing requirement, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation or stock exchange listing requirement.

**Section 18. Effectiveness of Plan.** The Plan will become effective upon the execution of an underwriting agreement with respect to the Company's initial public offering of common stock (the "Effective Time").

**Section 19. Term of Plan.** Unless the Plan shall theretofore have been terminated in accordance with Section 11, the Plan shall terminate on the 10-year anniversary of the Effective Time, and no Awards under the Plan shall thereafter be granted.

**Section 20. Invalid Provisions.** In the event that any provision of this Plan is found to be invalid or otherwise unenforceable under any Applicable Law, such invalidity or unenforceability will not be construed as rendering any other provisions contained herein as invalid or unenforceable, and all such other provisions will be given full force and effect to the same extent as though the invalid or unenforceable provision was not contained herein.

**Section 21. Governing Law.** The Plan and all Awards granted hereunder will be governed by and construed in accordance with the laws and judicial decisions of the State of Delaware, without regard to the application of the principles of conflicts of laws.

**Section 22. Notices.** Any notice to be given to the Company pursuant to the provisions of this Plan must be given in writing and addressed, if to the Company, to its principal executive office to the attention of its Chief Financial Officer (or such other Person as the Company may designate in writing from time to time), and, if to a Participant, to the address contained in the Company's personnel files, or at such other address as that Participant may hereafter designate in writing to the Company. Any such notice will be deemed duly given: if delivered personally or via recognized overnight delivery service, on the date and at the time so delivered; if sent via telecopier or email, on the date and at the time telecopied or emailed with confirmation of delivery; or, if mailed, five (5) days after the date of mailing by registered or certified mail.

## COGNITION THERAPEUTICS, INC.

## 2021 EMPLOYEE STOCK PURCHASE PLAN

1. **Purpose.** The purpose of the Cognition Therapeutics, Inc. 2021 Employee Stock Purchase Plan is to provide employees of the Company and its Participating Subsidiaries with an opportunity to acquire a proprietary interest in the Company through the purchase of shares of Common Stock. The Company intends that the Plan qualify as an “employee stock purchase plan” under Section 423 of the Code, and the Plan shall be interpreted in a manner that is consistent with that intent.

2. **Definitions.**

“**Board**” means the Board of Directors of the Company, as constituted from time to time.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall be deemed to include any regulations promulgated thereunder.

“**Committee**” means the Compensation Committee of the Board.

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

“**Company**” means Cognition Therapeutics, Inc., a Delaware corporation, including any successor thereto.

“**Compensation**” means base salary and base wages, including compensation for overtime, paid to an Eligible Employee by the Company or a Participating Subsidiary as compensation for services to the Company or Participating Subsidiary, before deduction for any contributions from salary or wages made by the Eligible Employee to any tax-qualified or nonqualified deferred compensation plan, cafeteria plan or similar arrangement.

“**Corporate Transaction**” means a merger, consolidation, acquisition of property or stock, separation, reorganization or other corporate event described in Section 424 of the Code.

“**Designated Broker**” means the financial services firm or other agent designated by the Company to maintain ESPP Share Accounts on behalf of Participants who have purchased shares of Common Stock under the Plan.

“**Effective Date**” means the Public Trading Date, provided that the Board has adopted the Plan prior to such date and subject to the Plan obtaining shareholder approval in accordance with Section 19.10.

“**Employee**” means any person who renders services to the Company or a Participating Subsidiary as an employee pursuant to an employment relationship with such employer. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on military leave, sick leave or other leave of absence approved by the Company or a Participating Subsidiary that meets the requirements of Treasury Regulation Section 1.421-1(h)(2). Where the period of leave exceeds three (3) months, or such other period of time specified in Treasury Regulation Section 1.421-1(h)(2), and the individual’s right to re-employment is not guaranteed by statute or contract, the employment relationship shall be deemed to have terminated on the first day immediately following such three-month period, or such other period specified in Treasury Regulation Section 1.421-1(h)(2).

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**“Eligible Employee”** means an Employee who is customarily employed for at least twenty (20) hours per week and for more than five (5) months in any calendar year. Notwithstanding the foregoing, the Committee may exclude from participation in the Plan or from any Offering, Employees who are (x) “highly compensated employees” of the Company or a Participating Subsidiary (within the meaning of Section 414(q) of the Code) or a sub-set of such highly compensated employees, or (y) citizens or residents of a foreign jurisdiction where the grant of an option under the Plan to such Employee would be prohibited under the laws of such foreign jurisdiction or the grant of an option under the Plan to such Employee in compliance with the laws of such foreign jurisdiction would cause the Plan to violate the requirements of Section 423 of the Code, as determined by the Committee in its sole discretion.

**“Enrollment Form”** means an agreement pursuant to which an Eligible Employee may elect to enroll in the Plan, authorize a new level of payroll deductions, or stop payroll deductions and withdraw from an Offering Period.

**“ESPP Share Account”** means an account into which Common Stock purchased with accumulated payroll deductions at the end of an Offering Period are held on behalf of a Participant.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

**“Fair Market Value”** means, as of any date, (i) if the shares are listed on any established stock exchange or a national market system, including, without limitation, the New York Stock Exchange or the NASDAQ Stock Market, the closing price of a share of Common Stock (or if no sales were reported, the closing price on the date immediately preceding such date) as quoted on such exchange or system on the day of determination, as reported in The Wall Street Journal, or (ii) in the absence of an established market for the shares, an amount determined in good faith by the Committee, with such determination conclusive and binding on all persons.

**“Offering”** means the grant of rights to an Eligible Employee to purchase shares of Common Stock during an Offering Period in accordance with the Plan.

**“Offering Date”** means the first Trading Day of each Offering Period, as designated by the Committee.

**“Offering Period”** means a period of six (6) months beginning on January 1<sup>st</sup> and July 1<sup>st</sup> of each year; provided that, pursuant to Section 5, the Committee may change the duration of future Offering Periods (subject to a maximum Offering Period of twenty-seven (27) months) and/or the start and end dates of future Offering Periods.

“**Participant**” means an Eligible Employee who is actively participating in the Plan.

“**Participating Subsidiaries**” means the Subsidiaries that the Committee has designated as eligible to participate in the Plan, and such other Subsidiaries that may be designated by the Committee from time to time in its sole discretion.

“**Plan**” means this Cognition Therapeutics, Inc. 2021 Employee Stock Purchase Plan, as set forth herein, and as amended from time to time.

“**Public Trading Date**” shall mean the first date upon which the Common Stock is listed (or approved for listing) upon notice of issuance on any securities exchange or designated (or approved for designation) upon notice of issuance as a national market security on an interdealer quotation system.

“**Purchase Date**” means the last Trading Day of each Offering Period.

“**Purchase Price**” means an amount equal to the lesser of (i) eight-five percent (85%) of the Fair Market Value of a share of Common Stock on the Offering Date and (ii) eight-five percent (85%) of the Fair Market Value of a share of Common Stock on the Purchase Date; provided that, the Purchase Price per share of Common Stock will in no event be less than the par value of the Common Stock.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Subsidiary**” means any corporation, domestic or foreign, other than the Company, in an unbroken chain of corporations beginning with the Company if, at the time of the determination, each of the corporations other than the last corporation in an 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 the chain; provided, however, that a limited liability company or partnership may be treated as a Subsidiary to the extent that either (i) such entity is treated as a disregarded entity under Treasury Regulation Section 301.7701-3(a) by reason of the Company or any other Subsidiary that is a corporation being the sole owner of such entity, or (b) such entity elects to be classified as a corporation under Treasury Regulation Section 301.7701-3(a) and such entity would otherwise qualify as a Subsidiary. In all cases, the determination of whether an entity is a Subsidiary shall be made in accordance with Section 424(f) of the Code.

“**Trading Day**” means any day on which the national stock exchange upon which the Common Stock is listed is open for trading or, if the Common Stock is not listed on an established stock exchange or national market system, a business day, as determined by the Committee in good faith.

3. Administration. The Committee shall administer the Plan and shall have the authority to construe and interpret the Plan, prescribe, amend and rescind rules relating to the Plan’s administration and take any other actions necessary or desirable for the administration of the Plan, and to ensure compliance with Section 423 of the Code and other applicable law. The Committee’s decisions shall be final and binding on all persons. All expenses of administering the Plan shall be borne by the Company.



4. Eligibility.

4.1. Unless otherwise determined by the Committee in a manner consistent with Section 423 of the Code, any individual who is an Eligible Employee as of the first day of the enrollment period designated by the Committee for a particular Offering Period shall be eligible to participate in such Offering Period, subject to requirements under Section 423 of the Code.

4.2. Notwithstanding any provision of the Plan to the contrary, (i) no Eligible Employee shall be granted an option under the Plan if immediately after the grant of the option, such Eligible Employee (or any other person whose stock would be attributed to such Eligible Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company or hold outstanding options to purchase stock possessing 5% or more of the total combined voting power or value of all classes of stock of the Company or any Subsidiary, and (ii) in accordance with Section 423(b)(8) of the Code, no Eligible Employee shall be granted an option under the Plan to the extent such option would permit his or her rights to purchase stock under the Plan and all other employee stock purchase plans of the Company and any Subsidiary to accrue at a rate which exceeds \$25,000 of the fair market value of such stock (determined at the time the option is granted) for each calendar year in which the option is outstanding.

5. Offering Periods. The Plan shall be implemented by a series of Offering Periods, commencing at such time as determined by the Committee. The Committee shall have the authority to change the duration, frequency, start and end dates of Offering Periods.

6. Participation.

6.1. Enrollment and Payroll Deductions. An Eligible Employee may elect to participate in the Plan by completing an Enrollment Form and submitting it to the Company, in accordance with the enrollment procedures established by the Committee. Participation in the Plan is entirely voluntary. By submitting an Enrollment Form, an Eligible Employee authorizes payroll deductions from his or her pay check in an amount equal to (i) a whole percentage of his or her Compensation (no less than 1% and no greater than 15 % (or such other maximum percentage as the Committee may establish from time to time before an Offering Period begins)) or (ii) a fixed dollar amount, in each case, on each pay day occurring during an Offering Period. Payroll deductions shall commence on the first payroll date following the Offering Date and end on the last payroll date on or before the Purchase Date. The Company shall maintain records of all payroll deductions but shall have no obligation to pay interest on payroll deductions or to hold such amounts in a trust or in any segregated account. Unless expressly permitted by the Committee, a Participant may not make any separate contributions or payments to the Plan.

6.2. Election Changes. During an Offering Period, a Participant may decrease or increase his or her rate of payroll deductions applicable to such Offering Period only once. To make such a change, the Participant must submit a new Enrollment Form authorizing the new rate of payroll deductions at least fifteen (15) days before the Purchase Date. Any such change of payroll deductions during an Offering Period shall be effective with the first full payroll period that commences at least five (5) business days after the Company's receipt of the Participant's new Enrollment Form. A Participant may decrease or increase his or her rate of payroll deductions for future Offering Periods by submitting a new Enrollment Form authorizing the new rate of payroll deductions at least fifteen (15) days before the start of the next Offering Period.

6.3. Automatic Re-Enrollment. The deduction rate selected by a Participant in an Enrollment Form shall remain in effect for subsequent Offering Periods, unless the Participant (i) submits a new Enrollment Form authorizing a new level of payroll deductions in accordance with Section 6.2, (ii) withdraws from the Plan in accordance with Section 10, or (iii) terminates employment or otherwise becomes ineligible to participate in the Plan.

7. Grant of Option. On each Offering Date, each Participant in the applicable Offering Period shall be granted an option to purchase, on the Purchase Date, a number of shares of Common Stock determined by dividing the Participant's accumulated payroll deductions during the Offering Period by the applicable Purchase Price (rounded down to the nearest whole share of Common Stock); provided that in no event shall any Participant purchase more than 5,000 shares of Common Stock during an Offering Period (subject to adjustment in accordance with Section 18 and the limitations set forth in Section 13).

8. Exercise of Option/Purchase of Shares. A Participant's option to purchase shares of Common Stock will be exercised automatically on the Purchase Date of each Offering Period. The Participant's accumulated payroll deductions will be used to purchase the maximum number of whole shares of Common Stock that can be purchased with the amounts in the Participant's notional account. No fractional shares may be purchased.

9. Transfer of Shares. As soon as reasonably practicable after each Purchase Date, the Company will arrange for the delivery to each Participant of the shares of Common Stock purchased upon exercise of his or her option. The Committee may permit or require that the shares of Common Stock be deposited directly into an ESPP Share Account established in the name of the Participant with a Designated Broker and may require that the shares of Common Stock be retained with such Designated Broker for a specified period of time. Participants will not have any voting, dividend or other rights of a shareholder with respect to the shares of Common Stock subject to any option granted hereunder until such shares have been delivered pursuant to this Section 9.

10. Withdrawal.

10.1. Withdrawal Procedure. A Participant may withdraw from an Offering by submitting a revised Enrollment Form to the Committee indicating his or her election to withdraw at least fifteen (15) days before the Purchase Date. The accumulated payroll deductions held on behalf of a Participant in his or her notional account (that have not been used to purchase shares of Common Stock) shall be paid to the Participant promptly following receipt of the Participant's Enrollment Form indicating his or her election to withdraw and the Participant's option shall be automatically terminated. If a Participant withdraws from an Offering Period, no payroll deductions will be made during any succeeding Offering Period, unless the Participant re-enrolls in accordance with Section 6.1.

10.2. Effect on Succeeding Offering Periods. A Participant's election to withdraw from an Offering Period will not have any effect upon his or her eligibility to participate in succeeding Offering Periods that commence following the completion of the Offering Period from which the Participant withdraws.

11. Termination of Employment; Change in Employment Status. Upon termination of a Participant's employment for any reason, including death, disability or retirement, or a change in the Participant's employment status following which the Participant is no longer an Eligible Employee, the Participant will be deemed to have withdrawn from the Plan and the payroll deductions in the Participant's notional account that have not been used to purchase shares of Common Stock shall be returned to the Participant, or in the case of the Participant's death, to the person(s) entitled to such amounts under Section 17, and the Participant's option shall be automatically terminated.

12. Interest. No interest shall accrue on or be payable with respect to the payroll deductions of a Participant in the Plan.

13. Shares Reserved for Plan.

13.1. Number of Shares. A total of \_\_\_\_\_<sup>1</sup> shares of Common Stock have been authorized and reserved for issuance under the Plan. In addition to the foregoing, subject to prior approval by the Board in each instance, on or about January 1, 2022 and on each anniversary of such date thereafter prior to the termination of the Plan, the number of shares of Common Stock authorized and reserved for issuance under the Plan shall be increased by a number of shares of Common Stock equal to the lesser of (i) 1,000,000 shares of Common Stock, (ii) 1% of the shares of Common Stock outstanding on the final day of the immediately preceding calendar year, and (iii) such smaller number of shares of Common Stock as determined by the Board. Such shares of Common Stock may be newly issued shares, treasury shares or shares acquired on the open market.

13.2. Over-Subscribed Offerings. The number of shares of Common Stock which a Participant may purchase in an Offering under the Plan may be reduced if the Offering is over-subscribed. No option granted under the Plan shall permit a Participant to purchase shares of Common Stock which, if added together with the total number of shares of Common Stock purchased by all other Participants in such Offering, would exceed the total number of shares of Common Stock remaining available under the Plan. If the Committee determines that, on a particular Purchase Date, the number of shares of Common Stock with respect to which options are to be exercised exceeds the number of shares of Common Stock then available under the Plan, the Company shall make a pro rata allocation of the shares of Common Stock remaining available for purchase in as uniform a manner as practicable and as the Committee determines to be equitable.

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<sup>1</sup> Total number of shares subject to the Plan will be 1% of the total shares outstanding at the closing of the initial public offering.

14. Transferability. No payroll deductions credited to a Participant or any rights with respect to the exercise of an option or any rights to receive Common Stock hereunder may be assigned, transferred, pledged or otherwise disposed of in any way by the Participant, other than by will, the laws of descent and distribution, or as provided in Section 17. Any attempt to assign, transfer, pledge or otherwise dispose of such rights or amounts shall be without effect.

15. Application of Funds. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose to the extent permitted by applicable law, and the Company shall not be required to segregate such payroll deductions or contributions.

16. Statements. Upon request by a Participant, he or she will be provided with a statement which shall set forth the contributions made by the Participant to the Plan, the Purchase Price of any shares of Common Stock purchased with accumulated funds, the number of shares of Common Stock purchased, and any payroll deduction amounts remaining in the Participant's notional account.

17. Designation of Beneficiary. A Participant may file a written designation of beneficiary who is to receive any cash withheld through payroll deductions and credited to the Participant's notional account in the event of the Participant's death prior to the Purchase Date of an Offering Period.

18. Adjustments; Dissolution or Liquidation; Corporate Transactions.

18.1. Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Common Stock, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, or exchange of Common Stock or other securities of the Company, or other change in the Company's structure affecting the Common Stock occurs, then in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, the Committee will, in such manner as it deems equitable, adjust the number of shares and class of Common Stock that may be delivered under the Plan, the Purchase Price per share and the number of shares of Common Stock covered by each outstanding option under the Plan, and the numerical limits of Section 7 and Section 13.

18.2. Dissolution or Liquidation. Unless otherwise determined by the Committee, in the event of a proposed dissolution or liquidation of the Company, any Offering Period then in progress will be shortened by setting a new Purchase Date that occurs before the date of the Company's proposed dissolution or liquidation. Before the new Purchase Date, the Committee will provide each Participant with written notice, which may be electronic, of the new Purchase Date and that the Participant's option will be exercised automatically on such date, unless before such time, the Participant has withdrawn from the Offering in accordance with Section 10.

18.3. Corporate Transaction. In the event of a Corporate Transaction, each outstanding option will be assumed or an equivalent option substituted by the successor corporation or a parent or Subsidiary of such successor corporation. If the successor corporation refuses to assume or substitute the option, the Offering Period with respect to which the option relates will be shortened by setting a new Purchase Date that occurs before the date of the Corporate Transaction. Prior to the new Purchase Date, the Committee will provide each Participant with written notice, which may be electronic, of the new Purchase Date and that the Participant's option will be exercised automatically on such date, unless before such time, the Participant has withdrawn from the Offering in accordance with Section 10.

19. General Provisions.

19.1. Equal Rights and Privileges. Notwithstanding any provision of the Plan to the contrary and in accordance with Section 423 of the Code, all Eligible Employees who are granted options under the Plan shall have the same rights and privileges.

19.2. No Right to Continued Service. Neither the Plan nor any compensation paid hereunder will confer on any Participant the right to continue as an Employee or in any other capacity.

19.3. Rights as Shareholder. A Participant will become a shareholder with respect to the shares of Common Stock that are purchased pursuant to options granted under the Plan when the shares are transferred to the Participant's ESPP Share Account.

19.4. Successors. The Plan shall be binding on the Company and its successors.

19.5. Compliance with Law. The obligations of the Company with respect to payments under the Plan are subject to compliance with all applicable laws and regulations. Common Stock shall not be issued with respect to an option granted under the Plan unless the issuance and exercise of such option, and the issuance and delivery of the shares of Common Stock pursuant thereto, shall comply with all applicable provisions of law, including, without limitation, the Securities Act, the Exchange Act, and the requirements of any stock exchange upon which the shares may then be listed.

19.6. Notice of Disqualifying Dispositions. Each Participant shall give the Company prompt written notice of any disposition or other transfer of shares of Common Stock acquired pursuant to the exercise of an option acquired under the Plan, if such disposition or transfer is made within two years after the Offering Date or within one year after the Purchase Date.

19.7. Term of Plan. The Plan shall become effective on the Effective Date and, unless terminated earlier pursuant to Section 19.8, shall have a term of ten (10) years.

19.8. Amendment or Termination. The Committee may, in its sole discretion, amend, suspend or terminate the Plan at any time and for any reason. If the Plan is terminated, the Committee may elect to terminate all outstanding Offering Periods either immediately or once shares of Common Stock have been purchased on the next Purchase Date (which may, in the discretion of the Committee, be accelerated) and all amounts that have not been used to purchase shares of Common Stock will then be returned to Participants.

19.9. Applicable Law. The laws of the State of Delaware shall govern all questions concerning the construction, validity and interpretation of the Plan, without regard to such state's conflict of law rules.

19.10. Shareholder Approval. The Plan shall be subject to approval by the shareholders of the Company within twelve (12) months before or after the date the Plan is adopted by the Board.

19.11. Section 423 of the Code. The Plan is intended to qualify as an employee stock purchase plan under Section 423 of the Code and will be interpreted accordingly; provided that the Company does not guarantee any particular tax treatment with respect to an option granted under this Plan.

19.12. Withholding. To the extent required by applicable federal, state or local law, a Participant must make arrangements satisfactory to the Company for the payment of any withholding or similar tax obligations that arise in connection with the Plan. At any time, the Company may, but shall not be obligated to, withhold from the Participant's compensation the amount necessary for the Company to meet applicable withholding obligations.

19.13. Severability. If any provision of the Plan shall for any reason be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, and the Plan shall be construed as if such invalid or unenforceable provision were omitted.

19.14. Headings. The headings of sections herein are included solely for convenience and shall not affect the meaning of any of the provisions of the Plan.

## EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (the “**Agreement**”), dated \_\_\_\_\_, 20\_\_\_\_, is made and entered into by and between COGNITION THERAPEUTICS, INC., a Delaware corporation (the “**Company**”) and Lisa Ricciardi (“**Executive**”), and will become effective on the first date that the Company’s common stock is traded on a national stock exchange or national market system (the “**Effective Date**”).

Introduction

WHEREAS, Executive is currently employed by the Company as its Chief Executive Officer in accordance with the terms and conditions of that certain employment agreement by and between the Company and Executive dated June 1, 2020 (the “**Prior Agreement**”); and

WHEREAS, the parties desire to replace the Prior Agreement with this Agreement, effective as of the Effective Date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. **Position.** Executive will continue to serve as the Chief Executive Officer and President of the Company and will continue to report directly to the Board of Directors of the Company (the “**Board**”). In addition to performing the duties and responsibilities associated with that position, from time to time the Company may assign to Executive other duties and responsibilities reasonable and consistent with such position. Executive agrees to devote her full business time and best efforts to the performance of her duties and to the furtherance of the Company’s interests. Executive also agrees that during her employment with the Company, she will not engage in any other employment, consulting, business services or board memberships without the written consent of the Board (provided that with respect to board memberships, such consent shall not be unreasonably withheld); provided further, however, that without such consent, Executive may engage in charitable or public service, so long as such activities do not interfere with the performance of her duties and obligations to the Company. The Company also expects that Executive will continue to serve, without the receipt of any additional compensation, as a member of the Board while employed as the Chief Executive Officer of the Company, subject to re-election by the Company’s stockholders from time to time. The Company will nominate Executive for election to a seat on the Board for as long as Executive continues to serve as Chief Executive Officer, provided that, notwithstanding any other provision of this Agreement, the failure of the Company’s stockholders to re-elect Executive will not be construed as a termination by Executive for “Good Reason” under Section 13(g).
  2. **Term.** Executive’s employment pursuant to this Agreement will commence on the Effective Date and will continue until terminated in accordance with Section 9 hereof. Notwithstanding the foregoing, if the Company’s common stock has not commenced trading on a national stock exchange or national market system on or prior to December 31, 2022, this Agreement shall be null and void.
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3. **Place of Performance.** Executive will perform services hereunder at the principal executive offices of the Company in a location to be determined by the Board; provided, however, that Executive may be required to travel from time to time for business purposes.

4. **Salary.** This is a full-time exempt position. The Company will pay Executive a salary at an annual rate of \$512,500 (“**Base Salary**”), payable in accordance with the Company’s standard payroll schedule and subject to applicable deductions and withholdings. The Base Salary shall be reviewed on an annual basis by the Compensation Committee of the Board (the “**Committee**”) and may be adjusted from time to time by the Committee.

5. **Annual Bonus.** For each calendar year ending during her employment, Executive will have the opportunity to earn an annual bonus with a target amount of 50% of the Base Salary in effect at the end of the applicable year (the “**Target Bonus**”). The actual bonus payable to Executive, if any, with respect to any year may be more or less than the Target Bonus and will be determined by the Committee, in its sole discretion, based on the achievement of corporate and/or personal objectives established by the Committee. Except as otherwise provided herein or determined by the Committee, payment of any otherwise earned bonus will be conditioned on Executive’s continued service through the date that annual bonuses are paid to the Company’s executive officers generally with respect to the applicable year.

6. **Equity Incentives.**

(a) Executive may receive equity awards, at times and on terms determined by the Committee in its discretion.

(b) Upon a “Change of Control” as defined under the Cognition Therapeutics, Inc. 2017 Equity Incentive Plan, that certain option to purchase 2,898,686 shares of common stock granted to Executive on June 1, 2020 shall vest in full and become immediately exercisable, subject to Executive’s continued employment through such “Change of Control.”

7. **Benefits; Business Expenses.**

(a) Executive shall be entitled to participate in Company benefit plans that are generally available to other employees of the Company of similar rank and tenure, in accordance with and subject to the terms and conditions of such plans, as in effect from time to time.

(b) The Company will pay or reimburse Executive for all reasonable business expenses incurred or paid by Executive in the performance of her duties and responsibilities for the Company in accordance with the expense reimbursement policies of the Company, as may be amended from time to time.



8. **Restrictive Covenants Agreement**. To induce the Company to enter into this Agreement, as a condition to Executive's continued employment by the Company, and in recognition of (i) the compensation payable to Executive pursuant to this Agreement, and (ii) such other consideration payable to Executive by the Company or any of its affiliates, Executive must sign and return to the Company no later than the Effective Date the restrictive covenants agreement attached hereto as Exhibit A (the "**Restrictive Covenants Agreement**").

9. **Termination**.

(a) Executive's employment hereunder shall terminate on the earliest of: (i) on the date set forth in a written notice to Executive from the Board that Executive's employment with the Company has been or will be terminated, (ii) on the date not less than 30 days following written notice from Executive to the Company that Executive is resigning from the Company, (iii) on the date of Executive's death, or (iv) on the date set forth in a written notice to Executive from the Board that Executive's employment is terminated on account of Executive's Disability, as determined by the Board. Notwithstanding the foregoing, in the event that Executive gives notice of termination to the Company, the Company may unilaterally accelerate the date of termination and such acceleration shall not constitute a termination by the Company for purposes of this Agreement.

(b) Upon cessation of Executive's employment for any reason, unless otherwise consented to in writing by the Board, Executive will resign immediately from any and all officer, director and other positions Executive then holds with the Company and its affiliates and agrees to execute such documents as may be requested by the Company to confirm that resignation.

(c) Upon any cessation of Executive's employment with the Company, Executive will be entitled only to such compensation and benefits as described in Section 10 below.

(d) Executive agrees that, following any cessation of her employment and subject to reimbursement of her reasonable expenses, she will cooperate with the Company and its counsel with respect to any matter (including litigation, investigations, or governmental proceedings) in which Executive was in any way involved during her employment with the Company. Executive agrees to render such cooperation in a timely manner on reasonable notice from the Company, provided the Company exercises reasonable efforts to limit and schedule the need for Executive's cooperation so as not to materially interfere with her other professional obligations.

(e) Executive agrees that, upon any cessation of her employment, she will deliver to the Company (and will not retain in her possession or control, or deliver to anyone else) all property and equipment of the Company, including without limitation (i) all keys, books, records, computer hardware, software, cellphones, access cards, credit cards and identification, and (ii) all other Company materials (including copies thereof), including without limitation any records, data, notes, reports, proposals, lists or correspondence.

10. **Rights Upon Termination.**

(a) **Termination without Cause or Resignation for Good Reason.** If Executive's employment by the Company ceases due to a termination by the Company without Cause (as defined below) or a resignation by Executive for Good Reason (as defined below):

(i) the Company shall pay to Executive the Accrued Obligations (as defined below) at the time such Accrued Obligations would otherwise be paid according to the Company's usual payroll practices;

(ii) to the extent then unpaid, the Company shall pay to Executive the Earned Bonus (as defined below);

(iii) the Company shall make monthly severance payments equal to one-twelfth of Executive's Base Salary as in effect immediately prior to such cessation of employment (or, if such cessation is due to the Good Reason described in clause (i) of that definition, the Base Salary in effect immediately prior to such material diminution) for a period equal to the Severance Period;

(iv) if Executive validly elects to receive continuation coverage under the Company's group health plan (if any) pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Company shall pay the applicable premium otherwise payable for COBRA continuation coverage for Executive and her eligible dependents, to the extent such premium exceeds the monthly amount charged to active similarly-situated employees of the Company for the same coverage until the earlier of (x) the end of the Severance Period, or (y) such date as Executive becomes eligible for group health insurance through another employer; and

(v) if such cessation of employment occurs within three (3) months prior to or twelve (12) months following a Change in Control (as defined below), (x) the Company shall pay to Executive an amount equal to one and a half (1.5) times the Target Bonus, and (y) all outstanding equity awards that are subject to vesting based solely on the passage of time and Executive's continued employment shall become vested upon the later of the date of Executive's cessation of employment and the Change in Control.

Except as otherwise provided in this Section 10(a) or pursuant to COBRA, all compensation and benefits will cease at the time of Executive's cessation of employment and the Company will have no further liability or obligation by reason of such cessation of employment. The payments and benefits described in this Section 10(a) are in lieu of, and not in addition to, any other severance arrangement maintained by the Company. Notwithstanding any provision of this Agreement, the payments and benefits described in Sections 10(a)(ii) - 10(a)(v) are conditioned on Executive's execution and delivery to the Company and the expiration of all applicable statutory revocation periods, by the 60<sup>th</sup> day following the effective date of Executive's cessation of employment, of a release attached hereto as Exhibit B (the "**Release**"), and on Executive's continued compliance with the provisions of the Restrictive Covenants Agreement.

Subject to Section 11 below (to the extent applicable) and provided the Release requirement described above has been timely satisfied: (x) the payment described in Section 10(a)(ii) will be paid on the later of the sixty-fifth (65<sup>th</sup>) day following Executive's cessation of employment (the "**Settlement Date**"), or the date such annual bonus would have otherwise been paid, absent Executive's cessation of employment; (y) the payments described in Sections 10(a)(iii)-10(a)(iv) will commence to be paid on the Settlement Date, provided that the initial payment will include any payments that, but for the above-described timing rule, would have otherwise been paid since the date of Executive's cessation of employment, and (z) the payment of the Target Bonus amount described in Section 10(a)(v)(x) will be paid on the later of the Settlement Date or the tenth (10th) day following the Change in Control.

(b) **Other Terminations.**

(i) If Executive's employment with the Company ceases due to Executive's death or Disability, then the Company shall not have any further obligation or liability under this Agreement except for payment of the Accrued Obligations and the Earned Bonus. The Accrued Obligations shall be paid on the first payroll date following the last date of employment to the extent administratively feasible and, if not, then at the second payroll date following the last date of employment. The Earned Bonus, if any, will be paid when it would have been paid had Executive remained employed with the Company.

(ii) If Executive's employment with the Company ceases for any reason other than as described in Sections 10(a) and 10(b) (i) above (including but not limited to (i) termination by the Company for Cause or (ii) resignation by Executive without Good Reason), then the Company's obligation to Executive will be limited solely to the payment of the Accrued Obligations through the date of such cessation of employment. The Accrued Obligations shall be paid on the first payroll date following the last date of employment to the extent administratively feasible and, if not, then on the second payroll date following the last date of employment. The foregoing will not be construed to limit Executive's right to payment or reimbursement for claims incurred prior to the date of such termination under any insurance contract funding an employee benefit plan, policy or arrangement of the Company in accordance with the terms of such insurance contract.

11. **Section 409A.**

(a) The parties intend for this Agreement to comply with or be exempt from Section 409A of the Code, and all provisions of this Agreement will be interpreted and applied accordingly. Nonetheless, the Company does not guaranty the tax treatment of any compensation payable to Executive.

(b) Notwithstanding anything to the contrary in this Agreement, no portion of the benefits or payments to be made under Section 10(a) above will be payable until Executive has a “separation from service” from the Company within the meaning of Section 409A of the Code. In addition, to the extent compliance with the requirements of Treas. Reg. § 1.409A-3(i)(2) (or any successor provision) is necessary to avoid the application of an additional tax under Section 409A of the Code to payments due to Executive upon or following her “separation from service,” then notwithstanding any other provision of this Agreement (or any otherwise applicable plan, policy, agreement or arrangement), any such payments that are otherwise due within six months following Executive’s “separation from service” (taking into account the preceding sentence of this paragraph) will be deferred without interest and paid to Executive in a lump sum immediately following that six month period. This paragraph should not be construed to prevent the application of Treas. Reg. § 1.409A-1(b)(9)(iii) (or any successor provision) to amounts payable hereunder. For purposes of the application of Section 409A of the Code, each payment in a series of payments will be deemed a separate payment.

(c) Notwithstanding anything in this Agreement to the contrary, to the extent an expense, reimbursement or in-kind benefit provided to Executive pursuant to this Agreement or otherwise constitutes a “deferral of compensation” within the meaning of Section 409A of the Code: (i) the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive in any other calendar year, (ii) the reimbursements for expenses for which Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, and (iii) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

12. **Section 280G.** Notwithstanding any contrary provision of this Agreement (or any plan, policy, agreement or other arrangement covering Executive), if any payment, right or benefit paid, provided or due to Executive, whether pursuant to this Agreement or otherwise (each, a “**Payment**,” and collectively, the “**Total Payments**”), would subject Executive to the excise tax imposed by Section 4999 of the Code (the “**Excise Tax**”), then the Total Payments will be reduced to the minimum extent necessary to avoid the imposition of the Excise Tax, but only if (i) the amount of such Total Payments, as so reduced, is greater than or equal to (ii) the amount of such Total Payments without reduction (in each case, determined on an after-tax basis). Any reduction of the Total Payments required by this paragraph will be implemented by determining the Parachute Ratio (as defined below) for each Payment and then by reducing the Payments in order, beginning with the Payment with the highest Parachute Ratio. For Payments with the same Parachute Ratio, later Payments will be reduced before earlier Payments. For Payments with the same Parachute Ratio and the same time of payment, each Payment will be reduced proportionately. For purposes of this paragraph, “Parachute Ratio” means a fraction, (x) the numerator of which is the value of the applicable Payment, as calculated for purposes of Section 280G of the Code, and (y) the denominator of which is the economic value of the applicable Payment.

13. **Certain Definitions.** For purposes of this Agreement:

(a) **“Accrued Obligations”** mean any portion of Executive’s Base Salary payable for the payroll period in which Executive’s termination of employment occurs for service prior to the termination date, and any business expenses properly incurred but not yet reimbursed, as provided for in Section 7(b).

(b) **“Cause”** means (i) Executive’s refusal to comply with any lawful directive or policy of the Company which refusal is not cured by Executive within ten (10) days of such written notice from the Company; (ii) the Company’s determination that Executive has committed any act of dishonesty, embezzlement, unauthorized use or disclosure of confidential information or other intellectual property or trade secrets, common law fraud or other fraud against the Company or any subsidiary or affiliate; (iii) a material breach by Executive of any written agreement with or any fiduciary duty owed to any Company or any subsidiary or affiliate; (iv) Executive’s conviction (or the entry of a plea of a nolo contendere or equivalent plea) of a felony or any misdemeanor involving material dishonesty or moral turpitude; or (v) Executive’s habitual or repeated misuse of, or habitual or repeated performance of Executive’s duties under the influence of, alcohol, illegally obtained prescription controlled substances or non-prescription controlled substances.

(c) **“Change in Control”** will have the meaning set forth in the Cognition Therapeutics, Inc. 2021 Equity Incentive Plan.

(d) **“Code”** means the Internal Revenue Code of 1986, as amended.

(e) **“Disability”** means a condition entitling Executive to benefits under the Company’s long term disability plan, policy or arrangement; provided, however, that if no such plan, policy or arrangement is then maintained by the Company and applicable to Executive, “Disability” will mean illness, incapacity or a mental or physical condition that renders Executive unable or incompetent, with or without a reasonable accommodation, to carry out the job responsibilities that Executive held or the tasks that Executive was assigned at the time the disability commenced, as determined in good faith by a physician mutually acceptable to the Company and Executive, for a period of 90 consecutive days, or 180 non-consecutive days in any rolling 12-month period. Termination as a result of a Disability will not be construed as a termination by the Company “without Cause.”

(f) **“Earned Bonus”** means the bonus amount (if any) earned under Section 5 with respect to the fiscal year ended immediately prior to the cessation of Executive’s employment, to the extent unpaid.

(g) “**Good Reason**” means: (i) a reduction in the Base Salary, as then in effect, other than in connection with the same percentage across-the-board decrease in base salaries applicable to other key executives, (ii) a material reduction of Executive’s authority, position, responsibilities, duties, title or reporting line, except that, following a Change of Control, a reduction in authority, position, responsibilities, duties, title or reporting line solely by virtue of the Company being acquired and becoming part of a larger entity or operated as a subsidiary shall not constitute Good Reason, (iii) the Company’s material breach of this Agreement, or (iv) a relocation of Executive’s principal workplace by more than 30 miles; provided, however, that no such event will constitute Good Reason unless (x) Executive, within 60 days after the initial existence of the act or failure to act by the Company that constitutes “Good Reason” within the meaning of this Agreement, provides the Company with written notice that describes, in particular detail, the act or failure to act that Executive believes to constitute “Good Reason” and identifies the particular clause of this Section 13(g) that Executive contends is applicable to such act or failure to act; (y) the Company, within 30 days after its receipt of such notice, fails or refuses to rescind such act or remedy such failure to act so as to eliminate “Good Reason” for the termination by Executive of Executive’s employment relationship with the Company; and (z) Executive actually resigns from the employ of the Company on or before that date that is 12 months after the initial existence of the act or failure to act by the Company that constitutes “Good Reason.” If the requirements of the immediately preceding sentence are not fully satisfied on a timely basis, then the resignation by Executive from the employ of the Company shall not be deemed to have been for “Good Reason” Executive shall not be entitled to any of the benefits to which Executive would have been entitled if Executive had resigned from the employ of the Company for “Good Reason,” and the Company shall not be required to pay any amount or provide any benefit that would otherwise have been due to Executive under this Agreement had Executive resigned with “Good Reason.”

(h) “**Severance Period**” means twelve (12) months. Notwithstanding the foregoing, with respect to a cessation of employment due to a termination by the Company without Cause or resignation by Executive for Good Reason that occurs (in either case) within three (3) months prior to or twelve (12) months following a Change in Control, “Severance Period” shall mean eighteen (18) months.

14. **Company Policies.** Executive will comply with all policies of the Company in effect from time to time, including (without limitation) policies regarding ethics, personal conduct, stock ownership, securities trading, clawback and hedging and pledging of securities.

15. **Indemnification.** In addition to any rights to indemnification to which Executive may be entitled under the Company’s governing documents, the Company shall obtain and maintain an appropriate level of Directors and Officers Liability insurance coverage for Executive’s benefit on the same terms as applicable to other directors and C-level executives of the Company.

16. **No Conflicting Agreements.** Executive represents and warrants that she is not a party to or otherwise bound by any agreement or restriction that could conflict with, or be violated by, the performance of her duties to the Company or her obligations under this Agreement. Executive will not use or misappropriate any intellectual property, trade secrets or confidential information belonging to any third party.

17. **Taxes.** All compensation payable to Executive are subject to reduction to reflect applicable withholding and payroll taxes and other deductions required by law. Executive hereby acknowledges that the Company does not have a duty to design its compensation policies in a manner that minimizes Executive's tax liabilities, and Executive not make any claim against the Company or its board of directors related to tax liabilities arising from her compensation.

18. **Entire Agreement; Assignment; Amendment.**

(a) This Agreement, together with the Restrictive Covenants Agreement, constitutes the final and entire agreement of the parties with respect to the matters covered hereby and replace and supersede all prior agreements, discussions, negotiations, representations or understandings (whether written, oral or implied) relating to Executive's employment by the Company, including without limitation the Prior Agreement.

(b) The rights and obligations of Executive hereunder are personal and may not be assigned. The Company may assign this Agreement, and its rights and obligations hereunder, to any entity to which the Company transfers substantially all of its assets (or an affiliate thereof). Notwithstanding any other provision of this Agreement, any such assignment of this Agreement by the Company will not entitle Executive to severance benefits under Section 10(a) or otherwise, whether or not Executive accepts employment with the assignee.

(c) This Agreement may be amended or modified only by a written instrument signed by a duly authorized officer of the Company and Executive.

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without regard to its choice of law provisions.

20. **Arbitration.** In the event of any dispute under the provisions of this Agreement or otherwise regarding Executive's employment or compensation (other than a dispute in which the primary relief sought is an injunction or other equitable remedy, such as an action to enforce compliance with the Restrictive Covenants Agreement), the parties shall be required to have the dispute, controversy or claim settled by arbitration in Allegheny County, Commonwealth of Pennsylvania, in accordance with the National Rules for the Resolution of Employment Disputes then in effect of the American Arbitration Association ("**AAA**"), by one arbitrator mutually agreed upon by the parties (or, if no agreement can be reached within 30 days after names of potential arbitrators have been proposed by the AAA, then by one arbitrator having relevant experience who is chosen by the AAA). Any award or finding will be confidential. The arbitrator may not award attorneys' fees to either party unless a statute or contract at issue specifically authorizes such an award. Any award entered by the arbitrators will be final, binding and non-appealable and judgment may be entered thereon by either party in accordance with applicable law in any court of competent jurisdiction. This arbitration provision will be specifically enforceable. Each party will be responsible for its own expenses relating to the conduct of the arbitration (including reasonable attorneys' fees and expenses) and will share equally the fees of the arbitrator.

21. **Headings.** The headings of the sections of this Agreement are inserted for convenience only and shall not the meaning of this Agreement.
22. **Notices.** All notices, demands or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person, by e-mail or fax, by United States mail, certified or registered with return receipt requested, or by a nationally recognized overnight courier service, or otherwise actually delivered: (a) if to Executive, at the most recent address contained in the Company's personnel files; (b) if to the Company, to the attention of its Legal Department at the address of its principal executive office; or (c) or at such other address as may have been furnished by such person in writing to the other party. Any such notice, demand or communication shall be deemed given on the date given, if delivered in person, e-mailed or faxed, on the date received, if given by registered or certified mail, return receipt requested or by overnight delivery service, or three days after the date mailed, if otherwise given by first class mail, postage prepaid.
23. **Counterparts.** This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement.

*[Signature Page Follows]*



This Agreement has been executed and delivered on the date first above written.

**COGNITION THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXECUTIVE**

\_\_\_\_\_  
**LISA RICCIARDI**

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**EXHIBIT A**

**EMPLOYEE RESTRICTIVE COVENANT AGREEMENT**

THIS AGREEMENT (the "Agreement") is between Cognition Therapeutics, Inc. (the "Company"), a Delaware corporation with its principal offices at 2403 Sidney St., Suite 261, Pittsburgh, PA 15203 and Lisa Ricciardi (the "Employee"), an individual residing at the address set forth on the signature page to this Agreement.

Recitals:

The parties desire to enter into this Agreement in connection with the Employee's employment or continued employment by the Company.

NOW, THEREFORE, in consideration of the employment or continued employment of the Employee by the Company and the payment by the Company of compensation to the Employee for services rendered and to be rendered, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Non-Disclosure of Confidential Information.** The Employee acknowledges that in the course of performing services for the Company, the Employee has in the past and may continue to obtain knowledge of the Company's business plans, products, processes, software, know-how, trade secrets, formulas, methods, models, prototypes, discoveries, inventions, materials and reagents, improvements, disclosures, customer and supplier lists, information about employees and/or other proprietary and/or confidential information (collectively, the "Confidential Information"). The Employee agrees to keep the Confidential Information secret and confidential and not to publish, disclose or divulge to any other party, or use for the Employee's own benefit or to the detriment of the Company, any Confidential Information without the prior written consent of the Company, whether or not such Confidential Information was discovered or developed by the Employee. The Employee also agrees not to divulge, publish or use any proprietary and/or confidential information of others that the Company is obligated to maintain in confidence.

(a) The Employee will not be held criminally or civilly liable under any Federal or state trade secret law for his/her disclosure of a trade secret that is made in confidence to Federal, state or local government officials or to an attorney provided that such disclosure is: (i) solely for the purpose of reporting or investigating a suspected violation of law; (ii) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; or (iii) if the Employee files a lawsuit for retaliation by the Company for reporting a suspected violation of law and where such disclosure is made to the Employee's attorney, all documents containing any trade secret are filed under seal, and the Employee does not disclose any such trade secret except pursuant to a court order.

(b) Notwithstanding anything herein to the contrary, nothing in this Agreement shall (x) prohibit the Employee from making reports of possible violations of federal law or regulation to any governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934, as amended, or Section 806 of the Sarbanes-Oxley Act of 2002, or of any other whistleblower protection provisions of federal law or regulation, or (y) require notification or prior approval by the Company of any such report; provided that, the Employee is not authorized to disclose communications with counsel that were made for the purpose of receiving legal advice or that contain legal advice or that are protected by the attorney work product or similar privilege.

2. **Inventions and Discoveries.**

(a) **Disclosure.** The Employee shall promptly and fully disclose to the Company, with all necessary detail, all developments, know-how, discoveries, inventions, improvements, concepts, ideas, formulae, processes and methods (whether copyrightable, patentable or otherwise) made, received, conceived, acquired or written by the Employee (whether or not at the request or upon the suggestion of the Company), solely or jointly with others, during the period of the Employee's engagement by the Company in any capacity that (i) relate to any line of business, activity or field of interest or investigation with respect to which the Employee renders services to the Company or (ii) are otherwise made through the use of the Company's time, facilities or materials (all of the foregoing being hereinafter referred to collectively as the "Inventions").

(b) **Assignment and Transfer.** The Employee acknowledges that all work performed by the Employee is on a "work for hire" basis and does hereby assign and transfer, and to the extent any such assignment cannot be made at present, will assign and transfer, to the Company all of the Employee's right, title and interest in and to the Inventions, and the Employee further agrees to deliver to the Company any and all drawings, notes, specifications and data relating to the Inventions, and to sign, acknowledge and deliver all such further papers, including applications for and assignments of copyrights and patents, and all renewals thereof, as may be necessary to obtain copyrights and patents for any Inventions in any and all countries and to vest title thereto in the Company and its successors and assigns and to otherwise protect the Company's interests therein.

(c) **Power of Attorney.** If the Company is unable, after reasonable effort, to secure the Employee's signature on any application for patent, copyright, trademark or other analogous registration or other documents regarding any legal protection relating to an Invention, whether because of the Employee's physical or mental incapacity or for any other reason whatsoever, the Employee hereby irrevocably designates and appoints each of the President and each Vice President of the Company as the Employee's agent and attorney-in-fact, to act for and in the Employee's behalf and stead to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of patent, copyright, trademark or other registrations or any other legal protection thereon with respect to an Invention with the same legal force and effect as if executed by the Employee.

(d) **Documentation and Records.** The Employee shall hold in a fiduciary capacity for the benefit of the Company all documentation, disks, programs, data, records, drawings, manuals, reports, sketches, blueprints, letters, notes, notebooks and all other writings, electronic data, graphics and tangible information and materials of a secret, confidential or proprietary information nature relating to the Company or the Company's business that are in the possession or under the control of the Employee. The Employee agrees that in connection with any research, development or other services performed for the Company, the Employee will maintain careful, adequate and contemporaneous written records of all Inventions, which records shall be the property of the Company.

3. **Restrictive Covenants.**

(a) **Non-Competition and Non-Solicitation.** The Employee shall not, directly or indirectly (including, without limitation, through ownership, management, operation or control of any other person or entity, or participation in the ownership, management, operation or control of any other person or entity, or by having any interest as a stockholder, lender, investor, agent, consultant, employee, partner or otherwise, in or with respect to any other person or entity) do any of the following:

(i) During the period of the Employee's employment with the Company and for 12 months following the date of termination of the Employee's employment for any reason (the "Restricted Period"), own, manage, operate, control, invest in, participate in, be employed by, provide consulting services to, or be involved or associated with in any capacity, any person or entity that is engaged in a Competitive Business anywhere in the United States. The Employee acknowledges that the Company's business is national in scope. "Competitive Business" means a business that is engaged in the research, development, marketing, manufacturing, sale or other commercialization of any compound or other agent that targets the sigma-2/PGRMC 1 receptor for the prevention and/or treatment of Alzheimer's Disease or any other neurodegenerative indication or condition (including age-related macular degeneration), and any other business in which the Company engages or takes substantial steps to engage in during the last two years of the Employee's employment. The foregoing shall not prohibit the Employee from owning in the aggregate less than one percent of any class of securities listed on a national securities exchange or traded publicly in the over-the-counter market;

(ii) During the Restricted Period, directly or indirectly (A) solicit, encourage or entice any client, customer, vendor, licensee, licensor, consultant or supplier of the Company to cease, reduce or modify the business such person or entity has done with or intends to do with, or to end, reduce or modify the relationship or proposed relationship of such person or entity with, the Company, or (B) interfere with, impair, disrupt or attempt to interfere with, impair, disrupt or otherwise jeopardize any relationship of the Company with any client, customer, vendor, licensee, licensor, consultant or supplier or any other person or entity with whom the Company has a business relationship; and

(iii) During the Restricted Period, directly or indirectly (A) solicit, hire, contract for services, retain or otherwise employ any person who is or was an employee or consultant of the Company during Employee's employment with the Company, or (B) otherwise encourage any such individual to leave the employ of or to terminate a consulting arrangement with the Company, or to become an employee of, or consultant to, any other person or entity.

(b) **Tolling.** The Employee agrees that if the Employee breaches any of the provisions in this Section 3, the Restricted Period and any additional periods thereafter shall be tolled and shall cease to run during the period of any violation by the Employee, and the restrictions contained in Section 3 will be extended for a period equal to the period that the Employee was in breach.

4. **No Conflicts.** The Employee represents and warrants that the Employee is not party to any agreement, contract or understanding, whether of employment, consultancy or otherwise, in conflict with this Agreement or which would in any way restrict or prohibit the Employee from undertaking or performing services for the Company or otherwise from entering into or performing this Agreement. As a condition of employment, the Company requires that the Employee does not breach any obligation to refrain from disclosing or using any confidential or proprietary information or trade secrets of any other prior employer or third party. Employee is not permitted to bring or use documents or other property of any prior employer or other third party in the Employee's work for the Company.

5. **Injunctive Relief.** The Employee acknowledges that compliance with this Agreement is necessary to protect the goodwill and other proprietary interests of the Company, and that the restrictions herein are reasonable and necessary to protect the legitimate interests of the Company and will not interfere with the Employee's ability to find other employment. The Employee acknowledges that a breach of this Agreement will result in irreparable and continuing damage to the Company and its business, for which there will be no adequate remedy at law. The Employee further agrees that in the event that Employee breaches this Agreement, the Company and its successors and assigns shall be entitled to injunctive relief (without posting a bond) and without prejudice to any other rights and remedies that the Company may have for a breach, or threatened breach, of this Agreement. The Employee agrees that in any action in which the Company seeks an injunction or other equitable relief, the Employee will not assert or contend that any of the provisions of this Agreement are unreasonable, that the Company has an adequate remedy at law or that the Agreement is otherwise unenforceable.

6. **No Right to Continued Employment.** It is expressly understood that this Agreement is not intended to define the terms of the Employee's employment other than as specifically provided herein. Nothing contained in this Agreement shall be interpreted to provide a right to continuing employment or to change the Employee's status as an at-will employee.

7. **Return of Company Property.** Upon termination of the Employee's employment with the Company and at any earlier time the Company requests, the Employee will deliver to the person designated by the Company all originals and copies of all documents in any medium (including electronic) and all other property of the Company in the Employee's possession, under the Employee's control or to which Employee may have access (including computers, smart phones and other portable electronic devices). The only forms of property excepted from this paragraph are: (i) documents referring to Employee's compensation and benefits; and (ii) specific documents for which Employee has received the express, prior written consent of the Company to retain.

8. **Notification of Future Employers.** During the Restricted Period, the Employee agrees to notify future employers of the existence of this Agreement and further agrees that the Company may do the same.

9. **Survival of Agreement; Binding Nature.** It is expressly agreed that the provisions of this Agreement shall survive and apply after the termination of the Employee's employment with the Company. This Agreement shall be binding on the Employee's executors, administrators or other legal representatives or assigns and shall inure to the benefit of the Company's successors and assigns. The Company shall have the right to assign this Agreement without the consent of the Employee. The Employee does not have the right to assign this Agreement.

10. **Severability.** If any court or other decision-maker of competent jurisdiction determines that any of the covenants contained in this Agreement, or any part thereof, is unenforceable because of the duration or geographical scope of such provision, then, the duration or scope of such provision, as the case may be, shall be reduced so that such provision becomes enforceable and, in its reduced form, such provision shall then be enforceable and shall be enforced. In the case that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11. **No Modification or Waiver.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the Employee and the Company.

12. **Construction.** This Agreement shall be construed and interpreted in accordance with the substantive laws of the Commonwealth of Pennsylvania. Any disputes under this Agreement shall be resolved in the state and federal courts in Allegheny County, Pennsylvania having subject matter jurisdiction and each party submits to the personal jurisdiction of such courts for purposes of such litigation.

13. **Entire Agreement.** This Agreement constitutes the final and entire agreement of the parties with respect to the matters covered hereby, and supersedes and replaces any existing agreement or understanding, whether oral or written, between the Employee and the Company relating to the same subject matter.

14. **Acknowledgement.** The Employee acknowledges and agrees that (a) the Employee has had the opportunity to consult with independent counsel concerning this Agreement, (b) the Employee has read and understands the Agreement, is fully aware of its legal effect, and has entered into it freely, (c) the duration and scope of this Agreement are reasonable and necessary to protect the Company's customer relationships, trade secrets, confidential information and other legitimate business interests, and (d) the Employee has not relied on any agreements or representations, express or implied, that are not set forth expressly in this Agreement.

IN WITNESS WHEREOF, this Agreement has been signed by the parties as of the date set forth below next to the name of the Employee.

COGNITION THERAPEUTICS, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Date: \_\_\_\_\_

Employee's Signature

\_\_\_\_\_

LISA RICCIARDI

Employee's Address:

\_\_\_\_\_

*[Signature Page to Employee Restrictive Covenant Agreement]*

EXHIBIT B

RELEASE OF CLAIMS

1. **Termination of Employment.** \_\_\_\_\_ (“**Executive**”) hereby agrees and acknowledges that as of [ \_\_\_\_\_ ], Executive’s employment relationship with Cognition Therapeutics, Inc., a Delaware corporation (the “**Company**”), was permanently and irrevocably severed.

2. **Release of Claims.** In consideration of the payments and benefits described in Section 10(a) of the Executive Employment Agreement (the “**Agreement**”), effective \_\_\_\_\_, 20\_\_\_\_, by and between Executive and the Company, to which Executive is not entitled until and unless Executive executes and does not revoke this Release, Executive, for and on behalf of herself and her heirs, executors, administrators and assigns, hereby waives and releases any and all complaints, claims, suits, controversies, and actions, whether known or unknown, suspected or claimed, which Executive, or any of the Executive’s heirs, executors, administrators or assigns ever had, now has or may have against the Company and/or its respective predecessors, successors, past or present parents or subsidiaries, affiliates, investors, branches or related entities, in their respective capacities as such (collectively, including the Company, the “**Entities**”) and/or the Entities’ past or present stockholders, insurers, assigns, trustees, directors, officers, limited and general partners, managers, joint venturers, members, employees or agents in their respective capacities as such (collectively with the Entities, the “**Releasees**”) by reason of circumstances, acts or omissions which have occurred on or prior to the date that this Release becomes effective, including, without limitation, (a) any complaint, charge or cause of action arising under (i) federal, state or local laws pertaining to employment or termination of employment, including the Age Discrimination in Employment Act of 1967 (the “**ADEA**,” a law which prohibits discrimination on the basis of age), the National Labor Relations Act, as amended, the Civil Rights Act of 1991, as amended, the Americans with Disabilities Act of 1990, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, as amended, the Genetic Information Nondiscrimination Act, the Family and Medical Leave Act of 1993, as amended, the Worker Adjustment Retraining and Notification Act, as amended, the Employee Retirement Income Security Act of 1974, as amended, any applicable Executive Order Programs, the Fair Labor Standards Act, or their state or local counterparts (including, but not limited to, the Pennsylvania Human Relations Act); (ii) any other federal, state or local civil or human rights law; (iii) any other local, state, or federal law, regulation or ordinance; (iv) any public policy, contract and/or quasi-contract or tort (including but not limited to, claims of breach of the Agreement, an express or implied contract, tortious interference with contract or prospective business advantage, breach of the covenant of good faith and fair dealing, promissory estoppel, detrimental reliance, invasion of privacy, nonphysical injury, personal injury or sickness or any other harm, wrongful or retaliatory discharge, fraud, defamation, slander, libel, false imprisonment, negligent or intentional infliction of emotional distress); (v) common law; or (vi) any policies, practices or procedures of the Company, or (b) any claim for costs, fees, damages, penalties, or other expenses, including attorneys’ fees incurred in these matters (the “**Released Claims**”). By signing this Release, Executive acknowledges that she intends to waive and release any rights known or unknown that she may have against the Releasees under these and any other laws. Notwithstanding the foregoing, Executive does not release, discharge or waive (i) any rights to indemnification that she may have under the certificate of incorporation, the bylaws or equivalent governing documents of the Company or its subsidiaries or affiliates, the laws of the State of Delaware or any other state of which any such subsidiary or affiliate is a domiciliary, the Agreement or any indemnification agreement between Executive and the Company; (ii) any rights that cannot be released as a matter of law, such as her rights to COBRA, workers compensation, and unemployment insurance; (iii) any rights to insurance coverage under any directors’ and officers’ personal liability insurance or fiduciary insurance policy; (iv) any rights she may have in her capacity as a stockholder of the Company; (v) any rights she may have to vested equity interests, and (vi) any rights she may have to the payments and benefits set forth in Section 10(a) of the Agreement (the “**Excluded Claims**”). The Executive acknowledges that she has made no assignment or transfer of any right, claim, demand, cause of action, or other matter covered by this Section 2.

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3. **Proceedings.** Executive acknowledges that she has not filed any complaint, charge, claim or proceeding, if any, or assigned to any other person the right to bring any such complaint, charge, claim, or proceeding, relating to the Released Claims against any of the Releasees before any local, state or federal agency, court or other body (each individually a “**Proceeding**”). Executive (i) acknowledges, that she will not initiate or cause to be initiated on her behalf any Proceeding and will not participate in any Proceeding, in each case, except as required by law and (ii) waives any right she may have to benefit in any manner from any relief (whether monetary or otherwise) arising out of any Proceeding, including any Proceeding conducted by the Equal Employment Opportunity Commission (the “**EEOC**”) or comparable state or local agency. Further, Executive understands that, by executing this Release, she will be limiting the availability of certain remedies that she may have against the Releasees and limiting also her ability to pursue certain claims against the Releasees. Notwithstanding the above, nothing in Section 2 of this Release shall prevent Executive from (i) initiating or causing to be initiated on her behalf any complaint, charge, claim or proceeding against any Releasee before any local, state or federal agency, court or other body challenging the validity of the waiver of her claims under the ADEA contained in Section 2 of this Release (but no other portion of such waiver); (ii) initiating or participating in an investigation or proceeding conducted by the EEOC or comparable state or local agency; (iii) reporting possible violations of federal, state or local law, ordinance or regulation to any governmental agency or entity, including, but not limited to, the Department of Justice, the U.S. Securities and Exchange Commission (the “**SEC**”), the Congress and any agency Inspector General, or otherwise taking action or making disclosures that are protected under the whistleblower provisions of any federal, state or local law, ordinance or regulation, including, but not limited to, Rule 21F-17 promulgated under the Securities Exchange Act of 1914, as amended; or (iv) receiving a monetary award for information provided to the SEC pursuant to Rule 21F-17 promulgated under the Securities Exchange Act of 1934, as amended. The Executive acknowledges and agrees that the Executive’s separation from employment with the Company in compliance with the terms of the Agreement shall not serve as the basis for any claim or action (including, without limitation, any claim under the Age Discrimination in Employment Act of 1967).

4. **Time to Consider.** Executive acknowledges that she has been advised that she has [twenty-one (21)]/[forty-five (45)]<sup>1</sup> days, from the date of receipt of this Release to consider all the provisions of this Release and, further, that if Executive signs this Release prior to the expiration of such [twenty-one (21)]/[forty-five (45)] day period, she does hereby knowingly and voluntarily waives said [twenty-one (21)]/[forty-five (45)] day period. The parties agree that changes to this Release, whether or not material, will not extend the [twenty-one (21)]/[forty-five (45)] day period.] EXECUTIVE FURTHER ACKNOWLEDGES THAT SHE HAS READ THIS RELEASE CAREFULLY, HAS BEEN ADVISED BY THE COMPANY TO, AND HAS IN FACT, CONSULTED AN ATTORNEY, AND FULLY UNDERSTANDS THAT BY SIGNING BELOW SHE IS GIVING UP CERTAIN RIGHTS WHICH SHE MAY HAVE TO SUE OR ASSERT A CLAIM AGAINST ANY OF THE RELEASEES, AS DESCRIBED IN SECTION 2 OF THIS RELEASE AND THE OTHER PROVISIONS HEREOF. EXECUTIVE ACKNOWLEDGES THAT SHE HAS NOT BEEN FORCED OR PRESSURED IN ANY MANNER WHATSOEVER TO SIGN THIS RELEASE, AND EXECUTIVE AGREES TO ALL OF ITS TERMS VOLUNTARILY. [EXECUTIVE ALSO ACKNOWLEDGES THAT SHE HAS RECEIVED ALL INFORMATION REQUIRED TO BE DISCLOSED IN CONNECTION WITH AN EXIT INCENTIVE OR OTHER EMPLOYMENT TERMINATION PROGRAM.]

5. **Revocation.** Executive hereby acknowledges and understands that Executive shall have seven (7) days from the date of her execution of this Release to revoke this Release, (including, without limitation, any and all claims arising under the ADEA) and that neither the Company nor any other person is obligated to provide any benefits to Executive pursuant to Section 10(a) of the Agreement until eight (8) days have passed since Executive's signing of this Release without Executive having revoked this Release. If Executive revokes this Release, Executive will be deemed not to have accepted the terms of this Release, no action or forbearance of action will be required of the Company under any section of this Release, and Executive shall not be entitled to receive any portion of the payments and benefits set forth in Section 10(a) of the Agreement or any other compensation or benefits which are conditioned on the delivery of this Release.

6. **No Admission.** This Release does not constitute an admission of liability or wrongdoing of any kind by Executive or the Company.

7. **Return of Company Property.** Executive represents that all equipment and other property of the Company, including any documents and files, whether electronically stored or maintained in hard copy, have been returned to the Company, and that Executive has not retained any copies of the same. Notwithstanding anything to the contrary in this Release, Executive may retain her personal contact lists, whether in electronic or paper form (e.g., rolodex, Outlook contacts, etc.) and copies of documents related to Executive's compensation and benefits.

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<sup>1</sup> NTD: To be selected based on whether applicable termination was "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967).

8. **Non-Disparagement.** Executive will not disparage any Releasee or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of any Releasee. The Company will instruct its directors, officers and senior executives not to disparage or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of the Executive.
9. **Post-Employment Obligations.** Executive reaffirms that she will comply with all of her post employment obligations as set forth in Sections 9(b), 9(d) and 9(e) of the Agreement and as set forth in the Restrictive Covenants Agreement.
10. **Entire Agreement.** This Release constitutes the entire agreement between the parties and supersedes any and all prior representations, agreements, written or oral, expressed or implied, except for the Restrictive Covenants Agreement, which survives the termination of Executive's employment and is incorporated herein by reference, and except for any agreements with respect to Executive's options to acquire Common Stock of the Company. This Release may not be modified or amended other than by an agreement in writing signed by an officer of the Company.
11. **Acknowledgement.** Executive acknowledges and agrees that, subsequent to the termination of Executive's employment, Executive shall not be eligible for any payments from the Company or Company-paid benefits, except as expressly set forth in this Release. Executive also acknowledges and agrees that Executive has been paid for all time worked and has received all other compensation owed to her.
12. **Assignment.** This Release shall be binding upon and be for the benefit of the parties as well as Executive's heirs and the Company's successors and assigns.
13. **General Provisions.** A failure of any of the Releasees to insist on strict compliance with any provision of this Release shall not be deemed a waiver of such provision or any other provision hereof. If any provision of this Release is determined to be so broad as to be unenforceable such provision shall be interpreted to be only so broad as is enforceable, and in the event that any provision is determined to be entirely unenforceable, such provision shall be deemed severable, such that all other provisions of this Release shall remain valid and binding upon Executive and the Releasees.
14. **Governing Law.** The validity, interpretations, construction and performance of this Release shall be governed by the laws of the Commonwealth of Pennsylvania without giving effect to conflict of laws principles.
15. **Arbitration.** The parties agree that, in the event of any dispute under the provisions of this Release (other than a dispute in which the primary relief sought is an injunction or other equitable remedy), the parties shall be required to have the dispute, controversy or claim settled by arbitration in accordance with the provisions of Section 20 of the Agreement.

IN WITNESS WHEREOF, Executive has hereunto set Executive's hand as of the day and year set forth opposite her signature below.

**EXECUTIVE**

\_\_\_\_\_  
**LISA RICCIARDI**

Date: \_\_\_\_\_

## EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (the “**Agreement**”), dated \_\_\_\_\_, 20\_\_\_\_, is made and entered into by and between COGNITION THERAPEUTICS, INC., a Delaware corporation (the “**Company**”) and James O’Brien (“**Executive**”), and will become effective on the first date that the Company’s common stock is traded on a national stock exchange or national market system (the “**Effective Date**”).

Introduction

WHEREAS, Executive is currently employed by the Company as its Chief Financial Officer in accordance with the terms and conditions of that certain letter agreement by and between the Company and Executive dated October 7, 2019 (the “**Prior Agreement**”); and

WHEREAS, the parties desire to replace the Prior Agreement with this Agreement, effective as of the Effective Date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

- 1. Position.** Executive will continue to serve as the Chief Financial Officer of the Company and will continue to report to the Chief Executive Officer of the Company or his or her delegate. In addition to performing the duties and responsibilities associated with that position, from time to time the Company may assign to Executive other duties and responsibilities reasonable and consistent with such position. Executive agrees to devote his full business time and best efforts to the performance of his duties and to the furtherance of the Company’s interests. Executive also agrees that during his employment with the Company, he will not engage in any other employment, consulting or business services without the written consent of the Company; provided, however, that without such consent, Executive may engage in charitable or public service, so long as such activities do not interfere with the performance of his duties and obligations to the Company.
  - 2. Term.** Executive’s employment pursuant to this Agreement will commence on the Effective Date and will continue until terminated in accordance with Section 9 hereof. Notwithstanding the foregoing, if the Company’s common stock has not commenced trading on a national stock exchange or national market system on or prior to December 31, 2022, this Agreement shall be null and void.
  - 3. Place of Performance.** Executive will perform services hereunder at the principal executive offices of the Company in a location to be determined by the board of directors of the Company (the “**Board**”); provided, however, that Executive may be required to travel from time to time for business purposes.
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4. **Salary.** This is a full-time exempt position. The Company will pay Executive a salary at an annual rate of \$387,500 (“**Base Salary**”), payable in accordance with the Company’s standard payroll schedule and subject to applicable deductions and withholdings. The Base Salary shall be reviewed on an annual basis by the Compensation Committee of the Board (the “**Committee**”) and may be adjusted from time to time by the Committee.
5. **Annual Bonus.** For each calendar year ending during his employment, Executive will have the opportunity to earn an annual bonus with a target amount of 40% of the Base Salary in effect at the end of the applicable year (the “**Target Bonus**”). The actual bonus payable to Executive, if any, with respect to any year may be more or less than the Target Bonus and will be determined by the Committee, in its sole discretion, based on the achievement of corporate and/or personal objectives established by the Committee. Except as otherwise provided herein or determined by the Committee, payment of any otherwise earned bonus will be conditioned on Executive’s continued service through the date that annual bonuses are paid to the Company’s executive officers generally with respect to the applicable year.
6. **Equity Incentives.** Executive may receive equity awards, at times and on terms determined by the Committee in its discretion.
7. **Benefits; Business Expenses.**
- (a) Executive shall be entitled to participate in Company benefit plans that are generally available to other employees of the Company of similar rank and tenure, in accordance with and subject to the terms and conditions of such plans, as in effect from time to time.
- (b) The Company will pay or reimburse Executive for all reasonable business expenses incurred or paid by Executive in the performance of his duties and responsibilities for the Company in accordance with the expense reimbursement policies of the Company, as may be amended from time to time.
8. **Restrictive Covenants Agreement.** To induce the Company to enter into this Agreement, as a condition to Executive’s continued employment by the Company, and in recognition of (i) the compensation payable to Executive pursuant to this Agreement, and (ii) such other consideration payable to Executive by the Company or any of its affiliates, Executive must sign and return to the Company no later than the Effective Date the restrictive covenants agreement attached hereto as Exhibit A (the “**Restrictive Covenants Agreement**”).

**9. Termination.**

(a) Executive's employment hereunder shall terminate on the earliest of: (i) on the date set forth in a written notice to Executive from the Board that Executive's employment with the Company has been or will be terminated, (ii) on the date not less than 30 days following written notice from Executive to the Company that Executive is resigning from the Company, (iii) on the date of Executive's death, or (iv) on the date set forth in a written notice to Executive from the Board that Executive's employment is terminated on account of Executive's Disability, as determined by the Board. Notwithstanding the foregoing, in the event that Executive gives notice of termination to the Company, the Company may unilaterally accelerate the date of termination and such acceleration shall not constitute a termination by the Company for purposes of this Agreement.

(b) Upon cessation of Executive's employment for any reason, unless otherwise consented to in writing by the Board, Executive will resign immediately from any and all officer, director and other positions Executive then holds with the Company and its affiliates and agrees to execute such documents as may be requested by the Company to confirm that resignation.

(c) Upon any cessation of Executive's employment with the Company, Executive will be entitled only to such compensation and benefits as described in Section 10 below.

(d) Executive agrees that, following any cessation of his employment and subject to reimbursement of his reasonable expenses, he will cooperate with the Company and its counsel with respect to any matter (including litigation, investigations, or governmental proceedings) in which Executive was in any way involved during his employment with the Company. Executive agrees to render such cooperation in a timely manner on reasonable notice from the Company, provided the Company exercises reasonable efforts to limit and schedule the need for Executive's cooperation so as not to materially interfere with his other professional obligations.

(e) Executive agrees that, upon any cessation of his employment, he will deliver to the Company (and will not retain in his possession or control, or deliver to anyone else) all property and equipment of the Company, including without limitation (i) all keys, books, records, computer hardware, software, cellphones, access cards, credit cards and identification, and (ii) all other Company materials (including copies thereof), including without limitation any records, data, notes, reports, proposals, lists or correspondence.

**10. Rights Upon Termination.**

(a) **Termination without Cause or Resignation for Good Reason.** If Executive's employment by the Company ceases due to a termination by the Company without Cause (as defined below) or a resignation by Executive for Good Reason (as defined below):

(i) the Company shall pay to Executive the Accrued Obligations (as defined below) at the time such Accrued Obligations would otherwise be paid according to the Company's usual payroll practices;

(ii) to the extent then unpaid, the Company shall pay to Executive the Earned Bonus (as defined below);

(iii) the Company shall make monthly severance payments equal to one-twelfth of Executive's Base Salary as in effect immediately prior to such cessation of employment (or, if such cessation is due to the Good Reason described in clause (i) of that definition, the Base Salary in effect immediately prior to such material diminution) for a period equal to the Severance Period;

(iv) if Executive validly elects to receive continuation coverage under the Company's group health plan (if any) pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Company shall pay the applicable premium otherwise payable for COBRA continuation coverage for Executive and his eligible dependents, to the extent such premium exceeds the monthly amount charged to active similarly-situated employees of the Company for the same coverage until the earlier of (x) the end of the Severance Period, or (y) such date as Executive becomes eligible for group health insurance through another employer; and

(v) if such cessation of employment occurs within three (3) months prior to or twelve (12) months following a Change in Control (as defined below), (x) the Company shall pay to Executive an amount equal to the Target Bonus, and (y) all outstanding equity awards that are subject to vesting based solely on the passage of time and Executive's continued employment shall become vested upon the later of the date of Executive's cessation of employment and the Change in Control.

Except as otherwise provided in this Section 10(a) or pursuant to COBRA, all compensation and benefits will cease at the time of Executive's cessation of employment and the Company will have no further liability or obligation by reason of such cessation of employment. The payments and benefits described in this Section 10(a) are in lieu of, and not in addition to, any other severance arrangement maintained by the Company. Notwithstanding any provision of this Agreement, the payments and benefits described in Sections 10(a)(ii) - 10(a)(v) are conditioned on Executive's execution and delivery to the Company and the expiration of all applicable statutory revocation periods, by the 60<sup>th</sup> day following the effective date of Executive's cessation of employment, of a general release of claims against the Company and its affiliates in a form and manner satisfactory to the Company (the "**Release**") and on Executive's continued compliance with the provisions of the Restrictive Covenants Agreement.

Subject to Section 11 below (to the extent applicable) and provided the Release requirement described above has been timely satisfied: (x) the payment described in Section 10(a)(ii) will be paid on the later of the sixty-fifth (65<sup>th</sup>) day following Executive's cessation of employment (the "**Settlement Date**"), or the date such annual bonus would have otherwise been paid, absent Executive's cessation of employment; (y) the payments described in Sections 10(a)(iii) - 10(a)(iv) will commence to be paid on the Settlement Date, provided that the initial payment will include any payments that, but for the above-described timing rule, would have otherwise been paid since the date of Executive's cessation of employment; and (z) the payment of the Target Bonus amount described in Section 10(a)(v)(x) will be paid on the later of the Settlement Date or the tenth (10<sup>th</sup>) day following the Change in Control.



(b) **Other Terminations.**

(i) If Executive's employment with the Company ceases due to Executive's death or Disability, then the Company shall not have any further obligation or liability under this Agreement except for payment of the Accrued Obligations and the Earned Bonus. The Accrued Obligations shall be paid on the first payroll date following the last date of employment to the extent administratively feasible and, if not, then at the second payroll date following the last date of employment. The Earned Bonus, if any, will be paid when it would have been paid had Executive remained employed with the Company.

(ii) If Executive's employment with the Company ceases for any reason other than as described in Sections 10(a) and 10(b) (i) above (including but not limited to (i) termination by the Company for Cause or (ii) resignation by Executive without Good Reason), then the Company's obligation to Executive will be limited solely to the payment of the Accrued Obligations through the date of such cessation of employment. The Accrued Obligations shall be paid on the first payroll date following the last date of employment to the extent administratively feasible and, if not, then on the second payroll date following the last date of employment. The foregoing will not be construed to limit Executive's right to payment or reimbursement for claims incurred prior to the date of such termination under any insurance contract funding an employee benefit plan, policy or arrangement of the Company in accordance with the terms of such insurance contract.

**11. Section 409A.**

(a) The parties intend for this Agreement to comply with or be exempt from Section 409A of the Code, and all provisions of this Agreement will be interpreted and applied accordingly. Nonetheless, the Company does not guaranty the tax treatment of any compensation payable to Executive.

(b) Notwithstanding anything to the contrary in this Agreement, no portion of the benefits or payments to be made under Section 10(a) above will be payable until Executive has a "separation from service" from the Company within the meaning of Section 409A of the Code. In addition, to the extent compliance with the requirements of Treas. Reg. § 1.409A-3(i)(2) (or any successor provision) is necessary to avoid the application of an additional tax under Section 409A of the Code to payments due to Executive upon or following his "separation from service," then notwithstanding any other provision of this Agreement (or any otherwise applicable plan, policy, agreement or arrangement), any such payments that are otherwise due within six months following Executive's "separation from service" (taking into account the preceding sentence of this paragraph) will be deferred without interest and paid to Executive in a lump sum immediately following that six month period. This paragraph should not be construed to prevent the application of Treas. Reg. § 1.409A-1(b)(9)(iii) (or any successor provision) to amounts payable hereunder. For purposes of the application of Section 409A of the Code, each payment in a series of payments will be deemed a separate payment.

(c) Notwithstanding anything in this Agreement to the contrary, to the extent an expense, reimbursement or in-kind benefit provided to Executive pursuant to this Agreement or otherwise constitutes a “deferral of compensation” within the meaning of Section 409A of the Code: (i) the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to Executive in any other calendar year, (ii) the reimbursements for expenses for which Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, and (iii) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

12. **Section 280G.** Notwithstanding any contrary provision of this Agreement (or any plan, policy, agreement or other arrangement covering Executive), if any payment, right or benefit paid, provided or due to Executive, whether pursuant to this Agreement or otherwise (each, a “Payment,” and collectively, the “Total Payments”), would subject Executive to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then the Total Payments will be reduced to the minimum extent necessary to avoid the imposition of the Excise Tax, but only if (i) the amount of such Total Payments, as so reduced, is greater than or equal to (ii) the amount of such Total Payments without reduction (in each case, determined on an after-tax basis). Any reduction of the Total Payments required by this paragraph will be implemented by determining the Parachute Ratio (as defined below) for each Payment and then by reducing the Payments in order, beginning with the Payment with the highest Parachute Ratio. For Payments with the same Parachute Ratio, later Payments will be reduced before earlier Payments. For Payments with the same Parachute Ratio and the same time of payment, each Payment will be reduced proportionately. For purposes of this paragraph, “Parachute Ratio” means a fraction, (x) the numerator of which is the value of the applicable Payment, as calculated for purposes of Section 280G of the Code, and (y) the denominator of which is the economic value of the applicable Payment.

13. **Certain Definitions.** For purposes of this Agreement:

(a) “**Accrued Obligations**” mean any portion of Executive’s Base Salary payable for the payroll period in which Executive’s termination of employment occurs for service prior to the termination date, and any business expenses properly incurred but not yet reimbursed, as provided for in Section 7(b).

(b) “**Cause**” means (i) Executive’s refusal to comply with any lawful directive or policy of the Company which refusal is not cured by Executive within ten (10) days of such written notice from the Company; (ii) the Company’s determination that Executive has committed any act of dishonesty, embezzlement, unauthorized use or disclosure of confidential information or other intellectual property or trade secrets, common law fraud or other fraud against the Company or any subsidiary or affiliate; (iii) a material breach by Executive of any written agreement with or any fiduciary duty owed to any Company or any subsidiary or affiliate; (iv) Executive’s conviction (or the entry of a plea of a nolo contendere or equivalent plea) of a felony or any misdemeanor involving material dishonesty or moral turpitude; or (v) Executive’s habitual or repeated misuse of, or habitual or repeated performance of Executive’s duties under the influence of, alcohol, illegally obtained prescription controlled substances or non-prescription controlled substances.

(c) “**Change in Control**” will have the meaning set forth in the Cognition Therapeutics, Inc. 2021 Equity Incentive Plan.

(d) “**Code**” means the Internal Revenue Code of 1986, as amended.

(e) “**Disability**” means a condition entitling Executive to benefits under the Company’s long term disability plan, policy or arrangement; provided, however, that if no such plan, policy or arrangement is then maintained by the Company and applicable to Executive, “Disability” will mean illness, incapacity or a mental or physical condition that renders Executive unable or incompetent, with or without a reasonable accommodation, to carry out the job responsibilities that Executive held or the tasks that Executive was assigned at the time the disability commenced, as determined in good faith by a physician mutually acceptable to the Company and Executive, for a period of 90 consecutive days, or 180 non-consecutive days in any rolling 12-month period. Termination as a result of a Disability will not be construed as a termination by the Company “without Cause.”

(f) “**Earned Bonus**” means the bonus amount (if any) earned under Section 5 with respect to the fiscal year ended immediately prior to the cessation of Executive’s employment, to the extent unpaid.

(g) “**Good Reason**” means: (i) a reduction in the Base Salary, as then in effect, other than in connection with the same percentage across-the-board decrease in base salaries applicable to other key executives; (ii) a material reduction of Executive’s authority, position, responsibilities, duties or title, except that, following a Change of Control, a reduction in authority, position, responsibilities, duties or title, solely by virtue of the Company being acquired and becoming part of a larger entity or operated as a subsidiary shall not constitute Good Reason, (iii) the Company’s material breach of this Agreement, or (iv) a relocation of Executive’s principal workplace by more than 30 miles; provided, however, that no such event will constitute Good Reason unless (x) Executive, within 60 days after the initial existence of the act or failure to act by the Company that constitutes “Good Reason” within the meaning of this Agreement, provides the Company with written notice that describes, in particular detail, the act or failure to act that Executive believes to constitute “Good Reason” and identifies the particular clause of this Section 13(g) that Executive contends is applicable to such act or failure to act; (y) the Company, within 30 days after its receipt of such notice, fails or refuses to rescind such act or remedy such failure to act so as to eliminate “Good Reason” for the termination by Executive of Executive’s employment relationship with the Company; and (z) Executive actually resigns from the employ of the Company on or before that date that is 12 months after the initial existence of the act or failure to act by the Company that constitutes “Good Reason.” If the requirements of the immediately preceding sentence are not fully satisfied on a timely basis, then the resignation by Executive from the employ of the Company shall not be deemed to have been for “Good Reason,” Executive shall not be entitled to any of the benefits to which Executive would have been entitled if Executive had resigned from the employ of the Company for “Good Reason,” and the Company shall not be required to pay any amount or provide any benefit that would otherwise have been due to Executive under this Agreement had Executive resigned with “Good Reason.”

(h) **“Severance Period”** means nine (9) months. Notwithstanding the foregoing, with respect to a cessation of employment due to a termination by the Company without Cause or resignation by Executive for Good Reason that occurs (in either case) within three (3) months prior to or twelve (12) months following a Change in Control, “Severance Period” shall mean twelve (12) months.

14. **Company Policies.** Executive will comply with all policies of the Company in effect from time to time, including (without limitation) policies regarding ethics, personal conduct, stock ownership, securities trading, clawback and hedging and pledging of securities.

15. **Indemnification.** In addition to any rights to indemnification to which Executive may be entitled under the Company’s governing documents, the Company shall obtain and maintain an appropriate level of Directors and Officers Liability insurance coverage for Executive’s benefit on the same terms as applicable to other directors and C-level executives of the Company.

16. **No Conflicting Agreements.** Executive represents and warrants that he is not a party to or otherwise bound by any agreement or restriction that could conflict with, or be violated by, the performance of his duties to the Company or his obligations under this Agreement. Executive will not use or misappropriate any intellectual property, trade secrets or confidential information belonging to any third party.

17. **Taxes.** All compensation payable to Executive are subject to reduction to reflect applicable withholding and payroll taxes and other deductions required by law. Executive hereby acknowledges that the Company does not have a duty to design its compensation policies in a manner that minimizes Executive’s tax liabilities, and Executive not make any claim against the Company or its board of directors related to tax liabilities arising from his compensation.

18. **Entire Agreement; Assignment; Amendment.**

(a) This Agreement, together with the Restrictive Covenants Agreement, constitutes the final and entire agreement of the parties with respect to the matters covered hereby and replace and supersede all prior agreements, discussions, negotiations, representations or understandings (whether written, oral or implied) relating to Executive’s employment by the Company, including without limitation the Prior Agreement.

(b) The rights and obligations of Executive hereunder are personal and may not be assigned. The Company may assign this Agreement, and its rights and obligations hereunder, to any entity to which the Company transfers substantially all of its assets (or an affiliate thereof). Notwithstanding any other provision of this Agreement, any such assignment of this Agreement by the Company will not entitle Executive to severance benefits under Section 10(a) or otherwise, whether or not Executive accepts employment with the assignee.

(c) This Agreement may be amended or modified only by a written instrument signed by a duly authorized officer of the Company and Executive.

**19. Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without regard to its choice of law provisions.

**20. Arbitration.** In the event of any dispute under the provisions of this Agreement or otherwise regarding Executive's employment or compensation (other than a dispute in which the primary relief sought is an injunction or other equitable remedy, such as an action to enforce compliance with the Restrictive Covenants Agreement, the parties shall be required to have the dispute, controversy or claim settled by arbitration in Allegheny County, Commonwealth of Pennsylvania, in accordance with the National Rules for the Resolution of Employment Disputes then in effect of the American Arbitration Association ("**AAA**"), by one arbitrator mutually agreed upon by the parties (or, if no agreement can be reached within 30 days after names of potential arbitrators have been proposed by the AAA, then by one arbitrator having relevant experience who is chosen by the AAA). Any award or finding will be confidential. The arbitrator may not award attorneys' fees to either party unless a statute or contract at issue specifically authorizes such an award. Any award entered by the arbitrators will be final, binding and non-appealable and judgment may be entered thereon by either party in accordance with applicable law in any court of competent jurisdiction. This arbitration provision will be specifically enforceable. Each party will be responsible for its own expenses relating to the conduct of the arbitration (including reasonable attorneys' fees and expenses) and will share equally the fees of the arbitrator.

**21. Headings.** The headings of the sections of this Agreement are inserted for convenience only and shall not the meaning of this Agreement.

**22. Notices.** All notices, demands or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person, by e-mail or fax, by United States mail, certified or registered with return receipt requested, or by a nationally recognized overnight courier service, or otherwise actually delivered: (a) if to Executive, at the most recent address contained in the Company's personnel files; (b) if to the Company, to the attention of its Legal Department at the address of its principal executive office; or (c) or at such other address as may have been furnished by such person in writing to the other party. Any such notice, demand or communication shall be deemed given on the date given, if delivered in person, e-mailed or faxed, on the date received, if given by registered or certified mail, return receipt requested or by overnight delivery service, or three days after the date mailed, if otherwise given by first class mail, postage prepaid.

**23. Counterparts.** This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement.

*[Signature Page Follows]*

This Agreement has been executed and delivered on the date first above written.

**COGNITION THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXECUTIVE**

\_\_\_\_\_  
**JAMES O'BRIEN**

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**EMPLOYEE RESTRICTIVE COVENANT AGREEMENT**

THIS AGREEMENT (the "Agreement") is between Cognition Therapeutics, Inc. (the "Company"), a Delaware corporation with its principal offices at 2500 Westchester Ave., Purchase, NY 10577 and \_\_\_\_\_ (the "Employee"), an individual residing at the address set forth on the signature page to this Agreement.

## Recitals:

The parties desire to enter into this Agreement in connection with the Employee's employment or continued employment by the Company.

NOW, THEREFORE, in consideration of the employment or continued employment of the Employee by the Company and the payment by the Company of compensation to the Employee for services rendered and to be rendered, and intending to be legally bound hereby, the parties hereto agree as follows:

**1. Non-Disclosure of Confidential Information.** The Employee acknowledges that in the course of performing services for the Company, the Employee has in the past and may continue to obtain knowledge of the Company's business plans, products, processes, software, know-how, trade secrets, formulas, methods, models, prototypes, discoveries, inventions, materials and reagents, improvements, disclosures, customer and supplier lists, information about employees and/or other proprietary and/or confidential information (collectively, the "Confidential Information"). The Employee agrees to keep the Confidential Information secret and confidential and not to publish, disclose or divulge to any other party, or use for the Employee's own benefit or to the detriment of the Company, any Confidential Information without the prior written consent of the Company, whether or not such Confidential Information was discovered or developed by the Employee. The Employee also agrees not to divulge, publish or use any proprietary and/or confidential information of others that the Company is obligated to maintain in confidence.

(a) The Employee will not be held criminally or civilly liable under any Federal or state trade secret law for his/her disclosure of a trade secret that is made in confidence to Federal, state or local government officials or to an attorney provided that such disclosure is: (i) solely for the purpose of reporting or investigating a suspected violation of law; (ii) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; or (iii) if the Employee files a lawsuit for retaliation by the Company for reporting a suspected violation of law and where such disclosure is made to the Employee's attorney, all documents containing any trade secret are filed under seal, and the Employee does not disclose any such trade secret except pursuant to a court order.

(b) Notwithstanding anything herein to the contrary, nothing in this Agreement shall (x) prohibit the Employee from making reports of possible violations of federal law or regulation to any governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934, as amended, or Section 806 of the Sarbanes-Oxley Act of 2002, or of any other whistleblower protection provisions of federal law or regulation, or (y) require notification or prior approval by the Company of any such report; provided that, the Employee is not authorized to disclose communications with counsel that were made for the purpose of receiving legal advice or that contain legal advice or that are protected by the attorney work product or similar privilege.

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## 2. Inventions and Discoveries.

(a) **Disclosure.** The Employee shall promptly and fully disclose to the Company, with all necessary detail, all developments, know-how, discoveries, inventions, improvements, concepts, ideas, formulae, processes and methods (whether copyrightable, patentable or otherwise) made, received, conceived, acquired or written by the Employee (whether or not at the request or upon the suggestion of the Company), solely or jointly with others, during the period of the Employee's engagement by the Company in any capacity that (i) relate to any line of business, activity or field of interest or investigation with respect to which the Employee renders services to the Company or (ii) are otherwise made through the use of the Company's time, facilities or materials (all of the foregoing being hereinafter referred to collectively as the "Inventions").

(b) **Assignment and Transfer.** The Employee acknowledges that all work performed by the Employee is on a "work for hire" basis and does hereby assign and transfer, and to the extent any such assignment cannot be made at present, will assign and transfer, to the Company all of the Employee's right, title and interest in and to the Inventions, and the Employee further agrees to deliver to the Company any and all drawings, notes, specifications and data relating to the Inventions, and to sign, acknowledge and deliver all such further papers, including applications for and assignments of copyrights and patents, and all renewals thereof, as may be necessary to obtain copyrights and patents for any Inventions in any and all countries and to vest title thereto in the Company and its successors and assigns and to otherwise protect the Company's interests therein.

(c) **Power of Attorney.** If the Company is unable, after reasonable effort, to secure the Employee's signature on any application for patent, copyright, trademark or other analogous registration or other documents regarding any legal protection relating to an Invention, whether because of the Employee's physical or mental incapacity or for any other reason whatsoever, the Employee hereby irrevocably designates and appoints each of the President and each Vice President of the Company as the Employee's agent and attorney-in-fact, to act for and in the Employee's behalf and stead to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of patent, copyright, trademark or other registrations or any other legal protection thereon with respect to an Invention with the same legal force and effect as if executed by the Employee.



(d) **Documentation and Records.** The Employee shall hold in a fiduciary capacity for the benefit of the Company all documentation, disks, programs, data, records, drawings, manuals, reports, sketches, blueprints, letters, notes, notebooks and all other writings, electronic data, graphics and tangible information and materials of a secret, confidential or proprietary information nature relating to the Company or the Company's business that are in the possession or under the control of the Employee. The Employee agrees that in connection with any research, development or other services performed for the Company, the Employee will maintain careful, adequate and contemporaneous written records of all Inventions, which records shall be the property of the Company.

### 3. Restrictive Covenants.

(a) **Non-Competition and Non-Solicitation.** The Employee shall not, directly or indirectly (including, without limitation, through ownership, management, operation or control of any other person or entity, or participation in the ownership, management, operation or control of any other person or entity, or by having any interest as a stockholder, lender, investor, agent, consultant, employee, partner or otherwise, in or with respect to any other person or entity) do any of the following:

(i) During the period of the Employee's employment with the Company and for 12 months following the date of termination of the Employee's employment for any reason (the "Restricted Period"), own, manage, operate, control, invest in, participate in, be employed by, provide consulting services to, or be involved or associated with in any capacity, any person or entity that is engaged in a Competitive Business anywhere in the United States. The Employee acknowledges that the Company's business is national in scope. "Competitive Business" means a business that is engaged in the research, development, marketing, manufacturing, sale or other commercialization of any compound or other agent that targets the sigma-2/PGRMC 1 receptor for the prevention and/or treatment of Alzheimer's Disease or any other neurodegenerative indication or condition (including age-related macular degeneration), and any other business in which the Company engages or takes substantial steps to engage in during the last two years of the Employee's employment. The foregoing shall not prohibit the Employee from owning in the aggregate less than one percent of any class of securities listed on a national securities exchange or traded publicly in the over-the-counter market;

(ii) During the Restricted Period, directly or indirectly (A) solicit, encourage or entice any client, customer, vendor, licensee, licensor, consultant or supplier of the Company to cease, reduce or modify the business such person or entity has done with or intends to do with, or to end, reduce or modify the relationship or proposed relationship of such person or entity with, the Company, or (B) interfere with, impair, disrupt or attempt to interfere with, impair, disrupt or otherwise jeopardize any relationship of the Company with any client, customer, vendor, licensee, licensor, consultant or supplier or any other person or entity with whom the Company has a business relationship; and

(iii) During the Restricted Period, directly or indirectly (A) solicit, hire, contract for services, retain or otherwise employ any person who is or was an employee or consultant of the Company during Employee's employment with the Company, or (B) otherwise encourage any such individual to leave the employ of or to terminate a consulting arrangement with the Company, or to become an employee of, or consultant to, any other person or entity.

(b) **Tolling.** The Employee agrees that if the Employee breaches any of the provisions in this Section 3, the Restricted Period and any additional periods thereafter shall be tolled and shall cease to run during the period of any violation by the Employee, and the restrictions contained in Section 3 will be extended for a period equal to the period that the Employee was in breach.

4. **No Conflicts.** The Employee represents and warrants that the Employee is not party to any agreement, contract or understanding, whether of employment, consultancy or otherwise, in conflict with this Agreement or which would in any way restrict or prohibit the Employee from undertaking or performing services for the Company or otherwise from entering into or performing this Agreement. As a condition of employment, the Company requires that the Employee does not breach any obligation to refrain from disclosing or using any confidential or proprietary information or trade secrets of any other prior employer or third party. Employee is not permitted to bring or use documents or other property of any prior employer or other third party in the Employee's work for the Company.

5. **Injunctive Relief.** The Employee acknowledges that compliance with this Agreement is necessary to protect the goodwill and other proprietary interests of the Company, and that the restrictions herein are reasonable and necessary to protect the legitimate interests of the Company and will not interfere with the Employee's ability to find other employment. The Employee acknowledges that a breach of this Agreement will result in irreparable and continuing damage to the Company and its business, for which there will be no adequate remedy at law. The Employee further agrees that in the event that Employee breaches this Agreement, the Company and its successors and assigns shall be entitled to injunctive relief (without posting a bond) and without prejudice to any other rights and remedies that the Company may have for a breach, or threatened breach, of this Agreement. The Employee agrees that in any action in which the Company seeks an injunction or other equitable relief, the Employee will not assert or contend that any of the provisions of this Agreement are unreasonable, that the Company has an adequate remedy at law or that the Agreement is otherwise unenforceable.

6. **No Right to Continued Employment.** It is expressly understood that this Agreement is not intended to define the terms of the Employee's employment other than as specifically provided herein. Nothing contained in this Agreement shall be interpreted to provide a right to continuing employment or to change the Employee's status as an at-will employee.

7. **Return of Company Property.** Upon termination of the Employee's employment with the Company and at any earlier time the Company requests, the Employee will deliver to the person designated by the Company all originals and copies of all documents in any medium (including electronic) and all other property of the Company in the Employee's possession, under the Employee's control or to which Employee may have access (including computers, smart phones and other portable electronic devices). The only forms of property excepted from this paragraph are: (i) documents referring to Employee's compensation and benefits; and (ii) specific documents for which Employee has received the express, prior written consent of the Company to retain.

**8. Notification of Future Employers.** During the Restricted Period, the Employee agrees to notify future employers of the existence of this Agreement and further agrees that the Company may do the same.

**9. Survival of Agreement; Binding Nature.** It is expressly agreed that the provisions of this Agreement shall survive and apply after the termination of the Employee's employment with the Company. This Agreement shall be binding on the Employee's executors, administrators or other legal representatives or assigns and shall inure to the benefit of the Company's successors and assigns. The Company shall have the right to assign this Agreement without the consent of the Employee. The Employee does not have the right to assign this Agreement.

**10. Severability.** If any court or other decision-maker of competent jurisdiction determines that any of the covenants contained in this Agreement, or any part thereof, is unenforceable because of the duration or geographical scope of such provision, then, the duration or scope of such provision, as the case may be, shall be reduced so that such provision becomes enforceable and, in its reduced form, such provision shall then be enforceable and shall be enforced. In the case that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**11. No Modification or Waiver.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the Employee and the Company.

**12. Construction.** This Agreement shall be construed and interpreted in accordance with the substantive laws of the Commonwealth of Pennsylvania. Any disputes under this Agreement shall be resolved in the state and federal courts in Allegheny County, Pennsylvania having subject matter jurisdiction and each party submits to the personal jurisdiction of such courts for purposes of such litigation.

**13. Entire Agreement.** This Agreement constitutes the final and entire agreement of the parties with respect to the matters covered hereby, and supersedes and replaces any existing agreement or understanding, whether oral or written, between the Employee and the Company relating to the same subject matter, including but not limited to that certain Employee Non-Disclosure and Invention Assignment Agreement by and between the Company and the Employee dated October 8, 2019.

**14. Acknowledgement.** The Employee acknowledges and agrees that (a) the Employee has had the opportunity to consult with independent counsel concerning this Agreement, (b) the Employee has read and understands the Agreement, is fully aware of its legal effect, and has entered into it freely, (c) the duration and scope of this Agreement are reasonable and necessary to protect the Company's customer relationships, trade secrets, confidential information and other legitimate business interests, and (d) the Employee has not relied on any agreements or representations, express or implied, that are not set forth expressly in this Agreement.

IN WITNESS WHEREOF, this Agreement has been signed by the parties as of the date set forth below next to the name of the Employee.

COGNITION THERAPEUTICS, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Date: \_\_\_\_\_

Employee's Signature

\_\_\_\_\_

[EMPLOYEE NAME]

Employee's Address:

\_\_\_\_\_

*[Signature Page to Employee Restrictive Covenant Agreement]*

COGNITION THERAPEUTICS, INC. 2021 EQUITY INCENTIVE PLAN

STOCK OPTION GRANT NOTICE AND  
AWARD AGREEMENT

Cognition Therapeutics, Inc., a Delaware corporation (the "Company"), pursuant to its 2021 Equity Incentive Plan (the "Plan"), hereby grants to the individual listed below ("Participant") an option to purchase the number of Shares set forth below (the "Option"). The Option described in this Stock Option Grant Notice (the "Grant Notice") is subject to the terms and conditions set forth in the Award Agreement attached hereto as Exhibit A (the "Agreement") and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, capitalized terms used in this Grant Notice and the Agreement will have the meanings defined in the Plan.

**Participant:** [ \_\_\_\_\_ ]

**Grant Date:** [ \_\_\_\_\_ ]

**Exercise Price Per Share:** [ \_\_\_\_\_ ]

**Total Number of Shares Subject to Option:** [ \_\_\_\_\_ ]

**Expiration Date:** [ \_\_\_\_\_ ]

**Type of Option:**  Incentive Stock Option (to the extent permitted by 422(d) of the Code)  
 Non-Qualified Stock Option

**Vesting Schedule:** [ \_\_\_\_\_ ]

By signing below, Participant agrees to be bound by the terms and conditions of the Plan, the Agreement and this Grant Notice. This document may be executed, including by electronic means, in multiple counterparts, each of which will be deemed an original, and all of which together will be deemed a single instrument.

COGNITION THERAPEUTICS, INC.

PARTICIPANT

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:

\_\_\_\_\_

**EXHIBIT A  
TO STOCK OPTION GRANT NOTICE**

**AWARD AGREEMENT**

1. Award of Option. Effective as of the Grant Date set forth in the Grant Notice, the Company has granted to Participant the Option to purchase part or all of the aggregate number of Shares set forth in the Grant Notice, subject to the terms and conditions set forth in the Grant Notice, the Plan and this Agreement.
2. Term of Option. The Option may not be exercised later than the Expiration Date set forth in the Grant Notice, subject to earlier termination in accordance with the Plan and this Agreement.
3. Option Exercise Price. The exercise price per Share of the Option (the "Exercise Price") is set forth in the Grant Notice.
4. Vesting and Exercise of Option. Subject to the continued service of Participant with the Company through the relevant vesting dates, the Option shall become vested and exercisable in such amounts and at such times as set forth in the Grant Notice. In addition:
  - a. Effect of Termination of Service due to Death on the Option. Upon Participant's death during his or her continuous service with the Company, any portion of the Option that is outstanding and unvested immediately prior to Participant's death will remain outstanding for ninety (90) days, during which time the Committee may, in its sole discretion, vest all or a portion of such Option. If the Committee decides to vest all or any portion of such Option under this Section 4.a, it may condition such vesting on the execution by Participant's estate and/or beneficiaries of a general release of claims against the Company and its affiliates in such form as the Company may prescribe (each, a "Release"). Upon the ninetieth (90th) day following Participant's death, any portion of the unvested Option that the Committee has not determined to vest in accordance with this Section 4.a will be forfeited.
  - b. Effect of Termination of Service on the Option. Unless otherwise provided in the Grant Notice, the termination or survival of the Option will be determined in accordance with Section 7 of the Plan.
  - c. Service with Affiliates. Solely for purposes of this Agreement, service with the Company will be deemed to include service with an Affiliate of the Company (for only so long as such entity remains an Affiliate of the Company).

d. Effect of Termination of Service on the Option. Unless otherwise provided in the Grant Notice, this Agreement or in Participant's employment agreement, the termination or survival of the Option will be determined in accordance with Section 7 of the Plan.

e. Method of Exercise. Participant may exercise the Option only to the extent it is vested. To exercise the Option, Participant must deliver a payment of the Exercise Price, any required tax withholding and written notice of exercise to the Company in accordance with Section 5(d) of the Plan. Such notice must also be accompanied by any further documents or instruments the Company deems necessary or desirable to carry out the purposes or intent of this Agreement.

f. Partial Exercise. The Option may be exercised in whole or in part, provided, however, that any exercise may apply only with a whole number of Shares.

g. Restrictions on Exercise. The Option may not be exercised, and any purported exercise will be void, if the issuance of Shares upon such exercise would constitute a violation of any law, regulation or exchange listing requirement. The Committee may from time to time modify the terms of the Option or impose additional conditions on the exercise of the Option as it deems necessary or appropriate to facilitate compliance with any law, regulation or exchange listing requirement.

h. Rights as Stockholder. The Option will not confer upon Participant any of the rights or privileges of a stockholder in the Company unless and until Participant is issued Shares following Participant's exercise of the Option.

5. Non-Transferability of Option. The Option may not be sold, pledged, assigned, hypothecated, gifted, transferred or disposed of in any manner, either voluntarily or involuntarily, other than by will or by the laws of descent and distribution.

6. Adjustments. The Exercise Price, as well as the number and kind of shares subject to the Option, are subject to adjustment in accordance with Section 3(e) of the Plan.

7. No Continuation of Service. Neither the Plan nor this Agreement will confer upon Participant any right to continue in the employment or service of the Company or any of its Affiliates, or limit in any respect the right of the Company or its Affiliates to discharge Participant at any time, for any reason.

8. Withholding. Participant acknowledges that the exercise of the Option will give rise to taxable income subject to required withholding. In accordance with Section 15 of the Plan, the obligations of the Company hereunder are conditioned on Participant timely paying, or otherwise making arrangements satisfactory to the Company regarding the timely satisfaction of, such required withholding.

9. The Plan. Participant has received a copy of the Plan, has read the Plan and is familiar with its terms, and hereby accepts the Option subject to the terms and provisions of the Plan. Pursuant to the Plan, the Committee is authorized to interpret the Plan and to adopt rules and regulations not inconsistent with the Plan as it deems appropriate. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee with respect to questions arising under the Plan, the Grant Notice or this Agreement.

10. Company Policies. Participant agrees, in consideration for the grant of the Restricted Stock, to be subject to any policies of the Company and its Affiliates regarding clawbacks, securities trading, and hedging or pledging of securities that may be in effect from time to time, or as may otherwise be required by applicable law, regulation or exchange listing standard.



11. Entire Agreement. The Grant Notice and this Agreement, together with the Plan, represent the entire agreement between the parties with respect to the subject matter hereof and supersede any prior agreement, written or otherwise, relating to the subject matter hereof.

12. Amendment. This Agreement may only be amended by a writing signed by each of the parties hereto; provided that the Company may amend this Agreement without Participant's consent, if the amendment does not materially impair Participant's rights hereunder or as otherwise permitted in Section 4(f), above.

13. Governing Law. This Agreement will be construed in accordance with the laws and judicial decisions of the State of Delaware, without regard to the application of the principles of conflicts of laws.

14. Headings. The headings in this Agreement are for convenience only. They form no part of the Agreement and will not affect its interpretation.

15. Incentive Stock Options.

a. If the Option is designated as an Incentive Stock Option, Participant acknowledges that nonetheless a portion of the Option may not qualify (or may cease to qualify) as an "incentive stock option" under the Code due to limitations set forth in Section 422(d) of the Code or otherwise. To the extent the Option does not qualify for treatment as an "incentive stock option" under the Code, it will be treated as a non-qualified stock option. The Company does not guarantee any particular tax treatment for the Option or the Shares subject to the Option.

b. If the Option is designated as an Incentive Stock Option, Participant shall give prompt written notice to the Company of any disposition or other transfer of any Shares acquired under the Option, if such disposition or transfer is made (i) within two years from the Grant Date, or (ii) within one year after the transfer of such Shares to Participant. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by Participant in such disposition or other transfer.

16. Electronic Delivery of Documents. Participant authorizes the Company to deliver electronically any prospectuses or other documentation related to the Option and any other compensation or benefit plan or arrangement in effect from time to time (including, without limitation, reports, proxy statements or other documents that are required to be delivered to participants in such arrangements pursuant to federal or state laws, rules or regulations). For this purpose, electronic delivery will include, without limitation, delivery by means of e-mail or e-mail notification that such documentation is available on the Company's Intranet site. Upon written request, the Company will provide to Participant a paper copy of any document also delivered to Participant electronically. The authorization described in this paragraph may be revoked by Participant at any time by written notice to the Company.

October 22, 2020

Mr. Brett Monia, Ph.D.  
2306 Casa Hermosa Court  
Encinitas, CA 92024  
[bmonia523@gmull.com](mailto:bmonia523@gmull.com)

Dear Brett:

Following our recent discussions, I am pleased to invite you to join the Board of Directors of Cognition Therapeutics, Inc. (the "Company") as an outside director, on the following basis:

1. **Position.** Upon your acceptance of this letter, your nomination and election as a director will be submitted to the stockholders of the Company for approval.
  2. **Duties; Time Commitment.** As an outside director, you will be expected to attend the meetings of the Board of Directors and the Committees of the Board on which you serve. It is contemplated that the Board will meet in person three times a year and by telephone three times a year and may hold special meetings from time to time, either in person or by telephone. It is also contemplated that you will be appointed certain Committees of the Board, to be discussed at an upcoming Board meeting. It is anticipated that each Committee of the Board will meet four times a year and as otherwise needed. Board meetings are scheduled upon prior consultation with directors and are typically held in New York, NY. The next virtual Board dinner is currently held virtually and is scheduled for November 1, 2020 from 4 to 6pm EST. The next Board meeting is currently scheduled for November 2, 2020, from 8:30am to 1 pm EST.
  3. **Compensation.**
    - a. Annual Retainer. For so long as you continue to serve as a director of the Company, and subject to approval by the Board, you shall be entitled to receive an annual retainer of \$50,000, payable on a quarterly basis. Such retainer shall be pro-rated for any partial year.
    - b. Equity Award(s). For serving as an outside director, subject to the approval of the Board, following your election to the Board by the Company's stockholders Company will grant to you a one-time nonqualified stock option exercisable for the purchase of 135,000 shares of Common Stock, which will vest in four equal installments of 33,750 shares on the first, second, third and fourth anniversaries of the date of your election to the Board, provided that you continue to serve as a director of the Company on the applicable vesting date. If a change of control of the Company occurs prior to the termination of this stock option and before the stock option is vested in full, this stock option will vest in full upon the closing of the change of control. The Board has also approved in principle the grant of an additional nonqualified stock option exercisable for the purchase of 25,000 shares of Common Stock on each anniversary date of the date of your election to the Board, which would vest in four equal annual increments provided that you continue to serve as a director of the Company on the applicable vesting date. Each stock option will be granted under an equity incentive plan established by the Company, and subject to your execution of a nonqualified stock option agreement, at an exercise price determined in accordance with the equity incentive plan and applicable law; and containing such other terms and conditions as are determined by the Board. The initial stock option is expected to have an exercise price of \$.37 per share based on a recent valuation of the Company's Common Stock.
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4. **Expenses.** The Company will pay or reimburse the reasonable, authorized expenses incurred by you in the discharge of your duties as a director, in accordance with the general practices and policies of the Company and upon the submission of appropriate documentation.
  5. **Fiduciary Obligations; Governance.** The Company is governed by Delaware law. The structure, practices and authority of the Board, including matters relating to the size and composition of the Board, the election and removal of directors, requirements relating to Board action and the appointment of executive officers, are governed by the Company's Certificate of Incorporation and By-laws, as each may be amended from time to time.
  6. **Term; Termination.** This letter and your acceptance do not create a contract or promise for you to serve as a director of the Company for a definite period of time. Therefore, you are free to resign for any reason or for no reason. Similarly, the Company is free to conclude its relationship with you at any time in accordance with applicable law and corporate governance principles.
  7. **Indemnification.** The Company maintains directors and officers liability insurance. The Company will also indemnify you under its Certificate of Incorporation and By-Laws and under a separate Indemnification Agreement between you and the Company.
  8. **Proprietary Information.** You agree that all information, whether or not in writing, of a private, secret or confidential nature concerning the Company's business, business relationships or financial affairs (collectively, "**Proprietary Information**") is and shall be the exclusive property of the Company. In consideration for the Company sharing with you the Company's Proprietary Information, you agree (a) that you will not disclose any Proprietary Information to any person or entity other than employees or advisors of the Company or use the same for any purposes (other than in the performance of your duties as a member of the Board) without written approval by an officer of the Company, either during or after you serve as a member of the Board, unless and until such Proprietary Information has become public knowledge without your fault, and (b) that any materials containing Proprietary Information which shall come into your custody or possession shall be and are the exclusive property of the Company to be used only in the performance of your duties for the Company. All such materials or copies thereof and all tangible property of the Company in your custody or possession shall be delivered to the Company or destroyed, at the Company's election, upon the earlier of (i) the Company's request, or (ii) termination of your service on the Board. After such delivery or destruction, you shall not retain any such materials or copies thereof or any such tangible property. You agree that your obligations not to disclose or to use Proprietary Information and materials containing Proprietary Information and to return materials and tangible property also extends to such types of information, materials and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to you or the Company.
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9. **Independent Contractor.** You will render services to the Company as an independent contractor. As such, you will not be entitled to any benefits paid by the Company to its employees. You will be solely responsible for any tax consequences applicable to you by reason of this appointment and your services to the Company, and the Company will not be responsible for the payment of any federal, state or local taxes or contributions imposed under any employment insurance, social security, income tax or other tax law or regulation with respect to your performance of services to the Company.
10. **Obligations to Third Parties.** You represent that your service as a member of the Board does not and will not breach any agreement you have with any current or former employer or any other person (including without limitation any nondisclosure or non-competition agreement), and that you will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any current or previous employer or other.
11. **Governing Law.** The terms of this letter shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Delaware.
12. **Successors and Assigns.** This relationship is personal to you. You may not assign any of your rights and/or obligations under this letter to any other person except as expressly permitted by the Company. The provisions of this letter shall inure to the successors and assigns of the Company.
13. **Entire Agreement; Amendment.** This letter and the Indemnification Agreement supersede all previous and contemporaneous communications, agreements and understandings, whether oral or written, between you, on the one hand, and the Company or any of its affiliates, on the other hand, and constitute the entire agreement between you and the Company pertaining to the subject matter hereof. The provisions of this letter may be amended only in writing and only if the writing is signed by you and authorized officer of the Company.
14. **Counterparts.** This letter may be executed in two counterparts, both of which shall be considered one and the same agreement, and shall become a binding agreement when signed by each party and delivered to the other party. An executed counterpart of this letter may be delivered by electronic or facsimile transmission.

*[Remainder of page intentionally blank]*

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If the foregoing is acceptable to you, please sign, date and return a copy of this letter to the Company. The invitation set forth in this letter will expire if not accepted by November 5, 2020.

Sincerely,

COGNITION THERAPEUTICS, INC.

By: /s/ Robert Gailus

Robert Gailus

Chairman of the Board

AGREED AND ACCEPTED BY:

/s/ Brett Monia, Ph.D.

Brett Monia, Ph.D.

October 26, 2020

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August 14, 2020

Mr. Jack A. Khattar  
105 Alderwood Drive  
Gaithersburg, MD 20878  
[khattar.jack@gmail.com](mailto:khattar.jack@gmail.com)

Dear Jack:

Following our recent discussions, I am pleased to invite you to join the Board of Directors of Cognition Therapeutics, Inc. (the "Company") as an outside director, subject to election by the Company's stockholders, on the following basis:

1. **Position.** Upon your acceptance of this letter, your nomination and election as a director will be submitted to the stockholders of the Company for approval.
  2. **Duties; Time Commitment.** As an outside director, you will be expected to attend the meetings of the Board of Directors and the Committees of the Board on which you serve. It is contemplated that the Board will meet in person three times a year and by telephone three times a year and may hold special meetings from time to time, either in person or by telephone. It is also contemplated that you will be appointed certain Committees of the Board, to be discussed at an upcoming Board meeting. It is anticipated that each Committee of the Board will meet four times a year and as otherwise needed. Board meetings are scheduled upon prior consultation with directors and are typically held in New York, NY. The next Board meeting is currently scheduled for September 16, 2020.
  3. **Compensation.**
    - a. **Annual Retainer.** For so long as you continue to serve as a director of the Company, and subject to approval by the Board, you shall be entitled to receive an annual retainer of \$50,000, payable on a quarterly basis. Such retainer shall be pro-rated for any partial year.
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- b. **Equity Award(s).** For serving as an outside director, subject to the approval of the Board, following your election to the Board by the Company's stockholders Company will grant to you a one-time nonqualified stock option exercisable for the purchase of 135,000 shares of Common Stock, which will vest in four equal installments of 33,750 shares on the first, second, third and fourth anniversaries of the date of your election to the Board, provided that you continue to serve as a director of the Company on the applicable vesting date. If a change of control of the Company occurs prior to the termination of this stock option and before the stock option is vested in full, this stock option will vest in full upon the closing of the change of control. The Board has also approved in principle the grant of an additional nonqualified stock option exercisable for the purchase of 25,000 shares of Common Stock on each anniversary date of the date of your election to the Board, which would vest in four equal annual increments provided that you continue to serve as a director of the Company on the applicable vesting date. Each stock option will be granted under an equity incentive plan established by the Company, and subject to your execution of a nonqualified stock option agreement, at an exercise price determined in accordance with the equity incentive plan and applicable law; and containing such other terms and conditions as are determined by the Board. The initial stock option is expected to have an exercise price of \$.37 per share based on a recent valuation of the Company's Common Stock.
4. **Expenses.** The Company will pay or reimburse the reasonable, authorized expenses incurred by you in the discharge of your duties as a director, in accordance with the general practices and policies of the Company and upon the submission of appropriate documentation.
5. **Fiduciary Obligations; Governance.** The Company is governed by Delaware law. The structure, practices and authority of the Board, including matters relating to the size and composition of the Board, the election and removal of directors, requirements relating to Board action and the appointment of executive officers, are governed by the Company's Certificate of Incorporation and By-laws, as each may be amended from time to time.
6. **Term; Termination.** This letter and your acceptance do not create a contract or promise for you to serve as a director of the Company for a definite period of time. Therefore, you are free to resign for any reason or for no reason. Similarly, the Company is free to conclude its relationship with you at any time in accordance with applicable law and corporate governance principles.
7. **Indemnification.** The Company maintains directors and officers liability insurance. The Company will also indemnify you under its Certificate of Incorporation and By-Laws and under a separate Indemnification Agreement between you and the Company.
8. **Proprietary Information.** You agree that all information, whether or not in writing, of a private, secret or confidential nature concerning the Company's business, business relationships or financial affairs (collectively, "**Proprietary Information**") is and shall be the exclusive property of the Company. In consideration for the Company sharing with you the Company's Proprietary Information, you agree (a) that you will not disclose any Proprietary Information to any person or entity other than employees or advisors of the Company or use the same for any purposes (other than in the performance of your duties as a member of the Board) without written approval by an officer of the Company, either during or after you serve as a member of the Board, unless and until such Proprietary Information has become public knowledge without your fault, and (b) that any materials containing Proprietary Information which shall come into your custody or possession shall be and are the exclusive property of the Company to be used only in the performance of your duties for the Company. All such materials or copies thereof and all tangible property of the Company in your custody or possession shall be delivered to the Company or destroyed, at the Company's election, upon the earlier of (i) the Company's request, or (ii) termination of your service on the Board. After such delivery or destruction, you shall not retain any such materials or copies thereof or any such tangible property. You agree that your obligations not to disclose or to use Proprietary Information and materials containing Proprietary Information and to return materials and tangible property also extends to such types of information, materials and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to you or the Company.
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9. **Independent Contractor.** You will render services to the Company as an independent contractor. As such, you will not be entitled to any benefits paid by the Company to its employees. You will be solely responsible for any tax consequences applicable to you by reason of this appointment and your services to the Company, and the Company will not be responsible for the payment of any federal, state or local taxes or contributions imposed under any employment insurance, social security, income tax or other tax law or regulation with respect to your performance of services to the Company.
  10. **Obligations to Third Parties.** You represent that your service as a member of the Board does not and will not breach any agreement you have with any current or former employer or any other person (including without limitation any nondisclosure or non-competition agreement), and that you will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any current or previous employer or other.
  11. **Governing Law.** The terms of this letter shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Delaware.
  12. **Successors and Assigns.** This relationship is personal to you. You may not assign any of your rights and/or obligations under this letter to any other person except as expressly permitted by the Company. The provisions of this letter shall inure to the successors and assigns of the Company.
  13. **Entire Agreement; Amendment.** This letter and the Indemnification Agreement supersede all previous and contemporaneous communications, agreements and understandings, whether oral or written, between you, on the one hand, and the Company or any of its affiliates, on the other hand, and constitute the entire agreement between you and the Company pertaining to the subject matter hereof. The provisions of this letter may be amended only in writing and only if the writing is signed by you and authorized officer of the Company.
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14. **Counterparts.** This letter may be executed in two counterparts, both of which shall be considered one and the same agreement, and shall become a binding agreement when signed by each party and delivered to the other party. An executed counterpart of this letter may be delivered by electronic or facsimile transmission.

*[Remainder of page intentionally blank]*

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If the foregoing is acceptable to you, please sign, date and return a copy of this letter to the Company. The invitation set forth in this letter will expire if not accepted by August 28, 2020.

Sincerely,

COGNITION THERAPEUTICS, INC.

By: /s/ Robert Gailus

Robert Gailus

Chairman of the Board

AGREED AND ACCEPTED BY:

/s/ Jack A. Khattar

Jack A. Khattar

August 21, 2020