

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

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

**WINDTREE THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

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

**94-3171943**  
(IRS Employer  
Identification No.)

**2600 Kelly Road, Suite 100**  
**Warrington, Pennsylvania 18976**  
**(215) 488-9300**  
(Address, including zip code, of Principal Executive Offices)

**Windtree Therapeutics, Inc. 2020 Equity Incentive Plan**

(Full title of the plan)

**Craig E. Fraser**  
**Executive Chairman,**  
**President & Chief Executive Officer**  
**Windtree Therapeutics, Inc.**  
**2600 Kelly Road, Suite 100**  
**Warrington, Pennsylvania 18976**  
**(215) 488-9300**

(Name, address and telephone number of agent for service)

**Copies to:**  
Rachael M. Bushey, Esq.  
Jennifer L. Porter, Esq.  
Troutman Pepper Hamilton Sanders LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103  
(215) 981-4331

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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.

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share	1,535,500 shares(3)	\$5.57	\$8,552,735	\$933.11

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement also covers an indeterminate number of additional shares of common stock, par value \$0.001 (the “Common Stock”) of Windtree Therapeutics, Inc. (the “Company.”) issuable under the Windtree Therapeutics, Inc. 2020 Equity Incentive Plan (the “2020 Plan”) in the event the number of outstanding shares of the Company is increased by reason of any stock dividend, stock split, recapitalization, merger, consolidation or reorganization or similar transaction.
- (2) Estimated in accordance with Rule 457(c) and (h) under the Securities Act solely for the purpose of calculating the registration fee based upon the average of the high and low prices of the Company’s Common Stock on the Nasdaq Capital Market on February 10, 2021.
- (3) Represents 1,535,500 shares of Common Stock reserved for issuance under the 2020 Plan as of the date hereof.

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

**Item 1. Plan Information.**

The documents constituting Part I of this registration statement on Form S-8 (this "Registration Statement") will be delivered to participants in the 2020 Plan as specified by Rule 428(b)(1) under the Securities Act. Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the "Commission") either as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this form, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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

Upon written or oral request, the Company will provide, without charge, the documents incorporated by reference in Item 3 of Part II of this Registration Statement. The documents are incorporated by reference in the Section 10(a) prospectus. The Company will also provide, without charge, upon written or oral request, other documents required to be delivered to employees pursuant to Rule 428(b). Requests for the information described above should be directed to Investor Relations at [ir@windtreetx.com](mailto:ir@windtreetx.com) or John P. Hamill, the Company's Chief Financial Officer, at the address and telephone number on the cover of this Registration Statement.

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents, which have been filed by the Company with the Commission are incorporated by reference in, and shall be deemed to be a part of, this Registration Statement:

- Our Annual Report on Form 10-K for the year ended [December 31, 2019](#) filed with the Commission on April 3, 2020;
- Our Quarterly Reports on Form 10-Q for the quarters ended [March 31, 2020](#) filed with the Commission on May 13, 2020, [June 30, 2020](#) filed with the Commission on August 14, 2020 and [September 30, 2020](#) filed with the Commission on November 16, 2020;
- Our Current Reports on Form 8-K filed with the Commission on [March 13, 2020](#), [March 23, 2020](#), [April 24, 2020](#), [April 29, 2020](#), [April 30, 2020](#), [May 7, 2020](#), [May 22, 2020](#), [July 15, 2020](#), [July 23, 2020](#), [September 17, 2020](#), [September 29, 2020](#), [October 1, 2020](#), [December 31, 2020](#) and [February 9, 2021](#); and
- The description of our common stock included in our Form 8-A filed with the Commission on [May 15, 2020](#), including any amendments or reports filed for the purpose of updating such description.

All reports and other documents we subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of this offering, including all such documents we may file with the Commission after the date of the initial registration statement and prior to the effectiveness of the registration statement, but excluding any information furnished to, rather than filed with, the Commission, will also be incorporated by reference into this prospectus and deemed to be part of this prospectus from the date of the filing of such reports and documents.

For purposes of this Registration Statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained therein, or in any other subsequently filed document which also is or is deemed to be incorporated by reference, modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

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You may request a copy, without charge, of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents) by writing or telephoning us at the address and telephone number on the cover of this Registration Statement:

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Article Eight of our Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation") limits the liability of directors to the maximum extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for (i) any breach of their duty of loyalty to the corporation or its stockholders, (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL or (iv) any transaction from which the director derives an improper personal benefit.

Our Amended and Restated By-Laws (the "By-Laws") provide that we shall indemnify our directors and officers, the directors and officers of any of our subsidiaries and any other individuals acting as directors or officers of any other corporation at our request, to the fullest extent permitted by law.

We have entered into indemnification agreements with our executive officers and directors containing provisions that may require us, among other things, to indemnify them against liabilities that may arise by reason of their status or service as officers or directors, as applicable, other than liabilities arising from willful misconduct of a culpable nature and to advance certain expenses incurred as a result of any proceeding against them as to which they could be indemnified. We have obtained limited directors' and officers' liability insurance.

These provisions in our Certificate of Incorporation and our By-Laws do not eliminate the officers' and directors' fiduciary duty, and in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each officer and director will continue to be subject to liability for breach of their duty of loyalty to us for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the officer or director and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provisions also do not affect an officer's or director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

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## Item 8. Exhibits.

The following documents are filed as exhibits to this Registration Statement:

### EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description of Exhibit</u>
4.1	<a href="#"><u>Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K, as filed with the SEC on April 17, 2018).</u></a>
4.2	<a href="#"><u>Amendment to the Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K, as filed with the SEC on April 29, 2020).</u></a>
4.3	<a href="#"><u>Amended and Restated By-Laws (incorporated by reference to Exhibit 3.2 to the Company's Form 8-K, as filed with the SEC on April 18, 2016).</u></a>
4.4	<a href="#"><u>Windtree Therapeutics, Inc. 2020 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K, as filed with the SEC on December 31, 2020).</u></a>
4.5*	<a href="#"><u>Form of Restricted Stock Unit Award Agreement</u></a>
4.6*	<a href="#"><u>Form of Stock Option Award Agreement</u></a>
5.1*	<a href="#"><u>Opinion of Troutman Pepper Hamilton Sanders LLP.</u></a>
23.1*	<a href="#"><u>Consent of Troutman Pepper Hamilton Sanders LLP (included in Exhibit 5.1).</u></a>
23.2*	<a href="#"><u>Consent of Ernst &amp; Young LLP, Independent Registered Public Accounting Firm.</u></a>
24.1*	<a href="#"><u>Powers of Attorney (included on the signature page of the Registration Statement).</u></a>

\* Filed herewith

## Item 9. Undertakings.

(a) The Company 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;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of this 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 this Registration Statement; and
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

*Provided, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Company 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 Company hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual report pursuant to Section 13(a) or 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.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.



## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Warrington, Pennsylvania, on February 12, 2021.

### WINDTREE THERAPEUTICS, INC.

By: /s/ Craig E. Fraser  
Craig E. Fraser  
President and Chief Executive Officer  
(Principal Executive Officer)

## POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below hereby constitutes and appoints Craig E. Fraser and John P. Hamill, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact, proxy, and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact, proxy and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Craig E. Fraser</u> Craig E. Fraser	Director, President, and Chief Executive Officer (Principal Executive Officer)	February 12, 2021
<u>/s/ John P. Hamill</u> John P. Hamill	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 12, 2021
<u>/s/ James Huang</u> James Huang	Director (Chairman of the Board)	February 12, 2021
<u>/s/ Daniel E. Geffken</u> Daniel E. Geffken	Director	February 12, 2021
<u>/s/ Evan Loh, M.D.</u> Evan Loh, M.D.	Director	February 12, 2021
<u>/s/ Bruce A. Peacock</u> Bruce A. Peacock	Director	February 12, 2021
<u>/s/ Robert Scott, M.D.</u> Robert Scott, M.D.	Director	February 12, 2021
<u>/s/ Leslie J. Williams</u> Leslie J. Williams	Director	February 12, 2021

**WINDTREE THERAPEUTICS, INC.  
2020 EQUITY INCENTIVE PLAN**

**RESTRICTED STOCK UNIT GRANT NOTICE AND  
RESTRICTED STOCK UNIT AGREEMENT**

Windtree Therapeutics, Inc., a Delaware corporation (the "Company"), pursuant to its 2020 Equity Incentive Plan (the "Plan"), hereby grants to the individual listed below ("Participant") an award of the number of Restricted Stock Units set forth below (the "Restricted Stock Units"). The Restricted Stock Units are subject to the terms and conditions set forth in this Restricted Stock Unit Grant Notice (the "Grant Notice"), the Restricted Stock Unit Agreement attached hereto as Exhibit A (the "Agreement") and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Grant Notice and the Agreement.

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

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

**Total Number of Restricted Stock Units:** [\_\_\_\_\_]

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

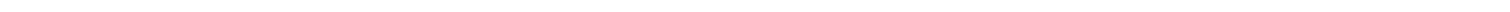
By Participant's signature below, Participant agrees to be bound by the terms and conditions of the Plan, the Agreement and the Grant Notice. Participant has reviewed the Agreement, the Plan and the Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing the Grant Notice and fully understands all provisions of the Grant Notice, the Agreement and the Plan.

**WINDTREE THERAPEUTICS, INC.**

**PARTICIPANT**

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

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



**EXHIBIT A  
TO RESTRICTED STOCK UNIT GRANT NOTICE**

**RESTRICTED STOCK UNIT AGREEMENT**

1. Award of Restricted Stock Units. The Company has granted to the Participant the number of Restricted Stock Units set forth in the Grant Notice, upon the terms and conditions set forth in the Grant Notice, the Plan and this Agreement. Each Restricted Stock Unit represents the right to receive one Share at the times and subject to the conditions set forth herein.

2. Date of Grant. The Restricted Stock Units were granted on the Grant Date set forth in the Grant Notice.

3. Vesting of Restricted Stock Units.

(a) Vesting. Subject to the continued service of the Participant with the Company through the relevant vesting dates, the Restricted Stock Units shall become vested in such amounts and at such times as are set forth in the Grant Notice.

(b) Service with Affiliates. Solely for purposes of this Agreement, service with the Company will be deemed to include service with any Affiliate of the Company (for only so long as such entity remains an Affiliate of the Company).

(c) Effect of Termination of Service. If the Participant's service with the Company ceases for any reason, the unvested portion of the Restricted Stock Units shall be forfeited immediately.

4. Settlement of Restricted Stock Units.

(a) Shares will be issued in respect of vested Restricted Stock Units within sixty (60) days following the applicable vesting date. For avoidance of doubt, this deadline is intended to comply with the "short-term deferral" exemption from Section 409A of the Code.

(b) The Restricted Stock Units will not confer on the Participant any rights as a stockholder of the Company until Shares are actually issued in settlement of such Restricted Stock Units.

(c) Notwithstanding the foregoing, to the extent provided in Prop. Treas. Reg. § 1.409A-1(b)(4)(ii) or any successor provision, the Company may delay settlement of Restricted Stock Units if it reasonably determines that such settlement would violate federal securities laws or any other applicable law.

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

6. Investment Representations. The Participant represents and warrants to the Company that the Participant is acquiring the Restricted Stock Units (and upon settlement of the Restricted Stock Units, may be acquiring Shares) for investment for the Participant's own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distribution thereof. As a further condition to the settlement of the Restricted Stock Units, the Board may require that certain agreements, undertakings, representations, certificates, legends and/or information or other matters, as the Board may deem necessary or advisable, be executed, agreed to and/or provided to the Company to assure compliance with all such applicable laws or regulations.

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7. Tax Consequences. The Participant acknowledges that the Company has not advised the Participant regarding the Participant's income tax liability in connection with the grant of the Restricted Stock Units and that the Company does not guarantee any particular tax treatment. The Participant acknowledges that the Participant has reviewed with the Participant's own tax advisors the tax treatment of the Restricted Stock Units and is relying solely on those advisors in that regard. The Participant understands that the Participant (and not the Company) will be responsible for the Participant's own tax liabilities arising in connection with the Restricted Stock Units.

8. No Continuation of Service. Neither the Plan nor this Agreement will confer upon the Participant any right to continue in the employment or service of the Company or any of its Affiliates, or limit in any respect the right of the Company or its Affiliates to discharge the Participant at any time, with or without Cause and with or without notice.

9. Withholding. The Company is hereby authorized to withhold from any consideration payable or property transferable to the Participant any taxes required to be withheld in connection with the Restricted Stock Units.

10. Company Policies. In consideration for the grant of the Restricted Stock Units, the Participant agrees to be subject to the policies of the Company regarding clawback, securities trading and hedging or pledging of securities, as in effect from time to time.

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

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

13. Amendment. Except as otherwise provided herein, in the Grant Notice or in the Plan, or as would otherwise not have a material adverse effect on the Participant, this Agreement may only be amended by a writing signed by each of the parties hereto.

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

15. Execution. The Grant Notice may be executed, including execution by facsimile or electronic signature, in one or more counterparts, each of which will be deemed an original, and all of which together shall be deemed to be one and the same instrument.

**WINDTREE THERAPEUTICS, INC.  
2020 EQUITY INCENTIVE PLAN**

**STOCK OPTION GRANT NOTICE AND  
STOCK OPTION AGREEMENT**

Windtree Therapeutics, Inc., a Delaware corporation (the “Company”), pursuant to its 2020 Equity Incentive Plan, as amended from time to time (the “Plan”), hereby grants to the individual listed below (“Participant”) an option to purchase the number of Shares set forth below (the “Option”). The Option is subject to the terms and conditions set forth in this Stock Option Grant Notice (the “Grant Notice”), the Stock Option Agreement attached hereto as Exhibit A (the “Agreement”) and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Grant Notice and the Agreement.

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

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

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

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

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

**Type of Option:**  Incentive Stock Option  
 Non-Qualified Stock Option

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

By Participant’s signature below, Participant agrees to be bound by the terms and conditions of the Plan, the Agreement and the Grant Notice. Participant has reviewed the Agreement, the Plan and the Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing the Grant Notice and fully understands all provisions of the Grant Notice, the Agreement and the Plan.

**WINDTREE THERAPEUTICS, INC.**

**PARTICIPANT**

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

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



**EXHIBIT A  
TO STOCK OPTION GRANT NOTICE**

**STOCK OPTION AGREEMENT**

Pursuant to the Grant Notice to which this Agreement is attached, the Company has granted to Participant an Option under the Plan to purchase the number of Shares set forth in the Grant Notice.

1. Award of Option. In consideration of Participant's past and/or continued employment with or service to the Company and for other good and valuable consideration, effective as of the Grant Date set forth in the Grant Notice, the Company has granted to Participant the Option to purchase any part or all of the aggregate number of Shares set forth in the Grant Notice, upon the terms and conditions set forth in the Grant Notice, the Plan and this Agreement.

2. Date of Grant; Term of Option. The Option is granted on the Grant Date and may not be exercised later than the Expiration Date, subject to earlier termination in accordance with the Plan and this Agreement.

3. Option Exercise Price. The exercise price per Share of the Shares subject to the Option (the "Exercise Price") shall be as set forth in the Grant Notice.

4. Vesting and Exercise of Option. The Option will become vested and exercisable only in accordance with the terms and provisions of the Plan and this Agreement, as follows:

(a) Vesting. Subject to the continued service of the Participant by the Company through the relevant vesting dates, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice.

(b) Service with Affiliates. Solely for purposes of this Agreement, service with the Company will be deemed to include service with any Affiliate of the Company (for only so long as such entity remains an Affiliate of the Company).

(c) Effect of Termination of Service on the Option.

(i) Forfeiture of Unvested Option. If the Participant's service terminates or is terminated for any reason, the unvested portion of the Option shall be forfeited immediately with no further compensation due to the Participant.

(ii) Vested Portion of the Option. If the Participant's service terminates or is terminated for any reason, the vested portion of the Option shall remain exercisable for such period as set forth in Section 7 of the Plan.

(d) Method of Exercise. The Participant may exercise the Option only to the extent it is vested. To exercise the Option, the Participant must deliver payment of the Exercise Price, any required tax withholding and written notice of exercise to the Company in accordance with Section 5(d) of the Plan. Such notice must also be accompanied by:

(i) a joinder to any shareholder, voting or similar agreement entered into by the stockholders of the Company (if not already party thereto) agreeing to be bound by the terms thereof; and

(ii) any further documents or instruments necessary or desirable to carry out the purposes or intent of this Agreement.

(e) Partial Exercise. The vested portion of the Option may be exercised in whole or in part; *provided, however*, that any exercise may apply only with respect to a whole number of Shares.

(f) Restrictions on Exercise. The Option may not be exercised, and any purported exercise will be void, if the issuance of Shares upon such exercise would constitute a violation of any law, regulation or exchange listing requirement. The Board may from time to time modify the terms of the Option or impose additional conditions on the exercise of the Option as it deems necessary or appropriate to facilitate compliance with any law, regulation or exchange listing requirement. As a further condition to the exercise of the Option, the Company may require the Participant to make any representation or warranty as may be required by or advisable under any applicable law or regulation.

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

6. Investment Representations. The Participant represents and warrants to the Company that the Participant is acquiring the Option (and upon exercise of the Option, will be acquiring Shares) for investment for the Participant's own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distribution thereof. As a further condition to the exercise of the Option, the Board may require that certain agreements, undertakings, representations, certificates, legends and/or information or other matters, as the Board may deem necessary or advisable, be executed, agreed to and/or provided to the Company to assure compliance with all such applicable laws or regulations.

7. Tax Consequences. The Participant acknowledges that the Company has not advised the Participant regarding the Participant's income tax liability in connection with the grant of the Option and that the Company does not guarantee any particular tax treatment. The Participant acknowledges that the Participant has reviewed with the Participant's own tax advisors the tax treatment of the Option (including the purchase and sale of Shares subject hereto) and is relying solely on those advisors in that regard. The Participant understands that the Participant (and not the Company) will be responsible for the Participant's own tax liabilities arising in connection with the Option.

8. No Continuation of Service. Neither the Plan nor this Agreement will confer upon the Participant any right to continue in the employment or service of the Company or any of its Affiliates, or limit in any respect the right of the Company or its Affiliates to discharge the Participant at any time, with or without Cause and with or without notice.

9. Withholding. The Company is hereby authorized to withhold from any consideration payable or property transferable to the Participant any taxes required to be withheld by applicable law in connection with the exercise of the Option or the vesting or disposition of the Shares subject to the Option.

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

11. Entire Agreement. The Grant Notice and this Agreement, together with the Plan, and any other exhibits attached hereto, represents the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, written or otherwise, relating to the subject matter hereof.

12. Amendment. Except as otherwise provided herein, in the Grant Notice or in the Plan, or as would otherwise not have a material adverse effect on the Participant, this Agreement may only be amended by a writing signed by each of the parties hereto.

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

14. Execution. The Grant Notice may be executed, including execution by facsimile or electronic signature, in one or more counterparts, each of which will be deemed an original, and all of which together shall be deemed to be one and the same instrument.

15. Incentive Stock Options. Participant acknowledges that to the extent the aggregate Fair Market Value of Shares (determined as of the time the option with respect to the Shares is granted) with respect to which Incentive Stock Options, including the Option (if applicable), are exercisable for the first time by Participant during any calendar year exceeds \$100,000 or if for any other reason such Incentive Stock Options do not qualify or cease to qualify for treatment as "incentive stock options" under Section 422 of the Code, such Incentive Stock Options shall be treated as Non-Qualified Stock Options. Participant further acknowledges that the rule set forth in the preceding sentence shall be applied by taking the Option and other stock options into account in the order in which they were granted, as determined under Section 422(d) of the Code and the Treasury Regulations thereunder. Participant also acknowledges that an Incentive Stock Option exercised more than three months after Participant's termination of service, other than by reason of death or disability, will be taxed as a Non-Qualified Stock Option.

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

Troutman Pepper Hamilton Sanders LLP  
3000 Two Logan Square, Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799

troutman.com



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February 12, 2021

Board of Directors  
Windtree Therapeutics, Inc.  
2600 Kelly Road, Suite 100  
Warrington, Pennsylvania

Ladies and Gentlemen:

We are acting as counsel to Windtree Therapeutics, Inc., a Delaware corporation (the “**Company**”), in connection with the preparation and filing of its registration statement on Form S-8 (the “**Registration Statement**”), filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “**Act**”), relating to the registration of 1,535,500 shares of common stock, par value \$0.001 per share, of the Company (the “**Shares**”), which may be issued pursuant to the Company’s 2020 Equity Incentive Plan (the “**2020 Plan**”). This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related prospectus, other than as expressly stated herein with respect to the issuance of the Shares.

For purposes of this opinion letter, we have examined copies of such agreements, instruments and documents as we have deemed an appropriate basis on which to render the opinions hereinafter expressed. In our examination of the aforesaid documents, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as copies (including telecopies). As to all matters of fact, we have relied on the representations and statements of fact made in the documents so reviewed, and we have not independently established the facts so relied on. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “**DGCL**”), and we express no opinion with respect to any other laws.

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This opinion letter is based as to matters of law solely on the Delaware General Corporation Law, as amended. We express no opinion herein as to any other statutes, rules or regulations.

Based upon, subject to and limited by the foregoing, we are of the opinion as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the recipients, and have been issued by the Company for legal consideration in excess of par value in the circumstances contemplated by the 2020 Plan, assuming in each case that the individual issuances, grants or awards under the 2020 Plan are duly authorized by all necessary corporate action and duly issued, granted or awarded and exercised in accordance with the requirements of law and the 2020 Plan (and the agreements duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, the Shares will be validly issued, fully paid, and nonassessable.

This opinion letter has been prepared for use in connection with the Registration Statement. We assume no obligation to advise you of any changes in the foregoing subsequent to the effective date of the Registration Statement.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are an "expert" within the meaning of the Act.

Very truly yours,

/s/ Troutman Pepper Hamilton Sanders LLP

Troutman Pepper Hamilton Sanders LLP

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Windtree Therapeutics, Inc. 2020 Equity Incentive Plan of our report dated April 2, 2020 (except for the second paragraph of Note 2, as to which the date is May 6, 2020), with respect to the consolidated financial statements of Windtree Therapeutics, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2019, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania

February 12, 2021