

SECURITIES AND EXCHANGE COMMISSION

FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

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FILER

Lucid Diagnostics Inc.

CIK: **1799011** | IRS No.: **825488042** | State of Incorporation: **DE** | Fiscal Year End: **1231**
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SIC: **3841** Surgical & medical instruments & apparatus

Mailing Address
*ONE GRAND CENTRAL
PLACE, SUITE 4600
NEW YORK NY 10165*

Business Address
*ONE GRAND CENTRAL
PLACE, SUITE 4600
NEW YORK NY 10165
212 949 4319*

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

LUCID DIAGNOSTICS INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

82-5488042
(IRS Employer
Identification No.)

**One Grand Central Place, Suite 4600
New York, NY 10165**
(Address of Principal Executive Offices) (Zip Code)

LUCID DIAGNOSTICS INC. EMPLOYEE STOCK PURCHASE PLAN
(Full title of the plan)

**Dr. Lishan Aklog, Chairman and Chief Executive Officer
Lucid Diagnostics Inc.
One Grand Central Place, Suite 4600
New York, NY 10165**
(Name and address of agent for service)

(212) 949-4319
(Telephone number, including area code, of agent for service)

with a copy to:

**David Alan Miller, Esq.
Eric T. Schwartz, Esq.
Graubard Miller
The Chrysler Building
405 Lexington Avenue, 11th floor
New York, NY 10174**

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

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company

Emerging growth company

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

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

The information required by this Part I is omitted from this Registration Statement in accordance with rules and regulations under the Securities Act of 1933, as amended (“Securities Act”), and the Note to Part I of Form S-8. The documents containing the information specified in this Part I will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act. Such documents and the documents incorporated by reference herein pursuant to Item 3 of Part II of this registration statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents that we have previously filed with the SEC are incorporated by reference in this registration statement (excluding any reports or portions thereof that are furnished under Item 2.02 or Item 7.01 and any exhibits included with such items):

- The prospectus dated October 13, 2021, which contains our audited financial statements as of and for the fiscal years ended December 31, 2020 and 2019 (filed on October 15, 2021).
- The quarterly report on Form 10-Q for the nine months ended September 30, 2021 (filed on November 23, 2021).
- The current reports on Form 8-K dated October 18, 2021 (filed on October 18, 2021), January 17, 2022 (filed on January 20, 2022), and February 25, 2022 (filed on March 3, 2022).
- The Form 8-A dated October 12, 2021, which registers our common stock under Section 12(b) of the Exchange Act (filed on October 12, 2021).

All documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), prior to the filing of a post-effective amendment which indicates that all the securities offered have been sold or which deregisters all securities then remaining unsold (excluding any reports or portions thereof that are furnished under Item 2.02 or Item 7.01 of a Current Report on Form 8-K and any exhibits included with such items) will be deemed to be incorporated by reference in this registration statement and to be a part of this registration statement from the respective date of filing. Any statement contained in a document incorporated by reference in this registration statement will be modified or superseded for all purposes to the extent that a statement contained in this registration statement or in any other subsequently filed document which is incorporated by reference modifies or replaces the statement. Any such statement so modified or superseded shall not be deemed, except as so modified or amended, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Graubard Miller issued the opinion as to the legality of the shares of our common stock being registered pursuant to this registration statement.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law, relating to indemnification our officers, directors, employees and agents, provides as follows:

“Section 145. Indemnification of officers, directors, employees and agents; insurance.

“(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person’s conduct was unlawful.

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“(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

“(c) To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith.

“(d) Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

“(e) Expenses (including attorneys’ fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys’ fees) incurred by

former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

“(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office.

“(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person’s status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

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

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

“(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

“(k) The Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise. The Court of Chancery may summarily determine a corporation’s obligation to advance expenses (including attorneys’ fees).”

Our amended and restated certificate of incorporation provide that all persons whom we have the power to indemnify under Delaware law, including our directors and officers, shall be entitled to be indemnified by us to the fullest extent permitted by Delaware law. Paragraph B of Article Eighth of our certificate of incorporation provides as follows:

“The Corporation, to the full extent permitted by Section 145 of the GCL, as amended from time to time, shall indemnify all persons whom it may indemnify pursuant thereto. Expenses (including attorneys’ fees) incurred by an officer or director in defending any civil, criminal, administrative, or investigative action, suit or proceeding for which such officer or director may be entitled to indemnification hereunder shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized hereby.”

Furthermore, our bylaws provide for (i) indemnification of any person party to or threatened to be made party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a director, officer, employee or agent of ours, or is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; (ii) payment or reimbursement by us of expenses incurred by any current or former officer or director in advance of the final disposition of any such action, suit or proceeding; and (iii) our power to purchase insurance to protect any person who is or was a director,

officer, employee or agent of ours, or is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

In addition, we have entered into, and intend to continue to enter into, indemnification agreements with our directors and officers. Additionally, in accordance with our bylaws, we have acquired directors' and officers' insurance.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See the Exhibit Index, which is incorporated herein by reference.

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Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing procedures, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question

whether such indemnification by it against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in New York, New York on this 15th day of March, 2022.

LUCID DIAGNOSTICS INC.

By: /s/ Lishan Aklog, M.D.

Lishan Aklog, M.D.

Chairman of the Board and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Lishan Aklog, M.D. and Dennis M. McGrath, and each of them, with full power to act without the other, such person's true and lawful attorneys-in-fact and agents, with full power of substitution and re-substitution, for him and in his name, place and stead, in any and all capacities, to sign this registration statement, any and all amendments thereto (including post-effective amendments), and any amendments thereto and to file the same, with exhibits and schedules thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing necessary or desirable to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
By: <u>/s/ Lishan Aklog, M.D.</u> Lishan Aklog, M.D.	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	March 15, 2022
By: <u>/s/ Dennis M. McGrath</u> Dennis M. McGrath	President and Chief Financial Officer (Principal Financial and Accounting Officer)	March 15, 2022
By: <u>/s/ Stanley N. Lapidus</u> Stanley N. Lapidus	Vice Chairman and Director	March 15, 2022
By: <u>/s/ Aster Angagaw</u> Aster Angagaw	Director	March 15, 2022
By: <u>/s/ James L. Cox, M.D.</u> James L. Cox, M.D.	Director	March 15, 2022
By: <u>/s/ Jacque J. Sokolov, M.D.</u> Jacque J. Sokolov, M.D.	Director	March 15, 2022
By: <u>/s/ Ronald M. Sparks</u> Ronald M. Sparks	Director	March 15, 2022

EXHIBIT INDEX

Exhibit No.	Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date	Exhibit No.	
3.1	Amended and Restated Certificate of Incorporation	S-1/A	10/7/21	3.1	
3.2	Amended and Restated Bylaws	S-1/A	10/7/21	3.2	
4.1	Specimen Lucid Diagnostics Inc. Common Stock Certificate	S-1/A	10/7/21	4.1	
5.1	Opinion of Graubard Miller				X
10.1	Lucid Diagnostics Inc. Employee Stock Purchase Plan				X
23.1	Consent of Marcum LLP				X
23.2	Consent of Graubard Miller (included in Exhibit 5.1)				X
24.1	Power of Attorney (included on the signature page hereto)				X
107	Calculation of Filing Fee Table				X

Graubard Miller
405 Lexington Avenue
New York, New York 10174

March 15, 2022

Lucid Diagnostics Inc.
One Grand Central Place, Suite 4600
New York, NY 10165

Ladies and Gentlemen:

Reference is made to the Registration Statement on Form S-8 (the "Registration Statement") filed by Lucid Diagnostics Inc., a Delaware corporation ("Company"), under the Securities Act of 1933, as amended (the "Act"), with respect to an aggregate of 500,000 shares (the "Shares") of common stock, par value \$.001 per share ("Common Stock"), reserved for issuance by the Company under the Company's Employee Stock Purchase Plan (the "ESPP").

We have examined such documents and considered such legal matters as we have deemed necessary and relevant as the basis for the opinion set forth below. With respect to such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as reproduced or certified copies, and the authenticity of the originals of those latter documents. As to questions of fact material to this opinion, we have, to the extent deemed appropriate, relied upon certain representations of certain officers and employees of the Company.

In our examination of documents for purposes of this opinion, we have assumed, and express no opinion as to, the authenticity and completeness of all documents submitted to us as originals, the genuineness of signatures on documents reviewed by us, the conformity to originals and the completeness of all documents submitted to us as copies, the legal capacity of all parties executing any documents (other than the Company), the lack of any undisclosed termination or modification or waiver of any document, the absence of any extrinsic agreements or documents that might change or affect the interpretation or terms of documents, and the due authorization, execution and delivery of all documents by each party thereto other than the Company. We have also assumed that any certificates or instruments representing the Shares, when issued, will be executed by the Company by officers of the Company duly authorized to do so. In rendering our opinion, we have also relied upon a good standing certificate regarding the Company issued by the Delaware Secretary of State and representations and certifications made to us by the Company, including, without limitation, representations that the Company has available a sufficient number of authorized shares of Common Stock that are not currently outstanding or reserved for issuance under other outstanding securities or plans of the Company, to enable the Company to issue and deliver all of the Shares as of the date of this letter. We have also assumed that in granting awards under the ESPP, the Board of Directors of the Company or the appropriate committee thereunder will exercise its discretion in establishing the terms of such awards in accordance with the terms of the ESPP and within the permissible limits of the law of the State of Delaware and the certificate of incorporation, as amended, and by-laws, as amended, of the Company.

Based upon and subject to the foregoing, it is our opinion that the Shares that may be issued and sold by the Company pursuant to the purchase rights granted or to be granted under the ESPP, when sold in accordance with the terms of the Plans and the individual instruments or agreements governing their issuance, will be legally issued, fully paid and nonassessable.

The opinion expressed herein is limited to the corporate laws of the State of Delaware, and we express no opinion as to the effect on matters covered by this letter of the laws of any other jurisdiction.

We hereby consent to the use of this opinion as an exhibit to the Registration Statement, to the use of our name as your counsel and to all references made to us in the Registration Statement. In giving this consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Act, or the rules and regulations promulgated thereunder.

Very truly yours,

/s/ Graubard Miller



Employee Stock Purchase Plan

LUCID DIAGNOSTICS INC. EMPLOYEE STOCK PURCHASE PLAN (Effective as of November 9, 2021)

Effective as of the Effective Date, the Board (or an appropriate committee thereof) adopted this Plan, which shall govern all grants of Options made after the Effective Date.

- Purpose of the Plan.** The purpose of this Plan is to encourage and enable Eligible Employees of the Company and certain of its Subsidiaries to acquire proprietary interests in the Company through the ownership of Shares. It is the intention of the Company to have this Plan and the Options granted pursuant to this Plan satisfy the requirements of Section 423 of the Code; provided, however, that the Administrator may also authorize the grant of Options under offerings of the Plan that are not intended to comply with the requirements of Section 423 of the Code, pursuant to any rules, procedures, agreements, appendices, or sub-plans adopted by the Administrator for such purpose (each, a “*Non-423 Offering*”).
- 1.
 2. **Definitions.** Unless otherwise provided in the Plan, capitalized terms, when used herein, shall have the following respective meanings:
 - a. “*Account*” shall mean a bookkeeping account established and maintained to record the amount of funds accumulated pursuant to the Plan with respect to a Participant for purchasing Shares under this Plan.
 - b. “*Administrator*” shall mean the Board, the Compensation Committee of the Board or any other committee appointed by the Board.
 - c. “*Applicable Laws*” shall mean all applicable laws, rules, regulations and requirements, including, but not limited to, U.S. state corporate laws, U.S. federal and state securities laws, the Code, the rules of any stock exchange or quotation system on which the Shares are listed or quoted and the applicable laws, rules, regulations and requirements of any other country or jurisdiction where Options are granted under the Plan or where Eligible Employees reside or provide services, as such laws, rules, regulations and requirements shall be in effect from time to time.
 - d. “*Board*” shall mean the Company’s Board of Directors.
 - e. “*Cashless Participation Agreement*” shall mean an agreement in the form as may be adopted by the Administrator from time to time.
 - f. “*Cashless Participation Program*” shall mean the program described in Section 9.
 - g. “*Change in Control*” shall mean and include each of the following:
 - i. A transaction or series of transactions (other than an offering of Common Stock to the general public through a registration statement filed with the Securities and Exchange Commission or a transaction or series of transactions that meets the requirements of clauses (a) and (b) of subsection (iii) below) whereby any “person” or related “group” of “persons” (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”)) (other than the Company, any of its Subsidiaries, an employee benefit plan maintained by the Company or any of its Subsidiaries or a “person” that, prior to such

transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

- ii. During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in subsections (i) or (iii)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

- iii. The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

- A. which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "Successor Entity")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

- B. after which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however*, that no person or group shall be treated for purposes of this clause (b) as beneficially owning 50% or more of the combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction.

The Administrator shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change in Control has occurred pursuant to the above definition, the date of the occurrence of such Change in Control and any incidental matters relating thereto.

- h. "Code" shall mean the U.S. Internal Revenue Code of 1986, as amended, and the regulations and interpretations promulgated thereunder.
- i. "Common Stock" shall mean the Company's common stock.
- j. "Company" shall mean Lucid Diagnostics Inc.
- k. "Designated Entities" shall mean any Parent or Subsidiary designated by the Administrator from time to time, in its sole discretion, whose employees may participate in the Plan, if such employees otherwise qualify as Eligible Employees. The Administrator may provide that the non-U.S. Eligible Employees of any Designated Entity shall only be eligible to participate in a Non-423 Offering.

- l. "Effective Date" shall mean November 9, 2021.

- m. “*Eligible Compensation*” shall mean and refer to the Participant’s cash compensation paid through the Company’s or a Designated Entity’s payroll system for personal services rendered in the course of employment. “*Eligible Compensation*” shall be limited to amounts received by the Participant during the period he or she is participating in the Plan and includes salary, wages and other incentive payments, amounts contributed by the Participant to any benefit plan maintained by the Company or any Designated Entity (including any 401(k) plan, 125 plan, or any other deferred compensation plan), overtime pay, commissions, draws against commissions, shift premiums, sick pay, vacation pay, holiday pay, severance pay and shutdown pay, except to the extent that the exclusion of any such item (or a sub-set of any such item) is specifically directed by the Administrator for all Eligible Employees. “*Eligible Compensation*” does not include any remuneration paid in a form other than cash, fringe benefits (including car allowances and relocation payments), employee discounts, expense reimbursement or allowances, long-term disability payments, workmen’s compensation payments, welfare benefits, and any contributions that the Company or any Designated Entity makes to any benefit plan (including any 401(k) plan or any other welfare or retirement plan).
- n. “*Eligible Employee*” shall mean any person, including an officer, who is employed by the Company or any Designated Entity.
- o. “*Enrollment Agreement*” means an agreement between the Company and an Eligible Employee, in such form as may be established by the Administrator from time to time, pursuant to which an Eligible Employee elects to participate in this Plan, or elects to make changes with respect to such participation as permitted by this Plan.
- p. “*Enrollment Period*” shall mean that period of time prescribed by the Administrator during which Eligible Employees may elect to participate in an Offering Period. The duration and timing of Enrollment Periods may be changed or modified by the Administrator from time to time.
- q. “*Fair Market Value*” shall mean, unless otherwise determined or provided by the Administrator in the circumstances, the last price (in regular trading) for a share of Common Stock as furnished by the National Association of Securities Dealers, Inc. (the “*NASD*”) through the NASDAQ Global Market Reporting System (the “*Global Market*”) or any other established stock exchange for the date in question or, if no sales of Common Stock were reported by the NASD on the Global Market or any other established stock exchange on that date, the last price (in regular trading) for a share of Common Stock as furnished by the NASD through the Global Market or any other established stock exchange for the last day preceding such day on which sales of Common Stock were reported. The Administrator may, however, provide with respect to one or more Options that the Fair Market Value shall equal the last price for a share of Common Stock as furnished by the NASD through the Global Market or any other established stock exchange on the last trading day preceding the date in question or the average of the high and low trading prices of a share of Common Stock as furnished by the NASD through the Global Market or any other established stock exchange for the date in question or the most recent trading day, provided that any such determination is made on a uniform basis with respect to all Options under the Plan or in a separate offering thereunder. If the Common Stock is no longer listed or is no longer actively traded on the Global Market or any other established stock exchange as of the applicable date, the Fair Market Value of the Common Stock shall be the value as reasonably determined by the Administrator for purposes of the Award in the circumstances. The Administrator also may adopt a different methodology for determining Fair Market Value with respect to one or more Options if a different methodology is necessary or advisable to secure any intended favorable tax, legal or other treatment for the particular Option(s) (for example, and without limitation, the Administrator may provide that Fair Market Value for purposes of one or more Options will be based on an average of closing prices (or the average of high and low daily trading prices) for a specified period preceding the relevant date).

- r. “*Irrevocable Contract*” shall mean an irrevocable enforceable contract in the form as may be adopted by the Administrator from time to time.
- s. “*Offering Period Beginning Date*” shall mean the first Trading Day of each Offering Period.
- t. “*Offering Period*” shall mean the period established in advance by the Administrator during which Payroll Contributions shall be collected to purchase Shares pursuant to an offering made under this Plan. Unless otherwise established by the Administrator prior to the start of an Offering Period, there shall be two Offering Periods that commence each year, and each shall be of approximately six months’ duration, with the first such Offering Period beginning on April 1 (or the first Trading Day following such April 1 if such April 1 is not a Trading Day) and ending

on September 30 (or the Trading Day immediately preceding such September 30 if such September 30 is not a Trading Day), and the second such Offering Period beginning on October 1 (or the first Trading Day following such October 1 if such October 1 is not a Trading Day) and ending on March 31 of the following year (or the Trading Day immediately preceding such March 31 if such March 31 is not a Trading Day).

- u. “*Offering Period End Date*” shall mean the last Trading Day of an Offering Period.
- v. “*Option*” shall mean the right granted to Participants to purchase Shares pursuant to an offering made under this Plan.
- w. “*Outstanding Election*” shall mean a Participant’s then-current election to purchase Shares in an Offering Period, or that part of such an election which has not been cancelled (including any voluntary cancellation under Section 10 and deemed cancellation under Section 15) prior to the close of business on the last Trading Day of the Offering Period or such other date as determined by the Administrator.
- x. “*Parent*” shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of the corporations other than the Company owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.
- y. “*Participant*” shall mean an Eligible Employee who has elected to participate in the Plan pursuant to Section 6.
- z. “*Payroll Contributions*” shall have the meaning set forth in Section 8.
- aa. “*Plan*” shall mean this Lucid Diagnostics Inc. Employee Stock Purchase Plan as herein amended and restated, and as it may be further amended from time to time.

- bb. “*Purchase Price Per Share*” shall be the lower of (i) eighty-five percent (85%) of the Fair Market Value on the Offering Period Beginning Date or (ii) eighty- five percent (85%) of the Fair Market Value on the Offering Period End Date.
- cc. “*Share*” shall mean one share of Common Stock.
- dd. “*Subsidiary*” shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.
- ee. “*Termination of Service*” means, in the case of an Employee, a cessation of the employee-employer relationship between the Employee and the Company or a Parent or a Subsidiary for any reason, including but not by way of limitation, a termination by resignation, discharge, death, disability, retirement or the disaffiliation of a Parent or a Subsidiary but excluding such termination where there is a simultaneous reemployment by the Company or a Parent or a Subsidiary, and excluding any bona fide and Company approved leave of absence such as family leave, medical leave, personal leave and military leave.
- ff. “*Trading Day*” shall mean a day on which national stock exchanges in the United States are open for trading.

3. **Shares Reserved for Plan.** Subject to adjustment pursuant to Section 18, a maximum of 500,000 Shares may be delivered pursuant to Options granted under this Plan; provided that the maximum number of Shares that may be delivered pursuant to Options granted under this Plan will automatically and cumulatively increase on January 1, 2023 and on each subsequent January 1, through and including January 1, 2032, by a number of shares (the “Annual Increase”) equal to the smallest of (i) 2% of the total number of shares of Common Stock outstanding on December 31 of the immediately preceding calendar year, (ii) 1,000,000 Shares, or (iii) an amount determined by the Board. The Shares reserved for issuance pursuant to this Plan shall be authorized but unissued Shares. If any Option granted under the Plan shall for any reason terminate without having been exercised, the Shares not purchased under such Option shall again become available for issuance under the Plan. All Shares

issued under the Plan shall be free of a restricted legend. For the avoidance of doubt, up to the maximum number of Shares reserved under this Section 3 may be used to satisfy exercises of Options granted pursuant to this Plan under Section 423 of the Code and any remaining portion of such maximum number of Shares may be used to satisfy exercises of any Options that may be granted under a Non-423 Offering.

- If the number of Shares to be purchased by Participants on the Offering Period End Date exceeds the total number of Shares then available under the Plan, then the Administrator shall make a pro-rata allocation of any Shares that may
- a. be issued pursuant to the Plan in as uniform and equitable a manner as is reasonably practicable, as determined in the Administrator's sole discretion. In such event, the Company shall provide written notice to each affected Participant of the reduction of the number of Shares to be purchased under the Participant's Option.

- If the Administrator determines that some or all of the Shares to be purchased by Participants on the Offering Period End Date would not be issued in accordance with Applicable Laws or any approval by any regulatory body as may be required, or the Shares would not be issued pursuant to an effective Form S-8 registration statement or that the issuance
- b. of some or all of such Shares pursuant to a Form S-8 registration statement is not advisable due to the risk that such issuance will violate Applicable Laws, the Administrator may, without Participant consent, terminate any outstanding Offering Period and the Options granted pursuant thereto and refund in cash all affected Participants' entire Account balances for such Offering Period as soon as practicable thereafter.

4. **Administration of the Plan.** The Administrator shall have the authority and responsibility for the day-to-day administration of the Plan, which, to the extent permitted by Applicable Laws, it may delegate to a sub-committee. Subject to the provisions of the Plan, the Administrator shall have full authority, in its sole discretion, to take any actions it deems necessary or advisable for the administration of the Plan, including, but not limited to:

- a. Interpreting the Plan and adopting rules and regulations it deems appropriate to implement the Plan including amending any outstanding Option as it may deem advisable or necessary to comply with Applicable Laws, and making all other decisions relating to the operation of the Plan;
 - i. Establishing the timing and length of Offering Periods;
 - ii. Establishing minimum and maximum contribution rates;
 - iii. Changing the existing limit set forth in Section 5.b on the number of Shares an Eligible Employee may elect to purchase with respect to any Offering Period, if such limits are announced prior to the first Offering Period to be affected;
 - iv. Adopting such rules or sub-plans as may be deemed necessary or appropriate to comply with the laws of other countries, allow for tax- preferred treatment of the Options or otherwise provide for the participation by Eligible Employees who reside outside of the U.S., including determining which Eligible Employees are eligible to participate in a Non-423 Offering or other sub-plans established by the Administrator; and
 - v. Establishing the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars and permit payroll withholding more than the amount designated by a Participant to adjust for delays or mistakes in the processing of properly completed enrollment forms.
- b. The Administrator's determinations under the Plan shall be final and binding on all persons.

5. **Grant of Option; Limitations.**

- a. *Grant of Option.* On each Offering Period Beginning Date, each Participant shall automatically be granted an Option to purchase as many whole Shares as the Participant will be able to purchase with the Payroll Contributions credited to the Participant's Account during the applicable Offering Period and the Cashless Participation loan proceeds if the Participant has agreed to the Cashless Participation Program, but in any event not more than 25,000 Shares.

- Limit on Value of Shares Purchased.* Any provisions of the Plan to the contrary notwithstanding, excluding Options granted pursuant to any Non-423 Offering, no Participant shall be granted an Option to purchase Shares under this Plan which permits the Participant's rights to purchase stock under all employee stock purchase plans (described in Section 423 of the Code) of the Company, its Parents and its Subsidiaries to accrue at a rate which exceeds twenty-five thousand dollars (\$25,000) of the Fair Market Value of such stock (determined at the time such Options are granted) for each calendar year in which such Options are outstanding at any time.
- b.

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- 5% Owner Limit.* Any provisions of the Plan to the contrary notwithstanding, no Participant shall be granted an Option to purchase Shares under this Plan if such Participant (or any other person whose stock would be attributed to such Participant pursuant to Section 424(d) of the Code), immediately after such Option is granted, would own or hold options to purchase Shares possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or of any of its Parents or Subsidiaries.
- c.

- Other Limitations.* The Administrator may determine, as to any Offering Period, that the offer will not be extended to highly compensated Eligible Employees within the meaning of Section 414(q) of the Code. In addition, the Administrator may determine to impose a maximum number of Shares that may be purchased by any Participant and/or by all Participants in the aggregate during an Offering Period.
- d.

- Participation in the Plan.** An Eligible Employee may become a Participant for an Offering Period by completing the prescribed Enrollment Agreement and submitting such form to the Company (or the Company's designee) as directed by the Company, or by following an electronic or other enrollment process as prescribed by the Company, during the Enrollment Period prior to the commencement of the Offering Period to which it relates. Such Enrollment Agreement shall contain the payroll deduction authorization described in Section 8. A Participant may participate in the Cashless Participation Program by executing the Cashless Participation Agreement and Irrevocable Contract pursuant to Section 9. Such Cashless Participation Agreement and Irrevocable Contract will not impair the Participant's ability to withdraw from the Plan in accordance with Section 10. A payroll deduction authorization will be effective for the first Offering Period following the submission of the Enrollment Agreement and all subsequent Offering Periods as provided by Section 7 until it is terminated in accordance with Sections 10 or 15, it is modified by filing another Enrollment Agreement in accordance with this Section 6 or an election is made to decrease Payroll Contributions in accordance with Section 8 or until the Participant's employment terminates or the Participant is otherwise ineligible to participate in the Plan.
- 6.

- Automatic Re-Enrollment.** Following the end of each Offering Period, each Participant shall be automatically re-enrolled in the next Offering Period at the applicable rate of Payroll Contributions in effect on the last Trading Day of the prior Offering Period or otherwise as provided under Section 8, and each Participant who participates in the Cashless Participation Program for an Offering Period will continue to participate in the Cashless Participation Program for subsequent Offering Periods, unless the Participant has elected to withdraw from the Plan in accordance with Section 10, the Participant's employment terminates, or the Participant is otherwise ineligible to participate in the next Offering Period. Notwithstanding the foregoing, the Administrator may require current Participants to complete and submit a new Enrollment Agreement at any time it deems necessary or desirable to facilitate Plan administration or for any other reason.
- 7.

- Payroll Contributions.** Each Participant's Enrollment Agreement shall contain a payroll deduction authorization pursuant to which he or she shall elect to have a designated whole percentage of Eligible Compensation between 1% and 15% deducted on each payday during the Offering Period (less any amounts deducted pursuant to an employee stock purchase plan of any Parent or Subsidiary) and credited to the Participant's Account for the purchase of Shares pursuant to the Offering Period (such amount, the "*Payroll Contributions*"). Payroll Contributions shall commence on the Offering Period Beginning Date of the first Offering Period to which the Enrollment Agreement relates (or as soon as administratively practicable thereafter) and shall continue through subsequent Offering Periods pursuant to Section 7. Participants shall not be permitted to make any separate cash payments into their Account for the purchase of Shares pursuant to an offering.
- 8.

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- If in any payroll period, a Participant has no pay or his or her pay is insufficient (after other authorized deductions) to permit deduction of the full amount of his or her Payroll Contribution election, then (i) the Payroll Contribution election for such payroll period shall be reduced to the amount of pay remaining, if any, after all other authorized deductions,
- a.

and (ii) the percentage amount of Eligible Compensation shall be deemed to have been reduced by the amount of the reduction in the Payroll Contribution election for such payroll period. Deductions of the full amount originally elected by the Participant will recommence as soon as his or her pay is sufficient to permit such Payroll Contributions; provided, however, no additional amounts will be deducted to satisfy the Outstanding Election.

- Participant may elect to decrease, but not increase, the rate of his or her Payroll Contributions during an Offering Period by submitting the prescribed form to the Company (or the Company's designee) at any time prior to the first day of the last calendar month of such Offering Period. Any such Payroll Contribution change will be effective as soon as administratively practicable thereafter and will remain in effect for successive Offering Periods as provided in Section 7. Participants will only be allowed to decrease the rate of Payroll Contributions once per Offering Period. Reductions in Payroll Contribution rates do not constitute a withdrawal or termination of the Plan. A Participant may only increase his or her rate of Payroll Contributions to be effective for the next Offering Period by completing and filing with the Company a new Enrollment Agreement authorizing the Payroll Contributions.

- Notwithstanding the foregoing, the Company may adjust a Participant's Payroll Contributions and Cashless Participation loan amount at any time during an Offering Period to the extent necessary to comply with Section 423(b)(8) of the Code and the limitations of Section 5. Payroll Contributions will recommence and be made in accordance with the Outstanding Election prior to such Company adjustment starting with the first Offering Period that begins in the next calendar year (or such other time as is determined by the Administrator) unless the Participant withdraws in accordance with Section 10, is withdrawn from the Plan in accordance with Section 15 or is otherwise ineligible to participate in the Plan.

- Cashless Participation Program.** An Eligible Employee may become a participant in the Cashless Participation Program by completing and submitting to the Company, its appointed plan administrator or Cashless Participation loan provider a Cashless Participation Agreement and an Irrevocable Contract, which shall contain terms and conditions of the Eligible Employee's participation in the Cashless Participation Program, including, without limitation, the level of participation, sale price, loan terms, interest and repayment provisions. The aggregate outstanding principal amount of any loan to a Participant under the Cashless Participation Program will be equal to the difference between the Participant's selected Payroll Contribution rate pursuant to Section 8 and the maximum allowable under the Plan for such Offering Period pursuant to Section 5. Participation in the Cashless Participation Program is available to all Eligible Employees (other than executive officers of the Company), unless prohibited by Applicable Law. All Employees must contribute a minimum of 1% of Eligible Compensation to be able to participate in the Cashless Participation program.

- Withdrawal from Offering Period After Offering Period Beginning Date.** An Eligible Employee may withdraw from any Offering Period after the applicable Offering Period Beginning Date, in whole but not in part, at any time prior to the date specified by the Administrator or, if no such date is specified by the Administrator, ten days before the last Trading Day of such Offering Period, by submitting the prescribed withdrawal notice to the Company (or the Company's designee). If a Participant withdraws from an Offering Period, the Participant's Option for such Offering Period will automatically be terminated, and the Company will refund in cash the Participant's entire Account balance for such Offering Period as soon as practicable thereafter. A Participant's withdrawal from an Offering Period shall be irrevocable. If a Participant wishes to participate in a subsequent Offering Period, he or she must re-enroll in the Plan by timely submitting a new Enrollment Agreement in accordance with Section 6.

- Purchase of Stock.** On the last Trading Day of each Offering Period, the Administrator shall cause the amount credited to each Participant's Account from Payroll Contributions and any loan proceeds from the Cashless Participation Program to be applied to purchase as many Shares pursuant to the Participant's Option as possible at the Purchase Price Per Share, subject to limitations of Sections 3 and 5, and amounts from the Participant's Account that are used to purchase such Shares shall be deducted from such Participant's Account. In no event may Shares be purchased pursuant to an Option more than 27 months after the Offering Period Beginning Date of such Option. Any amounts remaining credited to the Participant's Account on the Offering Period End Date shall be returned to such Participant in one lump sum in cash as soon as reasonably practicable after the Offering Period End Date. At the time a Participant's Options under the Plan are exercised, in whole or in part, or at the time some or all of the Common Stock issued under the Plan is disposed of, the Participant must make adequate provision for the Company's or a Parent's or a Subsidiary's federal, state, or other tax withholding obligations, if any, that arise upon the exercise of the Option or the disposition of the Common Stock acquired upon exercise of the Option. At any time, the Company or a Parent or a Subsidiary may, but shall not be obligated to, withhold from the Participant's compensation the amount necessary for

the Company or Parent or Subsidiary to meet applicable withholding obligations, including any withholding required to make available to the Company or Parent or Subsidiary any tax deductions or benefits attributable to the sale or early disposition by the Participant of Common Stock by the Participant upon exercise of the Option.

12. **Interest on Payments.** No interest shall be paid on sums withheld from a Participant's pay for the purchase of Shares under this Plan unless otherwise determined necessary by the Administrator.

13. **Rights as Shareholder.** A Participant will not be a shareholder with respect to Shares subject to the Participant's Options issued under the Plan until the Shares are purchased pursuant to the Options and such Shares are transferred into the Participant's name on the Company's books and records.

14. **Options Not Transferable.** A Participant's Options under this Plan may not be sold, pledged, assigned, or transferred in any manner. If a Participant sells, pledges, assigns or transfers his or her Options in violation of this Section 14, such Options shall immediately terminate, and the Participant shall immediately receive a refund of the amount then credited to the Participant's Account. For the avoidance of doubt, participation in the Cashless Participation Program, including without limitation, the delivery to the Cashless Participation Provider of any Shares required for the repayment by the Participant of any Cashless Participation loan amount, will not be deemed to violate this Section 14.

15. **Deemed Cancellations.**

- a. *Termination of Service.* In the event of a Participant's Termination of Service, any outstanding Option held by the Participant shall immediately terminate, the Participant shall be withdrawn from the Plan and the Participant shall receive a refund of the amount contributed to the Plan.

- b. *Death of a Participant.* If a Participant dies, any outstanding Option held by the Participant shall immediately terminate and the Participant shall be withdrawn from the Plan. As soon as administratively practicable after the Participant's death, the amount then credited to the Participant's Account shall be remitted to the executor, administrator or other legal representative of the Participant's estate or, if the Administrator permits a beneficiary designation, to the beneficiary or beneficiaries designated by the Participant if such designation has been filed with the Company or the Company's designee before such Participant's death. If such executor, administrator or other legal representative of the Participant's estate has not been appointed (to the knowledge of the Company) or if the beneficiary or beneficiaries are no longer living at the time of the Participant's death, the Company, in its discretion, may deliver the outstanding Account balance to the spouse or to any one or more dependents or relatives of the Participant or to such other person as the Company may designate.

16. **Application of Funds.** All funds received by the Company in payment for Shares purchased under this Plan and held by the Company at any time may be used for any valid corporate purpose.

17. **No Employment/Service Rights.** Neither the action of the Company in establishing the Plan, nor any action taken under the Plan by the Board or the Administrator, nor any provision of the Plan itself, shall be construed to grant any person the right to remain in the employ of the Company or any Parent or Subsidiary for any period of specific duration, and such person's employment may be terminated at any time, with or without cause.

18. **Adjustments.** Subject to Section 19, upon (or, as may be necessary to effect the adjustment, immediately prior to): any reclassification, recapitalization, stock split (including a stock split in the form of a stock dividend) or reverse stock split; any merger, combination, consolidation, or other reorganization; any spin-off, split-up, or similar extraordinary dividend distribution in respect of the Common Stock; or any exchange of Common Stock or other securities of the Company, or any similar, unusual or extraordinary corporate transaction in respect of the Common Stock; then the Administrator shall equitably and proportionately adjust (1) the number and type of Shares of Common Stock (or other securities) that thereafter may be made the subject of Options (including the specific Share limits, maximums and numbers of Shares set forth elsewhere in the Plan), (2) the number, amount and type of Shares of Common Stock (or other securities or property) subject to any outstanding Options, (3) the Purchase Price Per Share of any outstanding Options, and/or (4) the securities, cash or other property deliverable upon exercise or payment of any outstanding Options, in each case to the extent necessary to preserve (but not increase) the level of incentives intended by the Plan and the then-outstanding Options.

- a. It is intended that, if possible, any adjustments contemplated by the preceding paragraph be made in a manner that satisfies applicable legal, tax (including, without limitation and as applicable in the circumstances, Section 424 of the Code and Section 409A of the Code) and accounting (to not trigger any charge to earnings with respect to such adjustment) requirements.

- b. Without limiting the generality of Section 4, any good faith determination by the Administrator as to whether an adjustment is required in the circumstances pursuant to this Section 18, and the extent and nature of any such adjustment, shall be conclusive and binding on all persons.

19. **Merger or Liquidation of Company.** In the event the Company or its shareholders enter into an agreement to dispose of all or substantially all of the assets or outstanding capital stock of the Company by means of a sale, merger or reorganization in which the Company will not be the surviving corporation (other than a reorganization effected primarily to change the State in which the Company is incorporated, a merger or consolidation with a wholly-owned Subsidiary or a Parent by which the Company is wholly-owned, or any other transaction in which there is no substantial change in the shareholders of the Company or their relative stock holdings, regardless of whether the Company is the surviving corporation), in the event of a Change in Control, or in the event the Company is liquidated, then all outstanding Options under the Plan shall automatically be exercised prior to the consummation of such sale, merger, reorganization, Change in Control or liquidation (deemed the end of the Offering Period in such case) by causing all amounts credited to each Participant's Account via Payroll Contributions and Cashless Participation loans to be applied to purchase as many Shares pursuant to the Participant's Option as possible at the Purchase Price Per Share, subject to the limitations of Sections 3 and 5, provided that any Shares subject to an Irrevocable Contract will continue to be subject thereto.

20. **Acquisitions and Dispositions.** The Administrator may, in its sole and absolute discretion and in accordance with principles under Section 423 of the Code, create special Offering Periods for individuals who become Eligible Employees solely in connection with the acquisition of another company or business by merger, reorganization or purchase of assets and, notwithstanding Section 15.b, may provide for special purchase dates for Participants who will cease to be Eligible Employees solely in connection with the disposition of all or a portion of any Designated Entity or a portion of the Company, which Offering Periods and purchase rights granted pursuant thereto shall, notwithstanding anything stated herein, be subject to such terms and conditions as the Administrator considers appropriate in the circumstances.

21. **Government Approvals or Consents.** This Plan and any offering and sales of Shares or delivery of Shares under this Plan to Eligible Employees under it are subject to any governmental or regulatory approvals or consents that may be or become applicable in connection therein.

22. **Plan Amendment; Plan Termination.** The Board may from time to time amend or terminate the Plan in any manner it deems necessary or advisable; provided, however, that no such action shall adversely affect any then outstanding and vested Options under the Plan unless such action is required to comply with Applicable Laws; provided, further, that any Cashless Participation Agreement or Irrevocable Contract may only be amended in accordance with its terms; and provided, further, that no such action of the Board shall be effective without the approval of the Company's shareholders if such approval is required by Applicable Laws. Upon the termination of the Plan, any balance in a Participant's Account shall be refunded to him or her as soon as practicable thereafter.

23. **Governing Law.** The Plan shall be governed by, and construed in accordance with, the laws of the State of Delaware (except its choice-of-law provisions) and applicable U.S. federal laws.

24. **Notice of Disposition of Shares.** Each Participant shall give prompt notice to the Company of any disposition or other transfer of any Shares purchased upon exercise of a right under the Plan if such disposition or transfer is made: (a) within two years from the Offering Period Beginning Date in which the Shares were purchased or (b) within one year after the date on which such Shares were purchased. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Participant in such disposition or other transfer.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Lucid Diagnostics Inc. on Form S-8 of our report dated July 13, 2021, except for Note 3 (*Milestones and Royalty Fee*) as to which the date is September 3, 2021, and effect of a stock split as to which the date is October 6, 2021, with respect to our audits of the financial statements of Lucid Diagnostics, Inc. as of December 31, 2020 and 2019, and for each of the two years in the period ended December 31, 2020, which report appears in the prospectus dated October 13, 2021 that was filed as part of the Registration Statement of Lucid Diagnostics Inc. on Form S-1 (File No. 333-259721).

/s/ Marcum LLP

Marcum LLP
New York, NY
March 15, 2022

Calculation of Filing Fee Table

Form S-8
(Form Type)

Lucid Diagnostics Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee ⁽²⁾
Equity	Employee Stock Purchase Plan Common Stock, \$0.001 par value per share	Other ⁽³⁾	500,000 ⁽⁴⁾	\$ 3.65 ⁽³⁾	\$ 1,825,000	.0000927	\$ 169.18
Total Offering Amounts					\$ 1,825,000		\$ 169.18
Total Fees Previously Paid							—
Total Fee Offsets							—
Net Fee Due							\$ 169.18

Pursuant to Rule 416 promulgated under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement also covers such additional securities that may be offered pursuant to the terms of the Lucid Diagnostics Inc. Employee Stock Purchase Plan (“ESPP”) as a result of one or more adjustments under the ESPP to prevent dilution resulting from one or more stock splits, stock dividends or similar transactions.

(1) The Registrant does not have any fee offsets.

Pursuant to Rule 457(c) and 457(h) promulgated under the Securities Act, solely for the purpose of calculating the registration fee, (3) the proposed maximum offering price per share for the shares reserved for future grants under the ESPP is the average of the high and low prices of our common stock as reported on the Nasdaq Capital Market on March 9, 2022.