

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Apollo Endosurgery, Inc.

Form: S-8

Date Filed: 2021-03-10

Corporate Issuer CIK: 1251769

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

**FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

APOLLO ENDOSURGERY, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

16-1630142
(I.R.S. Employer
Identification No.)

**1120 S. Capital of Texas Highway
Building 1, Suite #300
Austin, Texas 78746**
(Address, including zip code, of principal executive offices)
(512) 279-5100
(Registrant's telephone number, including area code)

**Non-Plan Inducement Stock Option Grant
Non-Plan Inducement Restricted Stock Unit Award**
(Full Title of the Plans)

**Charles McKhann
Chief Executive Officer and President
1120 S. Capital of Texas Highway
Building 1, Suite #300
Austin, Texas 78746
(512) 279-5100**
(Name, address, including zip code and telephone number, including area code, of agent for service)

**Copies to:
Mark B. Weeks
John T. McKenna
Cooley LLP
3175 Hanover Street
Palo Alto, California 94304
(650) 843-5000**

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

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

(Calculation of Registration Fee on following page)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value per share				
Non-Plan Inducement Stock Option Grant	848,733 ⁽²⁾	\$5.95 ^{(4)(a)}	\$5,049,961.35	\$550.96
Non-Plan Inducement Restricted Stock Unit Award	707,278 ⁽³⁾	\$5.56 ^{(4)(b)}	\$3,932,465.68	\$429.04
Total	1,556,011		\$8,982,427.03	\$980.00

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of the Registrant's common stock, par value \$0.001 per share (the "Common Stock") that become issuable by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Common Stock.
- (2) Represents shares of the Registrant's Common Stock reserved for issuance upon the exercise of stock options granted outside the Apollo Endosurgery, Inc. 2017 Equity Incentive Plan (the "2017 Plan"), but pursuant to the terms of the 2017 Plan as if such stock options were granted under the 2017 Plan, as inducement grants pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules.
- (3) Represents shares of the Registrant's Common Stock reserved for issuance upon the vesting of restricted stock units granted outside the 2017 Plan but pursuant to the terms of the 2017 Plan as if such restricted stock units were granted under the 2017 Plan, as inducement grants pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules.
- (4) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) under the Securities Act. The offering price per share and the aggregate offering price are based upon (a) \$5.95 per share, which is the exercise price of the stock option granted by the Registrant to its Chief Executive Officer and President as a material inducement to his acceptance of employment with the Registrant in accordance with Rule 5635(c)(4) of the Nasdaq Listing Rules and (b) \$5.56 per share, the average of the high and low prices of the Common Stock as reported on The Nasdaq Global Market on March 5, 2021, a date that is within five business days prior to the date on which this Registration Statement is being filed.
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EXPLANATORY NOTE

Apollo Endosurgery, Inc. (the "Company") is filing this Registration Statement on Form S-8 for the purpose of registering 1,556,011 shares of Common Stock comprised of (i) 848,733 shares of Common Stock issuable upon the exercise of an inducement stock option grant, with a per share exercise price of \$5.95 and (ii) 707,278 shares of Common Stock issuable upon the vesting of a restricted stock unit award, each granted to Charles McKhann on March 10, 2021 as inducement for acceptance of employment with the Registrant as Chief Executive Officer and President (the "Inducement Awards"). The Inducement Awards, which were granted outside of the 2017 Equity Incentive Plan, were approved by the Company's Board of Directors and issued pursuant to the "inducement" grant exception under Nasdaq Rule 5635(c)(4).

In accordance with the instructional note to Part I of Form S-8 as promulgated by the Securities and Exchange Commission (the "SEC"), the information specified by Part I of Form S-8 has been omitted from this Registration Statement on Form S-8.

PART II

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by the Company with the SEC are incorporated by reference into this Registration Statement:

(a) the Company's [Annual Report on Form 10-K for the year ended December 31, 2020, filed with the SEC on February 25, 2021](#) (File No. 001-35706);

(b) the Company's [Current Report on Form 8-K filed with the SEC on February 8, 2021](#), as amended on [Form 8-K/A filed with the SEC on March 3, 2021](#) (File No. 001-35706);

(c) the description of the Company's Common Stock, which is registered under Section 12 of the Exchange Act of 1934, as amended, (the "Exchange Act") in the registration statement on [Form 8-A12B/A, filed with the SEC on October 31, 2012](#) (File No. 001-35706); and

(d) all other reports and documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such reports and documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Not applicable.

ITEM 8. EXHIBITS

<u>Exhibit No.</u>	<u>Exhibit Description</u>	<u>Schedule / Form</u>	<u>File Number</u>	<u>Exhibit</u>	<u>Filing Date</u>
4.1	Amended and Restated Certificate of Incorporation	8-K	001-35706	3.1	June 13, 2017
4.2	Amended and Restated Bylaws	8-K	001-35706	3.2	June 13, 2017
4.3	Specimen Common Stock Certificate of Apollo Endosurgery, Inc.	10-Q	001-35706	4.1	May 4, 2017
5.1*	Opinion of Cooley LLP				
23.1*	Consent of Moss Adams LLP, Independent Registered Public Accounting Firm				
23.2*	Consent of KPMG LLP, Independent Registered Public Accounting Firm				
23.3*	Consent of Cooley LLP (included in Exhibit 5.1)				
24.1*	Power of Attorney (included on the signature page of this Form S-8)				
99.1	Apollo Endosurgery, Inc. 2017 Equity Incentive Plan	8-K	001-35706	10.1	June 13, 2017
99.2*	Inducement Stock Option Grant and Award Agreement by and between Apollo Endosurgery, Inc. and Charles McKhann				
99.3*	Inducement Restricted Stock Unit Grant Notice and Award Agreement by and between Apollo Endosurgery, Inc. and Charles McKhann				

*Filed herewith.

ITEM 9. UNDERTAKINGS

1. The undersigned registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- i. To include any prospectus required by Section 10(a)(3) of the Securities Act;
- ii. To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
- iii. To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 3. 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 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.
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Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Austin, State of Texas, on the 10th day of March, 2021.

APOLLO ENDOSURGERY, INC.

/s/ Charles McKhann

Charles McKhann
Chief Executive Officer and President

Power of Attorney

Know All Persons By These Presents, that each person whose signature appears below constitutes and appoints Charles McKhann and Stefanie Cavanaugh, as his or her true and lawful attorney-in-fact and agent, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to sign any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Charles McKhann</u> Charles McKhann	Chief Executive Officer, President and Director <i>(Principal Executive Officer)</i>	March 10, 2021
<u>/s/ Stefanie Cavanaugh</u> Stefanie Cavanaugh	Chief Financial Officer, Treasurer and Secretary <i>(Principal Financial Officer)</i>	March 10, 2021
<u>/s/ Chrissy Citzler-Carr</u> Chrissy Citzler-Carr	Controller <i>(Principal Accounting Officer)</i>	March 10, 2021
<u>/s/ John R. Barr</u> John R. Barr	Chairman of the Board	March 10, 2021
<u>/s/ Rick Anderson</u> Rick Anderson	Director	March 10, 2021
<u>/s/ William D. McClellan, Jr.</u> William D. McClellan, Jr.	Director	March 10, 2021
<u>/s/ R. Kent McGaughy, Jr.</u> R. Kent McGaughy, Jr.	Director	March 10, 2021
<u>/s/ David C. Pacitti</u> David C. Pacitti	Director	March 10, 2021
<u>/s/ Bruce Robertson, Ph.D.</u> Bruce Robertson, Ph.D.	Director	March 10, 2021
<u>/s/ Julie Shimer, Ph.D.</u> Julie Shimer, Ph.D.	Director	March 10, 2021



March 10, 2021

John T. McKenna
T: +1 650 843 5059
jmckenna@cooley.com

Apollo Endosurgery, Inc.
1120 S. Capital of Texas Highway
Building 1, Suite 300
Austin, Texas, 78746

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by Apollo Endosurgery, Inc., a Delaware corporation (the "**Company**"), of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission covering the offering of up to 1,556,011 shares of the Company's Common Stock, \$0.001 par value per share (the "**Shares**"), consisting of 848,733 shares of Common Stock issuable upon the exercise of a stock option grant and 707,278 shares of Common Stock issuable upon the vesting of a restricted stock unit award, each offered as inducement awards by the Company (the "**Inducement Awards**").

In connection with this opinion, we have examined the Registration Statement and related prospectus, the documents evidencing the Inducement Awards, the Company's certificate of incorporation and bylaws, each as currently in effect, and such other documents, records, certificates, memoranda and other instruments as we in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signature, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials, and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion herein is expressed solely with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the terms of the Inducement Awards, the Registration Statement and related prospectus, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

Cooley LLP

By: /s/ John T. McKenna
John T. McKenna

Cooley LLP 3175 Hanover Street Palo Alto, CA 94304-1130
t: (650) 843-5000 f: (650) 849-7400 cooley.com

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Apollo Endosurgery, Inc. (the "Company"), of our report dated February 25, 2021, relating to the consolidated financial statements of the Company, which report expresses an unqualified opinion, appearing in the Annual Report on Form 10-K for the year ended December 31, 2020.

/s/ Moss Adams LLP

Dallas, Texas
March 10, 2021

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Apollo Endosurgery, Inc.:

We consent to the use of our report dated March 26, 2020 with respect to the consolidated balance sheet of Apollo Endosurgery, Inc. and subsidiaries as of December 31, 2019, the related consolidated statements of operations and comprehensive loss, changes in stockholders' equity, and cash flows for the year then ended, and the related notes, incorporated by reference herein.

Our audit report dated March 26, 2020 contains an explanatory paragraph that states that the Company has suffered recurring losses from operations, cash flow deficits and debt covenant violations and has an accumulated deficit, which raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ KPMG LLP

Austin, Texas
March 9, 2021

Apollo Endosurgery, Inc.
Stock Option Grant Notice
(Inducement Grant Outside of the 2017 Equity Incentive Plan)

Apollo Endosurgery, Inc. (the "**Company**"), as an inducement material to Optionholder entering into employment with the Company, hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is granted outside of the Company's 2017 Equity Incentive Plan (the "**Plan**"), but is subject to all of the terms and conditions as set forth in this notice, in the Option Agreement, the Plan (as if it had been granted under the Plan) and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Option Agreement will have the same definitions as in the Plan or the Option Agreement. If there is any conflict between the terms in this notice and the Plan, the terms of the Plan will control.

Optionholder:	Charles McKhann
Date of Grant:	March 10, 2021
Grant Number:	
Vesting Commencement Date:	March 1, 2021
Number of Shares Subject to Option:	848,733
Exercise Price (Per Share):	\$5.95
Total Exercise Price:	\$5,049,961.35
Expiration Date:	

Type of Grant:	Nonstatutory Stock Option
Exercise Schedule:	Same as Vesting Schedule

Vesting Schedule:

Subject to the terms and conditions in that certain employment agreement by and between the Company and the Optionholder, effective as of March 1, 2021 ("**Employment Agreement**"), the Option Agreement and the provisions of Section 5 of the Plan, this Option shall vest per the following vesting schedule: 25% of the total number of Shares subject to the Option shall vest on the one-year anniversary of the Vesting Commencement Date and 1/48 of the total number of Shares subject to the Option shall vest on each monthly anniversary of the Vesting Commencement Date thereafter, subject to Optionholder's Continuous Service as of each such date.

In the event of a Change in Control, 100% of the total shares subject to the Option shall become vested as of the date immediately prior to the effective time of the Change in Control, subject to Optionholder's Continuous Service through such date.

Notwithstanding anything contained in this notice or the Option Agreement to contrary, upon the termination of Participant's employment under Section 9(d) the Employment Agreement, provided, that such termination constitutes a "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definitions thereunder, "**Separation from Service**") and subject to Optionholder's satisfaction of the conditions set forth in Section 9(d)(ii) of the Employment Agreement: (1) a number of shares subject to the Option shall vest equal to the number of shares that would have vested in accordance with the first paragraph of this Vesting Schedule if the Optionholder had remained in Continuous Service for an additional 12 months following such Separation from Service and (2) if such Separation from Service occurs within three months prior to or upon a Change in Control, in either case, contingent upon the occurrence of such Change in Control, the shares subject to the Option shall fully vest as of immediately prior to the effectiveness of such Change in Control.

Payment:

By one or a combination of the following items (described in the Option Agreement):

By cash, check, bank draft, wire transfer or money order payable to the Company

Pursuant to a Regulation T Program if the shares are publicly traded

By delivery of already-owned shares if the shares are publicly traded

Subject to the Company's consent at the time of exercise, by a "net exercise" arrangement

Additional Terms/Acknowledgements: Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice, the Option Agreement and the Plan. Optionholder acknowledges and agrees that this Stock Option Grant Notice and the Option Agreement may not be modified, amended or revised except as provided in the Plan. Optionholder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice, the Option Agreement, the Plan, and the Employment Agreement set forth the entire understanding between Optionholder and the Company regarding this option award and supersede all prior oral and written agreements, promises and/or representations on that subject with the exception, if applicable, of (i) equity awards previously granted and delivered to Optionholder, (ii) any compensation recovery policy that is adopted by the Company or is otherwise required by applicable law and (iii) any written employment or severance arrangement that would provide for vesting acceleration of this option upon the terms and conditions set forth therein.

This Stock Option Grant Notice is deemed to be effective upon receipt.

Apollo Endosurgery, Inc.

By: __

Title: __

Attachments: Option Agreement, 2017 Equity Incentive Plan, and Notice of Exercise

Attachment I

Apollo Endosurgery, Inc. Inducement Grant Outside of the 2017 Equity Incentive Plan

Option Agreement

(Nonstatutory Stock Option)

Pursuant to your Stock Option Grant Notice ("**Grant Notice**") and this Option Agreement, Apollo Endosurgery, Inc. (the "**Company**") has granted you an option to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. This option is granted outside of, but subject to the terms and conditions of, the Company's 2017 Equity Incentive Plan (the "**Plan**"), as a material inducement to you entering into employment with the Company in compliance with Nasdaq Listing Rule 5634(c)(4), and effective as of the date of grant set forth in the Grant Notice (the "**Date of Grant**"). If there is any conflict between the terms in this Option Agreement and the Plan, the terms of the Plan will control. Capitalized terms not explicitly defined in this Option Agreement or in the Grant Notice but defined in the Plan will have the same definitions as in the Plan. The shares of Common Stock underlying this option shall not reduce and shall have no impact on the number of shares available for grant under the Plan.

The details of your option, in addition to those set forth in the Grant Notice and the Plan, are as follows:

1. Vesting. Subject to the provisions contained herein, your option will vest as provided in your Grant Notice. Vesting will cease upon the termination of your Continuous Service.

2. Number of Shares and Exercise Price. The number of shares of Common Stock subject to your option and your exercise price per share in your Grant Notice will be adjusted for Capitalization Adjustments.

3. Exercise Restriction for Non-Exempt Employees. If you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (that is, a "**Non-Exempt Employee**"), and except as otherwise provided in the Plan, you may not exercise your option until you have completed at least six (6) months of Continuous Service measured from the Date of Grant, even if you have already been an employee for more than six (6) months. Consistent with the provisions of the Worker Economic Opportunity Act, you may exercise your option as to any vested portion prior to such six (6) month anniversary in the case of (i) your death or disability, (ii) a Corporate Transaction in which your option is not assumed, continued or substituted, (iii) a Change in Control or (iv) your termination of Continuous Service on your "retirement" (as defined in the Company's benefit plans).

4. Method of Payment. You must pay the full amount of the exercise price for the shares you wish to exercise. You may pay the exercise price in cash or by check, bank draft or money order payable to the Company or in any other manner **permitted by your Grant Notice**, which may include one or more of the following:

(a) Provided that at the time of exercise the Common Stock is publicly traded, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds. This manner of payment is also known as a "broker-assisted exercise", "same day sale", or "sell to cover".

(b) Provided that at the time of exercise the Common Stock is publicly traded, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time you exercise your option, will include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. You may not exercise your option by delivery to the Company of Common Stock if doing so would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

(c) Subject to the consent of the Company at the time of exercise, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price. You must pay any remaining balance of the aggregate exercise price not satisfied by the "net exercise" in cash or other permitted form of payment. Shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter if those shares (i) are used to pay the exercise price pursuant to the "net exercise," (ii) are delivered to you as a result of such exercise, and (iii) are withheld to satisfy your tax withholding obligations.

5. **Whole Shares.** You may exercise your option only for whole shares of Common Stock.

6. **Securities Law Compliance.** In no event may you exercise your option unless the shares of Common Stock issuable upon exercise are then registered under the Securities Act or, if not registered, the Company has determined that your exercise and the issuance of the shares would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with all other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations (including any restrictions on exercise required for compliance with Treas. Reg. 1.401(k)-1(d)(3), if applicable).

7. **Term.** You may not exercise your option before the Date of Grant or after the expiration of the option's term. The term of your option expires, subject to the terms and conditions of your Employment Agreement (as defined in your Grant Notice) and the provisions of Sections 5(h) and 9(c) of the Plan, upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three (3) months after the termination of your Continuous Service for any reason other than Cause, your Disability or your death (except as otherwise provided in Section 7(d) below); provided, however, that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in the section above relating to "Securities Law Compliance," your option will not expire until the earlier of the Expiration Date or until it has been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service; provided further, that if (i) you are a Non-Exempt Employee, (ii) your Continuous Service terminates within six (6) months after the Date of Grant, and (iii) you have vested in a portion of your option at the time of your termination of Continuous Service, your option will not expire until the earlier of (x) the later of (A) the date that is seven (7) months after the Date of Grant, and (B) the date that is three (3) months after the termination of your Continuous Service, and (y) the Expiration Date; provided further, that upon the termination of your employment under Section 9(d) of your Employment Agreement (subject to such

termination constituting a Separation from Service (as defined in your Grant Notice) and your satisfaction of the conditions set forth in Section 9(d) (ii) of your Employment Agreement), the post-termination exercise period set forth in this Section 7(b) shall extend until the earlier of (x) the first anniversary of your Separation from Service date and (y) the effective date of a Change in Control;

(c) twelve (12) months after the termination of your Continuous Service due to your Disability (except as otherwise provided in Section 7(d)) below;

(d) twelve (12) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates for any reason other than Cause;

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the tenth (10th) anniversary of the Date of Grant.

8. Exercise.

(a) You may exercise the vested portion of your option during its term by (i) delivering a Notice of Exercise (in a form designated by the Company) or completing such other documents and/or procedures designated by the Company for exercise and (ii) paying the exercise price and any applicable withholding taxes to the Company's Secretary, stock plan administrator, or such other person as the Company may designate, together with such additional documents as the Company may then require.

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

(c) By exercising your option you agree that you will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company held by you, for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company will request to facilitate compliance with FINRA Rule 2241 or any successor or similar rules or regulation (the "**Lock-Up Period**"); *provided, however*, that nothing contained in this Section will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. You also agree that any transferee of any shares of Common Stock (or other securities) of the Company held by you will be bound by this Section 8(c). The underwriters of the Company's stock are intended third party beneficiaries of this Section 8(c) and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

9. Transferability. Except as otherwise provided in this Section 9, your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you.

(a) Certain Trusts. Upon receiving written permission from the Board or its duly authorized designee, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust. You and the trustee must enter into transfer and other agreements required by the Company.

(b) Domestic Relations Orders. Upon receiving written permission from the Board or its duly authorized designee, and provided that you and the designated transferee enter into transfer and other agreements required by the Company, you may transfer your option pursuant to the terms of a domestic relations order that contains the information required by the Company to effectuate the transfer. You are encouraged to discuss the proposed terms of any division of this option with the Company prior to finalizing the domestic relations order or marital settlement agreement to help ensure the required information is contained within the domestic relations order or marital settlement agreement.

(c) Beneficiary Designation. Upon receiving written permission from the Board or its duly authorized designee, you may, by delivering written notice to the Company, in a form approved by the Company and any broker designated by the Company to handle option exercises, designate a third party who, on your death, will thereafter be entitled to exercise this option and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, your executor or administrator of your estate will be entitled to exercise this option and receive, on behalf of your estate, the Common Stock or other consideration resulting from such exercise.

10. Option not a Service Contract. Your option is not an employment or service contract, and nothing in your option will be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option will obligate the Company or an Affiliate, their respective shareholders, boards of directors, officers or employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

11. Withholding Obligations.

(a) As further provided in Section 8 of the Plan: (a) you may not exercise your Option unless the applicable tax withholding obligations are satisfied, and (b) at the time you exercise your option, in whole or in part, and at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "same day sale" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

(b) Upon your request and subject to approval by the Company, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the maximum amount

of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes); *provided however*, that to the extent necessary to qualify for an exemption from application of Section 16(b) of the Exchange Act, if applicable, such share withholding procedure will be subject to the express prior approval of the Company's Compensation Committee. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company will have no obligation to issue a certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein, if applicable, unless such obligations are satisfied.

12. Tax Consequences. You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You will not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the "fair market value" per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option.

13. Notices. Any notices provided for in your option or the Plan will be given in writing (including electronically) and will be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company. The Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan and this option by electronic means or to request your consent to participate in the Plan by electronic means. By accepting this option, you consent to receive such documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

14. Governing Plan Document. Your option is subject to all the provisions of the Grant Notice, this Option Agreement, your Employment Agreement, and the Plan. The provisions of the Plan are hereby made a part of your option, and your option is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. If there is any conflict between the provisions of your option and those of the Plan, the provisions of the Plan will control. In addition, your option (and any compensation paid or shares issued under your option) is subject to recoupment in accordance with The Dodd-Frank Wall Street Reform and Consumer Protection Act and any implementing regulations thereunder, any clawback policy adopted by the Company and any compensation recovery policy otherwise required by applicable law. No recovery of compensation under such a clawback policy will be an event giving rise to a right to voluntarily terminate employment upon a resignation for "good reason," or for a "constructive termination" or any similar term under any plan or agreement with the Company.

15. Other Documents. You hereby acknowledge receipt of and the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Plan prospectus. In addition, you acknowledge receipt of the Company's policy permitting certain individuals to

sell shares only during certain “window” periods and the Company’s insider trading policy, in effect from time to time.

16. Effect on Other Employee Benefit Plans. The value of this option will not be included as compensation, earnings, salaries, or other similar terms used when calculating your benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company’s or any Affiliate’s employee benefit plans.

17. Voting Rights. You will not have voting or any other rights as a shareholder of the Company with respect to the shares to be issued pursuant to this option until such shares are issued to you. Upon such issuance, you will obtain full voting and other rights as a shareholder of the Company. Nothing contained in this option, and no action taken pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between you and the Company or any other person.

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

19. Miscellaneous.

(a) The rights and obligations of the Company under your option will be transferable to any one or more persons or entities, and all covenants and agreements hereunder will inure to the benefit of, and be enforceable by the Company’s successors and assigns.

(b) You agree upon request to execute any further documents or instruments necessary or desirable in the sole determination of the Company to carry out the purposes or intent of your option.

(c) You acknowledge and agree that you have reviewed your option in its entirety, have had an opportunity to obtain the advice of counsel prior to executing and accepting your option, and fully understand all provisions of your option.

(d) This Option Agreement will be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

(e) All obligations of the Company under the Plan and this Option Agreement will be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

* * *

Attachment III
NOTICE OF EXERCISE

Apollo Endosurgery, Inc.
Attention: Stock Plan Administrator
1120 S. Capital of Texas Hwy.
Building 1, Suite #300
Austin, TX 78746

Date of Exercise: _____

This constitutes notice to Apollo Endosurgery, Inc. (the "**Company**") under my stock option that I elect to purchase the below number of shares of Common Stock of the Company (the "**Shares**") for the price set forth below. Capitalized terms used in this notice but not defined have the meanings set forth in the Company's 2017 Equity Incentive Plan (the "**Plan**").

Stock option dated:	_____
Number of Shares as to which option is exercised:	_____
Total exercise price:	\$ _____
Cash, check, bank draft, or money order payment delivered herewith:	\$ _____
Value of _____ Shares delivered herewith: ¹	\$ _____
Value of _____ Shares pursuant to net exercise: ²	\$ _____
Regulation T Program (cashless exercise): ³	\$ _____

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the Plan and (ii) to provide for the payment by me to you (in the manner designated by you) of your withholding obligation, if any, relating to the exercise of this option.

I further agree that, if required by the Company (or a representative of the underwriters) in connection with the first underwritten registration of the offering of any securities of the Company under the Securities Act, I will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company for a period of one hundred eighty (180) days following the effective

¹ The Company must have established procedures to accept payment in shares of Common Stock at the time of exercise in order for this form of payment to be available.
² The Company must have established procedures to accept payment in shares of Common Stock at the time of exercise in order for this form of payment to be available.
³ The Company must have established procedures to accept payment via a cashless exercise procedure at the time of exercise in order for this form of payment to be available.

date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company shall request to facilitate compliance with FINRA Rule 2241 or any successor or similar rule or regulation) (the "**Lock-Up Period**"). I further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop transfer instructions with respect to securities subject to the foregoing restrictions until the end of such period.

Very truly yours,

—

Apollo Endosurgery, Inc.
Restricted Stock Unit Grant Notice
(Inducement Grant Outside of the 2017 Equity Incentive Plan)

Apollo Endosurgery, Inc. (the "**Company**"), as an inducement material to Participant entering into employment with the Company, hereby awards to Participant a Restricted Stock Unit Award for the number of shares of the Company's Common Stock ("**Restricted Stock Units**") set forth below (the "**Award**"). The Award is granted outside of the Company's 2017 Equity Incentive Plan (the "**Plan**"), but is subject to all of the terms and conditions as set forth in this notice of grant (this "**Restricted Stock Unit Grant Notice**") and in the Plan and the Restricted Stock Unit Agreement (the "**Award Agreement**"), both of which are attached hereto and incorporated herein in their entirety. Capitalized terms not otherwise defined herein will have the meanings set forth in the Plan or the Award Agreement. In the event of any conflict between the terms in the Award and the Plan, the terms of the Plan will control.

Participant:	Charles McKhann
Date of Grant:	
Vesting Commencement Date:	March 1, 2021
Number of Restricted Stock Units/Shares:	707,278

Vesting Schedule:

Subject to the terms and conditions in that certain employment agreement by and between the Company and Participant, effective as of March 1, 2021 ("**Employment Agreement**"), the Restricted Stock Units shall vest according to the following vesting schedule: (a) 25% of the Restricted Stock Units will vest upon achievement by the Company of \$50 million in annual revenue; (b) 25% of the Restricted Stock Units will vest upon achievement by the Company of \$65 million in annual revenue; (c) 25% of the Restricted Stock Units will vest upon achievement by the Company of \$80 million in annual revenue; and (d) 25% of the Restricted Stock Units will vest upon achievement by the Company of \$95 million in annual revenue. In the event that any Restricted Stock Units have not vested on the earlier of Participant's last day as an Employee, Consultant, or Non-Employee Director and the end of the sixteenth (16th) full fiscal quarter following the Vesting Commencement Date, the unvested Restricted Stock Units shall expire on such date. For purposes of determining achievement of foregoing vesting conditions, annual revenue shall be calculated on the basis of the trailing completed four (4) fiscal quarters.

The vesting of the Restricted Stock Units shall accelerate as follows upon a Change in Control: (i) if the Change in Control occurs in a transaction in which the deemed value per share of the Common Stock is at least two (2) times the last reported sale price of the Common Stock on The Nasdaq Global Market on Date of Grant (the "**Closing Price**"), but less than three (3) times the Closing Price, fifty percent (50%) of the unvested Restricted Stock Units shall vest as of immediately prior to effectiveness of such Change in Control; (ii) if the Change in Control occurs in a transaction in which the deemed value per share of the Common Stock is at least three (3) times the Closing Price, one-hundred percent (100%) of the Restricted Stock Units shall vest as of immediately prior to effectiveness of such Change in Control; and (iii) without limiting the foregoing clauses (i) and (ii), if within twenty-four (24) months following the Vesting Commencement Date the Change in Control occurs in a transaction in which the deemed value per share of the Common Stock is at least one and one-half (1½) times the Closing Price but less than two (2) times the Closing Price, twenty-five percent (25%) of the Restricted Stock Units shall vest as of immediately prior to effectiveness of such Change in Control.

Notwithstanding the foregoing, upon the termination of Participant's employment under Section 9(d) the Employment Agreement, provided, that such termination constitutes a "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definitions thereunder, "**Separation from Service**") and subject to Participant's satisfaction of the conditions set forth in Section 9(d) (ii) of the Employment Agreement: (1) the time period during which the Restricted Stock Units may vest pursuant to the terms set forth in the first paragraph of this Vesting Schedule shall be extended to the date that is the business day after the end of the day in which the Company reports its financial results for the second completed fiscal quarter following the effective date of Participant's Separation from Service and (2) if such Separation from Service occurs within three (3) months prior to or upon a Change in Control, in either case, contingent upon the occurrence of such Change in Control, the Restricted Stock Units shall vest in accordance with the terms set forth in the second paragraph of this Vesting Schedule as of immediately prior to effectiveness of such Change in Control.

Issuance Schedule:

The shares of Common Stock to be issued in respect of the Award will be issued in accordance with the issuance schedule set forth in Section 6 of the Restricted Stock Unit Agreement.

Additional Terms/Acknowledgements: Participant acknowledges receipt of, and understands and agrees to, this Restricted Stock Unit Grant Notice, the Award Agreement and the Plan. Participant acknowledges and agrees that this Restricted Stock Unit Grant Notice and the Award Agreement may not be modified, amended or revised except as provided in the Plan. Participant further acknowledges that as of the Date of Grant, this Restricted Stock Unit Grant Notice, the Award Agreement, the Plan and the Employment Agreement set forth the entire understanding between Participant and the Company regarding the acquisition of Common Stock pursuant to the Award and supersede all prior oral and written agreements on that subject with the exception, if applicable, of (i) equity awards previously granted and delivered to Participant, (ii) any compensation recovery policy that is adopted by the Company or is otherwise required by applicable law, and (iii) any written employment or severance arrangement that would provide for vesting acceleration of this Award upon the terms and conditions set forth therein.

This Restricted Stock Unit Grant Notice is deemed to be effective upon receipt.

Apollo Endosurgery, Inc.

By:
Title:

Attachments: Award Agreement, 2017 Equity Incentive Plan

Attachment I

Apollo Endosurgery, Inc.
Inducement Grant Outside of the 2017 Equity Incentive Plan

Restricted Stock Unit Agreement

Pursuant to the Restricted Stock Unit Grant Notice (the "**Grant Notice**") and this Restricted Stock Unit Agreement (the "**Award Agreement**"), Apollo Endosurgery, Inc. (the "**Company**") has awarded you ("**Participant**") a Restricted Stock Unit Award (the "**Award**") for the number of Restricted Stock Units indicated in the Grant Notice as a material inducement to you entering into employment with the Company in compliance with Nasdaq Listing Rule 5634(c)(4). This Award is granted outside of, but subject to the terms and conditions of, the Company's 2017 Equity Incentive Plan (the "**Plan**"). The shares of Common Stock underlying this Award shall not reduce and shall have no impact on the number of shares available for grant under the Plan. Capitalized terms not explicitly defined in this Award Agreement or the Grant Notice will have the same meanings given to them in the Plan. The terms of your Award, in addition to those set forth in the Grant Notice and the Plan, are as follows.

1. Grant of the Award. This Award represents the right to be issued on a future date one (1) share of Common Stock for each Restricted Stock Unit that vests on the applicable vesting date(s) (subject to any adjustment under Section 3 below) as indicated in the Grant Notice. As of the Date of Grant, the Company will credit to a bookkeeping account maintained by the Company for your benefit (the "**Account**") the number of Restricted Stock Units/shares of Common Stock subject to the Award. This Award was granted as a material inducement to you entering into employment with the Company in compliance with Nasdaq Listing Rule 5634(c)(4). Except as otherwise provided herein, you will not be required to make any payment to the Company or an Affiliate (other than services to the Company or an Affiliate) with respect to your receipt of the Award, the vesting of the Restricted Stock Units or the delivery of the Company's Common Stock to be issued in respect of the Award. Notwithstanding the foregoing, the Company reserves the right to issue you the cash equivalent of Common Stock, in part or in full satisfaction of the delivery of Common Stock upon vesting of your Restricted Stock Units, and, to the extent applicable, references in this Award Agreement and the Grant Notice to Common Stock issuable in connection with your Restricted Stock Units will include the potential issuance of its cash equivalent pursuant to such right.

2. Vesting. Subject to the limitations contained herein, your Award will vest, if at all, in accordance with the vesting schedule provided in the Grant Notice, provided that vesting will cease upon the termination of your Continuous Service (except as otherwise provided in the Grant Notice). Except as otherwise provided in the Grant Notice, upon such termination of your Continuous Service, the Restricted Stock Units/shares of Common Stock credited to the Account that were not vested on the date of such termination will be forfeited at no cost to the Company and you will have no further right, title or interest in or to such underlying shares of Common Stock.

3. Number of Shares. The number of Restricted Stock Units/shares subject to your Award may be adjusted from time to time for Capitalization Adjustments, as provided in the Plan. Any additional Restricted Stock Units, shares, cash or other property that becomes subject to the Award pursuant to this Section 3, if any, will be subject, in a manner determined by the Board, to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as applicable to the other Restricted Stock Units and shares covered by your Award. Notwithstanding the provisions of this Section 3, no fractional shares or rights for fractional shares of Common Stock will be created pursuant to this Section 3. Any fraction of a share will be rounded down to the nearest whole share.

4. Securities Law Compliance. You may not be issued any Common Stock under your Award unless the shares of Common Stock underlying the Restricted Stock Units are either (i) then registered under the Securities Act, or (ii) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Your Award must also comply with other applicable laws and regulations governing the Award, and you will not receive such Common Stock if the Company determines that such receipt would not be in material compliance with such laws and regulations.

5. Transfer Restrictions. Prior to the time that shares of Common Stock have been delivered to you, you may not transfer, pledge, sell or otherwise dispose of this Award or the shares issuable in respect of your Award, except as expressly provided in this Section 5. For example, you may not use shares that may be issued in respect of your Restricted Stock Units as security for a loan. The restrictions on transfer set forth herein will lapse upon delivery to you of shares in respect of your vested Restricted Stock Units. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Company, you may designate a third party who, in the event of your death, will thereafter be entitled to receive any distribution of Common Stock to which you were entitled at the time of your death pursuant to this Award Agreement. In the absence of such a designation, your legal representative will be entitled to receive, on behalf of your estate, such Common Stock or other consideration.

(a) **Death.** Your Award is transferable by will and by the laws of descent and distribution. At your death, vesting of your Award will cease and your executor or administrator of your estate will be entitled to receive, on behalf of your estate, any Common Stock or other consideration that vested but was not issued before your death.

(b) **Domestic Relations Orders.** Upon receiving written permission from the Board or its duly authorized designee, and provided that you and the designated transferee enter into transfer and other agreements required by the Company, you may transfer your right to receive the distribution of Common Stock or other consideration hereunder, pursuant to a domestic relations order, official marital settlement agreement or other divorce or separation instrument that contains the information required by the Company to effectuate the transfer. You are encouraged to discuss the proposed terms of any division of this Award with the Company General Counsel prior to finalizing the domestic relations order or marital settlement agreement to verify that you may make such transfer, and if so, to help ensure the required information is contained within the domestic relations order or marital settlement agreement.

6. Date of Issuance.

(a) The issuance of shares in respect of the Restricted Stock Units is intended to comply with Treasury Regulations Section 1.409A-1(b)(4) and will be construed and administered in such a manner. Subject to the satisfaction of the withholding obligations set forth in this Award Agreement, in the event one or more Restricted Stock Units vests, the Company will issue to you one (1) share of Common Stock for each Restricted Stock Unit that vests on the applicable vesting date(s) (subject to any adjustment under Section 3 above, and subject to any different provisions in the Grant Notice). The issuance date determined by this paragraph is referred to as the "**Original Issuance Date**".

(b) If the Original Issuance Date falls on a date that is not a business day, delivery will instead occur on the next following business day. In addition, if:

(i) the Original Issuance Date does not occur (1) during an "open window period" applicable to you, as determined by the Company in accordance with the Company's then-effective policy on trading in Company securities, or (2) on a date when you are otherwise permitted to

sell shares of Common Stock on an established stock exchange or stock market (including but not limited to under a previously established written trading plan that meets the requirements of Rule 10b5-1 under the Exchange Act and was entered into in compliance with the Company's policies (a "**10b5-1 Plan**")), and

(ii) either (1) Withholding Taxes do not apply, or (2) the Company decides, prior to the Original Issuance Date, (A) not to satisfy the Withholding Taxes by withholding shares of Common Stock from the shares otherwise due, on the Original Issuance Date, to you under this Award, and (B) not to permit you to enter into a "same day sale" commitment with a broker-dealer pursuant to Section 11 of this Agreement (including but not limited to a commitment under a 10b5-1 Plan) and (C) not to permit you to pay the Withholding Taxes in cash or from other compensation otherwise payable to you by the Company,

then the shares that would otherwise be issued to you on the Original Issuance Date will not be delivered on such Original Issuance Date and will instead be delivered on the first business day when you are not prohibited from selling shares of the Company's Common Stock in the open public market, but in no event later than December 31 of the calendar year in which the Original Issuance Date occurs (that is, the last day of your taxable year in which the Original Issuance Date occurs), or, if and only if permitted in a manner that complies with Treasury Regulations Section 1.409A-1(b)(4), no later than the date that is the 15th day of the third calendar month of the applicable year following the year in which the shares of Common Stock under this Award are no longer subject to a "substantial risk of forfeiture" within the meaning of Treasury Regulations Section 1.409A-1(d).

(c) The form of delivery of the shares of Common Stock in respect of your Award (e.g., a stock certificate or electronic entry evidencing such shares) will be determined by the Company.

7. Dividends. You will receive no benefit or adjustment to your Award with respect to any cash dividend, stock dividend or other distribution that does not result from a Capitalization Adjustment; provided, however, that this sentence will not apply with respect to any shares of Common Stock that are delivered to you in connection with your Award after such shares have been delivered to you.

8. Restrictive Legends. The shares of Common Stock issued under your Award will be endorsed with appropriate legends as determined by the Company.

9. Execution of Documents. You hereby acknowledge and agree that the manner selected by the Company by which you indicate your consent to your Grant Notice is also deemed to be your execution of your Grant Notice and of this Award Agreement. You further agree that such manner of indicating consent may be relied upon as your signature for establishing your execution of any documents to be executed in the future in connection with your Award.

10. Award not a Service Contract.

(a) Your Continuous Service with the Company or an Affiliate is not for any specified term and may be terminated by you or by the Company or an Affiliate at any time, for any reason, with or without cause and with or without notice. Nothing in this Award Agreement (including, but not limited to, the vesting of your Award or the issuance of the shares subject to your Award), the Plan or any covenant of good faith and fair dealing that may be found implicit in this Award Agreement or the Plan will: (i) confer upon you any right to continue in the employ of, or affiliation with, the Company or an Affiliate; (ii) constitute any promise or commitment by the Company or an Affiliate regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of employment or affiliation; (iii) confer any

right or benefit under this Award Agreement or the Plan unless such right or benefit has specifically accrued under the terms of this Award Agreement or Plan; or (iv) deprive the Company of the right to terminate you at will and without regard to any future vesting opportunity that you may have.

(b) By accepting this Award, you acknowledge and agree that the right to continue vesting in the Award is earned only by continuing as an employee, director or consultant at the will of the Company or an Affiliate and that the Company has the right to reorganize, sell, spin-out or otherwise restructure one or more of its businesses or Affiliates at any time or from time to time, as it deems appropriate (a "**reorganization**"). You further acknowledge and agree that such a reorganization could result in the termination of your Continuous Service, or the termination of Affiliate status of your employer and the loss of benefits available to you under this Award Agreement, including but not limited to, the termination of the right to continue vesting in the Award. You further acknowledge and agree that this Award Agreement, the Plan, the transactions contemplated hereunder and the vesting schedule set forth herein or any covenant of good faith and fair dealing that may be found implicit in any of them do not constitute an express or implied promise of continued engagement as an employee or consultant for the term of this Award Agreement, for any period, or at all, and will not interfere in any way with your right or the right of the Company or an Affiliate to terminate your Continuous Service at any time, with or without cause and with or without notice, and will not interfere in any way with the Company's right to conduct a reorganization.

11. Withholding Obligations.

(a) On each vesting date, and on or before the time you receive a distribution of the shares underlying your Restricted Stock Units, and at any other time as reasonably requested by the Company in accordance with applicable tax laws, you hereby authorize any required withholding from the Common Stock issuable to you and otherwise agree to make adequate provision in cash for any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or any Affiliate that arise in connection with your Award (the "**Withholding Taxes**"). Additionally, the Company or any Affiliate may, in its sole discretion, satisfy all or any portion of the Withholding Taxes obligation relating to your Award by any of the following means or by a combination of such means: (i) withholding from any compensation otherwise payable to you by the Company or an Affiliate; (ii) causing you to tender a cash payment; (iii) permitting or requiring you to enter into a "same day sale" commitment, if applicable, with a broker-dealer that is a member of the Financial Industry Regulatory Authority (a "**FINRA Dealer**") (pursuant to this authorization and without further consent) whereby you irrevocably elect to sell a portion of the shares to be delivered in connection with your Restricted Stock Units to satisfy the Withholding Taxes and whereby the FINRA Dealer irrevocably commits to forward the proceeds necessary to satisfy the Withholding Taxes directly to the Company and its Affiliates; or (iv) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to you in connection with the Award with a Fair Market Value (measured as of the date shares of Common Stock are issued to you pursuant to Section 6) equal to the amount of such Withholding Taxes; *provided, however*, that the number of such shares of Common Stock so withheld will not exceed the amount necessary to satisfy the Company's required tax withholding obligations using the maximum statutory withholding rates for federal, state, local and, if applicable, foreign tax purposes, including payroll taxes, that are applicable to supplemental taxable income; and *provided further*, that to the extent necessary to qualify for an exemption from application of Section 16(b) of the Exchange Act, if applicable, such share withholding procedure will be subject to the express prior approval of the Company's Compensation Committee. However, the Company does not guarantee that you will be able to satisfy the Withholding Taxes through any of the methods described in the preceding provisions and in all circumstances you remain responsible for timely and fully satisfying the Withholding Taxes.

(b) Unless the tax withholding obligations of the Company and any Affiliate are satisfied, the Company will have no obligation to deliver to you any Common Stock or other consideration pursuant to this Award.

(c) In the event the Company's obligation to withhold arises prior to the delivery to you of Common Stock or it is determined after the delivery of Common Stock to you that the amount of the Company's withholding obligation was greater than the amount withheld by the Company, you agree to indemnify and hold the Company harmless from any failure by the Company to withhold the proper amount.

12. Tax Consequences. The Company has no duty or obligation to minimize the tax consequences to you of this Award and will not be liable to you for any adverse tax consequences to you arising in connection with this Award. You are hereby advised to consult with your own personal tax, financial and legal advisors regarding the tax consequences of this Award and by signing the Grant Notice, you have agreed that you have done so or knowingly and voluntarily declined to do so. You understand that you (and not the Company) will be responsible for your own tax liability that may arise as a result of this investment or the transactions contemplated by this Award Agreement.

13. Unsecured Obligation. Your Award is unfunded, and as a holder of a vested Award, you will be considered an unsecured creditor of the Company with respect to the Company's obligation, if any, to issue shares or other property pursuant to this Award Agreement. You will not have voting or any other rights as a stockholder of the Company with respect to the shares to be issued pursuant to this Award Agreement until such shares are issued to you pursuant to Section 6 of this Award Agreement. Upon such issuance, you will obtain full voting and other rights as a stockholder of the Company. Nothing contained in this Award Agreement, and no action taken pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between you and the Company or any other person.

14. Notices. Any notice or request required or permitted hereunder will be given in writing to each of the other parties hereto and will be deemed effectively given on the earlier of (i) the date of personal delivery, including delivery by express courier, or delivery via electronic means, or (ii) the date that is five (5) days after deposit in the United States Post Office (whether or not actually received by the addressee), by registered or certified mail with postage and fees prepaid, addressed to the Company at its primary executive offices, attention: Stock Plan Administrator, and addressed to you at your address as on file with the Company at the time notice is given.

15. Headings. The headings of the Sections in this Award Agreement are inserted for convenience only and will not be deemed to constitute a part of this Award Agreement or to affect the meaning of this Award Agreement.

16. Additional Acknowledgements. You hereby consent and acknowledge that:

(a) Participation in the Plan is voluntary and therefore you must accept the terms and conditions of the Plan and this Award Agreement and Grant Notice as a condition to participating in the Plan and receipt of this Award. This Award and any other awards under the Plan are voluntary and occasional and do not create any contractual or other right to receive future awards or other benefits in lieu of future awards, even if similar awards have been granted repeatedly in the past. All determinations with respect to any such future awards, including, but not limited to, the time or times when such awards are made, the size of such awards and performance and other conditions applied to the awards, will be at the sole discretion of the Company.

(b) The future value of your Award is unknown and cannot be predicted with certainty. You do not have, and will not assert, any claim or entitlement to compensation, indemnity or damages arising from the termination of this Award or diminution in value of this Award and you irrevocably release the Company, its Affiliates and, if applicable, your employer, if different from the Company, from any such claim that may arise.

(c) The rights and obligations of the Company under your Award will be transferable by the Company to any one or more persons or entities, and all covenants and agreements hereunder will inure to the benefit of, and be enforceable by, the Company's successors and assigns.

(d) You agree upon request to execute any further documents or instruments necessary or desirable in the sole determination of the Company to carry out the purposes or intent of your Award.

(e) You acknowledge and agree that you have reviewed your Award in its entirety, have had an opportunity to obtain the advice of counsel prior to executing and accepting your Award and fully understand all provisions of your Award.

(f) This Award Agreement will be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

(g) All obligations of the Company under the Plan and this Award Agreement will be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and assets of the Company.

17. Governing Plan Document. Your Award is subject to all the provisions of your Grant Notice, this Award Agreement, your Employment Agreement, and the Plan. The provisions of the Plan are hereby made a part of your Award, and your Award is further subject to all interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan. Your Award (and any compensation paid or shares issued under your Award) is subject to recoupment in accordance with The Dodd–Frank Wall Street Reform and Consumer Protection Act and any implementing regulations thereunder, any clawback policy adopted by the Company and any compensation recovery policy otherwise required by applicable law. No recovery of compensation under such a clawback policy will be an event giving rise to a right to voluntarily terminate employment upon a resignation for “good reason,” or for a “constructive termination” or any similar term under any plan of or agreement with the Company.

18. Effect on Other Employee Benefit Plans. The value of the Award subject to this Award Agreement will not be included as compensation, earnings, salaries, or other similar terms used when calculating benefits under any employee benefit plan (other than the Plan) sponsored by the Company or any Affiliate except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any or all of the employee benefit plans of the Company or any Affiliate.

19. Choice of Law. The interpretation, performance and enforcement of this Award Agreement will be governed by the law of the State of Delaware without regard to that state's conflicts of laws rules.

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

21. Other Documents. You hereby acknowledge receipt of and the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Plan prospectus. In addition, you acknowledge receipt of the Company's policy permitting certain individuals to sell shares only during certain "window" periods and the Company's insider trading policy, in effect from time to time.

22. Amendment. This Award Agreement may not be modified, amended or terminated except by an instrument in writing, signed by you and by a duly authorized representative of the Company. Notwithstanding the foregoing, this Award Agreement may be amended solely by the Board by a writing which specifically states that it is amending this Award Agreement, so long as a copy of such amendment is delivered to you, and provided that, except as otherwise expressly provided in the Plan, no such amendment materially adversely affecting your rights hereunder may be made without your written consent. Without limiting the foregoing, the Board reserves the right to change, by written notice to you, the provisions of this Award Agreement in any way it may deem necessary or advisable to carry out the purpose of the Award as a result of any change in applicable laws or regulations or any future law, regulation, ruling, or judicial decision, provided that any such change will be applicable only to rights relating to that portion of the Award which is then subject to restrictions as provided herein.

23. Compliance with Section 409A of the Code. This Award is intended to comply with the "short-term deferral" rule set forth in Treasury Regulation Section 1.409A-1(b)(4). Notwithstanding the foregoing, if it is determined that the Award fails to satisfy the requirements of the short-term deferral rule and is otherwise deferred compensation subject to Section 409A, and if you are a "Specified Employee" (within the meaning set forth in Section 409A(a)(2)(B)(i) of the Code) as of the date of your "separation from service" (within the meaning of Treasury Regulation Section 1.409A-1(h) and without regard to any alternative definition thereunder), then the issuance of any shares that would otherwise be made upon the date of the separation from service or within the first six (6) months thereafter will not be made on the originally scheduled date(s) and will instead be issued in a lump sum on the earlier of: (i) the fifth business day following your death, or (ii) the date that is six (6) months and one day after the date of the separation from service, with the balance of the shares issued thereafter in accordance with the original vesting and issuance schedule set forth above, but if and only if such delay in the issuance of the shares is necessary to avoid the imposition of adverse taxation on you in respect of the shares under Section 409A of the Code. Each installment of shares that vests is intended to constitute a "separate payment" for purposes of Treasury Regulation Section 1.409A-2(b)(2).

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