

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 September 30, 2019

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: 001-36445



NanoVibronix, Inc
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

01-0801232

(I.R.S. Employer
Identification Number)

525 Executive Blvd. Elmsford, New York

(Address of principal executive office)

10523

(Zip Code)

Registrant's telephone number, including area code: (914) 233-3004

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common stock, par value \$0.001 per share	NOAV	NASDAQ Capital Market

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant has been required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting 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 type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

The number of shares outstanding of the registrant's Common Stock as of November 15, 2019 was 4,453,764 shares.

NanoVibronix, Inc.
Quarter Ended September 30, 2019

TABLE OF CONTENTS

	<u>Page</u>
<u>PART I. FINANCIAL INFORMATION</u>	
Item 1. Financial Statements (Unaudited)	1
Consolidated Balance Sheets as of September 30, 2019 and December 31, 2018	1
Consolidated Statements of Operations for the Three and Nine Months Ended September 30, 2019 and 2018	2
Consolidated Statements of Stockholders' Equity for the Three and Nine Months Ended September 30, 2019 and 2018	3
Consolidated Statements of Cash Flows for the Nine Months Ended September 30, 2019 and 2018	4
Notes to Consolidated Financial Statements	5
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	14
Item 3. Quantitative and Qualitative Disclosures about Market Risk	20
Item 4. Controls and Procedures	20
<u>PART II. OTHER INFORMATION</u>	
Item 1. Legal Proceedings	21
Item 1A. Risk Factors	21
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	21
Item 3. Defaults Upon Senior Securities	21
Item 4. Mine Safety Disclosures	21
Item 5. Other Information	21
Item 6. Exhibits	22
Item 7. Signatures	23

PART I - FINANCIAL INFORMATION

ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

NanoVibronix, Inc.
Consolidated Balance Sheets (Unaudited)
(Amounts in thousands, except share and per share data)

	<u>September 30,</u> <u>2019</u>	<u>December 31,</u> <u>2018</u>
ASSETS:		
Current assets:		
Cash	\$ 2,258	\$ 896
Trade receivables	175	95
Other accounts receivable and prepaid expenses	310	144
Inventory	104	95
Total current assets	<u>2,847</u>	<u>1,230</u>
Non-current assets:		
Fixed assets, net	5	8
Severance pay fund	218	342
Total non-current assets	<u>223</u>	<u>350</u>
Total assets	<u>\$ 3,070</u>	<u>\$ 1,580</u>
LIABILITIES AND STOCKHOLDERS' EQUITY:		
Current liabilities:		
Trade payables	\$ 186	\$ 193
Other accounts payable and accrued expenses	286	447
Due to related party	50	—
Total current liabilities	<u>522</u>	<u>640</u>
Non-current liabilities:		
Accrued severance pay	318	477
Total non-current liabilities	<u>318</u>	<u>477</u>
Total liabilities	<u>840</u>	<u>1,117</u>
COMMITMENTS AND CONTINGENCIES		
Stockholders' equity:		
Series C Preferred stock of \$0.001 par value – Authorized: 5,000,000 shares at September 30, 2019 and December 31, 2018; Issued and outstanding: 2,733,142 at September 30, 2019 and December 31, 2018	2	2
Series D Preferred stock of \$0.001 par value – Authorized: 5,000 shares at September 30, 2019 and December 31, 2018; Issued and outstanding: 304 at September 30, 2019 and December 31, 2018, respectively	—	—
Series E Preferred stock of \$0.001 par value – Authorized: 3,999,494 shares at September 30, 2019 and 0 at December 31, 2018; Issued and outstanding: 1,810,000 at September 30, 2019 and 0 at December 31, 2018, respectively	2	—
Common stock of \$0.001 par value – Authorized: 20,000,000 shares at September 30, 2019 and December 31, 2018; Issued and outstanding: 4,429,964 and 3,801,522 shares at September 30, 2019 and December 31, 2018, respectively	5	4
Additional paid in capital	39,358	32,993
Accumulated deficit	(37,137)	(32,536)
Total stockholders' equity	<u>2,230</u>	<u>463</u>
Total liabilities and stockholders' equity	<u>\$ 3,070</u>	<u>\$ 1,580</u>

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

NanoVibronix, Inc.
Consolidated Statements of Operations (Unaudited)
(Amounts in thousands, except share and per share data)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2019	2018	2019	2018
Revenues	\$ 101	\$ 54	\$ 443	\$ 264
Cost of revenues	54	46	136	123
Gross profit	47	8	307	141
Operating expenses:				
Research and development	79	121	381	408
Selling and marketing	228	345	820	871
General and administrative	533	868	3,018	1,802
Total operating expenses	840	1,334	4,219	3,081
Loss from operations	(793)	(1,326)	(3,912)	(2,940)
Financial income (expense), net	(20)	(7)	(71)	16
Change in fair value of derivative liabilities	—	—	102	—
Loss on extinguishment of derivative liability	—	—	(288)	—
Warrant modification expense	—	—	(412)	—
Loss before taxes on income	(813)	(1,333)	(4,581)	2,924
Income tax expense	(2)	(11)	(20)	33
Net loss	\$ (815)	\$ (1,344)	\$ (4,601)	\$ 2,957
Basic and diluted net loss available for holders of Common Stock, Preferred C stock and Preferred D stock	\$ (0.12)	\$ (0.21)	\$ (0.66)	\$ (0.46)
Weighted average common shares outstanding:				
Basic and diluted	7,054,845	6,438,308	7,094,547	6,433,239

The accompanying notes are an integral part of these condensed consolidated financial statements

NanoVibronix, Inc.
Consolidated Statement of Stockholders' Equity (Unaudited)
(Amounts in thousands, except share and per share data)

Three Months Ended September 30, 2019

	Preferred C Stock		Preferred D Stock		Preferred E Stock		Common Stock		Additional Paid – in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, June 30, 2019	2,733,142	\$ 2	304	\$ –	1,600,000	2	4,139,964	\$ 4	\$ 38,249	\$ (36,322)	\$ 1,935
Stock-based compensation	–	–	–	–	–	–	–	–	110	–	110
Sale of common stock	–	–	–	–	–	–	290,000	1	579	–	580
Issuance of preferred series E stock	–	–	–	–	210,000	–	–	–	420	–	420
Net loss	–	–	–	–	–	–	–	–	–	(815)	(815)
Balance, September 30, 2019	<u>2,733,142</u>	<u>\$ 2</u>	<u>304</u>	<u>\$ –</u>	<u>1,810,000</u>	<u>2</u>	<u>4,429,964</u>	<u>\$ 5</u>	<u>\$ 39,358</u>	<u>\$ (37,137)</u>	<u>\$ 2,230</u>

Nine Months Ended September 30, 2019

	Preferred C Stock		Preferred D Stock		Preferred E Stock		Common Stock		Additional Paid – in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, December 31, 2018	2,733,142	\$ 2	304	\$ –	–	–	3,801,552	\$ 4	\$ 32,993	\$ (32,536)	\$ 463
Issuance of Common Stock as compensation for services	–	–	–	–	–	–	275,000	–	1,042	–	1,042
Stock-based compensation	–	–	–	–	–	–	–	–	514	–	514
Sale of common stock	–	–	–	–	–	–	290,000	1	579	–	580
Exercise of options	–	–	–	–	–	–	63,412	–	4	–	4
Issuance of preferred series E stock	–	–	–	–	1,810,000	2	–	–	3,618	–	3,620
Reclassification of warrants	–	–	–	–	–	–	–	–	196	–	196
Warrant modification expense	–	–	–	–	–	–	–	–	412	–	412
Net loss	–	–	–	–	–	–	–	–	–	(4,601)	(4,601)
Balance September 30, 2019	<u>2,733,142</u>	<u>\$ 2</u>	<u>304</u>	<u>\$ –</u>	<u>1,810,000</u>	<u>2</u>	<u>4,429,964</u>	<u>\$ 5</u>	<u>\$ 39,358</u>	<u>\$ (37,137)</u>	<u>\$ 2,230</u>

Three Months Ended September 30, 2018

	Preferred C Stock		Preferred D Stock		Common Stock		Additional Paid – in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, June 30, 2018	2,483,142	\$ 2	304	\$ –	3,957,953	\$ 4	\$ 32,209	\$ (29,995)	\$ 2,220
Stock-based compensation	–	–	–	–	–	–	498	–	498
Exercise of warrants	–	–	–	–	9,107	–	12	–	12
Net loss	–	–	–	–	–	–	–	(1,344)	(1,344)
Balance, September 30, 2018	<u>2,483,142</u>	<u>\$ 2</u>	<u>304</u>	<u>\$ –</u>	<u>3,967,060</u>	<u>\$ 4</u>	<u>\$ 32,719</u>	<u>\$ (31,339)</u>	<u>\$ 1,386</u>

Nine Months Ended September 30, 2018

	Preferred C Stock		Preferred D Stock		Common Stock		Additional Paid – in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, December 31, 2017	2,483,142	\$ 2	304	\$ –	3,935,865	\$ 4	\$ 32,010	\$ (28,382)	\$ 3,634
Stock-based compensation	–	–	–	–	–	–	666	–	666
Exercise of warrants	–	–	–	–	31,195	–	43	–	43
Net loss	–	–	–	–	–	–	–	(2,957)	(2,957)
Balance, September 30, 2018	<u>2,483,142</u>	<u>\$ 2</u>	<u>304</u>	<u>\$ –</u>	<u>3,967,060</u>	<u>\$ 4</u>	<u>\$ 32,719</u>	<u>\$ (31,339)</u>	<u>\$ 1,386</u>

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

NanoVibronix, Inc.
Consolidated Statements of Cash Flows (Unaudited)
(Amounts in thousands, except share and per share data)

	Nine Months Ended September 30,	
	2019	2018
Cash flows from operating activities:		
Net loss	\$ (4,601)	\$ (2,957)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	3	4
Stock-based compensation	1,556	666
Noncash interest expense	10	—
Change in fair value of derivative liabilities	(102)	—
Warrant modification expense	412	—
Loss on extinguishment of derivative liability	288	—
Changes in operating assets and liabilities:		
Trade receivable	(80)	(46)
Prepaid expenses and other accounts receivable	(166)	(73)
Inventories	(9)	(58)
Other assets	—	(13)
Trade payables	(7)	(25)
Other accounts payable	(161)	(190)
Due to related party	50	—
Accrued severance pay, net	(35)	23
Net cash used in operating activities	(2,842)	(2,669)
Cash flows from investing activities:		
Purchases of property plant and equipment	—	(8)
Net cash used in investing activities	—	(8)
Cash flows from financing activities:		
Proceeds from issuance of convertible promissory notes and warrants	475	—
Proceeds from exercise of warrants	—	44
Repayments of convertible promissory notes	(475)	—
Proceeds from sale of common stock	580	—
Proceeds from issuance of Preferred Series E stock	3,620	—
Proceeds from exercise of options	4	—
Net cash provided by financing activities	4,204	44
Net decrease in cash and restricted cash	1,362	(2,633)
Cash and restricted cash at beginning of period	896	4,360
Cash and restricted cash at end of period	\$ 2,258	\$ 1,727
Supplemental non-cash financing and investing activities:		
Cash paid for interest	\$ 5	\$ —
Cash paid for taxes	\$ —	\$ —
Discount on convertible notes	\$ 414	\$ —

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

NANOVIBRONIX, INC.
Notes to Consolidated Financial Statements (Unaudited)
(Amounts in thousands except share and per share data)

NOTE 1 - DESCRIPTION OF BUSINESS

NanoVibronix, Inc. (the "Company"), a Delaware corporation, commenced operations on October 20, 2003 and is a medical device company focusing on noninvasive biological response-activating devices that target wound healing and pain therapy and can be administered at home, without the assistance of medical professionals.

The Company's principal research and development activities are conducted in Israel through its wholly-owned subsidiary, NanoVibronix (Israel 2003) Ltd., a company registered in Israel, which commenced operations in October 2003.

NOTE 2 - LIQUIDITY AND PLAN OF OPERATIONS

The Company's ability to continue to operate is dependent mainly on its ability to successfully market and sell its products and the receipt of additional financing until profitability is achieved. The Company currently incurs and historically has incurred losses from operations and expects to do so in the foreseeable future. In 2019, the Company raised \$3,620 through the issuance of its Series E Preferred Stock and \$580 through the issuance of its Common Stock. Despite the cash infusion, the Company will not have sufficient resources to fund its operations for the next twelve months from the date of this filing. These conditions raise substantial doubt about the Company's ability to continue as a going concern. During the next twelve months management expects that the Company will need to raise additional capital to finance its losses and negative cash flows from operations and may continue to be dependent on additional capital raising as long as its products do not reach commercial profitability.

Management's plans include the continued commercialization of the Company's products and raising capital through the sale of additional equity securities, debt or capital inflows from strategic partnerships. There are no assurances, however, that the Company will be successful in obtaining the level of financing needed for its operations. If the Company is unsuccessful in commercializing its products and raising capital, it will need to reduce activities, curtail or cease operations. The financial statements do not include any adjustments with respect to the carrying amounts of assets and liabilities and their classification that might be necessary should the Company be unable to continue as a going concern.

NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of presentation and principles of consolidation

The Company's unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP") for the interim financial information and with instructions to Form 10-Q and Article 10 of Regulation S-X. The unaudited consolidated financial statements include the accounts of all subsidiaries in which the Company holds a controlling financial interest as of the financial statement date.

The unaudited consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. The terms "we," "us," "our," and the "Company" refer to NanoVibronix, Inc. and its wholly-owned subsidiary. All intercompany accounts and transactions have been eliminated in consolidation.

Unaudited interim financial information

In the opinion of management, the accompanying unaudited interim consolidated financial statements reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the financial position and results of operations of the Company. These consolidated financial statements and notes thereto are unaudited and should be read in conjunction with the Company's audited financial statements for the year ended December 31, 2018, as found in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission (the "SEC") on April 15, 2019.

The balance sheet for December 31, 2018 was derived from the Company's audited financial statements for the year ended December 31, 2018. The results of operations for the periods presented are not necessarily indicative of results that could be expected for the entire fiscal year due to seasonality and other factors. Certain information and footnote disclosures normally included in the consolidated financial statements in accordance with U.S. GAAP have been omitted in accordance with the rules and regulations of the SEC for interim reporting.

Use of estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates, judgments and assumptions. The Company believe that the estimates, judgments and assumptions used are reasonable based upon information available at the time they are made. These estimates, judgments and assumptions can affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Foreign currency translation and transaction

Non-U.S. dollar denominated transactions and balances have been re-measured to U.S. dollars. All transaction gains and losses from re-measurement of monetary balance sheet items denominated in non-U.S. dollar currencies are reflected in the statements of operations as financial income or expenses, as appropriate. Gains and losses from foreign currency transactions and translation for the three and nine months ended September 30, 2019 and 2018 and the cumulative translation gains and losses as of September 30, 2019 and December 31, 2018 were not material.

Revenue recognition

The Company generates revenues from the sale of our products to distributors and patients. Revenues from those products are recognized in accordance with Accounting Standards Codification ("ASC") 606, Revenue from Contracts with Customers, in which its core principle of Accounting Standards Update ("ASU") 2014-09 is to recognize revenues when promised goods or services are transferred to customers in an amount that reflects the consideration that is expected to be received for those goods or services. ASU 2014-09 defines a five-step process to achieve this core principle and, in doing so, it is possible more judgment and estimates may be required within the revenue recognition process than are required under existing GAAP, including identifying performance obligations in a contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation.

Revenues from sales to distributors are recognized at the time the products are delivered to the distributors ("sell-in"). The Company does not grant rights of return, credits, rebates, price protection, or other privileges on its products to distributors.

Recently issued accounting pronouncements not yet adopted

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842). ASU 2016-02 requires that a lessee recognize the assets and liabilities that arise from operating leases. A lessee should recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right of use asset representing its right to use the underlying asset for the lease term. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. In transition, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. Public business entities should apply the amendments in ASU 2016-02 for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Early application is permitted for all public business entities and all nonpublic business entities upon issuance. The Company (as an EGC) that is taking advantage of the extended transition period offered to private entities would apply this for fiscal years beginning after December 15, 2019. The Company is currently evaluating the impact of adopting ASU 2016-02 on its consolidated financial statements.

Recently adopted accounting standards

In July 2017, the FASB issued ASU No. 2017-11, "Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815)" ("ASU 2017-11"), which addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced on the basis of the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. The Company adopted ASU 2017-11 on January 1, 2019 and as a result, the down round feature of equity instruments that were issued in the first and second quarter of 2019 were not considered when determining the derivative liability of those instruments.

SEC Disclosure Update and Simplification

In August 2018, the SEC adopted the final rule under SEC Release No. 33-10532, Disclosure Update and Simplification, amending certain disclosure requirements that were redundant, duplicative, overlapping, outdated or superseded. In addition, the amendments expanded the disclosure requirements on the analysis of stockholders' equity for interim financial statements. Under the amendments, an analysis of changes in each caption of stockholders' equity presented in the balance sheet must be provided in a note or separate statement. The analysis should present a reconciliation of the beginning balance to the ending balance of each period for which a statement of comprehensive income is required to be filed. This final rule was effective on November 5, 2018. The presentation of the changes in shareholders' equity in accordance with the new guidance is included in this Form 10-Q for the quarter ended September 30, 2019.

NOTE 4 - STOCKHOLDERS' EQUITY

Stock based compensation and sale of common stock

In February 2019, the Company issued 275,000 shares of common stock to a consultant for services valued at \$3.79 per share, or \$1,042.

In July 2019, the Company sold 290,000 shares of common stock to private investors at \$2 per share, or \$580.

During the three and nine-month period ended September 30, 2019, 0 and 63,412 employee options were exercised, and 0 and 120,000 options were issued, respectively. The options issued in 2019, were recorded at a fair value of \$183 and vested immediately. During the three and nine-month period ended September 30, 2019, stock-based compensation expense of \$110 and \$514 was recorded for options that vested, respectively.

The fair value for options granted in 2019 is estimated at the date of grant using a Black-Scholes-Merton options pricing model with the following underlying assumptions:

Price at valuation	\$	3.40
Exercise price	\$	3.40
Risk free interest		2.79%
Expected term (in years)		5
Volatility		48%

The total stock-based expense recognized in the financial statements for services received from employees and non-employees is shown in the following table.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Research and development	\$ —	\$ —	\$ —	\$ 7
Selling and marketing	11	6	33	9
General and administrative	99	492	481	650
Total	\$ 110	\$ 498	\$ 514	\$ 666

As of September 30, 2019, the total unrecognized estimated compensation cost related to non-vested stock options granted prior to that date was \$269, which is expected to be recognized over a weighted average period of approximately 1.13 years.

Series E Preferred Stock

On June 21, 2019, the Company filed a Certificate of Designation of the Series E Preferred Stock (the “Original Certificate of Designation”) with the Secretary of State of the State of Delaware (the “Secretary of State”). The Original Certificate of Designation was effective upon filing with the Secretary of State and designated the Series E Preferred Stock. On July 31, 2019 and November 15, 2019, the Company filed with the Secretary of State an Amended and Restated Certificates of Designation (the “Amended and Restated Certificates of Designation”) which were effective upon filing with the Secretary of State of Delaware. The Amended Certificates of Designation provide that, among other things, the Series E Preferred Stock is not convertible into the Company’s common stock, and the holders of Series E Preferred Stock have no voting rights, until, in each case, the Company receives stockholder approval of the June Offering (as defined below) and the July Offering (as defined below).

On June 21, 2019, the Company entered into and closed a private placement Securities Purchase Agreement with certain existing stockholders relating to the sale to such existing stockholders of 1,600,000 shares of the Company’s Series E Preferred Stock, and seven year warrants to purchase 1,600,000 shares of our Series E Preferred Stock at an exercise price of \$2.50 per share, at a purchase price per unit of \$2.00 (the “June Offering”), for aggregate gross proceeds of \$3,200,000 (excluding the exercise of the warrants issued in the June Offering).

On July 31, 2019, the Company entered into and closed a private placement Securities Purchase Agreement with certain existing stockholders relating to the sale to such existing investors of 210,000 shares of the Company’s Series E Preferred Stock and seven year warrants to purchase 210,000 shares of our Series E Preferred Stock at an exercise price of \$2.50 per share, at a purchase price per unit of \$2.00 (the “July Preferred Offering”), for gross proceeds of \$420,000 (excluding the exercise of the warrants issued in the July Preferred Offering).

Each share of Series E Preferred Stock is convertible at any time and from time to time at the option of a holder of Series E Preferred Stock into one share of the Company’s common stock, provided that each holder would be prohibited from converting Series E Preferred Stock into shares of the Company’s common stock if, as a result of such conversion, any such holder, together with its affiliates, would own more than 9.99% of the total number of shares of the Company’s common stock then issued and outstanding. This limitation may be waived with respect to a holder upon such holder’s provision of not less than 61 days’ prior written notice to the Company.

Upon liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, each holder of the Series E Preferred Stock shall be entitled to receive the amount of cash, securities or other property to which such holder would be entitled to receive with respect to such shares of Series E Preferred Stock if such shares had been converted to the Company’s common stock immediately prior to such liquidation.

Shares of Series E Preferred Stock are not entitled to receive any dividends, unless and until specifically declared by the Board. However, holders of Series E Preferred Stock are entitled to receive dividends on shares of Series E Preferred stock equal (on an as-if-converted-to-common-stock basis) to and in the same form as dividends actually paid on shares of the common stock when such dividends are specifically declared by the Board of Directors of the Company. The Company is not obligated to redeem or repurchase any shares of Series E Preferred Stock. Shares of Series E Preferred Stock are not otherwise entitled to any redemption rights, or mandatory sinking fund or analogous fund provisions.

Subject to the beneficial ownership limitations, each holder of Series E Preferred Stock shall be entitled to the number of votes equal to the number of shares of the Company's common stock equal to the Voting Ratio. The Voting Ratio, for each share of Series E Preferred Stock is equal to \$2.00 divided by \$3.53.

These Series E Preferred Shares are classified within permanent equity on the Company's consolidated balance sheet as they do not meet the criteria that would require presentation outside of permanent equity under ASC 480 *Distinguishing Liabilities from Equity*.

Warrants

During the nine months ended September 30, 2019, the Company issued warrants to purchase 190,000 shares of the Company's Common Stock or series C preferred stock, par value \$0.001 per share ("Series C Preferred Stock"), at an exercise price of the lesser of: (a) 80% (i.e., a 20% discount) of the exercise price per share of the warrants to purchase shares of the Company's capital stock issued in the first equity financing of the Company following the date of issuance, or (b) \$4.80, with a stipulation that in no event will the exercise price be less than \$3.00 per warrant share. The warrants were issued in conjunction with the issuance of convertible debt which has since been repaid and the warrants remain outstanding – See Note 5. The warrants were initially accounted for as a derivative liability until the completion of the June Financing – See Note 6.

The Company issued warrants to purchase 1,600,000 shares of Series E Preferred Stock in the June Financing and warrants to purchase 210,000 shares of Series E preferred Stock in the July Financing.

Warrant modification

On February 5, 2019, the Company entered into amendments to its two-year warrants (the "Warrant Amendment") to purchase an aggregate of 266,667 shares of Common Stock at an exercise price of \$3.00 per share (the "\$3.00 Warrants") and warrants to purchase an aggregate of 420,000 shares of Common Stock at an exercise price of \$6.00 per share (the "\$6.00 Warrants"), issued in January and February 2015, to extend the expiration date of the warrants for two additional years. The warrants were previously extended for two years in January 2017. In addition, the Warrant Amendment amended the exercise price with respect to the \$3.00 Warrants from \$3.00 per share to \$3.35 per share. The exercise price of the \$6.00 Warrants was unchanged. Pursuant to the Warrant Amendment, warrants to purchase 266,667 shares of Common Stock at \$3.35 per share and warrants to purchase 266,667 shares of Common Stock at \$6.00 per share will expire on January 29, 2021, and warrants to purchase 140,000 shares of Common Stock at \$6.00 per share will expire on February 10, 2021, and warrants to purchase 13,333 shares of Common Stock at \$6.00 per share will expire on February 23, 2021. The Warrant Amendment is effective as of January 29, 2019. All other terms of the original warrants remain the same.

The Warrant Amendment was accounted for in warrant modification expense, which was measured at the amount equal to the incremental value reflecting the change in the fair value of the warrants before and after the Warrant Amendment. Accordingly, warrant modification expense in the amount of \$412 was recorded with a corresponding increase in the additional paid-in capital.

In estimating the warrants' fair value, the Company used the following assumptions:

Risk free interest	2.56%
Dividend yield	0%
Volatility	55.6% - 56.5%
Contractual term (in years)	2

NOTE 5 - CONVERTIBLE NOTES

On March 29, 2019, the Company completed a bridge financing, pursuant to which the Company issued to two accredited investors convertible notes on the aggregate principal amount of \$225 (the "Notes") and seven-year warrants (the "March Warrants") to purchase an aggregate of 90,000 shares of the Company's Common Stock or Series C Preferred Stock.

The principal amount and all accrued but unpaid interest on the Notes are due and payable on the date (the "Maturity Date") that is the earlier of the (i) 5-year anniversary of the date of issuance, or (ii) the date the Company completes an equity financing pursuant to which the Company issues and sells shares of capital stock resulting in aggregate proceeds of at least \$2,000 (a "Qualified Financing"). The Notes bear interest at a rate of 6% per annum, payable on the Maturity Date. To the extent not previously converted, on the Maturity Date, the investors will receive, at the option of each the investor, either (a) cash equal to the original principal amount of the Note and interest then accrued and unpaid thereon, or (b) shares of Common Stock or Series C Preferred Stock of the Company, at a price per share equal to the lesser of: (x) 80% of the amount equal to the quotient obtained by dividing (i) the estimated value of the Company as of the Maturity Date, as determined in good faith by the Company's board of directors, by (ii) the aggregate number of outstanding shares of the Company's Common Stock, as of the Maturity Date on a fully diluted basis, and (y) \$5.90 per share, as such amount may be adjusted for any stock split, stock dividend, reclassification or similar events affecting the capital stock of the Company. Upon consummation of a Qualified Financing, each investor may elect to have the outstanding principal and accrued but unpaid interest thereon converted into (a) shares of the same class and series of equity securities sold in such Qualified Financing, (b) shares of Series C Preferred Stock or (c) Common Stock, at a price per share equal to the lesser of: (a) 80% of the price per share at which such securities are sold in such Qualified Financing and (b) \$4.00 per share, as such amount may be adjusted for any stock split, stock dividend, reclassification or similar events affecting the Company's capital stock.

In no event will the number of shares to be issued upon (i) exercise of this March Warrants, (ii) conversion of the Notes exceed, in the aggregate, 9.9% of the total shares outstanding or the voting power outstanding on the date immediately preceding the date of issuance.

Between April and May 2019, the Company completed multiple bridge financings, pursuant to which the Company issued to two accredited investors convertible notes in the aggregate principal amount of \$250 and seven-year warrants to purchase an aggregate of 100,000 shares of the Company's Common Stock or Series C Preferred Stock with the same terms as the notes issued on March 29, 2019.

In June 2019, the Company paid off all convertible notes and interest with funds raised from the Qualified Financing. The balance of the notes and interest paid off was \$475 and \$5, respectively. As a result, a loss of \$288 was recorded on extinguishment of derivative liabilities.

	September 30, 2019
Convertible Notes:	
Principal value of 6% convertible notes issued during the six months ended June 30, 2019	\$ 475
Fair value of derivative liability of convertible notes prior to payoff date	122
Debt discount less amortization during the period prior to payoff date	(410)
Loss on extinguishment of derivative liabilities upon payoff of convertible notes	288
Payoff of convertible notes	(475)
Total carrying value of convertible notes at September 30, 2019	\$ -

NOTE 6 - DERIVATIVE LIABILITIES

On March 29, 2019 the Company issued 90,000 warrants in conjunction with the issuance of convertible debt.

Between April and May 2019, the Company issued 100,000 warrants in conjunction with the issuance of convertible debt.

These warrants were initially accounted for as a derivative liability.

A summary of quantitative information with respect to valuation methodology and significant unobservable inputs used for the Company's purchase warrants that were categorized within Level 3 of the fair value hierarchy during the nine months ended September 30, 2019 is as follows:

Stock price	\$2.77 - \$4.05
Conversion price	\$1.60 - \$2.50
Contractual term (in years)	5
Volatility (annual)	57.7% - 62.9%
Risk-free rate	2.23% - 2.40%
Dividend yield (per share)	0%

The foregoing assumptions were reviewed quarterly and were subject to change based primarily on management's assessment of the probability of the events described occurring.

As of June 26, 2019, the Company completed a Qualified Financing, at which point the warrants exercise price is fixed and the warrants no longer require derivative treatment. The warrants were remeasured at fair value on that date and the remaining derivative liability of \$196 reclassified to equity.

Financial Liabilities Measured at Fair Value on a Recurring Basis

Financial liabilities measured at fair value on a recurring basis are summarized below and disclosed on the balance sheet under Derivative liability - warrants and derivative liabilities:

	Fair value measured at September 30, 2019			
	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	Fair value at September 30, 2019
Derivative liability – warrants	\$ -	\$ -	\$ -	\$ -
Embedded conversion feature derivative liability	-	-	-	-
Total	\$ -	\$ -	\$ -	\$ -

	Fair value measured at December 31, 2018			
	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	Fair value at December 31, 2018
Derivative liability – warrants	\$ -	\$ -	\$ -	\$ -
Embedded conversion feature derivative liability	-	-	-	-
Total	\$ -	\$ -	\$ -	\$ -

The fair value accounting standards define fair value as the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is determined based upon assumptions that market participants would use in pricing an asset or liability. Fair value measurements are rated on a three-tier hierarchy as follows:

- Level 1 inputs: Quoted prices (unadjusted) for identical assets or liabilities in active markets;
- Level 2 inputs: Inputs, other than quoted prices included in Level 1, that are observable either directly or indirectly; and
- Level 3 inputs: Unobservable inputs for which there is little or no market data, which require the reporting entity to develop its own assumptions.

There were no transfers between Level 1, 2 or 3 during the nine months ended September 30, 2019.

The following table presents changes in Level 3 liabilities measured at fair value for the nine months ended September 30, 2019:

	Derivative Liability - -Warrants	Embedded Conversion Feature Derivative Liability	Total Derivative Liabilities
Balance - January 1, 2019	\$ -	\$ -	\$ -
Liabilities	261	159	420
Change in fair value of warrant liability	(65)	(37)	(102)
Eliminate derivative treatment	(196)	(122)	(318)
Balance – September 30, 2019	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

NOTE 7 - LOSS PER SHARE APPLICABLE TO COMMON SHAREHOLDER

Basic net loss per common share (“Basic EPS”) is computed by dividing net loss available to common shareholders by the weighted average number of common shares outstanding during the period. All outstanding share options and warrants for the three and nine months ended September 30, 2019 and 2018 have been excluded from the calculation of the diluted net loss per share because all such securities are anti-dilutive for all periods presented.

The following table summarizes the Company’s securities, in common share equivalents, which have been excluded from the calculation of dilutive loss per share as their effect would be anti-dilutive:

	September 30, 2019	December 31, 2018
Series D Preferred Shares	303,782	303,782
Series E Preferred Shares	1,810,000	—
Stock Options - employee and non-employee	749,361	734,756
Warrants	266,667	266,667
Total	<u>3,129,810</u>	<u>1,305,205</u>

The diluted loss per share equals basic loss per share in the three and nine months ended September 30, 2019 and 2018 because the Company had a net loss and the impact of the assumed exercise of stock options and the vesting of restricted stock would have been anti-dilutive.

NOTE 8 - GEOGRAPHIC INFORMATION AND MAJOR CUSTOMER DATA

Summary information about geographic areas:

The Company manages its business on the basis of one reportable segment and derives revenues from selling its products directly to patients as well as through distributor agreements. The following is a summary of revenues within geographic areas:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
United States	\$ 101	\$ 28	\$ 259	\$ 129
Europe	-	16	161	61
Israel	-	3	13	41
India	-	-	8	3
Canada	-	-	2	21
Other	-	7	-	9
Total	<u>\$ 101</u>	<u>\$ 54</u>	<u>\$ 443</u>	<u>\$ 264</u>

During the three-month period ended September 30, 2019 and 2018, revenues from distributors accounted for 93% and 64% of total revenues, respectively.

During the nine-month period ended September 30, 2019 and 2018, revenues from distributors accounted for 59% and 52% of total revenues, respectively.

The Company’s long-lived assets are all located in Israel.

NOTE 9 - COMMITMENTS AND CONTINGENCIES

Leases

The Company leases office facilities and motor vehicles under operating leases, which expire on various dates, the latest of which is 2020.

Year ended December 31,	Operating leases
2019	\$ 11
2020	29
Total	\$ 40

Rent and related expenses were \$13 and \$12 for the three months ended September 30, 2019 and 2018 and \$43 and \$22 for the nine months ended September 30, 2019 and 2018, respectively.

NOTE 10 - SUBSEQUENT EVENTS

None

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of financial condition and results of operations in conjunction with our consolidated financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q.

Unless the context requires otherwise, references in this Form 10-Q to the "Company," "NanoVibronix," "we," "our" and "us" refer to NanoVibronix, Inc., a Delaware corporation, and its subsidiaries.

Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains "forward-looking statements," which include information relating to future events, future financial performance, financial projections, strategies, expectations, competitive environment and regulation. Words such as "may," "should," "could," "would," "predicts," "potential," "continue," "expects," "anticipates," "future," "intends," "plans," "believes," "estimates," and similar expressions, as well as statements in future tense, identify forward-looking statements. Forward-looking statements should not be read as a guarantee of future performance or results and may not be accurate indications of when such performance or results will be achieved. Forward-looking statements are based on information we have when those statements are made or management's good faith belief as of that time with respect to future events, and are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements. Important factors that could cause such differences include, but are not limited to:

- Our ability to continue as a going concern.
- The timing of clinical studies and eventual U.S. Food and Drug Administration approval of UroShield and our other product candidates.
- Regulatory actions that could adversely affect the price of or demand for our approved products.
- Market acceptance of existing and new products.
- Favorable or unfavorable decisions about our products from government regulators, insurance companies or other third-party payers.
- Our ability to regain compliance with the continued listing requirements of the Nasdaq Capital Market and the risk that our common stock will be delisted if we cannot do so.
- Our intellectual property portfolio.
- Our ability to recruit and retain qualified regulatory and research and development personnel.
- Unforeseen changes in healthcare reimbursement for any of our approved products.
- Lack of financial resources to adequately support our operations.
- Difficulties in maintaining commercial scale manufacturing capacity and capability.
- Our ability to generate internal growth.

- Changes in our relationship with key collaborators.
- Changes in the market valuation or earnings of our competitors or companies viewed as similar to us.
- Our failure to comply with regulatory guidelines.
- Uncertainty in industry demand and patient wellness behavior.
- General economic conditions and market conditions in the medical device industry.
- Future sales of large blocks of our common stock, which may adversely impact our stock price.
- Depth of the trading market in our common stock.

The foregoing does not represent an exhaustive list of matters that may be covered by the forward-looking statements contained herein or risk factors that we are faced with that may cause our actual results to differ from those anticipated in our forward-looking statements. For a discussion of these and other risks that relate to our business and financial performance, you should carefully review the risks and uncertainties described under the heading “Item 1A. Risk Factors” and elsewhere in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, and those described from time to time in our future reports filed with the Securities and Exchange Commission. Moreover, new risks regularly emerge, and it is not possible for us to predict or articulate all risks we face, nor can we assess the impact of all risks on our business or the extent to which any risk, or combination of risks, may cause actual results to differ from those contained in any forward-looking statements. All forward-looking statements included in this Form 10-Q are based on information available to us on the date of this Quarterly Report on Form 10-Q. Except to the extent required by applicable laws or rules, we undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

Overview

We are a medical device company focusing on noninvasive biological response-activating devices that target wound healing and pain therapy and can be administered at home, without the assistance of medical professionals. Our WoundShield, PainShield and UroShield products are backed by novel technology which relates to ultrasound delivery through surface acoustic waves.

Implications of being an Emerging Growth Company

We are an “emerging growth company,” as defined in Section 2(a) of the Securities Act of 1933, or the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. As such, we are eligible to take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not “emerging growth companies” including, but not limited to:

- being permitted to present only two years of audited financial statements and only two years of related disclosure in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in this Quarterly Report on Form 10-Q;
- being permitted to provide less extensive narrative disclosure than other public companies including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002 and reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements;
- being permitted to utilize exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved;
- being permitted to defer complying with certain changes in accounting standards; and
- being permitted to use test-the-waters communications with qualified institutional buyers and institutional accredited investors.

We intend to take advantage of these and other exemptions available to “emerging growth companies.” We could remain an “emerging growth company” until the earliest of (a) the last day of the fiscal year following the fifth anniversary of the date of the first sale of common stock in an offering registered under the Securities Act of 1933, as amended, (b) the last day of the first fiscal year in which our annual gross revenues exceed \$1.07 billion, (c) the last day of our fiscal year in which we are deemed to be a “large accelerated filer” as defined in Rule 12b-2 under the Securities Exchange Act of 1934, or Exchange Act (which would occur if the market value of our equity securities that is held by non-affiliates exceeds \$700 million as of the last business day of our most recently completed second fiscal quarter), or (d) the date on which we have issued more than \$1 billion in nonconvertible debt during the preceding three-year period.

The JOBS Act permits an “emerging growth company” like us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. This means that an “emerging growth company” can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to delay such adoption of new or revised accounting standards.

Recent Events

Our Common Stock is currently listed for trading on the NASDAQ Capital Market.

On September 14, 2018, we received a letter from the Listing Qualifications Staff (the “Staff”) of The Nasdaq Stock Market LLC notifying the Company that it was no longer in compliance with the minimum stockholders’ equity requirement for continued listing on the NASDAQ Capital Market. On October 26, 2018, November 23, 2018 and January 9, 2019, we submitted a plan and supporting documentation to regain compliance with the minimum stockholders’ equity requirement and was granted an extension through March 13, 2019 to comply with this requirement.

The Staff notified us by letter dated March 14, 2019 that it determined that we did not meet the terms of the extension because we were unable to complete an equity financing and evidence compliance with the minimum \$2.5 million stockholders’ equity requirement for continued listing on the NASDAQ Capital Market by March 13, 2019, and our Common Stock would be subject to delisting from the NASDAQ Capital Market unless the Company timely requests a hearing before the Nasdaq Hearings Panel (the “Panel”).

We timely requested a hearing before the Panel, which request stayed any delisting action by the Staff. The hearing occurred on May 2, 2019. At the hearing, we presented our plan to evidence compliance with the minimum stockholders’ equity requirement for continued listing on the NASDAQ Capital Market, and request an extension of time within which to do so.

By letter dated May 20, 2019, we received notice that the Panel granted our request for continued listing on the NASDAQ Capital Market. Assuming our compliance plan is executed and compliance with the \$2.5 million stockholder equity requirement is demonstrated, the Panel will maintain jurisdiction thereafter for the balance of the 180-day discretionary period and imposed certain conditions and reporting requirements during that period. The Panel determined to continue the listing of our shares of common stock on the NASDAQ Capital Market, partially based upon our assurances that it had a high level of confidence that it will receive the funding needed. The Panel will maintain a panel Monitor on the Company until September 2020.

To that end, on June 21, 2019, we entered into and closed a private placement Securities Purchase Agreement with certain existing stockholders relating to the sale to such existing stockholders of (i) 1,600,000 shares of the Company’s Series E Preferred Stock, par value \$0.001 per share (the “Series E Preferred Stock”), and warrants to purchase 1,600,000 shares of Series E Preferred Stock at an exercise price of \$2.50 per share, at a purchase price per unit of \$2.00 (the “June Financing”), for aggregate gross proceeds of \$3,200,000 (excluding the exercise of the warrants issued in the June Financing).

On July 31, 2019, we entered into and initially closed a private placement Securities Purchase Agreement with certain existing stockholders relating to the sale to such existing investors of the Series E Preferred Stock and warrants to purchase shares of Series E Preferred Stock at an exercise price of \$2.50 per share, at a purchase price per unit of \$2.00 (the “Preferred Financing”).

On July 31, 2019, we entered into and initially closed a private placement Securities Purchase Agreement with certain accredited investors relating to the sale to such investors of shares of our common stock, and (ii) warrants to purchase shares of our common stock at an exercise price of \$2.50 per share, at a purchase price per unit of \$2.00 (the “Common Financing”).

The aggregate gross proceeds from the initial closings of the Preferred Financing and the Common Financing is \$1,000,000 (excluding the exercise of the warrants issued in the Preferred Financing and the Common Financing).

We agreed to use commercially reasonable efforts to provide each stockholder entitled to vote at a special meeting of stockholders of the Company (the “Stockholder Meeting”) a proxy statement soliciting each such stockholder’s affirmative vote at the Stockholder Meeting for approval of resolutions (“Stockholder Resolutions”) providing for the issuance of all of the shares of our common stock issuable upon conversion of the Series E Preferred Stock in accordance with applicable law and the rules and regulations of the Nasdaq Stock Market (such affirmative approval being referred to herein as the “Stockholder Approval”, and the date such Stockholder Approval is obtained, the “Stockholder Approval Date”), and we have agreed to use its commercially reasonable efforts to solicit its stockholders’ approval of such Stockholder Resolutions and shall cause our board of directors to recommend to the stockholders that they approve such Stockholder Resolutions. The Stockholder Meeting occurred on November 18, 2019 and at the Stockholder Meeting, the stockholders of the Company approved the Stockholder Resolutions.

Each share of Series E Preferred Stock is convertible at any time and from time to time into one share of the Company’s common stock, provided that each holder would be prohibited from converting Series E Preferred Stock into shares of the Company’s common stock if, as a result of such conversion, any such holder, together with its affiliates, would own more than 9.99% of the total number of shares of the Company’s common stock then issued and outstanding. This limitation may be waived with respect to a holder upon such holder’s provision of not less than 61 days’ prior written notice to the Company.

Upon liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, each holder of the Series E Preferred Stock shall be entitled to receive the amount of cash, securities or other property to which such holder would be entitled to receive with respect to such shares of Series E Preferred Stock if such shares had been converted to the Company’s common stock immediately prior to such liquidation.

Shares of Series E Preferred Stock are not entitled to receive any dividends, unless and until specifically declared by the Board. However, holders of Series E Preferred Stock are entitled to receive dividends on shares of Series E Preferred stock equal (on an as-if-converted-to-common-stock basis) to and in the same form as dividends actually paid on shares of the common stock when such dividends are specifically declared by the Board of Directors of the Company. The Company is not obligated to redeem or repurchase any shares of Series E Preferred Stock. Shares of Series E Preferred Stock are not otherwise entitled to any redemption rights, or mandatory sinking fund or analogous fund provisions.

Subject to the beneficial ownership limitations, each holder of Series E Preferred Stock shall be entitled to the number of votes equal to the number of shares of the Company's common stock equal to the Voting Ratio. The Voting Ratio, for each share of Series E Preferred Stock is equal to \$2.00 divided by \$3.53. Unless and until the stockholders of the Company approve the June Offering and the July Offering, the holders of the Series E Preferred Stock have no voting rights.

Critical Accounting Policies

A critical accounting policy is one that is both important to the portrayal of our financial condition and results of operation and requires management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. Our critical accounting policies are more fully described in both (i) "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and (ii) Note 2 of the Notes to the Consolidated Financial Statements included in our Annual Report on Form 10-K/A for the fiscal year ended December 31, 2018. There have not been any material changes to such critical accounting policies since December 31, 2018.

The currency of the primary economic environment in which our operations are conducted is the U.S. dollar ("\$" or "dollar"). Accordingly, our functional currency is the dollar.

Results of Operations

Three Months Ended September 30, 2019 Compared to Three Months Ended September 30, 2018

Revenues. For the three months ended September 30, 2019 and 2018, our revenues were approximately \$101,000 and \$54,000 respectively, an increase of approximately 87%, or \$47,000 between the periods. The increase was mainly attributable to customer additions. Our revenues may fluctuate as we add new consumers or when existing distributors or consumers make large purchases of our products during one period and no purchases during another period. Our revenues may fluctuate from quarter-to-quarter and any growth or decrease in revenues by quarter may not be linear or consistent.

For the three months ended September 30, 2019, the percentage of revenues attributable to our products was: PainShield - 100% and UroShield 0%. For the three months ended September 30, 2018, the percentage of revenues attributable to our products was: PainShield - 72% and UroShield - 28%. For the three months ended September 30, 2019 and 2018, the percentage of revenues attributable to our disposable products was 12% and 23%, respectively. For the three months ended September 30, 2019 and 2018, the portion of our revenues that was derived from distributors was 93% and 64%, respectively.

Gross Profit. For the three months ended September 30, 2019 and 2018, gross profit was approximately \$47,000 and \$8,000, respectively, an increase of approximately 488%, mainly due to increased sales.

Gross profit as a percentage of revenues was approximately 47% and 15% for the three months ended September 30, 2019 and 2018, respectively. The increase in gross profit as a percentage is mainly due to extra costs incurred in the third quarter of 2018 that were incurred to correct defective products ..

Research and Development Expenses. For the three months ended September 30, 2019 and 2018, research and development expenses were approximately \$79,000 and \$121,000, respectively between the periods. The decrease was due to there being no clinical trials during the three months ended September 30, 2019.

Research and development expenses as a percentage of total revenues were approximately 78% and 224% for the three months ended September 30, 2019 and 2018, respectively.

Our research and development expenses consist mainly of payroll expenses to employees involved in research and development activities, stock-based compensation expenses, expenses related to subcontracting, patents application and registration, clinical trial and facilities expenses associated with and allocated to research and development activities.

Selling and Marketing Expenses. For the three months ended September 30, 2019 and 2018, selling and marketing expenses were approximately \$228,000 and \$345,000, respectively, a decrease of approximately 34%, or \$117,000, between the periods. The decrease was primarily due to bonuses and vacation payouts in 2018.

Selling and marketing expenses as a percentage of total revenues were approximately 226% and 639% for the three months ended September 30, 2019 and 2018, respectively.

Selling and marketing expenses consist mainly of payroll expenses to direct sales and marketing employees, stock-based compensation expenses, travel expenses, advertising and marketing expenses, rent and facilities expenses associated with and allocated to selling and marketing activities.

General and Administrative Expenses. For the three months ended September 30, 2019 and 2018, general and administrative expenses were approximately \$533,000 and \$868,000, respectively, a decrease of approximately 39%, or \$335,000, between the periods. The decrease was primarily due to higher compensation costs and public company expenses in 2018.

General and administrative expenses as a percentage of total revenues were approximately 528% and 1,607% for the three months ended September 30, 2019 and 2018, respectively.

Our general and administrative expenses consist mainly of payroll expenses for management and administrative employees, share-based compensation expenses, accounting, legal and facilities expenses associated with general and administrative activities and costs associated with being a publicly traded company.

Financial expenses, net. For the three months ended September 30, 2019 and 2018, financial expenses, net was approximately \$20,000 compared to a \$7,000, respectively, an increase of approximately \$13,000, between the periods. The increase in 2019 was derived primarily from exchange rate adjustments.

Tax expenses. For the three months ended September 30, 2019 and 2018, tax expenses were \$2,000 and \$11,000. The tax expense is computed by multiplying income before taxes at our Israeli subsidiary by the appropriate tax rate.

Net loss. Our net loss decreased by approximately \$529,000, or 39%, to approximately \$815,000 for the three months ended September 30, 2019 from approximately \$1,344,000 in the same period of 2018. The decrease in net loss resulted primarily from the factors described above.

Nine Months Ended September 30, 2019 Compared to Nine Months Ended September 30, 2018

Revenues. For the nine months ended September 30, 2019 and 2018, our revenues were approximately \$443,000 and \$264,000, respectively, an increase of approximately 68%, or \$179,000, between the periods. The increase was mainly attributable to new royalty agreement in the nine months ended September 30, 2019. Our revenues may fluctuate as we add new consumers or when existing distributors or consumers make large purchases of our products during one period and no purchases during another period. Our revenues may fluctuate from quarter-to-quarter and any growth or decrease in revenues by quarter may not be linear or consistent.

For the nine months ended September 30, 2019, the percentage of revenues attributable to our products was: PainShield - 54% and UroShield 46%. For the nine months ended September 30, 2018, the percentage of revenues attributable to our products was: PainShield - 75% and UroShield - 25%. For the nine months ended September 30, 2019 and 2018, the percentage of revenues attributable to our disposable products was 5% and 53%, respectively. For the nine months ended September 30, 2019 and 2018, the portion of our revenues that was derived from distributors was 59% and 52%, respectively.

Gross Profit. For the nine months ended September 30, 2019 and 2018, gross profit was approximately \$307,000 and \$141,000, respectively, an increase of approximately 118%, or \$166,000.

Gross profit as a percentage of revenues was approximately 69% and 53% for the nine months ended September 30, 2019 and 2018, respectively. The increase in gross profit as a percentage is mainly due to royalty income generated in the second quarter of 2019.

Research and Development Expenses. For the nine months ended September 30, 2019 and 2018, research and development expenses were approximately \$381,000 and \$408,000, respectively, a decrease of approximately 7%, or \$27,000 between the periods. The decrease is due to less clinical trials done in 2019.

Research and development expenses as a percentage of total revenues were approximately 86% and 155% for the nine months ended September 30, 2019 and 2018, respectively.

Our research and development expenses consist mainly of payroll expenses to employees involved in research and development activities, stock-based compensation expenses, expenses related to subcontracting, patents application and registration, clinical trial and facilities expenses associated with and allocated to research and development activities.

Selling and Marketing Expenses. For the nine months ended September 30, 2019 and 2018, selling and marketing expenses were approximately \$820,000 and \$871,000, respectively, a decrease of approximately 6%, or \$51,000, between the periods. The decrease was primarily due to higher compensation costs and public company expenses in 2018.

Selling and marketing expenses as a percentage of total revenues were approximately 185% and 330% for the nine months ended September 30, 2019 and 2018, respectively.

Selling and marketing expenses consist mainly of payroll expenses to direct sales and marketing employees, stock-based compensation expenses, travel expenses, advertising and marketing expenses, rent and facilities expenses associated with and allocated to selling and marketing activities.

General and Administrative Expenses. For the nine months ended September 30, 2019 and 2018, general and administrative expenses were approximately \$3,018,000 and \$1,802,000, respectively, an increase of approximately 681%, or \$1,216,000, between the periods. The increase is due to stock compensation cost and higher professional fees.

General and administrative expenses as a percentage of total revenues were approximately 681% and 683% for the nine months ended September 30, 2019 and 2018, respectively.

Our general and administrative expenses consist mainly of payroll expenses for management and administrative employees, share-based compensation expenses, accounting, legal and facilities expenses associated with general and administrative activities and costs associated with being a publicly traded company.

Financial expenses, net. For the nine months ended September 30, 2019 and 2018, financial income and (expenses), net was approximately (\$71,000) compared to a \$16,000, respectively, a decrease of approximately (\$87,000), between the periods.

Change in fair value of derivative liabilities. For the nine months ended September 30, 2019 and 2018, there was a change in fair value of derivative liabilities resulting in a gain of approximately \$102,000 compared to a \$0, respectively, an increase of approximately \$102,000, between the periods. The income in 2019 was derived from the valuation of derivative liabilities.

Loss on extinguishment of derivative liability. For the nine months ended September 30, 2019 and 2018, there was a loss on extinguishment of derivative liability of approximately (\$288,000) compared to a \$0, respectively, a decrease of approximately \$288,000, between the periods. The income in 2019 was derived from the elimination of derivative liabilities.

Warrant modification expenses. For the nine months ended September 30, 2019 and 2018, warrant modification expense was approximately \$412,000 compared to a \$0, respectively, and was related to warrant modification.

Tax expenses. For the nine months ended September 30, 2019 and 2018, tax expenses was approximately \$20,000 compared to \$33,000, respectively. The tax expense is computed by multiplying income before taxes at our Israeli subsidiary by the appropriate tax rate.

Net loss. Our net loss increased by approximately \$1,644,000, or 56%, to approximately \$4,601 for the nine months ended September 30, 2019 from approximately \$2,957,000 in the same period of 2018.

Liquidity and Capital Resources

We incurred losses in the amount of approximately \$4,601,000 during the nine-month period ended September 30, 2019 and accumulated negative cash flow from operating activities of \$2,842 for the nine-month period ended September 30, 2019.

Despite the cash infusion, the Company will not have sufficient resources to fund its operations for the next twelve months from the date of this filing. These conditions raise substantial doubt about the Company's ability to continue as a going concern.

During the next twelve months management expects that the Company will need to raise additional capital to finance its losses and negative cash flows from operations and may continue to be dependent on additional capital raising as long as its products do not reach commercial profitability. Our future capital requirements and the adequacy of our available funds will depend on many factors, including our ability to successfully commercialize our products, our development of future products and competing technological and market developments. We have been using these proceeds to meet our short-term liquidity requirements but may need to sell additional securities to advance our long-term plans. It is our current belief that if we do not continue to see significant increases in revenues, or if we are unable to raise additional capital at a later time in the next twelve months, we may need to reduce our operating budget as well as sales and marketing expenses which may impair our ability to execute our business objectives. However, we may be unable to raise sufficient additional capital when we require it or upon terms favorable to us. Delisting from NASDAQ Capital Markets would adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly affect the ability of investors to trade our securities and would negatively affect the value and liquidity of our Common Stock. In addition, the terms of any securities we issue in future financings may be more favorable to new investors and may include preferences, superior voting rights and the issuance of warrants or other derivative securities, which may have a further dilutive effect on the holders of any of our securities then outstanding. If we are unable to obtain adequate funds on reasonable terms, we may need to curtail operations significantly, including possibly postponing anticipated clinical trials or entering into financing agreements with unattractive terms.

We do not have any material commitments to capital expenditures as of September 30, 2019, and we are not aware of any material trends in capital resources that would impact our business.

Cash flows

General. As of September 30, 2019, we had cash and cash equivalents of approximately \$2,258,000, compared to approximately \$1,727,000 as of September 30, 2018. The increase is attributable to our net cash provided in financing activities. We have historically met our cash needs through a combination of issuance of equity, borrowing activities and sales. Our cash requirements are generally for product development, research and development cost, marketing and sales activities, finance and administrative cost, capital expenditures and general working capital.

Cash used in our operating activities was approximately \$2,842,000 for the nine months ended September 30, 2019 and \$2,669,000 for the same period in 2018.

Cash used in investing activities was \$0 and \$8,000 for the nine-month periods ended September 30, 2019 and 2018, respectively. Cash invested in 2018 was related to purchase of fixed assets.

Cash provided by financing activities was approximately \$4,204,000 for the nine months ended September 30, 2019 derived from proceeds received from the issuance of Series E preferred stock, compared to \$44,000 for the nine months ended September 30, 2018.

Off Balance Sheet Arrangements

Except as disclosed, as of September 30, 2019, we have no off-balance sheet transactions, arrangements, obligations (including contingent obligations), or other relationships with unconsolidated entities or other persons that have, or may have, a material effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

Factors That May Affect Future Operations

We believe that our future operating results will continue to be subject to quarterly variations based upon a wide variety of factors, including the ordering patterns of our distributors, timing of regulatory approvals, the implementation of various phases of our clinical trials and manufacturing efficiencies due to the learning curve of utilizing new materials and equipment. Our operating results could also be impacted by a weakening of the Euro and strengthening of the New Israeli Shekel, or NIS, both against the U.S. dollar. Lastly, other economic conditions we cannot foresee may affect customer demand, such as individual country reimbursement policies pertaining to our products.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Not applicable.

Item 4. Controls and Procedures

Management of the Company, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the Company's disclosure controls and procedures as of September 30, 2019, the end of the period covered by this quarterly report on Form 10-Q. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended ("Exchange Act"), means controls and other procedures of a company that are designed to provide reasonable assurance that information required to be disclosed by the company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures are also designed to provide reasonable assurance that such information is accumulated and communicated to the company's management, including its Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure. Based on their evaluation, as of the end of the period covered by this Form 10-Q, the Company's Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) were not effective because of the material weaknesses in our internal control over financial reporting as described in Item 9A in our Annual Report on Form 10-K for the fiscal ended December 31, 2018, filed with the Securities and Exchange Commission on April 15, 2019.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Exchange Act Rule 13a-15 or 15d-15 that occurred during the nine months ended September 30, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting, except for the Company's continued implementation of action plans to improve the effectiveness of our internal control over financial reporting and disclosure controls and procedures. While we have made progress in all areas of our remediation plan relating to the material weaknesses described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, filed with the Securities and Exchange Commission on April 15, 2019, material weaknesses continue to exist.

Part II - OTHER INFORMATION

Item 1. Legal Proceedings

From time to time, we may be involved in litigation that arises through the normal course of business. As of the date of this filing, we are not a party to any material litigation nor are we aware of any such threatened or pending litigation.

There are no material proceedings in which any of our directors, officers or affiliates or any registered or beneficial shareholder of more than 5% of our Common Stock, or any associate of any of the foregoing is an adverse party or has a material interest adverse to our interest.

Item 1A. Risk Factors

A description of the risks associated with our business, financial condition and results of operations is set forth in “Item 1A. Risk Factors” of our 2018 10-K, as filed with the SEC on April 15, 2019. There have been no material changes to these risks during the nine months ended September 30, 2019.

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

None

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not Applicable.

Item 5. Other Information

On June 21, 2019, the Company filed a Certificate of Designation of the Series E Preferred Stock (the “Original Certificate of Designation”) with the Secretary of State of the State of Delaware (the “Secretary of State”). The Original Certificate of Designation was effective upon filing with the Secretary of State and designated the Company’s Series E convertible preferred stock, par value \$0.001 per share (the “Series E Preferred Stock”). On July 31, the Company filed with the Secretary of State an Amended and Restated Certificate of Designation, which became effective upon filing with the Secretary of State. On November 18, 2019, the Company filed with the Secretary of State an Amended and Restated Certificate of Designation (the “Amended and Restated Certificate of Designation”). The Amended and Restated Certificate of Designation was effective upon filing with the Secretary of State. The Amended and Restated Certificate of Designation provides that, among other things, each holder of Series E Preferred Stock shall be entitled to the number of votes equal to the number of shares of the Company’s common stock equal to the Voting Ratio. The Voting Ratio, for each share of Series E Preferred Stock is equal to \$2.00 divided by \$3.53.

The foregoing description of the Amended and Restated Certificate of Designation does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Amended and Restated Certificate of Designation, the form of which is attached hereto as Exhibit 3.1, and are incorporated herein by reference.

Item 6. Exhibits

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.1	<u>Form of Certificate of Designation of Series E Convertible Preferred Stock</u>
31.1*	<u>Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>
31.2*	<u>Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>
32.1*	<u>Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>
32.2*	<u>Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>
101*	The following materials from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019, formatted in XBRL (eXtensible Business Reporting Language), (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Comprehensive Loss, (iii) Consolidated Statements of Changes in Equity (Deficiency) (iv) Consolidated Statements of Cash Flows and (v) the Notes to the Consolidated Financial Statements

* Filed herewith.

SIGNATURES

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

NANOVIBRONIX, INC.

Date: November 19, 2019

By: /s/ Brian Murphy
Name: Brian Murphy, Ph.D.
Title: Chief Executive Officer

Date: November 19, 2019

By: /s/ James S. Cardwell
Name: James S. Cardwell
Title: Chief Financial Officer

**DESIGNATION, PREFERENCES, RIGHTS AND LIMITATIONS
OF
SERIES E PREFERRED STOCK
OF
NANOVIBRONIX, INC.**

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

Pursuant to Section 151 of the General Corporation Law of the State of Delaware, NanoVibronix, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "**Corporation**"), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

WHEREAS, the Amended and Restated Certificate of Incorporation of the Corporation (the "**Certificate of Incorporation**") authorizes the issuance of up to five million (5,000,000) shares of preferred stock, par value \$0.001 per share, of the Corporation ("**Preferred Stock**") in one or more series, and expressly authorizes the Board of Directors of the Corporation (the "**Board**"), subject to limitations prescribed by law, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designation, rights, preferences, powers, restrictions and limitations of the shares of such series;

WHEREAS, pursuant to that certain Designation, Preferences, Rights and Limitations (the "**Certificate of Designation**") of Series E Preferred Stock of the Corporation, the Board has established and fixed the number of shares to be included in the Series E Convertible Preferred Stock and the designation, rights, preferences and limitations of the shares of such Series E Convertible Preferred Stock;

WHEREAS, it is the desire of the Board to amend and restate the Certificate of Designation to revise the designation, rights, preferences and limitations of the shares of the Series E Convertible Preferred Stock, in each case, in accordance herewith.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby amend and restate the Certificate of Designation to revise the designation, rights, preferences and limitations of the shares of the Series E Convertible Preferred Stock, in each case, as follows:

Section 1. Designation. The shares of such series shall be designated "Series E Convertible Preferred Stock," and the number of shares constituting such series shall be 1,999,494 (the "**Series E Preferred Stock**"). The number of shares of Series E Preferred Stock may be increased or decreased by resolution of the Board and the approval by the holders of a majority of the shares of the outstanding Series E Preferred Stock, voting as a separate class; provided that no decrease shall reduce the number of shares of Series E Preferred Stock to a number less than the number of shares of such series then outstanding.

1. Definitions. With respect to the Series E Preferred Stock, the following terms shall have the following meanings:

“**Affiliate**” means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Series E Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Series E Holder will be deemed to be an Affiliate of such Series E Holder.

“**Alternate Consideration**” shall have the meaning set forth in Section E.7(b) of this Article FOURTH.

“**Beneficial Ownership Limitation**” shall have the meaning set forth in Section E.6(b)(iv) of this Article FOURTH.

“**Business Day**” means any day except Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“**Closing Sale Price**” means, for any security as of any date, the last closing trade price for such security prior to 4:00 p.m., New York City time, on the principal securities exchange or trading market where such security is listed or traded, as reported by Bloomberg, L.P. (or an equivalent, reliable reporting service mutually acceptable to and hereafter designated by the Series E Holders holding a majority of the then-outstanding Series E Preferred Stock and the Corporation), or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, L.P., or, if no last trade price is reported for such security by Bloomberg, L.P., the average of the bid prices of any market makers for such security as reported on the any over the counter market operated by OTC Markets Group, Inc. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as determined in good faith by the Board of Directors of the Corporation.

“**Commission**” means the Securities and Exchange Commission.

“**Common Stock Equivalents**” means any securities of the Corporation or its subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“**Conversion Date**” shall have the meaning set forth in Section E.6(a) of this Article FOURTH.

“**Conversion Price**” shall mean \$2.00, as adjusted pursuant to Section E.7 of this Article FOURTH.

“**Conversion Ratio**” for each share of Series E Preferred Stock shall be equal to the Stated Value divided by the Conversion Price.

“**Conversion Shares**” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series E Preferred Stock in accordance with the provisions of Section E.6 of Article FOURTH hereof.

“**Daily Failure Amount**” means the product of (x) .005 multiplied by (y) the Closing Sale Price of the Common Stock on the applicable Share Delivery Date.

“**DWAC Delivery**” shall have the meaning set forth in Section E.6(a) of this Article FOURTH.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Fundamental Transaction**” shall have the meaning set forth in Section E.7(b) of this Article FOURTH.

“**Notice of Conversion**” shall have the meaning set forth in Section E.6(a) of this Article FOURTH.

“**Person**” means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Series E Holder**” means any holder of Series E Preferred Stock.

“**Series E Preferred Stock Register**” shall have the meaning set forth in Section E.2 of this Article FOURTH.

“**Share Delivery Date**” shall have the meaning set forth in Section E.6(c)(i) of Article FOURTH.

“**Stated Value**” shall mean \$2.00.

“**Stockholder Meeting**” means an annual or special meeting of the stockholders of the Company at which the stockholder vote for approval of resolutions (“**Stockholder Resolutions**”) providing for the Company’s issuance of all the Conversion Shares in accordance with applicable law and the rules and regulations of the Nasdaq Stock Market (such affirmative approval being referred to herein as the “**Stockholder Approval**”, and the date such Stockholder Approval is obtained, the “**Stockholder Approval Date**”).

“**Voting Ratio**” for each share of Series E Preferred Stock shall be equal to the Stated Value divided by \$3.53.

2. Number and Designation; Assignment. The number of shares designated as Series E Preferred Stock shall not be subject to increase without the written consent of the Series E Holders holding a majority of the then issued and outstanding Series E Preferred Stock. The Corporation shall register shares of the Series E Preferred Stock, upon records to be maintained by the Corporation for that purpose (the “**Series E Preferred Stock Register**”), in the name of the Series E Holders thereof from time to time. The Corporation may deem and treat the registered Series E Holder of shares of Series E Preferred Stock as the absolute owner thereof for the purpose of any conversion thereof and for all other purposes. The Corporation shall register the transfer of any shares of Series E Preferred Stock in the Series E Preferred Stock Register, upon surrender of the certificates evidencing such shares to be transferred, duly endorsed by the Series E Holder thereof, to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series E Preferred Stock so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring Series E Holder, in each case, within three Business Days.

3. Dividends. Series E Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Series E Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends (other than dividends in the form of Common Stock) actually paid on shares of the Common Stock when, as and if such dividends (other than dividends in the form of Common Stock) are specifically declared by the Board of Directors of the Corporation to be payable to the holders of the Common Stock. Other than as set forth in the previous sentence, no other dividends shall be paid on shares of Series E Preferred Stock; and the Corporation shall pay no dividends (other than dividends in the form of Common Stock) on shares of the Common Stock unless it simultaneously complies with the previous sentence.

4. Voting Rights. Following the Stockholder Approval Date, and subject to the limitations set forth in Section E.6(a) and Section E.6(b) herein, the Series E Holder of each share of Series E Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock equal to the Voting Ratio. Subject to the preceding sentence, the Series E Holder shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and shall be entitled to notice of any stockholders’ meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Series E Preferred Stock held by each Series E Holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). For the avoidance of doubt, the Series E Holders shall have no voting rights until the Stockholder Approval Date.

5. Liquidation. Upon liquidation, dissolution or winding up of the Corporation (a “**Liquidation**”), whether voluntary or involuntary, each Series E Holder shall be entitled to receive the amount of cash, securities or other property to which such holder would be entitled to receive with respect to such shares of Series E Preferred Stock if such shares had been converted to Common Stock immediately prior to such Liquidation (without giving effect for such purposes to the limitation on Conversion set forth in Section the Beneficial Ownership Limitation set forth in Section E.6(b) of this Article FOURTH, subject to the preferential rights of holders of any senior securities of the Corporation.

6. Conversion.

(a) **Conversion at Option of Holder.** Each share of Series E Preferred Stock shall be convertible, at any time and from time to time from and after the Stockholder Approval Date, at the option of the Series E Holder thereof, into a number of shares of Common Stock equal to the Conversion Ratio. Except for a conversion following a Fundamental Transaction or following a notice provided for under Section E.7(d)(ii) of this Article FOURTH, Series E Holders shall exercise the option to convert by providing the Corporation with a written notice of conversion (a “**Notice of Conversion**”), duly completed and executed. Each Notice of Conversion shall specify the number of shares of Series E Preferred Stock to be converted, the number of shares of Series E Preferred Stock owned prior to the requested conversion, the number of shares of Series E Preferred Stock owned subsequent to the requested conversion and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Series E Holder delivers such Notice of Conversion to the Corporation (the “**Conversion Date**”). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the Business Day that the Corporation receives the Notice of Conversion. Provided the Corporation’s transfer agent is participating in the Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer program and the applicable Conversion Shares are either registered for resale or eligible for resale without restriction pursuant to Rule 144 of the Securities Act, the Notice of Conversion may specify, at the Series E Holder’s election, whether the applicable Conversion Shares shall be credited to the account of the Series E Holder’s prime broker with DTC through its Deposit Withdrawal Agent Commission system (a “**DWAC Delivery**”). The calculations set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error.

(b) **Beneficial Ownership Limitation.**

(i) Notwithstanding anything herein to the contrary, the Corporation shall not effect any conversion of the Series E Preferred Stock, and a Series E Holder shall not have the right to convert any portion of its Series E Preferred Stock, to the extent that, after giving effect to an attempted conversion, such Series E Holder (together with such Series E Holder’s Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with the Series E Holder’s for purposes of Section 13(d) of the Exchange Act and the applicable rules and regulations of the Commission, including any “group” of which the Series E Holder is a member) would beneficially own a number of shares of Common Stock in excess of the Beneficial Ownership Limitation (as defined below).

(ii) For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Series E Series E Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series E Preferred Stock subject to conversion with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which are issuable upon (A) conversion of the remaining, unconverted shares of Series E Preferred Stock beneficially owned by such Series E Holder or any of its Affiliates, and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation beneficially owned by such Series E Holder or any of its Affiliates (including, without limitation, any convertible notes, convertible stock or warrants) that are subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this Section, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the applicable rules and regulations of the Commission. In addition, for purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and the applicable rules and regulations of the Commission.

(iii) To the extent that the limitation contained in this Section E.6(b) of Article FOURTH applies, the determination of whether the Series E Preferred Stock may be converted (in relation to other securities owned by the Series E Holder together with any Affiliates) and of which portion of its Series E Preferred Stock may be converted shall be in the sole discretion of the Series E Holder and the submission of a Notice of Conversion shall be deemed to be such Series E Holder's determination of whether the shares of Series E Preferred Stock may be converted (in relation to other securities owned by such Series E Holder together with any Affiliates) and how many shares of the Series E Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. For purposes of this Section, in determining the number of outstanding shares of Common Stock, a Series E Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Corporation's most recent public filing with the Commission, (B) a more recent public announcement by the Corporation or (C) a more recent notice by the Corporation or the Corporation's transfer agent to the Series E Holder setting forth the number of shares of Common Stock then outstanding. For any reason at any time, upon the written or oral request of a Series E Holder (which may be by email), the Corporation shall, within two (2) Business Days of such request, confirm orally and in writing to such Series E Holder (which may be via email) the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to any actual conversion or exercise of securities of the Corporation, including shares of Series E Preferred Stock, by such Series E Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was last publicly reported or confirmed to the Series E Holder.

(iv) The “**Beneficial Ownership Limitation**” shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock pursuant to such conversion (to the extent permitted pursuant to this Section). At any time following the Stockholder Approval Date, the Series E Holder, upon not less than 61 days’ prior notice to the Corporation, may increase (in the event that the Beneficial Ownership Limitation is subsequently reduced) or decrease the Beneficial Ownership Limitation provisions of this Section, provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon the conversion the Series E Preferred Stock held by the Series E Holder and the provisions of this Section shall continue to apply. Any such increase or decrease will not be effective until the 61st day after such notice is delivered to the Corporation and shall only be effective with respect to such Series E Holder. The provisions of this Section shall be construed, corrected and implemented in a manner so as to effectuate the intended beneficial ownership limitation herein contained and the shares of Common Stock underlying the Series E Preferred Stock in excess of the Beneficial Ownership Limitation shall not be deemed to be beneficially owned by the Series E Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act.

(v) At any time following the Stockholder Approval Date, the Beneficial Ownership Limitation provisions of this Section may be waived at the election of any Series E Holder upon not less than 61 days’ prior written notice to the Corporation. Any such waiver will not be effective and the provisions of this Section shall continue to apply until the 61st day (or later, if stated in the notice) after such notice of waiver is delivered to the Corporation.

(c) Mechanics of Conversion.

(i) **Delivery of Certificate or Electronic Issuance Upon Conversion.** Not later than three Business Days after the applicable Conversion Date, or if the Series E Holder requests the issuance of physical certificate(s), two Business Days after receipt by the Corporation of the original certificate(s) representing such shares of Series E Preferred Stock being converted, duly endorsed, and the accompanying Notice of Conversion (the “**Share Delivery Date**”), the Corporation shall (a) deliver, or cause to be delivered, to the converting Series E Holder a physical certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Series E Preferred Stock or (b) in the case of a DWAC Delivery, electronically transfer such Conversion Shares by crediting the account of the Series E Holder’s prime broker with DTC through its DWAC system. If in the case of any Notice of Conversion such certificate or certificates are not delivered to or as directed by or, in the case of a DWAC Delivery, such shares are not electronically delivered to or as directed by, the applicable Series E Holder by the Share Delivery Date, the applicable Series E Holder shall be entitled to elect to rescind such Conversion Notice by written notice to the Corporation at any time on or before its receipt of such certificate or certificates for Conversion Shares or electronic receipt of such shares, as applicable, in which event the Corporation shall promptly return to such Series E Holder any original Series E Preferred Stock certificate delivered to the Corporation and such Series E Holder shall promptly return to the Corporation any Common Stock certificates or otherwise direct the return of any shares of Common Stock delivered to the Series E Holder through the DWAC system, representing the shares of Series E Preferred Stock unsuccessfully tendered for conversion to the Corporation.

(ii) **Obligation Absolute.** Subject to Section E.6(b) hereof and subject to a Series E Holder's right to rescind a Conversion Notice pursuant to Section E.6(c)(i) above, the Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Series E Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Series E Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Series E Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Series E Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Series E Holder in connection with the issuance of such Conversion Shares. Subject to the Beneficial Ownership Limitation herein and subject to a Series E Holder's right to rescind a Conversion Notice pursuant to Section E.6(c)(i) above, in the event a Series E Holder shall elect to convert any or all of its Series E Preferred Stock, the Corporation may not refuse conversion based on any claim that such Series E Holder or any one Person associated or affiliated with such Series E Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to such Series E Holder, restraining and/or enjoining conversion of all or part of the Series E Preferred Stock of such Series E Holder shall have been sought and obtained by the Corporation, and the Corporation posts a surety bond for the benefit of such Series E Holder in the amount of 150% of the value of the Conversion Shares into which would be converted the Series E Preferred Stock which is subject to such injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Series E Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall, subject to the Beneficial Ownership Limitation herein and subject to Series E Holder's right to rescind a Conversion Notice pursuant to Section E.6(c)(i) above, issue Conversion Shares upon a properly noticed conversion. If the Corporation fails to deliver to a Series E Holder such certificate or certificates, or electronically deliver (or cause its transfer agent to electronically deliver) such shares in the case of a DWAC Delivery, pursuant to Section E.6(c)(i) on or prior to the fifth (5th) Business Day after the Share Delivery Date applicable to such conversion (other than a failure caused by incorrect or incomplete information provided by Series E Holder to the Corporation), then, unless the Series E Holder has rescinded the applicable Conversion Notice pursuant to Section E.6(c)(i) above, the Corporation shall pay (as liquidated damages and not as a penalty) to such Series E Holder an amount payable in cash equal to the product of (x) the number of Conversion Shares required to have been issued by the Corporation on such Share Delivery Date, (y) an amount equal to the Daily Failure Amount and (z) the number of Business Days actually lapsed after such fifth (5th) Business Day after the Share Delivery Date during which such certificates have not been delivered, or, in the case of a DWAC Delivery, such shares have not been electronically delivered. Nothing herein shall limit a Series E Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Series E Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief; provided that Series E Holder shall not receive duplicate damages for the Corporation's failure to deliver Conversion Shares within the period specified herein. The exercise of any such rights shall not prohibit a Series E Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(iii) **Reservation of Shares Issuable Upon Conversion.** The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series E Preferred Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Series E Holders, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments of Section D.7 of this Article FOURTH) upon the conversion of all outstanding shares of Series E Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

(iv) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon the conversion of the Series E Preferred Stock. As to any fraction of a share which a Series E Holder would otherwise be entitled to receive upon such conversion, such fraction shall be rounded up or down to the next whole share.

(v) **Transfer Taxes and Expenses.** The issuance of certificates for shares of the Common Stock upon conversion of the Series E Preferred Stock shall be made without charge to any Series E Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the registered Series E Holder(s) of such shares of Series E Preferred Stock and the Corporation shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all transfer agent fees required for processing of any Notice of Conversion.

(d) **Status as Stockholder.** Upon each Conversion Date, (i) the shares of Series E Preferred Stock being converted shall be deemed converted into shares of Common Stock and (ii) the Series E Holder's rights as a holder of such converted shares of Series E Preferred Stock shall cease and terminate, excepting only the right to receive certificates for such shares of Common Stock and to any remedies provided herein or otherwise available at law or in equity to such Series E Holder because of a failure by the Corporation to comply with the terms herein. In all cases, the holder shall retain all of its rights and remedies for the Corporation's failure to convert Series E Preferred Stock.

7. Certain Adjustments.

(a) **Stock Dividends and Stock Splits.** If the Corporation, at any time while this Series E Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of this Series E Preferred Stock) with respect to the then outstanding shares of Common Stock; (B) subdivides outstanding shares of Common Stock into a larger number of shares; or (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event (excluding any treasury shares of the Corporation). Any adjustment made pursuant to this Section E.7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination.

(b) **Fundamental Transaction.** If, at any time while this Series E Preferred Stock is outstanding, (A) the Corporation effects any merger or consolidation of the Corporation with or into another Person (other than a merger in which the Corporation is the surviving or continuing entity and its Common Stock is not exchanged for or converted into other securities, cash or property), (B) the Corporation effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, (C) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which all of the Common Stock is exchanged for or converted into other securities, cash or property, or (D) the Corporation effects any reclassification of the Common Stock or any compulsory share exchange pursuant (other than as a result of a dividend, subdivision or combination covered by Section E.7(b) above) to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “**Fundamental Transaction**”), then, upon any subsequent conversion of this Series E Preferred Stock the Series E Holders shall have the right to receive, in lieu of the right to receive Conversion Shares, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the “**Alternate Consideration**”). For purposes of any such subsequent conversion, the determination of the Conversion Ratio shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall adjust the Conversion Ratio in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Series E Holders shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Series E Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file an amendment to this Amended and Restated Certificate of Incorporation or separate Certificate of Designation with the same terms and conditions and issue to the Series E Holders new preferred stock consistent with the foregoing provisions and evidencing the Series E Holders’ right to convert such preferred stock into Alternate Consideration. The terms of any agreement to which the Corporation is a party and pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section E.7(b) and insuring that the Series E Preferred Stock (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction. The Corporation shall cause to be delivered to each Series E Holder, at its last address as it shall appear upon the stock books of the Corporation, written notice of any Fundamental Transaction at least 20 calendar days prior to the date on which such Fundamental Transaction is expected to become effective or close.

(c) **Calculations.** All calculations under this Section E.7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section E.7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(d) **Notice to Holders.**

(i) **Adjustment to Conversion Price.** Whenever the Conversion Price is adjusted pursuant to any provision of this Section E.7, the Corporation shall promptly deliver to each Series E Holder a notice setting forth the Conversion Ratio after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

(ii) **Other Notices.** If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, of any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Series E Preferred Stock, and shall cause to be delivered to each Series E Holder at its last address as it shall appear upon the stock books of the Corporation, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

8. Miscellaneous.

(a) **Notices.** Any and all notices or other communications or deliveries to be provided by the Series E Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at 525 Executive Blvd., Elmsford, NY 10523, facsimile number (631) 574-4401, or such other facsimile number or address as the Corporation may specify for such purposes by notice to the Series E Holders delivered in accordance with this Section. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Series E Holder at the facsimile number or address of such Series E Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Series E Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the date immediately following the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section between 5:30 p.m. and 11:59 p.m. (New York City time) on any date, (iii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) **Lost or Mutilated Series E Preferred Stock Certificate.** If a Series E Holder's Series E Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series E Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership thereof, reasonably satisfactory to the Corporation and, in each case, customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

(c) **Status of Converted Series E Preferred Stock.** If any shares of Series E Preferred Stock shall be converted or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of Preferred Stock and shall no longer be designated as Series E Preferred Stock.

RESOLVED, FURTHER, that the Chief Executive Officer or Secretary of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation in accordance with the foregoing resolution and the provisions of Delaware law.

IN WITNESS WHEREOF, NanoVibronix, Inc. has caused this Certificate of Designation to be duly executed by its authorized corporate officer this 13th day of November, 2019.

NANOVIBRONIX, INC.

By: /s/ Brian Murphy

Name: Brian Murphy

Title: Chief Executive Officer

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO RULE 13a-14(a)

I, Brian Murphy, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of NanoVibronix, Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 19, 2019

By: /s/ Brian Murphy

Name: Brian Murphy
Title: Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO RULE 13a-14(a)

I, James S. Cardwell, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of NanoVibronix, Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 19, 2019

By: /s/ James S. Cardwell

Name: James S. Cardwell
Title: Chief Financial Officer (Principal Financial and Accounting Officer)

CERTIFICATION FURNISHED PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

This certification is furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350) and accompanies the Quarterly Report on Form 10-Q (the "Form 10-Q") for the quarter ended September 30, 2019 of NanoVibronix, Inc. (the "Company"). I, Brian Murphy, the Chief Executive Officer of the Company, certify that, based on my knowledge:

1. The Form 10-Q fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company as of and for the periods covered in this report.

November 19, 2019

By: /s/ Brian Murphy

Name: Brian Murphy

Title: Chief Executive Officer (Principal Executive Officer)

The foregoing certification is being furnished as an exhibit to the Form 10-Q pursuant to Item 601(b)(32) of Regulation S-K and Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and, accordingly, is not being filed as part of the Form 10-Q for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

CERTIFICATION FURNISHED PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

This certification is furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350) and accompanies the Quarterly Report on Form 10-Q (the "Form 10-Q") for the quarter ended September 30, 2019 of NanoVibronix, Inc. (the "Company"). I, James S. Cardwell, the Chief Financial Officer of the Company, certify that, based on my knowledge:

1. The Form 10-Q fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company as of and for the periods covered in this report.

November 19, 2019

By: /s/ James S. Cardwell

Name: James S. Cardwell

Title: Chief Financial Officer

(Principal Financial and Accounting Officer)

The foregoing certification is being furnished as an exhibit to the Form 10-Q pursuant to Item 601(b)(32) of Regulation S-K and Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and, accordingly, is not being filed as part of the Form 10-Q for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.