

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

FORM 10-Q

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

For the quarterly period ended March 31, 2023

or

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

For the transition period from ___ to ___

Commission File Number 001-36305

SEMLER SCIENTIFIC, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

26-1367393

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

2340-2348 Walsh Avenue, Suite 2344

Santa Clara, CA 95051

(Address of principal executive offices) (Zip Code)

(877) 774-4211

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.001 per share	SMLR	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232,405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 type="checkbox"/>

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

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

As of May 5, 2023, there were 6,851,498 shares of the issuer's common stock, \$0.001 par value per share, outstanding.

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In this report, unless otherwise stated or as the context otherwise requires, references to “Semler Scientific,” “the Company,” “we,” “us,” “our” and similar references refer to Semler Scientific, Inc. The Semler Scientific logo, QuantaFlo and other trademarks or service marks of Semler Scientific, Inc. appearing in this report are the property of Semler Scientific, Inc. This report also contains registered marks, trademarks and trade names of other companies. All other trademarks, registered marks and trade names appearing in this report are the property of their respective holders.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This quarterly report on Form 10-Q contains forward-looking statements. Such forward-looking statements include those that express plans, anticipation, intent, contingency, goals, targets or future development and/or otherwise are not statements of historical fact. In some cases, you can identify forward-looking statements by terminology, such as “expects,” “anticipates,” “intends,” “estimates,” “plans,” “believes,” “seeks,” “may,” “should,” “continue,” “could” or the negative of such terms or other similar expressions. Any forward-looking statements are qualified in their entirety by reference to the factors discussed throughout this report. These forward-looking statements are based on our current expectations and projections about future events and they are subject to risks and uncertainties known and unknown that could cause actual results and developments to differ materially from those expressed or implied in such statements, including risks associated with:

- implementation of our business strategy and the fact that we actively market only two U.S. Food and Drug Administration, or FDA, cleared products and may not benefit from our recent investments in other companies developing complementary products or the extension of QuantaFlo to test for other cardiovascular diseases;
- changes in the regulatory reimbursement landscape, such as the recent 2024 Medicare Advantage and Part D Final Rate Announcement issued by the Centers for Medicare and Medicaid Services, or CMS, could impact the perceived value of using our products to aid diagnosis of cardiovascular diseases;
- the failure of physicians and other customers to widely adopt our products, or to determine that our product provides a safe and effective alternative to existing ankle brachial index, or ABI, devices;
- our testing product is generally but not specifically approved for reimbursement under any third-party payor codes;
- our reliance on the talents of a small number of key personnel, and a small direct sales force;
- not requiring customers to enter into long-term licenses;
- concentration of our revenues and accounts receivable with a limited number of customers;
- our reliance on a small number of independent suppliers and facilities for the manufacturing of our product;
- our business being subject to many laws and government regulations, including governing the manufacture and sale of medical devices, patient data, and others;
- our ability to protect our intellectual property;
- impacts of the ongoing Covid-19 pandemic and macroeconomic factors that could impact our business, such as the effects of the Russian invasion of Ukraine on the global economy and supply chain and inflation, as well as the recent bank failures; and
- the other factors set forth under the caption “Risk Factors” in our annual report on Form 10-K filed with the Securities and Exchange Commission, or SEC, on March 23, 2023.

Because the risks and uncertainties referred to above and in our SEC reports could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made by us or on our behalf, you should not place undue reliance on any forward-looking statements.

You should read this quarterly report and the documents that we reference herein and therein and have filed as exhibits to this report and our other filings with the SEC. You should assume that the information appearing in this quarterly report is accurate as of the date of this quarterly report only. Further, any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking

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statements. We qualify all of the information presented in this quarterly report, and particularly our forward-looking statements, by these cautionary statements.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

Semler Scientific, Inc.
Condensed Statements of Income
Unaudited
(In thousands of U.S. Dollars, except share and per share data)

	<u>For the three months ended March 31,</u>	
	<u>2023</u>	<u>2022</u>
Revenues	\$ 18,206	\$ 14,016
Operating expenses:		
Cost of revenues	1,269	970
Engineering and product development	1,630	1,126
Sales and marketing	5,192	4,676
General and administrative	3,859	3,302
Total operating expenses	11,950	10,074
Income from operations	6,256	3,942
Interest income	484	1
Change in fair value of notes held for investment	(107)	—
Other income, net	377	1
Pre-tax net income	6,633	3,943
Income tax provision	1,664	583
Net income	\$ 4,969	\$ 3,360
Net income per share, basic	\$ 0.74	\$ 0.50
Weighted average number of shares used in computing basic income per share	6,701,199	6,777,950
Net income per share, diluted	\$ 0.63	\$ 0.41
Weighted average number of shares used in computing diluted income per share	7,896,043	8,116,456

See accompanying notes to unaudited condensed financial statements.

Semler Scientific, Inc.
Condensed Balance Sheets
Unaudited
(In thousands of U.S. Dollars, except share and per share data)

	March 31, 2023	December 31, 2022
Assets		
Current Assets:		
Cash and cash equivalents	\$ 5,305	\$ 23,014
Short-term investments	37,663	20,073
Trade accounts receivable, net of reserves of \$154 and \$109, respectively	9,343	3,884
Inventory, net	512	469
Prepaid expenses and other current assets	2,769	1,468
Total current assets	55,592	48,908
Assets for lease, net	2,873	2,478
Property and equipment, net	703	667
Long-term investments	821	821
Notes held for investment (includes measured at fair value of \$4,072 and \$3,679, respectively)	5,072	4,679
Other non-current assets	2,818	2,842
Long-term deferred tax assets	2,378	2,298
Total assets	\$ 70,257	\$ 62,693
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 298	\$ 835
Accrued expenses	7,206	4,748
Deferred revenue	1,286	1,160
Other short-term liabilities	128	114
Total current liabilities	8,918	6,857
Long-term liabilities:		
Other long-term liabilities	138	160
Total long-term liabilities	138	160
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Common stock, \$0.001 par value; 50,000,000 shares authorized; 6,920,643, and 6,906,544 shares issued, and 6,706,221 and 6,692,122 shares outstanding (treasury shares of 214,422 and 214,422), respectively	7	7
Additional paid-in capital	17,005	16,449
Retained earnings	44,189	39,220
Total stockholders' equity	61,201	55,676
Total liabilities and stockholders' equity	\$ 70,257	\$ 62,693

See accompanying notes to unaudited condensed financial statements.

Semler Scientific, Inc.
Condensed Statements of Stockholders' Equity
Unaudited
(In thousands of U.S. Dollars, except share and per share data)

	For the Three Months Ended March 31, 2022						
	Common Stock		Treasury Stock		Additional	Retained Earnings	Total Stockholders' Equity
	Shares Issued	Common Stock Amount	Shares	Amount	Paid-In Capital		
Balance at December 31, 2021	6,824,380	\$ 7	(65,922)	\$ —	\$ 20,645	\$ 24,895	\$ 45,547
Treasury stock acquired	—	—	(2,030)	—	(99)	—	(99)
Employee stock grants	8,406	—	—	—	628	—	628
Taxes paid related to net share settlement of equity awards	(1,418)	—	—	—	(106)	—	(106)
Stock option exercises	23,800	—	—	—	62	—	62
Net income	—	—	—	—	—	3,360	3,360
Balance at March 31, 2022	6,855,168	\$ 7	(67,952)	\$ —	\$ 21,130	\$ 28,255	\$ 49,392

	For the Three Months Ended March 31, 2023						
	Common Stock		Treasury Stock		Additional	Retained Earnings	Total Stockholders' Equity
	Shares Issued	Common Stock Amount	Shares	Amount	Paid-In Capital		
Balance at December 31, 2022	6,906,544	\$ 7	(214,422)	\$ —	\$ 16,449	\$ 39,220	\$ 55,676
Employee stock grant	18,048	—	—	—	695	—	695
Taxes paid related to net share settlement of equity awards	(3,949)	—	—	—	(146)	—	(146)
Stock-based compensation	—	—	—	—	7	—	7
Net income	—	—	—	—	—	4,969	4,969
Balance at March 31, 2023	6,920,643	\$ 7	(214,422)	\$ —	\$ 17,005	\$ 44,189	\$ 61,201

See accompanying notes to unaudited condensed financial statements

Semler Scientific, Inc.
Condensed Statements of Cash Flows
Unaudited
(In thousands of U.S. Dollars)

	Three months ended March 31,	
	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 4,969	\$ 3,360
Reconciliation of Net Income to Net Cash Provided by Operating Activities:		
Depreciation	129	155
Deferred tax (income) expense	(80)	179
Loss on disposal of assets for lease	78	74
Allowance for credit losses	48	21
Change in fair value of notes held for investment	107	—
Gain on short-term investments	(305)	—
Stock-based compensation	702	628
Changes in Operating Assets and Liabilities:		
Trade accounts receivable	(5,507)	(1,818)
Inventory	(43)	(45)
Prepaid expenses and other current assets	(1,301)	(1,988)
Other non-current assets	25	19
Accounts payable	(537)	(68)
Accrued expenses	2,458	946
Other current and non-current liabilities	118	39
Net Cash Provided by Operating Activities	861	1,502
CASH FLOWS FROM INVESTING ACTIVITIES:		
Additions to property and equipment	(95)	(122)
Proceeds from maturities of short-term investments	20,211	—
Purchase of short-term investments	(37,496)	—
Purchase of notes held for investment	(500)	—
Purchase of assets for lease	(544)	(134)
Net Cash Used in Investing Activities	(18,424)	(256)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Taxes paid related to net settlement of equity awards	(146)	(106)
Treasury stock acquired	—	(99)
Proceeds from exercise of stock options	—	62
Net Cash Used in Financing Activities	(146)	(143)
<i>(DECREASE) INCREASE IN CASH</i>	<i>(17,709)</i>	<i>1,103</i>
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	23,014	37,323
CASH AND CASH EQUIVALENTS, END OF PERIOD	\$ 5,305	\$ 38,426

See accompanying notes to unaudited condensed financial statements

Semler Scientific, Inc.
Notes to Condensed Financial Statements
Unaudited
(In thousands of U.S. Dollars, except share and per share data)

1. Basis of Presentation

Semler Scientific, Inc., a Delaware corporation (“Semler” or “the Company”), prepared the unaudited interim financial statements included in this report in accordance with United States generally accepted accounting principles (“GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (“SEC”) for interim financial reporting. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. As such, the information included in this quarterly report on Form 10-Q should be read in conjunction with the audited financial statements and notes thereto included in the Company’s annual report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 23, 2023 (the “Annual Report”). In the opinion of management, these financial statements include all adjustments (consisting of normal recurring adjustments) necessary for a fair statement of the financial position, results of operations and cash flows for the periods presented. The results of operations for the interim periods shown in this report are not necessarily indicative of the results that may be expected for any future period, including the full year.

Credit Losses on Financial Instruments

In accordance with Accounting Standards Update (“ASU”) No. 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (“Topic 326”), the Company periodically reviews the financial assets for credit losses. Financial instruments include cash, cash equivalents, marketable and non-marketable securities, and accounts receivable.

In determining the amount of the allowance for credit losses, the Company considers historical collectability based on past due status and make judgments about the creditworthiness of customers based on ongoing credit evaluations. The Company also considers customer-specific information, current market conditions, and reasonable and supportable forecasts of future economic conditions. Any credit loss is recorded as a charge to other income, net, not to exceed the amount of the unrealized loss. Unrealized losses other than the credit loss are recognized in accumulated other comprehensive income (“AOCI”). If the Company has an intent to sell, or if it is more likely than not that the Company will be required to sell a debt security in an unrealized loss position before recovery of its amortized cost basis, the Company will write down the security to its fair value and record the corresponding charge as a component of other income, net.

Recently Issued Accounting Pronouncements

Accounting Pronouncements Recently Adopted

In June 2016, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (“Topic 326”). This ASU requires timelier recording of credit losses on loans and other financial instruments held. Instead of reserves based on a current probability analysis, Topic 326 requires the measurement of all expected credit losses for financial assets held at the reporting date based on historical experience, current conditions, and reasonable and supportable forecasts. All organizations will now use forward-looking information to better inform their credit loss estimates. Topic 326 requires enhanced disclosures regarding significant estimates and judgments used in estimating credit losses, as well as the credit quality and underwriting standards of an organization’s portfolio. These disclosures include qualitative and quantitative requirements that provide information about the amounts recorded in the financial statements. In addition, Topic 326 amends the accounting for credit losses on available-for-sale debt securities and purchased financial assets with credit deterioration. In April 2019, the FASB issued ASU No. 2019-04, *Codification Improvements to Topic 326 Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*, to introduce amendments which will affect the recognition and measurement of financial instruments, including derivatives and hedging. In May 2019, the FASB issued ASU No. 2019-05, *Financial Instruments – Credit Losses (Topic 326); Targeted Transition Relief*. The amendments in this ASU provide entities that have certain instruments within the scope of Subtopic 326-20 with an option to irrevocably elect the fair value option in Subtopic 825-10, applied on an instrument-by-instrument basis for eligible instruments upon adoption of Topic 326. This standard and related amendments are effective for the Company’s fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company adopted this ASU prospectively effective January 1, 2023 and determined that the adoption of this new accounting standard did not have a material impact on its financial statements.

Semler Scientific, Inc.
Notes to Condensed Financial Statements
Unaudited
(In thousands of U.S. Dollars, except share and per share data)

In March 2020, FASB issued ASU No. 2020-03, *Codification Improvements to Financial Instruments*. This ASU improves and clarifies various financial instruments topics, including the current expected credit losses standard issued in 2016 (ASU No. 2016-13). The ASU includes seven different issues that describe the areas of improvement and the related amendments to GAAP, intended to make the standards easier to understand and apply by eliminating inconsistencies and providing clarifications. The amendments have different effective dates. The issues 1-5 are conforming amendments, which are effective upon issuance of this final update. The Company determined that issues 1-5 have no impact on its financials. The amendments related to issue 6 and 7 effect ASU No. 2016-13, *Financial instruments – credit losses (Topic 326): measurement of credit losses on financial statements*. Effective dates of issue 6 and 7 are the same as the effective date of ASU No. 2016-13. The Company adopted this ASU prospectively effective January 1, 2023 and determined that the adoption of this new accounting standard did not have a material impact on its financial statements.

In October 2021, the FASB issued ASU No. 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. This ASU improves the accounting for acquired revenue contracts with customers in a business combination by addressing diversity in practice and inconsistency related to recognition of an acquired contract liability and payment terms and their effect on subsequent revenue recognized by the acquirer. For public business entities, this guidance will be effective for fiscal years beginning after December 15, 2022 and for interim periods within those fiscal years. This ASU should be applied prospectively to all business combinations in the year of adoption. The Company adopted this ASU prospectively effective January 1, 2023 and determined that the adoption of this new accounting standard did not have a material impact on its financial statements.

In March 2022, the FASB issued ASU No. 2022-02, *Financial Instruments-Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures*, which eliminates the troubled debt restructuring accounting model in Accounting Standards Codification (“ASC”) 310-40 for creditors that have adopted the guidance on measurement of credit losses in ASU 2016-13. Additionally, the ASU requires the public business entities to disclose current period gross write-offs by year of origination for financing receivables and net investments in leases as part of their vintage disclosures under ASC 326. For entities that have adopted the amendments in ASU 2026-13, the amendments are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. For entities that have not yet adopted the amendments in ASU 2016-13, the effective dates are the same as effective dates in ASU 2016-13. The Company adopted this ASU prospectively effective January 1, 2023 and determined that the adoption of this new accounting standard did not have a material impact on its financial statements.

2. Variably-Priced Revenue

The Company recognizes variable-fee licenses (i.e., fee per test) and sales of hardware equipment and accessories in accordance with ASC 606, *Revenue from Contracts with Customers*. Total fees from variable-fee licenses represent approximately \$8,561 and \$5,842 for the three months ended March 31, 2023 and 2022, respectively. Total sales of hardware and equipment accessories represent approximately \$340 and \$285 of revenues for the three months ended March 31, 2023 and 2022, respectively. The remainder of the revenue is earned from leasing the Company’s testing product for a fixed fee, which is not subject to Topic 606.

Upon shipment under variable-fee license contracts, assets for lease are sold to the customers, and the asset is recognized as cost of revenue.

3. Accounts Receivable and Allowance for Credit Losses

Accounts receivable are recorded at the invoiced amount, net of allowance for credit losses. The allowance for credit losses is based on management’s assessment of the collectability of accounts. The Company regularly reviews the adequacy of this allowance for credit losses by considering historical experience, the age of the accounts receivable balances, the credit quality of the customers, current economic conditions, reasonable and supportable forecasts of future economic conditions, and other factors that may affect customers’ ability to pay to determine whether a specific reserve is appropriate. Accounts receivable deemed uncollectable are charged against the allowance for credit losses when identified.

Semler Scientific, Inc.
Notes to Condensed Financial Statements
Unaudited
(In thousands of U.S. Dollars, except share and per share data)

4. Inventory

Inventory, which is made up of finished goods, is recorded at the lower of cost or net realizable value. Cost is determined on the first-in, first-out method. The Company periodically analyzes its inventory levels to identify inventory that has a cost basis in excess of its estimated realizable value and writes down such inventory as appropriate. Inventory balance was \$512 and \$469 as of March 31, 2023 and December 31, 2022, respectively.

5. Assets for Lease, net

The Company enters into contracts with customers for the Company's QuantaFlo product. The Company has determined these contracts meet the definition of a lease under Topic 842. Operating leases are short-term in nature (monthly, quarterly or one year), and all of which have renewal options. The assets that may be associated with these leasing arrangements are identified below as assets for lease. Upon shipment under operating leases, assets for lease are depreciated. During the three months ended March 31, 2023 and 2022, the Company recognized approximately \$9,304 and \$7,889, respectively, in lease revenues related to these arrangements, which is included in Revenues on the Condensed Statements of Income.

Assets for lease consist of the following:

	March 31, 2023	December 31, 2022
Assets for lease	\$ 3,970	\$ 3,702
Less: accumulated depreciation	(1,097)	(1,224)
Assets for lease, net	<u>\$ 2,873</u>	<u>\$ 2,478</u>

Depreciation expense amounted to \$70 and \$108 for the three months ended March 31, 2023 and 2022, respectively. Reduction to accumulated depreciation for returned and retired items was \$197 and \$90 for the three months ended March 31, 2023 and 2022, respectively. The Company recognized a loss on disposal of assets for lease in the amount of \$78 and \$74 for the three months ended March 31, 2023 and 2022, respectively.

6. Property and Equipment, net

Capital assets consist of the following:

	March 31, 2023	December 31, 2022
Capital assets	\$ 1,301	\$ 1,206
Less: accumulated depreciation	(598)	(539)
Capital assets, net	<u>\$ 703</u>	<u>\$ 667</u>

Depreciation expense amounted to \$59 and \$46 for the three months ended March 31, 2023 and 2022, respectively.

7. Long-Term Investments

Long term investments consist of the following for the periods presented:

	March 31, 2023	December 31, 2022
Investments in SYNAPS Dx	\$ 512	\$ 512
Investments in Mellitus Health Inc.	309	309
Total initial cost	<u>\$ 821</u>	<u>\$ 821</u>

Semler Scientific, Inc.
Notes to Condensed Financial Statements
Unaudited
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In September 2020, the Company acquired a promissory note from NeuroDiagnostics Inc., which is doing business as SYNAPS Dx, in the principal amount of \$500, \$100 of which was retained for expense reimbursement. Subsequently, in December 2020, the Company agreed to convert the promissory note, together with all accrued interest thereon, into shares of preferred stock of SYNAPS Dx as repayment in full of the promissory note. The value of the note exchanged for the shares of preferred stock of SYNAPS Dx held by the Company as of March 31, 2023 and December 31, 2022 was approximately \$512.

In October 2020, the Company acquired from a seller a convertible promissory note previously issued by Mellitus Health Inc., (“Mellitus”) to such seller for a purchase price of \$59, which represented the \$50 principal amount of the note and all accrued and unpaid interest thereon.

Subsequently, in October 2020, the Company purchased \$250 of shares of preferred stock of Mellitus, and in connection with such transaction, the convertible promissory note, together with all accrued interest thereon, also converted pursuant to its terms into shares of preferred stock of Mellitus as repayment in full of such convertible promissory note. The value of consideration exchanged for the shares of preferred stock of Mellitus held by the Company as of March 31, 2023 and December 31, 2022 was approximately \$309.

The investments in SYNAPS Dx and Mellitus securities that were retained by the Company as of March 31, 2023 were recorded in accordance with ASC 321, *Investments – equity securities*, which provides that investments in equity securities in privately-held companies without readily determinable fair values are generally recorded at cost, plus or minus subsequent observable price changes in orderly transactions for identical or similar investments, less impairments. The Company elected the practical expedient permitted by ASC 321 and recorded the above investments on a cost basis. As a part of the assessment for impairment indicators, the Company considers significant deterioration in the earnings performance and overall business prospects of the investee as well as significant adverse changes in the external environment these investments operate. If qualitative assessment indicates the investments are impaired, the fair value of these equity securities would be estimated, which would involve a significant degree of judgement and subjectivity.

The Company qualitatively assessed both investments for impairment in accordance with ASC 321. As of March 31, 2023 and December 31, 2022, the Company determined that there was no impairment for the investment in SYNAPS Dx and the investment in Mellitus.

8. Fair Value Measurements

The following table presents fair value hierarchy of the Company’s financial assets measured at fair value on a recurring basis:

	Fair Value Hierarchy			
	Level 1	Level 2	Level 3	Total
As of March 31, 2023				
U.S. Treasury bills (Included in short-term investments)	\$ 37,663	\$ —	\$ —	\$ 37,663
Investment in debt securities (Included in notes held for investment)	—	—	4,072	4,072
Total Assets	\$ 37,663	\$ —	\$ 4,072	\$ 41,735

Semler Scientific, Inc.
Notes to Condensed Financial Statements
Unaudited
(In thousands of U.S. Dollars, except share and per share data)

As of December 31, 2022	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
U.S. Treasury bill	\$ 20,073	\$ —	\$ —	\$ 20,073
(Included in short-term investments)				
Investment in debt securities	—	—	3,679	3,679
(Included in notes held for investment)				
Total Assets	<u>\$ 20,073</u>	<u>\$ —</u>	<u>\$ 3,679</u>	<u>\$ 23,752</u>

Treasury bills were purchased on February 10, 2023, March 3, 2023 and March 24, 2023, at a cost of \$9,999, \$20,498 and \$6,999, respectively, and fair values accrete to maturity dates at an interest rate of 4.61% , 4.84% and 4.51%, respectively. As of March 31, 2023, the interest income recorded on these bills was \$167.

The Company's privately held debt securities are recorded at fair value on a recurring basis. The estimation of fair value for these investments requires the use of significant unobservable inputs, and as a result, the Company deems these assets as Level 3 within the fair value measurement framework. For investments without a readily determinable fair value, the Company applies valuation methods based on information available, including the market approach and bond plus call pricing approach. Observable transactions, such as the issuance of new equity by an investee and changes in market yield, are indicators of investee enterprise value and are used to estimate the fair value of the Company's investments.

The Company valued the Monarch Debt Security using a bond plus call option model reflecting the cash flow from the Monarch Debt Security and assuming a 20% probability of an equity financing, a 20% probability of a change of control, and a 60% probability of payment at maturity or an insolvency event. The Company valued the Mellitus debt security using a bond plus call option model reflecting the cash flow from the Mellitus debt securities and assuming a 70% probability of an equity financing, 8% probability of a change of control, and a 22% probability of payment at maturity or an insolvency event. The fair value of the Company's privately held debt securities were estimated at \$4,072 and \$3,679 as of March 31, 2023 and December 31, 2022, respectively.

The key inputs for the valuation model are:

	March 31, 2023
Risk-free rate	3.67% - 4.67%
Cash flow discount rate	26.4% - 28.7%
Expert term in years	0.25 - 3.68
Expected volatility	105.0%- 205.0%

The following table represents changes in the notes held for the investments with significant unobservable inputs (Level 3):

	Convertible Notes
Balance as of December 31, 2022	\$ 3,679
Purchased	500
Change in fair value of the notes held for investment	(107)
Balance as of March 31, 2023	<u>\$ 4,072</u>

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9. Notes Held for Investment

Notes receivable consist of the following for the periods presented:

	March 31 2023	December 31 2022
Senior secured promissory notes	\$ 1,000	\$ 1,000
Secured convertible promissory notes	4,072	3,679
Total notes held for investment	\$ 5,072	\$ 4,679

In June 2022, the Company loaned Mellitus an aggregate of \$1,000 through the purchase of two senior secured promissory notes that bear interest at a rate of 5% per annum, and mature in three years unless accelerated due to an event of default as provided in the notes. Repayment of notes is secured by a first priority interest in all of Mellitus' assets.

In May 2022, to facilitate the subordination of such notes in connection with the purchase of the senior secured notes, the Company acquired \$179 aggregate principal amount of outstanding convertible notes of Mellitus, which, as amended, mature July 5, 2025, if not automatically converted into preferred stock prior thereto. This note bears an interest rate of 10% per annum.

In December 2022, the Company entered in a senior convertible promissory note arrangement with Monarch Medical Technology, LLC ("Monarch"), providing Monarch with up to \$5,000 in available funding, of which \$4,000, in principle was drawn as of March 31, 2023 (the "Debt Security"). The remaining \$1,000 is available to be drawn at any time unless there is an Event of Default that is continuing. The Debt Security accrues interest at 10% per annum, payable monthly, and the principal balance is due December 6, 2024. The note along with up to \$100 of transaction expenses is due and payable on the occurrence of an event of default or change of control unless accelerated due to the conversion into preferred stock prior thereto at the option of the Company. The Company has the option to extend the maturity date for two consecutive one-year terms. The Debt Security can be converted into Monarch's shares at the Company's option upon (a) an equity financing at Monarch, (b) upon a change of control at Monarch, or (c) at the Company's option at any time prior to the maturity date. If converted upon a change of control, the Company has the right to receive a cash payment equal to the balance of the Debt Security or the amount payable upon conversion into Monarch's shares. The Debt Security is redeemable at any time at Monarch's option or automatically upon an Event of Default.

The Company made an irrevocable election to account for the Debt Securities using the fair value option under ASC 825 – *Financial Instruments* ("ASC 825") and will measure the fair value of the Debt Securities in accordance with ASC 820. The Company made the fair value option election to present the Debt Securities in its entirety at fair value, which it believes to be preferable to recognizing the host instrument at fair value under ASC 320 and potentially separately recognizing certain embedded features as bifurcated derivatives under ASC 815. As of March 31, 2023, the Company estimated the fair value of the Debt Securities of Monarch to be \$3,858 and Mellitus \$214. As of December 31, 2022, the Company estimated the fair value of the Debt Securities of Monarch to be \$3,500 and Mellitus \$179, which were equivalent of the outstanding principal balances at December 31, 2022.

The Company recognizes interest income as it accrues on the Debt Securities, which is included in interest income in the statements of income. For the quarters ended March 31, 2023 and 2022, the Company recognized \$82 and \$0, respectively, of interest income from Monarch and Mellitus notes, which is included in prepaid and other current assets. The Company recognizes changes in fair value of the Debt Securities in the statements of income separately from the interest income. For the quarter ended March 31, 2023, the Company recorded change in fair value of \$107.

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10. Other Non-current assets

Other non-current assets consist of the following for the periods presented:

	March 31, 2023	December 31, 2022
Prepaid licenses	\$ 2,487	\$ 2,490
Other	331	352
Total other non-current assets	<u>\$ 2,818</u>	<u>\$ 2,842</u>

In April 2021, the Company entered into a five-year agreement, as amended in December 2022, with Mellitus to exclusively market and distribute its product line in the United States, including Puerto Rico, except for selected accounts. Under this distribution agreement and its amendments, the Company agreed to purchase \$2,500 of product licenses and prepaid \$2,500 for the license purchases. This prepayment, which was reclassified to a long-term asset in 2022 due to the change in the estimation of the recoverability period is expected to be more than one year. The long-term portion of the prepaid licenses are included in the Other non-current assets. Unless early terminated in accordance with its terms, the exclusive distribution agreement will remain in full force and effect until April 1, 2026, and for renewal periods of one year each upon its anniversary date, unless terminated by at least 60 days written notice prior to such an anniversary date. Either party may terminate the agreement by written notice to the other party upon or after the breach of any material provision of this agreement by the other party, if the other party has not cured such breach within 60 days after written notice thereof from the non-breaching party.

Revenue from these product licenses will be recognized in accordance with ASC 606, *Revenue from Contracts with Customers*. The Company did not generate significant revenue from these product licenses during the three months ended March 31, 2023 and 2022.

Other includes right-of-use asset ("ROU") of \$212, miscellaneous receivables of \$100, and long-term deposits of \$19 as of March 31, 2023. As of December 31, 2022, ROU was \$233, miscellaneous receivable was \$100, and long-term deposit was \$19.

11. Accrued Expenses

Accrued expenses consist of the following:

	March 31, 2023	December 31, 2022
Compensation	\$ 2,682	\$ 2,467
Accrued Taxes	3,781	1,923
Miscellaneous Accruals	743	358
Total Accrued Expenses	<u>\$ 7,206</u>	<u>\$ 4,748</u>

12. Concentration of Credit Risk

Credit risk is the risk of loss from amounts owed by the financial counterparties. Credit risk can occur at multiple levels; as a result of broad economic conditions, challenges within specific sectors of the economy, or from issues affecting individual companies. Financial instruments that potentially subject the Company to credit risk consist of cash and accounts receivable.

The Company maintains cash with major financial institutions. The Company's cash consists of bank deposits held with banks that, at times, exceed federally insured limits. The cash and cash equivalents also include short-term treasury bills with original maturities of three months or less. As of March 31, 2023, the Company held deposits of \$5,305, approximately \$5,198 of which held by First Republic Bank ("FRB"). The Company's deposits at FRB are largely uninsured. On May 1, 2023, JP Morgan Chase Bank ("JPM") agreed to acquire all the assets and liabilities of FRB. Consequently, all depositors of FRB will become the depositors of JPM. Deposits at JPM are largely uninsured. The Company also invested in U.S. treasury bills in the amount of \$37,663. The

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Company limits its credit risk by dealing with counterparties that are considered to be of high credit quality and by performing periodic evaluations of the relative credit standing of these financial institutions.

Management periodically monitors the creditworthiness of its customers and believes that it has adequately provided for exposure to potential credit loss. For the three months ended March 31, 2023, two customers (including affiliates) accounted for 40.9% and 33.5% of the Company's revenues. For the three months ended March 31, 2022, two customers (including affiliates) accounted for 39.2% and 31.7% of the Company's revenues. As of March 31, 2023, three customers accounted for 60.0%, 15.4%, and 13.6% of the Company's accounts receivable. As of December 31, 2022, three customers accounted for 26.8%, 25.9%, and 16.8% of the Company's accounts receivable. The Company's largest customer in terms of both revenues and accounts receivable in the three months ended March 31, 2023 is a U.S. diversified healthcare company and its affiliated plans.

As of March 31, 2023, two vendors accounted for 20.6% and 13.9% of the Company's accounts payable. As of December 31, 2022, two vendors accounted for 25.8% and 10.8% of the Company's accounts payable.

13. Lessee Arrangements

On July 31, 2020, the Company entered into a 61-month lease agreement for office space to use, as necessary, for office administration, lab space and assembly and storage purposes, located in Santa Clara, California. The Company took possession of the leased office space in September 2020, and the lease is effective through September 30, 2025.

As of March 31, 2023, the remaining lease term is two years and six months with no options to renew. The Company recognized facilities lease expenses of \$22 and \$22 for the three months ended March 31, 2023 and 2022, respectively.

The following table summarizes the future minimum rental payments required under operating leases that had initial or remaining non-cancelable lease terms greater than one year as of March 31, 2023:

	Total
2023 Remaining period	67
2024	93
2025	71
Total undiscounted future minimum lease payments	231
Less: present value discount	(7)
Total lease liabilities	224
Lease expense in excess cash payment	(12)
Total ROU asset	<u>\$ 212</u>

As of March 31, 2023, the Company's ROU asset was \$212, which was recorded on the Company's balance sheet as other noncurrent assets, and the Company's current and noncurrent lease liabilities were \$86 and \$138, respectively, which were recorded on the Company's balance sheet as other short-term liabilities and other long-term liabilities, respectively.

Lessor Arrangements

The Company enters into contracts with customers for the Company's QuantaFlo product. The Company has determined these contracts meet the definition of a lease under Topic 842. The lease portfolio primarily consists of operating leases that are short-term in nature (monthly, quarterly or one year, all of which have renewal options). The Company allocates the consideration in a bundled contract with its customers based on relative standalone selling prices of the lease and non-lease components. The Company made an accounting policy election to apply the practical expedient to not separate lease and eligible non-lease components. The lease component is the predominant component and consists of fees charged for use of the equipment over the period of the arrangement. The nature of the eligible non-lease component is primarily software support. The assets associated with these leasing arrangements are separately identified in the Balance Sheet as Assets for Lease and separately disclosed in Note 4 to the Unaudited Condensed Financial Statements.

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14. Commitments and Contingencies

Senior Secured Convertible Note

In December 2022, the Company committed a loan of \$5,000 to Monarch through the purchase of a senior secured convertible promissory note that bears interest at a rate of 10% per annum and matures on the second anniversary from the issue date, which can be extended for up to two additional consecutive one-year terms in the Company's sole discretion. The note along with up to \$100 of transaction expenses is due and payable on the occurrence of an event of default or change of control unless accelerated due to the conversion into preferred stock prior thereto at the option of the Company. Monarch borrowed \$3,500 on the issuance date and \$500 in the first quarter of 2023 out of the committed amount of \$5,000 and has agreed to reimburse the Company for up to \$100 of transaction expense. Repayment of the note is secured by a first priority interest in all of Monarch's assets. See Note 8 to the Unaudited Condensed Financial Statements.

Indemnification Obligations

The Company enters into agreements with customers, partners, lenders, consultants, lessors, contractors, sales representatives and parties to certain transactions in the ordinary course of the Company's business. These agreements may require the Company to indemnify the other party against third party claims alleging that its product infringes a patent or copyright. Certain of these agreements require the Company to indemnify the other party against losses arising from: a breach of representations or covenants, claims relating to property damage, personal injury or acts or omissions of the Company, its employees, agents or representatives. The Company has also agreed to indemnify the directors and certain of the officers and employees in accordance with the by-laws of the Company. These indemnification provisions will vary based upon the nature and terms of the agreements. In many cases, these indemnification provisions do not contain limits on the Company's liability, and the occurrence of contingent events that will trigger payment under these indemnities is difficult to predict. As a result, the Company cannot estimate its potential liability under these indemnities. The Company believes that the likelihood of conditions arising that would trigger these indemnities is remote and, historically, the Company has not made any significant payment under such indemnification provisions. Accordingly, the Company has not recorded any liabilities relating to these agreements. In certain cases, the Company has recourse against third parties with respect to the aforesaid indemnities, and the Company believes it maintains adequate levels of insurance coverage to protect the Company with respect to potential claims arising from such agreements.

401(K) Plan

Effective January 1, 2022, the Company started to match 50% of employee's 401(k) deferral up to a maximum of 6% of the employee's eligible earnings.

Other

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") provides for an employee retention payroll tax credit for certain employers, which is a refundable tax credit against certain employment taxes equal to 50% of the qualified wages an eligible employer pays to employees after March 12, 2020 and before December 31, 2021. For each employee, wages (including health plan costs) up to \$10,000 can be counted to determine the amount of the 50% credit. The Company started claiming this credit on its July 2020 payroll until mid-April 2021 when it determined that it no longer qualified given the change in government restrictions on travel that had impacted its sales activities. The Company's determination that it qualified to claim the employee retention payroll tax credit is subjective and subject to audit by the Internal Revenue Service ("IRS"). If the IRS were to disagree with the Company's tax position, it could be required to pay the retention credit claimed, along with penalties. As of March 31, 2023, the

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Company has claimed \$1.24 million in this retention credit. No credit was claimed for the three months ended March 31, 2023 and for the year ended December 31, 2022.

Litigation

From time to time in the normal course of business, the Company is subject to various legal matters, such as threatened or pending claims or litigation. Although the results of claims and litigation cannot be predicted with certainty, the Company does not believe it is a party to any claim or litigation the outcome of which, if determined adversely to it, would individually or in the aggregate be reasonably expected to have a material adverse effect on its results of operations or financial condition.

15. Stock Incentive Plan

The Company's stock-based compensation program is designed to attract and retain employees while also aligning employees' interests with the interests of its stockholders. Stock options have been granted to employees under the stockholder-approved 2007 Key Person Stock Option Plan ("2007 Plan") and stock options and restricted stock have been granted to employees under the stockholder-approved 2014 Stock Incentive Plan ("2014 Plan"). Stockholder approval of the 2014 Plan became effective in September 2014. The 2014 Plan originally provided that the aggregate number of shares of common stock that may be issued pursuant to awards granted under the 2014 Plan may not exceed 450,000 shares (the "Share Reserve"), however in October 2015, the stockholders approved a 1,500,000 increase to the Share Reserve. In addition, the Share Reserve automatically increases on January 1st of each year, for a period of not more than 10 years, beginning on January 1st of the year following the year in which the 2014 Plan became effective and ending on (and including) January 1, 2024, in an amount equal to 4% of the total number of shares of common stock outstanding on December 31st of the preceding calendar year. The Company's Board of Directors may act prior to January 1st of a given year to provide that there will be no January 1st increase in the Share Reserve for such year or that the increase in the Share Reserve for such year will be a lesser number of shares of common stock than would otherwise occur. On January 1, 2023, the Share Reserve increased by 267,685. The Share Reserve is currently 3,582,888 shares as of March 31, 2023.

In light of stockholder approval of the 2014 Plan, the Company no longer grants equity awards under the 2007 Plan. As of March 31, 2023, there were no shares available for future stock-based compensation grants under the 2007 Plan and 1,725,256 shares of an aggregate total of 3,582,888 shares were available for future stock-based compensation grants under the 2014 Plan.

Treasury Stock Acquired

On March 14, 2022, the Company's Board of Directors authorized a share repurchase program under which it may repurchase up to \$20.0 million of its outstanding common stock. Under this program the Company may purchase shares on a discretionary basis from time to time through open market purchases, privately negotiated transactions or other means, including through Rule 10b5-1 trading plans or through the use of other techniques such as accelerated share repurchases. The timing and amount of any transactions will be subject to the discretion of the Company based upon market conditions and other opportunities that it may have for the use or investment of its cash balances. The repurchase program has no expiration date, does not require the purchase of any minimum number of shares and may be suspended, modified or discontinued at any time without prior notice. The Company did not purchase any shares during the three months ended March 31, 2023. The Company purchased 148,500 shares at a cost of approximately \$4,991 as of March 31, 2023.

Stock Awards

The Company granted fully vested stock awards of 18,048 shares of common stock to the non-employee members of the board of directors and employees as compensation during the three months ended March 31, 2023. Net shares issued after deducting taxes paid on these grants were 14,099. Fair value of these stock awards on grant date was \$695. The Company granted fully vested stock awards of 8,406 shares of common stock to the non-employee members of the board of directors, employees and one non-employee as compensation during the three months ended March 31, 2022. Net shares issued after deducting taxes paid on these grants were 6,988. Fair value of these stock awards on grant date was \$628.

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Stock Options

Aggregate intrinsic value represents the difference between the closing market value as of March 31, 2023 of the underlying common stock and the exercise price of outstanding, in-the-money options. A summary of the Company's stock option activity and related information for the three months ended March 31, 2023 is as follows:

	Options Outstanding			
	Number of Stock Options Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In Years)	Aggregate Intrinsic Value (In Thousands)
Balance, December 31, 2022	1,287,847	\$ 3.44	3.03	\$ 38,053
Options exercised	—	—	—	—
Options granted	—	—	—	—
Balance, March 31, 2023	1,287,847	\$ 3.44	2.78	\$ 30,100
Exercisable as of March 31, 2023	1,282,847	\$ 3.34	2.76	\$ 30,100

As of March 31, 2023, the fair value of unvested stock options was approximately \$87. This unrecognized stock-based compensation expense is expected to be recorded over a weighted average period of 3.4 years.

No options were granted during the three months ended March 31, 2023 and 2022.

The Company has recorded an expense of \$702 and \$628 as it relates to stock-based compensation for the three months ended March 31, 2023 and 2022, respectively:

	Three months ended March 31,			
	2023		2022	
Engineering and Product Development	\$	45	\$	45
Sales and Marketing		170		172
General and Administrative		487		411
Total	\$	702	\$	628

16. Income Taxes

The Company's income tax provision for the three months ended March 31, 2023 was \$1,664 and for the three months ended March 31, 2022 was \$583. The income tax provision reflects its estimate of the effective tax rates expected to be applicable for the full year, adjusted for any discrete events that are recorded in the period in which they occurred. The estimates are re-evaluated each quarter based on the estimated tax expense for the full year.

For uncertain tax positions that meet a "more likely than not" threshold, the Company recognizes the benefit of uncertain tax positions in the financial statements. The Company's practice is to recognize interest and penalties, if any, related to uncertain tax positions in income tax expense in the statements of operations.

The effective tax rate for the three months ended March 31, 2023 was 24.68%, compared to 14.79%, in the same period of the prior year. The increase in effective tax rate for the three months ended March 31, 2023 was primarily due to lower tax benefits associated with employee stock-based compensation.

The effective tax rate for the three months ended March 31, 2023 differed from the U.S. federal statutory rate of 21% primarily due to state income taxes (net of federal benefit) and federal and state research and development ("R&D") credit benefit. The effective tax rate for the three months ended March 31, 2022 differed from the U.S. federal statutory rate of 21% primarily due to

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state income taxes (net of federal benefit) partially offset by tax benefits associated with employee share-based compensation plans and federal and state R&D credit benefit.

As of March 31, 2023, and December 31, 2022, the Company had \$447 and \$401, respectively of unrecognized tax benefits, excluding interest and penalties. The Company's practice is to recognize interest and penalty expenses related to uncertain tax positions in income tax expense, which was \$42 and \$30 for the three months ended March 31, 2023, and the year ended December 31, 2022, respectively.

On August 16, 2022, the Creating Helpful Incentives to Produce Semiconductors for America Act of 2022 ("CHIPS and Science Act"), and Inflation Reduction Act ("IRA") was signed into law in the United States. Among other things, CHIPS and Science Act provides incentives and tax credits for the global chip manufacturers who choose to set-up or expand existing operations in the United States. The IRA imposes a 15% corporate alternative minimum tax for tax years beginning after December 31, 2022, levies a 1% excise tax on net stock repurchases after December 31, 2022, and provides tax incentives to promote clean energy. This act is primarily applicable to large corporations with an annual revenue of \$1 billion or over. Implementation of this act has no impact on the Company's financial statements as of March 31, 2023.

17. Net Income Per Share, Basic and Diluted

Basic earnings per share ("EPS") represent net income attributable to common stockholders divided by the weighted average number of common shares outstanding during the measurement period. Diluted EPS represents net income attributable to common stockholders divided by the weighted average number of common shares outstanding during the measurement period while also giving effect to all potentially dilutive common shares that were outstanding during the period using the treasury stock method.

Basic and diluted EPS is calculated as follows:

	Three months ended March 31,					
	2023			2022		
	Shares	Net Income	EPS	Shares	Net Income	EPS
Basic	6,701,199	\$ 4,969	\$ 0.74	6,777,950	\$ 3,360	\$ 0.50
Common stock warrants	64,825	—		71,839	—	
Common stock options	1,130,019	—		1,266,667	—	
Diluted	<u>7,896,043</u>	<u>\$ 4,969</u>	<u>\$ 0.63</u>	<u>8,116,456</u>	<u>\$ 3,360</u>	<u>\$ 0.41</u>

As of March 31, 2023, 5,000 options related to stock awards were granted and unvested. These options were considered anti-dilutive for the computation of diluted net income per share. Hence, these options were excluded from the computation of diluted net income per share. As of March 31, 2022, there were no weighted average shares outstanding of common stock equivalents excluded from the computation of diluted net income per share.

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

The following discussion and analysis should be read together with our condensed unaudited financial statements and the related notes appearing elsewhere in this quarterly report on Form 10-Q and with the audited financial statements and notes for the fiscal year ended December 31, 2022, and the information under the headings “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K filed with the SEC on March 23, 2023, or the Annual Report. This discussion contains forward-looking statements reflecting our current expectations that involve risks and uncertainties. See “Cautionary Note Regarding Forward-Looking Statements” for a discussion of the uncertainties, risks and assumptions associated with these statements. Actual results and the timing of events could differ materially from those discussed in our forward-looking statements as a result of many factors, including those set forth under “Risk Factors” in the Annual Report.

Overview

We are a company that develops, manufactures and markets innovative products and services that assist our customers in evaluating and treating chronic diseases. Our flagship product, QuantaFlo, which is patented and cleared by the FDA, is a rapid point-of-care test that measures arterial blood flow in the extremities. The QuantaFlo test aids in the diagnosis of cardiovascular diseases, such as peripheral arterial disease, or PAD, and heart dysfunction. QuantaFlo is used by healthcare providers to evaluate their patient’s risk of mortality and major adverse cardiovascular events.

We have an agreement with Mellitus Health Inc., or Mellitus, a private company to exclusively market and distribute Insulin Insights, an FDA-cleared software product that recommends optimal insulin dosing for diabetic outpatients in the United States, including Puerto Rico, except for selected accounts.

We have minority investments in Mellitus, in Monarch Medical Technology LLC, or Monarch,, a private digital health company whose proprietary product, EndoTool Glucose Management System, offers a technological solution for inpatient glycemic management, and in Neurodiagnostics, Inc., which is doing business as SYNAPS Dx and whose product, Discern, is a test for early Alzheimer’s disease. We continue to develop additional complementary proprietary products in-house (such as our recently released QuantaFlo extension as an aid to measure hemodynamics related to heart dysfunction), and seek out other arrangements for additional products and services that we believe will bring value to our customers and to our company. We believe our current products and services, and any future products or services that we may offer, position us to provide valuable information to our customer base, which in turn permits them to better guide patient care.

In the three months ended March 31, 2023, we had total revenues of \$18.2 million and net income of \$5.0 million, compared to total revenues of \$14.0 million and net income of \$3.4 million in the same period in 2022.

Recent Developments

In late March 2023, CMS issued the final 2024 rate announcement with payment changes for the Medicare Advantage and Part D prescription drug programs. Essentially, CMS is phasing in a new Medicare Advantage risk adjustment model (2024 model) from the previous model (2020 model) over a three year period. The 2024 model does not include risk adjusted for PAD without complications, which payments many health insurers relied upon for their Medicare Advantage patients in the 2020 model. The changes will be phased in as follows: in calendar year 2023, full payment under the 2020 model; in calendar year 2024, 67% of the 2020 model; in calendar year 2025, 33% of the 2020 model.

Results of Operations

Three Months Ended March 31, 2023 Compared to Three Months Ended March 31, 2022

Revenues

We had revenues of \$18.2 million for the three months ended March 31, 2023, compared to \$14.0 million in the same period of 2022. Our revenues are primarily from fees charged to customers for use of our products and from sale of accessories used with these products. We recognized revenues of \$17.9 million from fees for our products for the three months ended March 31, 2023, consisting of \$9.3 million from fixed-fee licenses and \$8.6 million from variable-fee licenses, compared to \$13.7 million in the same period of the prior year, consisting of \$7.9 million from fixed-fee licenses and \$5.8 million from variable-fee licenses. The remainder was from sales of hardware and equipment accessories, which were \$0.3 million for each of the three months ended March 31, 2023 and 2022.

Revenues from fees for products are recognized monthly, usually billed as a fixed monthly fee or as a variable monthly fee dependent on usage.

The primary reason for the increase in fixed-fee revenues was growth in the number of installed units from both new customers and established customers, which we believe is the result of our sales and marketing efforts. The primary reason for the increase in variable-fee revenues was an increase in testing at our largest customer, partially offset by lower pricing at this customer.

Operating expenses

We had total operating expenses of \$12.0 million for the three months ended March 31, 2023, an increase of \$1.9 million or 18%, compared to \$10.1 million in the same period in the prior year. The primary reasons for this change were increased expenses associated with our expanding business, such as increased personnel expense and consulting fees. As a percentage of revenues, operating expenses decreased to 66% in the first quarter of 2023 as compared to 72% in the prior year period. The changes in the various components of our operating expenses are described below.

Cost of revenues

We had cost of revenues of \$1.3 million for the three months ended March 31, 2023, an increase of \$0.3 million or 34%, compared to \$1.0 million for the same period in 2022. The increase was primarily due to an increase in headcount, annual pay increases and increased consulting costs associated with QuantaFlo. As a percentage of revenues, cost of revenues was 7% in the first quarter of 2023, the same as first quarter of 2022.

Engineering and product development expense

We had engineering and product development expense of \$1.6 million for the three months ended March 31, 2023, an increase of \$0.5 million, or 45%, compared to \$1.1 million in the same period of the prior year. The increase was primarily due to increased headcount and annual pay increases, as well as consulting and engineering material costs associated with QuantaFlo extensions and upgrades. As a percentage of revenues, engineering and product development expense was at 9% in the first quarter of 2023, compared to 8% for the prior year period.

Sales and marketing expense

We had sales and marketing expense of \$5.2 million for the three months ended March 31, 2023, an increase of \$0.5 million, or 11%, compared to \$4.7 million in the same period of the prior year. The increase was primarily due to increased headcount, annual salary increases, and associated expense to serve a continued expansion of customer activities, as well as an increase in trade shows and travel costs, as our business resumed more typical pre-COVID activities. As a percentage of revenues, sales and marketing expense decreased to 29% in the first quarter of 2023, as compared to 33% in the prior year period.

General and administrative expense

We had general and administrative expense of \$3.8 million for the three months ended March 31, 2023, an increase of \$0.5 million, or 17%, compared to \$3.3 million in the same period of the prior year. The increase was primarily due to the growth in our business, which led to increased expenses including, compensation due to increased headcount and annual salary and stock compensation increases, as well as higher professional fees, offset by lower insurance costs. As a percentage of revenues, general and administrative expense decreased to 21% in the first quarter of 2023, as compared to 24% in the prior year period.

Other income, net

We had total other income of \$377 thousand for the three months ended March 31, 2023 compared to \$1 thousand in 2022. The increase from the prior year period was due to interest income of \$484 from increased investments in U.S. Treasury bills, debt securities and higher rates on short term government debt and money market funds, partially offset by changes in the fair value of investments of \$107 thousand.

Income tax provision

We had income tax provision of \$1.7 million for the three months ended March 31, 2023, an increase of \$1.1 million or 185%, compared to \$0.6 million in the same period of the prior year. The effective tax rate for the three months ended March 31, 2023 was 25%, compared to 15%, in the same period of the prior year. The increase in effective tax rate was primarily due to lower tax benefits associated with employee stock-based compensation.

Net income

We had net income of \$5.0 million, or \$0.74 per basic share and \$0.63 per diluted share, for the three months ended March 31, 2023, an increase of \$1.6 million, or 48%, compared to a net income of \$3.4 million, or \$0.50 per basic share and \$0.41 per diluted share, for the same period of the prior year.

Liquidity and Capital Resources

We had cash and cash equivalents and short-term investments of \$43.0 million at March 31, 2023 compared to \$43.1 million at December 31, 2022, and total current liabilities of \$8.9 million at March 31, 2023 compared to \$6.9 million at December 31, 2022. As of March 31, 2023, we had working capital of approximately \$46.7 million. We believe that our current sources of funds will provide us with adequate liquidity during the period following March 31, 2023, as well as in the long-term.

Our cash is held in a variety of non-interest bearing bank accounts and treasury bills. At March 31, 2023, we held approximately \$37.7 million of U.S. Treasury bills, and the remaining cash of \$5.3 million was held in non-interest bearing bank accounts. We have banking relationships with First Republic Bank, or FRB, and Edward Jones and are taking steps to diversify further. As of March 31, 2023, we held approximately \$5.2 million of deposits at FRB. Our deposits at FRB are largely uninsured. On May 1, 2023, JP Morgan Chase Bank, or JPM agreed to acquire all the assets and liabilities of FRB. Consequently, all depositors of FRB will become the depositors of JPM. Deposits at JPM are largely uninsured. Our investment guidelines allow for holdings in U.S. government and agency securities, corporate securities, taxable municipal bonds, commercial paper, money market accounts and treasury bills. In addition, we have, and may in the future, choose to invest some of our cash resources in other entities that may have complementary technologies or product offerings.

Operating activities

We generated \$0.9 million of net cash from operating activities for the three months ended March 31, 2023, compared to \$1.5 million of net cash from operating activities for the same period of the prior year. The change was primarily due to increases in our working capital requirements. Non-cash adjustments to reconcile net income to net cash from operating activities provided net cash of \$0.7 million and were primarily due to stock-based compensation expense of \$0.7 million, depreciation of \$0.1 million, loss on disposal of assets for lease of \$0.1 million, change in fair values of investments of \$0.1 million and allowance for doubtful accounts of \$0.1 million, partially offset by gain on short-term investments of \$0.3 million and deferred tax income of \$0.1 million. Changes in operating assets and liabilities used \$4.8 million of net cash. These changes in operating assets and liabilities included cash used by

trade receivables of \$5.5 million due to timing of revenue recognition, prepaid expenses other assets of \$1.3 million, trade payables of \$0.5 million, partially offset by cash provided by accrued expenses of \$2.5 million.

Investing activities

We used \$18.4 million of net cash in investing activities for the three months ended March 31, 2023, which reflects the purchase of short-term treasury bills of \$37.5 million, the purchase of a promissory note held for investment of \$0.5 million, funding to purchase assets for lease of \$0.5 million and fixed asset purchases of \$0.1 million to support our growing business, partially offset by the proceeds from maturities of short-term treasury bills of \$20.2 million.

We used \$0.3 million of net cash in investing activities for the three months ended March 31, 2022, which reflects funding of purchases of assets for lease of \$0.2 million and fixed asset purchases \$0.1 million to support our growing business.

Financing activities

We used \$0.1 million in net cash from financing activities during the three months ended March 31, 2023, which reflects payment of taxes withheld for stock grants of \$0.1 million.

We used \$0.1 million in net cash from financing activities during the three months ended March 31, 2022, which reflects payment of taxes withheld for stock grants of \$0.1 million and \$0.1 million for the treasury stock acquisition, under our recently announced share purchase program, partially offset by proceeds from exercise of stock options of \$0.1 million.

Critical Accounting Policies and Estimates

There have been no material changes to the Company's critical accounting policies and estimates described in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 23, 2023.

New Accounting pronouncements recently adopted

We have considered recently issued accounting pronouncements and do not believe the adoption of such pronouncements will have a material impact on our condensed consolidated financial statements. See Note 1 to Condensed Financial Statements for the new accounting pronouncements adopted in the first quarter of 2023.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Not applicable.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure material information required to be disclosed in our reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Interim Chief Executive Officer, our Senior Vice President, Finance and Accounting and our Vice President, Finance, as appropriate, to allow timely decisions regarding required financial disclosure. In designing and evaluating the disclosure controls and procedures, we recognized that a control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected. Management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision of and with the participation of our management, including our Interim Chief Executive Officer, our Senior Vice President, Finance and Accounting and our Vice President, Finance, we evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of March 31, 2023.

Based upon that evaluation, our Interim Chief Executive Officer, our Senior Vice President, Finance and Accounting and our Vice President, Finance concluded that our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting during our first fiscal quarter ended March 31, 2023.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

None.

Item 1A. Risk Factors.

Not applicable.

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

(a) Recent Sales of Unregistered Securities

None.

(b) Use of Proceeds

Not Applicable.

(c) Issuer Purchases of Equity Securities.

None.

Item 3. Defaults upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

Exh. No.	Exhibit Name
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of our Form 8-K filed with the Securities and Exchange Commission on November 2, 2015).
3.2	Third Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 of our Form 8-K filed with the Securities and Exchange Commission on April 19, 2023)
10.1	Employment Agreement with Wayne T. Pan dated March 29, 2023
31.1	Rule 13a-14(a) Certification of Principal Executive Officer of Registrant
31.2	Rule 13a-14(a) Certification of Principal Financial Officer of Registrant
32.1*	Section 1350 Certification
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase
104	The cover page from Semler Scientific's Quarterly Report on Form 10-Q for the three months ended March 31, 2023 is formatted in Inline XBRL and it is contained in Exhibit 101

* These certifications are furnished to the SEC pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

SIGNATURES

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

May 12, 2023

SEMLER SCIENTIFIC, INC.

By: /s/ Douglas Murphy-Chutorian
Douglas Murphy-Chutorian
Interim Chief Executive Officer

By: /s/ Andrew B. Weinstein
Andrew B. Weinstein
Senior Vice President, Finance and Accounting

EXECUTIVE EMPLOYMENT AGREEMENT

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this Employment Agreement (“Agreement”) is made between Semler Scientific, Inc. (the “Company”) and Wayne T. Pan (“Executive”). The Company and Executive are referred to collectively as the “Parties” and individually as a “Party.” This Agreement is effective as of the date it is signed by the Parties.

1. Employment.

- (a) Term. The Company will employ Executive pursuant to this Agreement, commencing as of April 3, 2023 (the “Start Date”) and continuing until such employment is terminated (the time between the Start Date and the Date of Termination is the “Term”).
- (b) At-Will Employment. Executive’s employment with the Company will be “at will,” meaning that Executive’s employment may be terminated by the Company or Executive at any time, for any reason or no reason, with or without notice, and with or without Cause. In addition, the Board of Directors of the Company (the “Board”) may modify Executive’s job title, supervisor, wages, work location, and benefits from time to time in its discretion. Although Employee’s job duties, title, location, compensation, and benefits, as well as the Company’s personnel policies and procedures, may change from time to time, the “at will” nature of Executives’ employment may only be changed in an express written agreement signed by Executive and a duly authorized officer of the Company other than Executive.
- (c) Position and Duties. Executive shall serve as the Chief Executive Officer of the Company and shall have such powers and duties as may from time to time be prescribed by the Board. Executive agrees that during the term of Executive’s employment with the Company, Executive will not (i) engage in any other employment, occupation, consulting, or other business activity directly related to the business in which the Company is now involved or becomes involved during the Term, (ii) own more than five percent (5%) of the stock of any other Company, or (iii) engage in any other activities that conflict with Executive’s obligations to the Company. Notwithstanding the foregoing, Executive may serve on other boards of directors, with the approval of the Board or engage in religious, charitable or other community activities as long as such services and activities do not create a conflict of interest or interfere with Executive’s performance of Executive’s duties to the Company.

2. Compensation and Related Matters.

- (a) Base Salary. Executive’s initial base salary during the Term will be Four Hundred and Fifty Thousand Dollars (\$450,000.00) per year, less applicable deductions and withholdings. Executive’s base salary will be subject to periodic review by the Board or the Compensation Committee of the Board (the “Compensation Committee”). The base salary in effect at any given time is referred to herein as “Base Salary.” The Base Salary
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will be payable in a manner that is consistent with the Company's usual payroll practices for its executive officers.

- (b) **Incentive Compensation.** Executive will be eligible to receive cash incentive compensation as determined by the Board or the Compensation Committee from time to time. Initially, Executive will be eligible to earn an annual discretionary bonus of up to 100% of Executive's base salary; *provided* that for calendar year 2023, Executive will be eligible to earn a discretionary bonus of up to a dollar amount equal to the product of (A) 100% of Executive's base salary, and (B) a fraction, the numerator of which is the number of days in the calendar year measured from Executive's Start Date and the denominator of which is 365. The target annual incentive compensation in effect at any given time is referred to herein as "**Target Bonus.**" The actual amount of Executive's annual incentive compensation, if any, will be determined in the sole discretion of the Board or the Compensation Committee. Executive must be employed by the Company on the date such incentive compensation is paid in order to earn or receive any annual incentive compensation. Any incentive compensation that becomes payable hereunder shall be paid no later than March 15th of the calendar year following the calendar year to which the bonus pertains.
- (c) **Expenses.** The Company will reimburse Executive for all reasonable and necessary expenses incurred by Executive in connection with the performance of Executive's duties hereunder upon receipt of documentation in accordance with the Company's regular reimbursement procedures and practices in effect from time to time.
- (d) **Other Benefits.** Executive will be eligible to participate in any retirement plans and any health, life, accident, general liability, employees' and officers' liability or disability insurance, paid time off, or other benefit plans or programs made available to other similarly situated employees of Company when such plans are established and as long as they are kept in force by the Company, provided that Executive meets the eligibility requirements and other terms, conditions and restrictions of the respective plans and programs.

3. **Termination of Employment.**

- (a) **Death.** Executive's employment hereunder shall terminate upon Executive's death.
 - (b) **Disability.** The Company may terminate Executive's employment if Executive is disabled and unable to perform or expected to be unable to perform the essential functions of Executive's then existing position or positions under this Agreement with or without reasonable accommodation for a period of 365 days (which need not be consecutive) in any 24-month period. If any question shall arise as to whether during any period Executive is disabled so as to be unable to perform the essential functions of Executive's then existing position or positions with or without reasonable accommodation, Executive may, and at the request of the Company shall, submit to the Company a certification in reasonable detail by a physician selected by the Company to whom Executive or Executive's guardian has no reasonable objection as to whether Executive is so disabled or how long such disability is expected to continue, and such certification shall for the
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purposes of this Agreement be conclusive of the issue. Executive shall cooperate with any reasonable request of the physician in connection with such certification. If such question arises and Executive fails to submit such certification, the Company's determination of such issue shall be binding on Executive. Nothing in this Section 3(b) waives Executive's rights, if any, under existing law including, without limitation, the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 *et seq.* and the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*

(c) Termination by the Company for Cause. For purposes of this Agreement, "Cause" means any of the following:

(i) conduct by Executive constituting a material act of misconduct in connection with the performance of Executive's duties, including, without limitation, (A) willful failure or refusal to perform material responsibilities that have been requested by the Board; (B) dishonesty to the Board with respect to any material matter; or (C) misappropriation of funds or property of the Company or any of its subsidiaries or affiliates;

(ii) the commission by Executive of acts satisfying the elements of (A) any felony or (B) a misdemeanor involving moral turpitude, deceit, dishonesty or fraud;

(iii) any misconduct by Executive, regardless of whether or not in the course of Executive's employment, that would reasonably be expected to result in material injury or reputational harm to the Company or any of its subsidiaries or affiliates if Executive were to continue to be employed in the same position;

(iv) continued unsatisfactory performance or non-performance by Executive of Executive's duties hereunder (other than by reason of Executive's physical or mental illness, incapacity or disability) which has continued for more than 30 days following written notice of such unsatisfactory performance or non-performance from the Board;

(v) a breach by Executive of any of the provisions contained in Section 10 of this Agreement;

(vi) a material violation by Executive of any of the Company's written employment policies; or

(vii) Executive's failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation.

(d) Termination by the Company without Cause. The Company may terminate Executive's employment hereunder at any time without Cause. Any termination by the Company of Executive's employment under this Agreement which does not constitute a termination for Cause under Section 3(c) and does not result from the death or disability of Executive under Section 3(a) or (b) shall be deemed a termination without Cause.

(e) Termination by Executive. Executive may terminate employment hereunder at any time for any reason, including but not limited to, Good Reason. For purposes of this Agreement, “Good Reason” means Executive has completed all steps of the Good Reason Process (hereinafter defined) following the occurrence of any of the following events without Executive’s consent (each, a “Good Reason Condition”):

- (i) a material diminution in Executive’s job title, responsibilities, authority or duties;
- (ii) a material diminution in Executive’s Base Salary except for across-the-board salary reductions based on the Company’s financial performance similarly affecting all or substantially all senior management employees of the Company;
- (iii) a material change in the geographic location of the principal office of the Company to which Executive is assigned, such that there is an increase of at least thirty (30) miles of driving distance to such location from Executive’s principal residence as of such change; or
- (iv) a material breach of this Agreement by the Company.

The “Good Reason Process” consists of the following steps:

- (i) Executive reasonably determines in good faith that a Good Reason Condition has occurred;
- (ii) Executive notifies the Company, in writing, of the first occurrence of the Good Reason Condition within 60 days of the first occurrence of such condition;
- (iii) Executive cooperates in good faith with the Company’s efforts, for a period of not less than 30 days following such notice (the “Cure Period”), to remedy the Good Reason Condition;
- (iv) notwithstanding such efforts, the Good Reason Condition continues to exist at the end of the Cure Period; and
- (v) Executive terminates employment within 60 days after the end of the Cure Period.

If the Company cures the Good Reason Condition during the Cure Period, Good Reason shall be deemed not to have occurred.

4. Matters Related to Termination.

- (a) Notice of Termination. Except for termination as specified in Section 3(a), any termination of Executive’s employment by the Company or any such termination by Executive shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon.
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- (b) Date of Termination. “Date of Termination” shall mean: (i) if Executive’s employment is terminated by death, the date of death; (ii) if Executive’s employment is terminated on account of disability under Section 3(b) or by the Company for Cause under Section 3(c), the date on which Notice of Termination is given; (iii) if Executive’s employment is terminated by the Company without Cause under Section 3(d), the date on which a Notice of Termination is given or the date otherwise specified by the Company in the Notice of Termination; (iv) if Executive’s employment is terminated by Executive under Section 3(e) other than for Good Reason, 30 days after the date on which a Notice of Termination is given, and (v) if Executive’s employment is terminated by Executive under Section 3(e) for Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period. Notwithstanding the foregoing, in the event that Executive gives a Notice of Termination to the Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in a termination by the Company for purposes of this Agreement.
- (c) Accrued Obligations. If Executive’s employment with the Company is terminated for any reason, the Company shall pay or provide to Executive (or to Executive’s authorized representative or estate) (i) any Base Salary earned through the Date of Termination and, if applicable, any accrued but unused vacation through the Date of Termination; (ii) unpaid expense reimbursements (subject to, and in accordance with, Section 2(c) of this Agreement); and (iii) any vested benefits Executive may have under any employee benefit plan of the Company through the Date of Termination, which vested benefits shall be paid and/or provided in accordance with the terms of such employee benefit plans (collectively, the “Accrued Obligations”).
- (d) Resignation of All Other Positions. To the extent applicable, Executive shall be deemed to have resigned from all officer and board member positions that Executive holds with the Company or any of its respective subsidiaries and affiliates upon the termination of Executive’s employment for any reason. Executive shall execute any documents in reasonable form as may be requested to confirm or effectuate any such resignations.
5. Severance Pay and Benefits Upon Termination by the Company without Cause or by Executive for Good Reason Outside the Initial Term. If Executive’s employment is terminated by the Company without Cause, or Executive terminates employment for Good Reason, in each case outside of the Initial Term (as defined below), then, in addition to the Accrued Obligations, and subject to (i) Executive signing a separation agreement and release in a form and manner satisfactory to the Company, which shall include, without limitation, a general release of claims against the Company and all related persons and entities (but that shall not release Executive’s rights to unpaid amounts to which he is entitled under this Agreement), a reaffirmation of all of Executive’s continuing obligations (as set forth in the Confidentiality Agreement) and shall provide that if Executive breaches any of those continuing obligations, all payments of the Severance Amount shall immediately cease (the “Separation Agreement”), and (ii) the Separation Agreement becoming irrevocable, all within 60 days after the Date of Termination or such shorter period as set forth in the Separation Agreement (the conditions in 5(i) and 5(ii) are the “Release Requirement”):
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- (a) the Company shall pay Executive an amount equal to nine (9) months of Executive's Base Salary (the "Severance Amount"); and
- (b) subject to Executive's copayment of premium amounts at the applicable active employees' rate and Executive's proper election to receive benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Company shall pay to the group health plan provider or the COBRA provider a monthly payment equal to the monthly employer contribution that the Company would have made to provide health insurance to Executive if Executive had remained employed by the Company for up to nine (9) months following the Date of Termination; *provided, however*, that if the Company determines that it cannot pay such amounts to the group health plan provider or the COBRA provider (if applicable) without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then the Company shall convert such payments to payroll payments directly to Executive for the time period specified above. Such payments to Executive shall be subject to tax-related deductions and withholdings and paid on the Company's regular payroll dates.

The amounts payable under this section, to the extent taxable, will be paid out in substantially equal installments in accordance with the Company's payroll practice over a nine month period commencing within 60 days after the Date of Termination; *provided, however*, that if the 60-day period begins in one calendar year and ends in a second calendar year, such payments, to the extent they qualify as "non-qualified deferred compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), shall begin to be paid in the second calendar year by the last day of such 60-day period; *provided, further*, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

6. **Severance Pay and Benefits Upon Termination by the Company without Cause or by Executive for Good Reason within the Initial Term.** The provisions of this Section 6 shall be in addition to the provisions of Section 5 if (i) Executive's employment is terminated either (a) by the Company without Cause, or (b) by Executive for Good Reason, and (ii) the Date of Termination is within 12 months following the Start Date (the 12 month period following the Start Date is the "Initial Term"). These provisions shall terminate and be of no further force or effect after the Initial Term.
- (a) If Executive's employment is terminated by the Company without Cause or Executive terminates employment for Good Reason and in each case the Date of Termination occurs during the Initial Term, then, in addition to the Accrued Obligations, and subject to the Release Requirement:
 - (i) the Company will continue to pay Executive's Base Salary for an additional number of months, if any, beyond the nine-month period in Section 5, such that Executive will have been paid for the entire 12-month Initial Term as though Executive remained employed throughout the Initial Term; and
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- (ii) subject to Executive's copayment of premium amounts at the applicable active employees' rate and Executive's proper election to receive benefits under COBRA, the Company will pay to the group health plan provider or the COBRA provider a monthly payment equal to the monthly employer contribution that the Company would have made to provide health insurance to Executive if Executive had remained employed by the Company until the end of the Initial Term; *provided, however*, that if the Company determines that it cannot pay such amounts to the group health plan provider or the COBRA provider (if applicable) without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then the Company shall convert such payments to payroll payments directly to Executive for the time period specified above. Such payments to Executive shall be subject to tax-related deductions and withholdings and paid on the Company's regular payroll dates.

Except as set forth in Section 6(a)(i), the amounts payable under this Section 6, to the extent taxable, shall be paid or commence to be paid within 60 days after the Date of Termination; *provided, however*, that if the 60-day period begins in one calendar year and ends in a second calendar year, such payments to the extent they qualify as "non-qualified deferred compensation" within the meaning of Section 409A of the Code, shall be paid or commence to be paid in the second calendar year by the last day of such 60-day period.

7. **Severance Pay and Benefits Upon Termination During Change in Control Period.** The provisions of this Section 7 shall apply in lieu of, and expressly supersede, the provisions of Section 5 and 6 if (i) the Executive's employment is terminated either (a) by the Company without Cause, or (b) by the Executive for Good Reason, and (ii) the Date of Termination is on or within 12 months after the occurrence of the first event constituting a Change of Control (as that term is defined in the Semler Scientific Inc. 2014 Stock Incentive Plan and such period, the "Change in Control Period"). These provisions shall terminate and be of no further force or effect after the Change in Control Period.

- (a) If the Executive's employment is terminated by the Company without Cause or the Executive terminates employment for Good Reason and in each case the Date of Termination occurs during the Change in Control Period, then, in addition to the Accrued Obligations, and subject to the Release Requirement:
 - (i) the Company shall pay Executive an amount equal to twelve (12) months of the Executive's then-current Base Salary (or the Executive's Base Salary in effect immediately prior to the Change in Control, if higher) (the "Severance Amount");
 - (ii) notwithstanding anything to the contrary in any applicable option agreement or other stock-based award agreement, all stock options and other stock-based awards held by the Executive that are subject solely to time-based vesting (the "Time-Based Equity Awards") shall immediately accelerate and become fully vested and exercisable or nonforfeitable as of the later of (i) the Date of Termination or (ii) the effective date of the Release (the "Accelerated Vesting Date"), *provided* that in order to effectuate the accelerated vesting contemplated by this subsection, the unvested portion of the Executive's Time-Based Equity Awards that would otherwise be forfeited on the Date
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of Termination will be delayed until the earlier of (A) the effective date of the Release (at which time acceleration will occur), or (B) the date that the Release can no longer become fully effective (at which time the unvested portion of the Executive's Time-Based Equity Awards will be forfeited). Notwithstanding the foregoing, no additional vesting of the Time-Based Equity Awards shall occur during the period between the Date of Termination and the Accelerated Vesting Date; and

- (iii) subject to Executive's copayment of premium amounts at the applicable active employees' rate and Executive's proper election to receive benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**"), the Company shall pay to the group health plan provider or the COBRA provider a monthly payment equal to the monthly employer contribution that the Company would have made to provide health insurance to Executive if Executive had remained employed by the Company for twelve (12) months following the Date of Termination; *provided, however*, that if the Company determines that it cannot pay such amounts to the group health plan provider or the COBRA provider (if applicable) without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then the Company shall convert such payments to payroll payments directly to Executive for the time period specified above. Such payments to Executive shall be subject to tax-related deductions and withholdings and paid on the Company's regular payroll dates.

The amounts payable under this section, to the extent taxable, will be paid out in substantially equal installments in accordance with the Company's payroll practice over twelve months commencing within 60 days after the Date of Termination; *provided, however*, that if the 60-day period begins in one calendar year and ends in a second calendar year, such payments, to the extent they qualify as "non-qualified deferred compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**"), shall begin to be paid in the second calendar year by the last day of such 60-day period; *provided, further*, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

8. Section 409A.

- (a) Anything in this Agreement to the contrary notwithstanding, if at the time of Executive's separation from service within the meaning of Section 409A of the Code, the Company determines that Executive is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that Executive becomes entitled to under this Agreement or otherwise on account of Executive's separation from service would be considered deferred compensation otherwise subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) six months and one day after Executive's separation from service, or (B) Executive's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have
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been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule.

- (b) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by Executive during the time periods set forth in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year (except for any lifetime or other aggregate limitation applicable to medical expenses). Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.
- (c) To the extent that any payment or benefit described in this Agreement constitutes “non-qualified deferred compensation” under Section 409A of the Code, and to the extent that such payment or benefit is payable upon Executive’s termination of employment, then such payments or benefits shall be payable only upon Executive’s “separation from service.” The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h).
- (d) The payments and benefits under this Agreement are intended, and will be construed, to be exempt from or comply with Section 409A of the Code and for this Agreement to be administered accordingly. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder are exempt from, or comply with Section 409A of the Code. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). The Parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party.
- (e) The Company makes no representation or warranty and shall have no liability to Executive or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code, but do not satisfy an exemption from, or the conditions of, such Section.

9. **Section 280G.**

- (a) Anything in this Agreement to the contrary notwithstanding, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of the Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Code and the applicable regulations thereunder (the “Aggregate Payments”), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate
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Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be \$1.00 less than the amount at which the Executive becomes subject to the excise tax imposed by Section 4999 of the Code; provided that such reduction shall only occur if it would result in the Executive receiving a higher After Tax Amount (as defined below) than the Executive would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G of the Code: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity-based payments and acceleration; and (4) non-cash forms of benefits; provided that in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c).

- (b) For purposes of this Section 9 the “After Tax Amount” means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on the Executive as a result of the Executive’s receipt of the Aggregate Payments. For purposes of determining the After Tax Amount, the Executive shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in each applicable state and locality, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.
- (c) The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to this Section 9 shall be made by a nationally recognized accounting firm selected by the Company (the “Accounting Firm”) with the Executive’s consent, which will not be unreasonably withheld. The Accounting Firm shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or the Executive. Any determination by the Accounting Firm shall be binding upon the Company and the Executive absent manifest error. The Company shall bear all costs of such Accounting Firm. The Parties shall cooperate with such Accounting Firm, including, if necessary, to make reasonable compensation calculations under Section 280G by valuing applicable restrictive covenants for such calculations purposes.

10. **Other.**

- (a) **Proprietary Information and Inventions.** Concurrently with the execution of this Agreement, Executive must sign the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (the “Confidentiality Agreement”) that is appended to this Agreement as Exhibit A and is considered a part of this Agreement. Executive acknowledges and agrees that Executive executing such agreement is a condition of employment with the Company. If Executive does not sign Exhibit A, Executive’s employment will be terminated for Cause.
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- (b) **Third-Party Agreements and Rights.** Executive hereby confirms that Executive is not bound by the terms of any agreement with any previous employer or other party which restricts in any way Executive's use or disclosure of information, other than confidentiality restrictions (if any), or Executive's engagement in any business. Executive represents to the Company that Executive's execution of this Agreement, Executive's employment with the Company and the performance of Executive's proposed duties for the Company will not violate any obligations Executive may have to any such previous employer or other party. In Executive's work for the Company, Executive will not disclose or make use of any information in violation of any agreements with or rights of any such previous employer or other party, and Executive will not bring to the premises of the Company any copies or other tangible embodiments of non-public information belonging to or obtained from any such previous employment or other party.
- (c) **Litigation and Regulatory Cooperation.** During and after Executive's employment, Executive shall cooperate fully with the Company in (i) the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company which relate to events or occurrences that transpired while Executive was employed by the Company, and (ii) the investigation, whether internal or external, of any matters about which the Company believes Executive may have knowledge or information. Executive's full cooperation in connection with such claims, actions or investigations shall include, but not be limited to, being available to meet with counsel to answer questions or to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after Executive's employment, Executive also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while Executive was employed by the Company. The Company will reimburse Executive for any reasonable out-of-pocket expenses incurred in connection with Executive's performance of obligations pursuant to this section.
11. **Integration.** This Agreement, including its Exhibit A, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements between the Parties concerning such subject matter. For the avoidance of doubt, previously executed equity award agreements between the Company and the Executive are not superseded hereby.
12. **Withholding; Tax Effect.** All payments made by the Company to Executive under this Agreement shall be net of any tax or other amounts required to be withheld by the Company under applicable law. Nothing in this Agreement shall be construed to require the Company to make any payments to compensate Executive for any adverse tax effect associated with any payments or benefits or for any deduction or withholding from any payment or benefit.
13. **Assignment; Successors and Assigns.** Neither Executive nor the Company may make any assignment of this Agreement or any interest in it, by operation of law or otherwise, without the prior written consent of the other; *provided, however*, that the Company may assign its rights and obligations under this Agreement without Executive's consent to any affiliate or to any person or entity with whom the Company shall hereafter effect a reorganization or
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consolidation, into which the Company merges or to whom it transfers all or substantially all of its properties or assets; *provided, further* that if Executive remains employed or becomes employed by the Company, the purchaser or any of their affiliates in connection with any such transaction, then Executive shall not be entitled to any payments, benefits or vesting pursuant to Section 5 or pursuant to Section 6 of this Agreement solely as a result of such transaction. This Agreement shall inure to the benefit of and be binding upon Executive and the Company, and each of Executive's and the Company's respective successors, executors, administrators, heirs and permitted assigns. In the event of Executive's death after Executive's termination of employment but prior to the completion by the Company of all payments due to Executive under this Agreement, the Company shall continue such payments to Executive's beneficiary designated in writing to the Company prior to Executive's death (or to Executive's estate, if Executive fails to make such designation).

14. **Enforceability.** If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
 15. **Survival.** The provisions of this Agreement shall survive the termination of this Agreement and/or the termination of Executive's employment to the extent necessary to effectuate the terms contained herein.
 16. **Waiver.** No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
 17. **Notices.** Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to Executive at the last address Executive has filed in writing with the Company or, in the case of the Company, at its main offices, attention of the Board.
 18. **Amendment.** This Agreement may be amended or modified only by a written instrument signed by Executive and by a duly authorized representative of the Company.
 19. **Effect on Other Plans and Agreements.** An election by Executive to resign for Good Reason under the provisions of this Agreement shall not be deemed a voluntary termination of employment by Executive for the purpose of interpreting the provisions of any of the Company's benefit plans, programs or policies.
 20. **Governing Law.** With the exception of the arbitration provision in Exhibit A which is governed by the FAA, this Agreement shall be construed under and be governed in all respects
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by the laws of the State of California, without giving effect to the conflict of laws principles thereof. To the extent any lawsuit is permitted under this Agreement, the Parties expressly consent to the personal and exclusive jurisdiction and venue of the state and federal courts located in California.

21. **Conditions.** Notwithstanding anything to the contrary herein, the effectiveness of this Agreement shall be conditioned on (i) Executive's satisfactory completion of reference and background checks, if so requested by the Company, and (ii) Executive's submission of satisfactory proof of Executive's legal authorization to work in the United States.
22. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

SEMLER SCIENTIFIC, INC.

By: /s/ Abbie Leibowitz
Its: Director

Date: March 29, 2023

WAYNE T. PAN

/s/ Wayne T. Pan
Wayne T. Pan

Date: March 29, 2023

Exhibit A

At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement

SEMLER SCIENTIFIC, INC.
AT-WILL EMPLOYMENT, CONFIDENTIAL INFORMATION,
INVENTION ASSIGNMENT,
AND ARBITRATION AGREEMENT

As a condition of my employment with Semler Scientific, Inc., its subsidiaries, affiliates, successors or assigns (together the "Company"), and in consideration of my employment with the Company and my receipt of the compensation and benefits now and hereafter paid to me by Company and my access to Company Confidential Information, I agree to the following provisions of this Semler Scientific, Inc. At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (this "Agreement"):

1. *At-Will Employment.*

I UNDERSTAND AND ACKNOWLEDGE THAT MY EMPLOYMENT WITH THE COMPANY IS FOR NO SPECIFIED TERM AND CONSTITUTES "AT-WILL" EMPLOYMENT. I ALSO UNDERSTAND THAT ANY REPRESENTATION TO THE CONTRARY IS UNAUTHORIZED AND NOT VALID UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY OTHER THAN ME. ACCORDINGLY, I ACKNOWLEDGE THAT MY EMPLOYMENT RELATIONSHIP MAY BE TERMINATED AT ANY TIME, FOR ANY REASON OR NO REASON, WITH OR WITHOUT CAUSE OR FOR ANY OR NO CAUSE, AT MY OPTION OR AT THE OPTION OF THE COMPANY, WITH OR WITHOUT NOTICE. I FURTHER ACKNOWLEDGE THAT THE COMPANY MAY MODIFY JOB TITLES, DUTIES, SALARIES, AND BENEFITS FROM TIME TO TIME AS IT DEEMS NECESSARY.

2. *Confidential Information.*

A. *Company Information.* I agree that during and after my employment with the Company, I will hold in the strictest confidence, and will not use (except for the benefit of the Company during my employment) or disclose to any person, firm, or corporation (without written authorization of the President, CEO, or the Board of Directors of the Company) any Company Confidential Information. I understand that my unauthorized use or disclosure of Company Confidential Information during my employment may lead to disciplinary action, up to and including immediate termination of employment and legal action by the Company. I understand that "**Company Confidential Information**" means any non-public information, whether or not in writing, that relates to the actual or anticipated business, research or development of the Company, or to the Company's technical data, trade secrets, or know-how, including, but not limited to, research, product plans, or other information regarding the Company's products or services and markets therefor, customer lists and customers (including, but not limited to, customers of the Company on which I called or with which I may become acquainted during the term of my employment), software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, and other business information. More examples of Company Confidential Information include: (a) *corporate information*, such as plans, strategies, methods, policies, resolutions, negotiations or litigation; (b) *marketing information*, such as strategies, methods, customer or business partner identities or other information about customers, business partners, prospect identities or other information about prospects, or market analyses or projections; (c) *financial information*, such as cost and performance data, debt arrangements, equity structure, investors and holdings, purchasing and sales data and price lists; and (d) *operational and technological information*, such as plans, specifications, manuals, forms, templates, software, testing data and strategies, research and development strategies, designs, methods, procedures, formulae, data, reports, discoveries, inventions, improvements, concepts, ideas, and other Inventions (as defined below), know-how and trade secrets. Company Confidential Information also includes information received in confidence by the Company from its customers, suppliers, business partners or other third parties. Notwithstanding the foregoing, Company Confidential Information does not include any such information which I can establish (i) was publicly known or made generally available prior to the time of disclosure by the Company to me; (ii) becomes publicly known or made generally available after disclosure by the Company to me through no wrongful action or omission by me; (iii) is in my rightful possession, without confidentiality obligations, at the time of disclosure by the Company as shown by my then-contemporaneous written records; or (iv) is a disclosure of generalized information about my

knowledge and/or experience (such as in a job interview); provided that any combination of individual items of information shall not be deemed to be within any of the foregoing exceptions merely because one or more of the individual items are within such exception, unless the combination as a whole is within such exception.

B. *Former Employer Information.* I agree that during my employment with the Company, I will not improperly use, disclose, or induce the Company to use any proprietary information or trade secrets of any former or concurrent employer or other person or entity. I further agree that I will not bring onto the premises of the Company or transfer onto the Company's technology systems any unpublished document, proprietary information, trade secrets, or other property belonging to any such employer, person, or entity unless consented to in writing by both the Company and such employer, person, or entity.

C. *Third Party Information.* I recognize that the Company may have received and in the future may receive from third parties associated with the Company, e.g., the Company's customers, suppliers, licensors, licensees, partners, or collaborators ("**Associated Third Parties**"), their confidential or proprietary information ("**Associated Third Party Confidential Information**"). By way of example, Associated Third Party Confidential Information may include the habits or practices of Associated Third Parties, the technology of Associated Third Parties, requirements of Associated Third Parties, and information related to the business conducted between the Company and such Associated Third Parties. I agree at all times during my employment with the Company and thereafter to hold in the strictest confidence, and not to use or to disclose to any person, firm, or corporation, any Associated Third Party Confidential Information, except as necessary in carrying out my work for the Company consistent with the Company's agreement with such Associated Third Parties. I further agree to comply with any and all Company policies and guidelines that may be adopted from time to time regarding Associated Third Parties and Associated Third Party Confidential Information. I understand that my unauthorized use or disclosure of Associated Third Party Confidential Information or violation of any Company policies during my employment may lead to disciplinary action, up to and including immediate termination of my employment and legal action by the Company.

3. *Inventions.*

A. *Inventions Retained and Licensed.* I have attached hereto as Exhibit A, a list describing all inventions, discoveries, original works of authorship, developments, improvements, and trade secrets that were conceived in whole or in part by me prior to my employment with the Company and to which I have any right, title, or interest, which are subject to California Labor Code Section 2870 (attached hereto as Exhibit B), and which relate to the Company's proposed business, products, or research and development ("**Prior Inventions**"); or, if no such list is attached, I represent and warrant that there are no such Prior Inventions. Furthermore, I represent and warrant that if any Prior Inventions are included on Exhibit A, they will not materially affect my ability to perform all obligations under this Agreement. If, in the course of my employment with the Company, I incorporate into or use in connection with any product, process, service, technology, or other work by or on behalf of the Company any Prior Invention, I hereby grant to the Company a non-exclusive, royalty-free, fully paid-up, irrevocable, perpetual, transferable, worldwide license, with the right to grant and authorize sublicenses, to make, have made, modify, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Prior Invention without restriction, including, without limitation, as part of or in connection with such product, process, service, technology, or other work, and to practice any method related thereto.

B. *Assignment of Inventions.* I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and I hereby do irrevocably assign to the Company, or its designee, all my right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks, or trade secrets, whether or not patentable or registrable under patent, copyright, or similar laws, which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time I am in the employ of the Company (including during my off-duty hours), or with the use of Company's equipment, supplies, facilities, or Company Confidential Information, except as provided in Section 3.F below (collectively referred to as "**Inventions**"). I further acknowledge that all original works of authorship that are made by me (solely or jointly with others) within the scope of and during the period of my employment with the Company and that are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. I understand and agree that the decision whether or not to commercialize or market any Inventions is within the Company's sole discretion and for the Company's sole benefit, and that no royalty or other consideration will be due to me as a result of the Company's efforts to commercialize or market any such Inventions.

C. *Moral Rights.* Any assignment to the Company of Inventions includes all rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as "moral rights," "artist's rights," "droit moral," or the like (collectively, "**Moral Rights**"). To the extent that Moral Rights cannot be assigned under applicable law, I hereby waive and agree not to enforce any and all Moral Rights, including, without limitation, any right to identification of authorship or limitation on subsequent modification that I may have in the assigned Inventions.

D. *Maintenance of Records.* I agree to keep and maintain adequate, current, accurate, and authentic written records of all Inventions made by me (solely or jointly with others) during the term of my employment with the Company. The records will be in the form of notes, sketches, drawings, electronic files, reports, or any other format that may be specified by the Company. The records are and will be available to and remain the sole property of the Company at all times.

E. *Further Assurances.* I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, and all other instruments that the Company shall deem proper or necessary in order to apply for, register, obtain, maintain, defend, and enforce such rights, and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title, and interest in and to such Inventions and any rights relating thereto, and testifying in a suit or other proceeding relating to such Inventions and any rights relating thereto. I further agree that my obligations under this Section 3E shall continue after the termination of this Agreement. If the Company is unable because of my mental or physical incapacity or for any other reason to secure my signature with respect to any Inventions, including, without limitation, to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering such Inventions, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, to act for and in my behalf and stead, to execute and file any papers and oaths, and to do all other lawfully permitted acts with respect to such Inventions with the same legal force and effect as if executed by me.

F. *Exception to Assignments.* I understand that the provisions of this Agreement requiring assignment of Inventions to the Company do not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870 (attached hereto as Exhibit B). I will advise the Company promptly in writing of any inventions that I believe meet the criteria in California Labor Code Section 2870 and are not otherwise disclosed on Exhibit A.

4. *Conflicting Employment.*

A. *Current Obligations.* I agree that during the term of my employment with the Company, I will not directly or indirectly, engage in or undertake any other employment, occupation, consulting relationship, or commitment that is directly related to the business in which the Company is now involved or becomes involved or has plans to become involved, nor will I engage in any other activities that conflict with my obligations to the Company.

B. *Prior Relationships.* Without limiting Section 4.A, I represent that I have no other agreements, relationships, or commitments to any other person or entity that conflict with my obligations to the Company under this Agreement or my ability to become employed and perform the services for which I am being hired by the Company. I further agree that if I have signed a confidentiality agreement or similar type of agreement with any former employer or other entity, I will comply with the terms of any such agreement to the extent that its terms are lawful under applicable law. I represent and warrant that after undertaking a careful search (including searches of my computers, cell phones, electronic devices, and documents), I have returned all property and confidential information belonging to all prior employers. Moreover, I agree to fully indemnify the Company, its directors, officers, agents, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations, and assigns for all verdicts, judgments, settlements, and other losses incurred by any of them resulting from my breach of my obligations under any agreement to which I am a party or obligation to which I am bound, as well as any reasonable attorneys' fees and costs if the plaintiff is the prevailing party in such an action, except as prohibited by law.

5. *Returning Company Documents.* All files, letters, notes, memoranda, reports, records, data, sketches, drawings, notebooks, layouts, charts, quotations and proposals, specification sheets, blueprints, models, prototypes, or other written, photographic or other tangible material containing Company Confidential Information, whether created by me or others, which come into my custody

or possession, are the exclusive property of the Company to be used by me only in the performance of my duties for the Company. Any property situated on the Company's premises and owned by the Company, including without limitation computers, disks and other storage media, filing cabinets or other work areas, is subject to inspection by the Company at any time with or without notice. Upon separation from employment with the Company or on demand by the Company during my employment, I will immediately deliver to the Company, and will not keep in my possession, recreate, or deliver to anyone else, any and all Company property, including, but not limited to, Company Confidential Information, Associated Third Party Confidential Information, as well as all devices and equipment belonging to the Company (including computers, handheld electronic devices, telephone equipment, and other electronic devices), Company credit cards, records, data, notes, notebooks, reports, files, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, photographs, charts, any other documents and property, and reproductions of any and all of the aforementioned items that were developed by me pursuant to my employment with the Company, obtained by me in connection with my employment with the Company, or otherwise belonging to the Company, its successors, or assigns, including, without limitation, those records maintained pursuant to Section 3.C. I also consent to an exit interview to confirm my compliance with this Section 5.

6. *Termination Certification.* Upon separation from employment with the Company, I agree to immediately sign and deliver to the Company the "Termination Certification" attached hereto as Exhibit C. I also agree to keep the Company advised of my home and business address for a period of three (3) years after termination of my employment with the Company, so that the Company can contact me regarding my continuing obligations provided by this Agreement.

7. *Notification of New Employer.* In the event that I leave the employ of the Company, I hereby grant consent to notification by the Company to my new employer about my obligations under this Agreement.

8. *Solicitation of Employees.* To the extent permitted under applicable law, I agree that for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason, whether voluntary or involuntary, with or without cause, I shall not either directly or indirectly solicit any of the Company's employees to leave their employment, or attempt to solicit employees of the Company, either for myself or for any other person or entity. I agree that nothing in this Section shall affect my continuing obligations under this Agreement during and after this twelve (12) month period, including, without limitation, my obligations under Section 2A.

9. *Representations.* I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by the Company. I hereby represent and warrant that I have not entered into, and I will not enter into, any oral or written agreement in conflict herewith.

10. *Audit.* I acknowledge that I have no reasonable expectation of privacy in any computer, technology system, email, handheld device, telephone, or documents that are used to conduct the business of the Company. As such, the Company has the right to audit and search all such items and systems, without further notice to me, to ensure that the Company is licensed to use the software on the Company's devices in compliance with the Company's software licensing policies, to ensure compliance with the Company's policies, and for any other business-related purposes in the Company's sole discretion. I understand that I am not permitted to add any unlicensed, unauthorized, or non-compliant applications to the Company's technology systems, including, without limitation, open source or free software not authorized by the Company, and that I shall refrain from copying unlicensed software onto the Company's technology systems or using non-licensed software or websites. I understand that it is my responsibility to comply with the Company's policies governing use of the Company's documents and the internet, email, telephone, and technology systems to which I will have access in connection with my employment.

11. *Defend Trade Secrets Act of 2016.* Pursuant to the federal Defend Trade Secrets Act of 2016, I acknowledge receipt of the following notice: "An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order."

12. *Protected Disclosures.* I understand that nothing contained in this Agreement limits my ability to communicate with any federal, state or local governmental agency or commission, including to provide documents or other information, without notice to the Company. I also understand that nothing in this Agreement limits my ability to share compensation information concerning myself or others, except that this does not permit me to disclose compensation information concerning others that I obtain because my job

responsibilities require or allow access to such information. I further understand that nothing in this Agreement prevents me from exercising any rights I may have under Section 7 of the National Labor Relations Act, including, without limitation, discussing any labor issue, dispute or term or condition of employment as part of engaging in concerted activities for the purpose of mutual aid or protection. In addition, I understand that nothing in this Agreement limits or prohibits me from discussing or disclosing information about sexual assault, sexual harassment, or unlawful acts in the workplace, such as harassment or discrimination or any other conduct that I have reason to believe is unlawful. I also understand that nothing in this Agreement is intended to limit employees' rights to discuss the terms, wages, and working conditions of their employment, as protected by applicable law. In making any disclosures or communications described in this section, I understand that employees must take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Company Confidential Information to any parties other than the relevant government agencies. Protected Disclosures do not include the disclosure of any Company attorney-client privileged communications or attorney work product; any such disclosure, without the Company's written consent, violates Company policy. I also understand that nothing in this Agreement is intended to limit my ability to communicate directly with the Securities and Exchange Commission in accordance with Section 21F of the Securities Exchange Act of 1934, which provides for Securities Whistleblower Incentives and Protections.

13. *Arbitration and Equitable Relief.*

A. *Arbitration.* IN CONSIDERATION OF MY EMPLOYMENT WITH THE COMPANY, ITS PROMISE TO ARBITRATE ALL EMPLOYMENT-RELATED DISPUTES, AND MY RECEIPT OF THE COMPENSATION, PAY RAISES, AND OTHER BENEFITS PAID TO ME BY THE COMPANY, AT PRESENT AND IN THE FUTURE, I AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES WITH THE COMPANY, INCLUDING ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, OR BENEFIT PLAN OF THE COMPANY, IN THEIR CAPACITY AS SUCH OR OTHERWISE, RELATING TO, OR RESULTING FROM MY EMPLOYMENT WITH THE COMPANY OR THE TERMINATION OF MY EMPLOYMENT WITH THE COMPANY, INCLUDING ANY BREACH OF THIS AGREEMENT, WILL BE SUBJECT TO BINDING ARBITRATION UNDER THE FEDERAL ARBITRATION ACT (THE "FAA"). I UNDERSTAND THIS MUTUAL AGREEMENT TO ARBITRATE APPLIES TO ANY DISPUTES THAT THE COMPANY MAY HAVE WITH OR AGAINST ME. THE FAA'S SUBSTANTIVE AND PROCEDURAL RULES WILL GOVERN AND APPLY TO THIS ARBITRATION AGREEMENT WITH FULL FORCE AND EFFECT, AND ANY STATE COURT OF COMPETENT JURISDICTION MAY STAY PROCEEDINGS PENDING ARBITRATION OR COMPEL ARBITRATION IN THE SAME MANNER AS A FEDERAL COURT UNDER THE FAA. I FURTHER AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY THE FAA, DISPUTES MAY NOT BE INITIATED OR MAINTAINED ON A CLASS ACTION, COLLECTIVE ACTION, OR REPRESENTATIVE (I.E., ON BEHALF OF OTHER EMPLOYEES) ACTION BASIS EITHER IN COURT OR ARBITRATION, AND I FURTHER AGREE TO WAIVE THE RIGHT TO INITIATE OR MAINTAIN SUCH AN ACTION, AND I ALSO FURTHER AGREE NOT TO HAVE DISPUTES ADJUDICATED ON MY BEHALF IN ANY CLASS ACTION, COLLECTIVE ACTION, OR REPRESENTATIVE (I.E., ON BEHALF OF OTHER EMPLOYEES) ACTION. I FURTHER AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY THE FAA, DISPUTES WILL BE ARBITRATED IN MY INDIVIDUAL CAPACITY ONLY (AND, AS APPLICABLE, ON BEHALF OF A STATE BUT NOT ON BEHALF OF ANY OTHER EMPLOYEES). I UNDERSTAND THAT THE FOREGOING DOES NOT PRECLUDE ME FROM PARTICIPATING IN A CLASS ACTION OR COLLECTIVE ACTION ALLEGING SEXUAL HARASSMENT OR SEXUAL ASSAULT ARISING ON OR AFTER MARCH 3, 2022 (OR EARLIER DATE, TO THE EXTENT APPLICABLE STATE OR LOCAL LAW PROVIDES FOR AN EARLIER DATE), AS PROTECTED BY APPLICABLE LAW. DISPUTES THAT I AGREE TO ARBITRATE, AND THEREBY AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY, INCLUDE ANY STATUTORY CLAIMS UNDER LOCAL, STATE, OR FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE OLDER WORKERS BENEFIT PROTECTION ACT, THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT, THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, THE FAMILY AND MEDICAL LEAVE ACT, THE CALIFORNIA FAMILY RIGHTS ACT, THE CALIFORNIA LABOR CODE, CLAIMS OF HARASSMENT, DISCRIMINATION, AND WRONGFUL TERMINATION, AND ANY STATUTORY OR COMMON LAW CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW, I ALSO AGREE TO ARBITRATE ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THE INTERPRETATION OR APPLICATION OF THIS AGREEMENT TO ARBITRATE, BUT NOT DISPUTES ABOUT THE ENFORCEABILITY, REVOCABILITY, OR VALIDITY OF THIS AGREEMENT TO ARBITRATE. IF, FOR ANY REASON, THE CLASS ACTION, COLLECTIVE ACTION, OR REPRESENTATIVE ACTION WAIVER IS HELD UNENFORCEABLE OR INVALID IN WHOLE OR IN PART, THEN A COURT OF COMPETENT JURISDICTION, NOT AN ARBITRATOR, WILL DECIDE THE TYPE OF CLAIM AS TO WHICH THE WAIVER WAS HELD UNENFORCEABLE OR INVALID AND, TO THE MAXIMUM EXTENT PERMITTED, THE COURT SHALL ENFORCE THE WAIVER(S) AS TO THOSE CLAIMS IT DETERMINES TO BE VALID AND ENFORCEABLE.

B. *Procedure.* I AGREE THAT ANY ARBITRATION WILL BE ADMINISTERED BY JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("JAMS"), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (THE "JAMS RULES") WHICH ARE AVAILABLE AT [HTTP://WWW.JAMSADR.COM/RULES-EMPLOYMENT-ARBITRATION/](http://www.jamsadr.com/rules-employment-arbitration/) PROVIDED, HOWEVER, THAT THE JAMS RULES SHALL NOT CONTRADICT OR OTHERWISE ALTER THE TERMS OF THIS AGREEMENT. I AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO DECIDE ANY MOTIONS BROUGHT BY ANY PARTY TO THE ARBITRATION, INCLUDING MOTIONS FOR SUMMARY JUDGMENT AND/OR ADJUDICATION, MOTIONS TO DISMISS AND DEMURRERS, AND MOTIONS FOR CLASS CERTIFICATION, PRIOR TO ANY ARBITRATION HEARING. I ALSO AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO AWARD

ANY REMEDIES AVAILABLE UNDER APPLICABLE LAW, AND THAT THE ARBITRATOR SHALL AWARD ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY, EXCEPT AS PROHIBITED BY LAW. I AGREE THAT THE DECREE OR AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED AS A FINAL AND BINDING JUDGMENT IN ANY COURT HAVING JURISDICTION THEREOF. I UNDERSTAND THAT THE COMPANY WILL PAY FOR ANY ADMINISTRATIVE OR HEARING FEES CHARGED BY THE ARBITRATOR OR JAMS EXCEPT THAT I SHALL PAY ANY FILING FEES ASSOCIATED WITH ANY ARBITRATION THAT I INITIATE, BUT ONLY SO MUCH OF THE FILING FEES AS I WOULD HAVE INSTEAD PAID HAD I FILED A COMPLAINT IN A COURT OF LAW. I AGREE THAT THE DECISION OF THE ARBITRATOR SHALL BE IN WRITING. I AGREE THAT ANY ARBITRATION UNDER THIS AGREEMENT SHALL BE CONDUCTED IN SANTA CLARA COUNTY, CALIFORNIA.

C. *Remedy.* EXCEPT AS PROVIDED BY THE ACT AND THIS AGREEMENT, ARBITRATION SHALL BE THE SOLE, EXCLUSIVE, AND FINAL REMEDY FOR ANY DISPUTE BETWEEN ME AND THE COMPANY. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THE ACT AND THIS AGREEMENT, NEITHER I NOR THE COMPANY WILL BE PERMITTED TO PURSUE COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION.

D. *Administrative Relief.* I UNDERSTAND THAT THIS AGREEMENT DOES NOT PROHIBIT ME FROM PURSUING AN ADMINISTRATIVE CLAIM WITH A LOCAL, STATE, OR FEDERAL ADMINISTRATIVE BODY OR GOVERNMENT AGENCY THAT IS AUTHORIZED TO ENFORCE OR ADMINISTER LAWS RELATED TO EMPLOYMENT, INCLUDING, BUT NOT LIMITED TO, THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE NATIONAL LABOR RELATIONS BOARD, OR THE WORKERS' COMPENSATION BOARD. THIS AGREEMENT DOES, HOWEVER, PRECLUDE ME FROM PURSUING COURT ACTION REGARDING ANY SUCH CLAIM, EXCEPT AS PERMITTED BY LAW.

E. *Exceptions.* I UNDERSTAND THAT NOTHING IN THIS AGREEMENT REQUIRES ME TO ARBITRATE CLAIMS THAT CANNOT BE ARBITRATED UNDER APPLICABLE LAW, SUCH AS (I) CLAIMS UNDER THE SARBANES-OXLEY ACT AND (II) CLAIMS CONSTITUTING, RELATING TO, AND/OR ALLEGING SEXUAL HARASSMENT OR SEXUAL ASSAULT BASED ON CONDUCT ARISING ON OR AFTER MARCH 3, 2022 (OR EARLIER DATE, TO THE EXTENT APPLICABLE STATE OR LOCAL LAW PROVIDES FOR AN EARLIER DATE), UNLESS I CHOOSE TO PROCEED WITH SUCH CLAIMS IN ARBITRATION. SIMILARLY, NOTHING IN THIS AGREEMENT PROHIBITS ME FROM ENGAGING IN PROTECTED ACTIVITY, AS SET FORTH ABOVE.

F. *Voluntary Nature of Agreement.* I ACKNOWLEDGE AND AGREE THAT I AM EXECUTING THIS AGREEMENT VOLUNTARILY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE BY THE COMPANY OR ANYONE ELSE. I FURTHER ACKNOWLEDGE AND AGREE THAT (1) THIS AGREEMENT IS SUPPORTED BY BARGAINED-FOR CONSIDERATION; (2) THE COMPANY'S BUSINESS, AND MY EMPLOYMENT WITH THE COMPANY, INVOLVES INTERSTATE COMMERCE; (3) I RETAIN THE RIGHT TO REPORT ANY GOOD FAITH ALLEGATION OF A PURPORTED VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, OR OTHER RELATED STATE OR FEDERAL RULE OR LAW THAT IS ENFORCED BY THE CALIFORNIA CIVIL RIGHTS DIVISION OR EQUAL EMPLOYMENT OPPORTUNITY COMMISSION TO THE APPROPRIATE FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY ENFORCING DISCRIMINATION LAWS; (4) I RETAIN THE RIGHT TO REPORT ANY GOOD FAITH ALLEGATION OF CRIMINAL CONDUCT TO ANY APPROPRIATE FEDERAL, STATE, OR LOCAL OFFICIAL; (5) I RETAIN THE RIGHT TO PARTICIPATE IN A PROCEEDING WITH ANY APPROPRIATE FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY ENFORCING DISCRIMINATION LAWS; (6) I RETAIN THE RIGHT TO MAKE ANY TRUTHFUL STATEMENTS OR DISCLOSURES REQUIRED BY LAW, REGULATION, OR LEGAL PROCESS; AND (8) I RETAIN THE RIGHT TO REQUEST OR RECEIVE CONFIDENTIAL LEGAL ADVICE. ALSO, BY SIGNING THIS AGREEMENT, I ACKNOWLEDGE THAT I'VE RECEIVED AND READ THIS ARBITRATION SECTION, AND I UNDERSTAND THAT IT REQUIRES THAT DISPUTES THAT INVOLVE THE MATTERS SUBJECT TO THE AGREEMENT BE SUBMITTED TO ARBITRATION PURSUANT TO THE ARBITRATION AGREEMENT RATHER THAN TO A JUDGE AND JURY IN COURT. I FURTHER ACKNOWLEDGE AND AGREE THAT I HAVE CAREFULLY READ THIS AGREEMENT AND THAT I HAVE ASKED ANY QUESTIONS NEEDED FOR ME TO UNDERSTAND THE TERMS, CONSEQUENCES, AND BINDING EFFECT OF THIS AGREEMENT AND FULLY UNDERSTAND IT, INCLUDING THAT **I AM WAIVING MY RIGHT TO A JURY TRIAL**. FINALLY, I AGREE THAT I HAVE BEEN PROVIDED AN OPPORTUNITY TO SEEK THE ADVICE OF AN ATTORNEY OF MY CHOICE BEFORE SIGNING THIS AGREEMENT.

14. *General Provisions.*

A. *Governing Law; Consent to Personal Jurisdiction.* With the exception of the arbitration provision which is governed by the FAA, this Agreement will be governed by the laws of the State of California without giving effect to any choice-of-law rules or principles that may result in the application of the laws of any jurisdiction other than California. To the extent that any lawsuit is permitted under this Agreement, I hereby expressly consent to the personal and exclusive jurisdiction and venue of the state and federal courts located in California.

B. *Entire Agreement.* This Agreement, together with the Exhibits herein and any executed written offer letter or employment agreement between the Company and me, to the extent such materials are not in conflict with this Agreement, sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and supersedes all prior discussions or representations between us, including, but not limited to, any representations made during my interview(s) or relocation negotiations, whether written or oral. 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 duly-authorized officer of the Company who is not me and me. Any subsequent change or changes in my duties, salary, or compensation will not affect the validity or scope of this Agreement.

C. *Severability.* If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

D. *Successors and Assigns.* This Agreement will be binding upon my heirs, executors, assigns, administrators, and other legal representatives, and will be for the benefit of the Company, its successors, and its assigns. There are no intended third-party beneficiaries to this Agreement, except as expressly stated. Notwithstanding anything to the contrary herein, Company may assign this Agreement and its rights and obligations under this Agreement to any successor to all or substantially all of Company's relevant assets, whether by merger, consolidation, sale of assets or stock, or otherwise.

E. *Waiver.* Waiver by the Company of a breach of any provision of this Agreement will not operate as a waiver of any other or subsequent breach.

F. *Survivorship.* The rights and obligations of the parties to this Agreement will survive termination of my employment with the Company.

G. *Signatures.* This Agreement may be signed in two counterparts, each of which shall be deemed an original, with the same force and effectiveness as though executed in a single document.

H. *Company Policies.* I understand I must comply with all Company policies, including, but not limited to the Company's policies regarding business conduct and ethics.

Date: _____

Signature

Name of Employee (typed or printed)

Exhibit A

LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP

Title

Date

Identifying Number or Brief
Description

___ No inventions or improvements

___ Additional Sheets Attached

Signature of Employee:

Print Name of Employee:

Date:

Exhibit B

**CALIFORNIA LABOR CODE SECTION 2870
INVENTION ON OWN TIME-EXEMPTION FROM AGREEMENT**

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

SEMLER SCIENTIFIC, INC.

TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, any other documents or property, or reproductions of any and all aforementioned items belonging to Semler Scientific, Inc., its subsidiaries, affiliates, successors or assigns (together, the "Company").

I further certify that I have complied with all the terms of the Company's At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined therein) conceived or made by me (solely or jointly with others), as covered by that agreement.

I further agree that, in compliance with the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement, I will preserve as confidential all Company Confidential Information and Associated Third Party Confidential Information, including trade secrets, confidential knowledge, data, or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, databases, other original works of authorship, customer lists, business plans, financial information, or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants, or licensees.

After leaving the Company's employment, I will be employed by _____ in the position of: _____.

NAME, an individual

Dated: _____

Name

RULE 13A-14(A) CERTIFICATION

I, Douglas Murphy-Chutorian, certify that:

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

Dated: May 12, 2023

/s/ Douglas Murphy-Chutorian
Douglas Murphy-Chutorian, M.D.
Interim Chief Executive Officer
(Principal Executive Officer)

RULE 13A-14(A) CERTIFICATION

I, Andrew B. Weinstein, certify that:

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

Dated: May 12, 2023

/s/ Andrew B. Weinstein

Andrew B. Weinstein
Senior Vice President, Finance and Accounting
(Principal Financial Officer)

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

Each of the undersigned, Douglas Murphy-Chutorian, M.D., Interim Chief Executive Officer of Semler Scientific, Inc., a Delaware corporation (the "Company"), and Andrew B. Weinstein, Senior Vice President, Finance and Accounting of the Company, does hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge (1) the quarterly report on Form 10-Q of the Company for the period ended March 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Douglas Murphy-Chutorian

Name: Douglas Murphy-Chutorian, M.D.

Title: Interim Chief Executive Officer

(Principal Executive Officer)

Dated: May 12, 2023

/s/ Andrew B. Weinstein

Name: Andrew B. Weinstein

Title: Senior Vice President, Finance and Accounting

(Principal Financial Officer)

Dated: May 12, 2023

This certification accompanies and is being "furnished" with this Report, shall not be deemed "filed" by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to liability under that Section and shall not be deemed to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Report, irrespective of any general incorporation language contained in such filing. A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.
