

**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)

Non-Qualified Stock Option Inducement Awards

(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

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(3)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share				
Inducement Stock Option Awards	311,000 shares(2)	\$6.52	\$2,027,720	\$221.25
TOTAL	311,000 shares(2)	\$6.52	\$2,027,720	\$221.25

- (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 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) Represents shares of Common Stock that are issuable upon the exercise of non-qualified stock option awards granted to certain employees of the Company as an inducement material to their acceptance of employment with the Registrant.
- (3) This estimate is made pursuant to Rule 457(c) and Rule 457(h) of the Securities Act. The price shown is based upon the weighted average exercise prices of the options included in the Inducement Awards.

EXPLANATORY NOTE

This registration statement on Form S-8 (this "Registration Statement") registers shares of the Company's Common Stock issuable pursuant to the equity awards detailed below (the "Inducement Awards"), which were granted to such individuals to induce them to accept employment with the Company on the following dates:

- non-qualified stock option to purchase an aggregate 100,000 shares of Common Stock granted to Dr. Joseph Soffer on January 29, 2021; and
- non-qualified stock option to purchase an aggregate 211,000 shares of Common Stock granted to John Hamill on July 20, 2020.

Each Inducement Award was approved by the Company's Board of Directors in compliance with and in reliance on Nasdaq Listing Rule 5635(c)(4). The Inducement Awards were granted outside of the Windtree Therapeutics, Inc. 2020 Equity Incentive Plan and its predecessor plans.

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

Item 1. Plan Information.

The documents constituting Part I of this Registration Statement will be delivered to the employees to whom the Inducement Awards have been granted, 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 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.

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.

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	<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>
4.2	<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>
4.3	<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>
4.4*	<u>Form of Inducement Award Agreement.</u>
5.1*	<u>Opinion of Troutman Pepper Hamilton Sanders LLP.</u>
23.1*	<u>Consent of Troutman Pepper Hamilton Sanders LLP (included in Exhibit 5.1).</u>
23.2*	<u>Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.</u>
24.1*	<u>Powers of Attorney (included on the signature page of the Registration Statement).</u>

* 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.
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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.

STOCK OPTION – NOTICE OF GRANT

Windtree Therapeutics, Inc. (the “Company”) hereby grants to Optionee an option to purchase the number of shares of the Company’s Shares set forth below. This option is subject to all of the terms and conditions as set forth in this Stock Option – Notice of Grant, in the Stock Option Agreement and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety. This is an inducement grant under NASDAQ Listing Rule 5635(c)(4). Accordingly, this stock option has been granted outside of the Company’s 2011 Long-Term Incentive Plan (the “**Plan**”) and any other equity plan established by the Company. However, this stock option will be governed in all respects as if issued under the Plan, which is attached hereto and incorporated herein in its entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Stock Option Agreement will have the same definitions as in the Plan or the Option Agreement. If there is any conflict between the terms in this Stock Option Grant Notice and the Plan, the terms of the Plan will control.

Optionee:
 Award Date:
 Vesting Commencement Date:
 Number of Option Shares:
 Option Price (Per Share):
 Total Exercise Price:

Expiration Date: _____

Type of Grant: Non-Qualified Stock Option

Vesting Schedule: [_____]

Additional Terms/Acknowledgements: Optionee acknowledges receipt of, and understands and agrees to, this Stock Option – Notice of Grant, the Stock Option Agreement and the Plan. Optionee acknowledges and agrees that this Stock Option – Notice of Grant and the Stock Option Agreement may not be modified, amended or revised except as provided in the Plan. Optionee further acknowledges that as of the Award Date, this Stock Option – Notice of Grant, the Stock Option Agreement, and the Plan set forth the entire understanding between Optionee and the Company regarding this option award and supersede all prior oral and written agreements, promises and/or representations on that subject with the exception of, if applicable, (i) any compensation recovery policy that is adopted by the Company or is otherwise required by applicable law and (ii) any written employment agreement, severance agreement, offer letter or other written agreement entered into between the Company and Optionee specifying the terms that should govern this specific option. By accepting this option, Optionee consents to receive such documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

WINDTREE THERAPEUTICS, INC.

OPTIONEE:

 By:
 Title: _____
 Date: _____

 –
 Signature
 Date: _____

ATTACHMENTS: Stock Option Agreement, 2011 Long-Term Incentive Plan Equity Incentive Plan and Notice of Exercise



WINDTREE THERAPEUTICS, INC.

STOCK OPTION AGREEMENT

RECITALS

A. The option to purchase common stock of Windtree Therapeutics, Inc. (the “Company”) reflected by this Stock Option Agreement (“Award Agreement”) is being granted as an “inducement” award under NASDAQ Listing Rule 5635(c)(4). Accordingly, such non-qualified option has been granted outside of the Company’s existing equity compensation plans. However, the option will be governed in all respects as if issued under the Company’s 2011 Long-Term Incentive Plan (the “Plan”), as currently in effect and as may be amended hereafter from time to time.

B. The Optionee is a newly hired Employee who will render valuable Services to the Company (or Subsidiary), and this Award Agreement is executed pursuant to, and is intended to carry out the purposes of, the Plan in connection with the Company’s grant of an option to the Optionee. The Option shall hereinafter be referred to as the Participant, notwithstanding the fact that the such option is granted as an inducement grant outside of the Company’s equity compensation plans.

C. All capitalized terms in this Award Agreement shall have the meaning assigned to them in the Plan. This Award Agreement, including the Notice of Grant, is subject to the terms of the Plan, which are incorporated in this Award Agreement by reference. If there is a conflict between the terms of the Plan and this Award Agreement or the Notice of Grant, the terms of the Plan shall prevail.

NOW, THEREFORE, it is hereby agreed as follows:

1. **Award of Option.** The Company hereby grants to Participant, as of the Award Date, a nonqualified stock option to purchase up to the number of Option Shares specified in the Notice of Grant. The option granted pursuant to this Award Agreement is not intended to be an incentive stock option within the meaning of section 422 of the Code. The Option Shares shall be purchasable from time to time as specified in Paragraph 4 during the option term specified in Paragraph 2 at the Option Price set forth in the Notice of Grant.
2. **Option Term.** This option shall have a term commencing on the Award Date and ending on the Expiration Date set forth in the Notice of Grant. The option shall expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5 or 6.
3. **Limited Transferability.** The option granted under this Award Agreement shall not be assignable, alienable, saleable, or transferable by Participant other than by will or by the laws of descent and distribution; provided, however, that, if a procedure shall be adopted by the Committee at any time, Participant may designate a beneficiary or beneficiaries to exercise the rights of Participant with respect to this option upon Participant’s death. The option granted under this Award Agreement shall be exercisable during Participant’s lifetime only by Participant or, if permissible under applicable law, by Participant’s guardian or legal representative. This option may not be pledged, alienated, attached, or otherwise encumbered, and any purported pledge, alienation, attachment, or encumbrance thereof shall be void and unenforceable against the Company or any affiliate of the Company. Notwithstanding the foregoing, this option may, in connection with Participant’s estate plan, be assigned, in whole or in part, during Participant’s lifetime to one or more members of Participant’s immediate family or to a trust established for the exclusive benefit of one or more such family members. The assigned portion shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such assignment. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Committee may deem appropriate.
4. **Dates of Exercise.** This option shall vest and become exercisable for the Option Shares in one or more installments as specified in the Notice of Grant. As the option becomes exercisable for such installments, those installments shall accumulate, and the option shall remain exercisable for the accumulated installments until the Expiration Date or sooner termination of the option term under Paragraph 5 or 6.

5. **Termination of Service.** The option term and this option shall expire and cease to be exercisable prior to the Expiration Date should any of the following provisions become applicable:

(a) If Participant's Service is terminated for any reason other than death, Disability or for Cause, then Participant shall have the right to exercise, in whole or in part, that portion of this option that was vested and exercisable on the date of termination of Service until the earlier of (i) three (3) months after termination of Service or (ii) the Expiration Date; and, to the extent that any portion of this option was not exercisable on the date of termination of Service, it will immediately terminate.

(b) If Participant's Service is terminated on account of death or Disability, then Participant or Participant's Beneficiary (as applicable) shall have the right to exercise, in whole or in part, that portion of this option that was vested and exercisable on the date of termination of Service until the earlier of (i) one (1) year after Participant's termination of Service or (ii) the Expiration Date; and, to the extent that any portion of this option was not exercisable on the date of termination of Service, it will immediately terminate.

(c) If Participant's Service is terminated for Cause or if Participant shall breach any post-Service duties to the Company or any post-Service covenants or agreements, including any confidentiality or noncompetition and non-solicitation agreement, any unexercised portion of this option shall terminate immediately. Solely for the purposes of this Award Agreement, notwithstanding any notice period or cure period provided in any employment or other applicable agreement, if Participant is terminated for Cause, the date of termination shall be deemed to be the date on which the Company issues a notice of termination to Participant (subject to any right that the Participant may have to cure). The right to exercise any vested and unexercised portion of this option shall be suspended during any such notice or cure period. Should the Company revoke any notice of termination based on Participant's satisfactory cure under an employment or other applicable agreement, the Committee may reinstate the right to exercise this option under the original terms of this Award Agreement.

6. **Special Acceleration of Option.** Except as otherwise expressly provided in a Participant's employment or other applicable agreement, which shall supersede the provisions of this Paragraph 6 solely to the extent that the rights and privileges under such agreement, as determined by the Committee, in its discretion, are not reasonably likely to significantly diminish the rights and benefits that would otherwise be provided under this paragraph 6:

(a) In the event of a Change in Control, vesting under this option shall automatically accelerate so that, immediately prior to the effective date of the Change in Control, but subject to the occurrence of the Change in Control, this option shall become exercisable with respect to the total number of Option Shares at the time subject to this option and may be exercised for any or all of those Option Shares. However, vesting under this option shall not so accelerate if and to the extent: (i) this option is, in connection with the Change in Control, either to be assumed by the successor corporation (or parent thereof) or to be replaced with a comparable option to purchase shares of the capital stock of the successor corporation (or parent thereof), or (ii) this option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on any unvested Option Shares at the time of the Change in Control (the excess of the Fair Market Value of those Option Shares over the aggregate Option Price payable for such Option Shares) and provides for subsequent pay-out in accordance with the same option vesting schedule set forth in the Notice of Grant. The determination of comparability under clause (i) above shall be made by the Committee, and its determination shall be final, binding and conclusive. Notwithstanding the foregoing, the Committee shall have the discretion, exercisable at any time during the option term, to provide for the automatic acceleration of all or a portion of this option upon the occurrence of a Change in Control, whether or not this option is to be assumed or replaced in the Change in Control.

(b) Upon the occurrence of the termination of Participant's Service by reason of an Involuntary Termination (as defined below) within eighteen (18) months following the effective date of a Change in Control, vesting under this option shall accelerate automatically and this option shall become exercisable with respect to the total number of Option Shares at the time subject to this option and shall remain exercisable until the earlier of (i) one year after the effective date of the Involuntary Termination, or (ii) the Expiration Date. Involuntary Termination shall mean the termination of the Service of any individual which occurs by reason of:

- (i) such individual's involuntary dismissal or discharge by the Company for reasons other than Cause, or
- (ii) such individual's voluntary resignation following (A) a change in his or her position with the Company (or Subsidiary employing such individual) which materially reduces such individual's duties and responsibilities or the level of management to which such individual reports, (B) a reduction in such individual's level of compensation (including base salary, fringe benefits and target bonus under any corporate performance-based bonus or incentive programs) by more than fifteen percent (15%) or (C) a relocation of such individual's place of employment by more than fifty (50) miles, and farther from the Participant's residence than prior to the relocation; provided and only if such change, reduction or relocation is effected by the Company without such individual's consent; provided that such voluntary resignation shall not be an Involuntary Termination unless the Participant gives the Company written notice of the Participant's intent to resign as a result of the existence of a specified condition described in (A), (B) or (C) within 90 days of the initial existence of such condition, provides the Company 30 days to cure such condition, and actually resigns no more than 10 days after the lapse of such 30day cure period if the condition is not cured.

(c) This Award Agreement shall not in any way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

7. **Repurchase Right.** If at any time Participant's Service is terminated for Cause or if Participant shall breach any covenants set forth in any written agreement between Participant and the Company, the Company may, in its discretion, for a period of one (1) year after the termination for Cause or upon the actual discovery by the Company of the breach, whether or not within such 1-year period, as the case may be, and upon 10 (ten) days' notice to Participant, (i) repurchase all or any portion of any Shares acquired by Participant upon Participant's exercise of this option, and/or (ii) require Participant to repay to the Company the amount of any profits realized by Participant upon the sale or other disposition during the preceding three (3) years of any Shares acquired by Participant upon Participant's exercise of this option. The purchase price for any Shares repurchased by the Company pursuant to clause (i) of this Paragraph 7 shall be the lesser of the price paid by Participant to acquire such Shares and the Fair Market Value thereof on the date of such repurchase by the Company. In addition, the Company shall have repurchase rights in accordance with the terms of any repurchase policy as may be in effect from time to time.

8. **Adjustment in Option Shares.** Should any change be made to the Shares of the Company by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Shares as a class without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Option Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

9. **Stockholder Rights.** The holder of this option shall not have any stockholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Option Price and become a holder of record of the purchased Shares.

10. **Manner of Exercising Option.**

(a) In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Participant (or any other person or persons exercising the option) must take the following actions:

(i) Execute and deliver to the Company a Notice of Exercise for the Option Shares for which the option is exercised.

(ii) Pay the aggregate Option Price for the purchased Shares in one or more of the following forms:

(A) cash or check made payable to the Company;

(B) Shares held by Participant (or any other person or persons exercising the option) for the requisite period necessary to avoid a charge to the Company's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date; or

(C) provided that no restrictions against trading in the Shares are then in effect, as contemplated by Paragraph 11, (I) through a "net exercise" arrangement to the extent permitted by applicable law, or (II) through a special sale and remittance procedure pursuant to which Participant (or any other person or persons exercising the option) shall concurrently provide irrevocable instructions (x) to a Company-approved brokerage firm to effect the immediate sale of the purchased Shares and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Option Price payable for the purchased Shares plus all applicable income and employment taxes required to be withheld by the Company by reason of such exercise and (y) to the Company to deliver the certificates for or other evidence of the purchased Shares directly to such brokerage firm in order to complete the sale.

Except to the extent the net exercise or the sale and remittance procedure is utilized in connection with the option exercise, payment of the Option Price must accompany the Notice of Exercise delivered to the Company in connection with the option exercise.

(iii) Furnish to the Company appropriate documentation that the person or persons exercising the option (if other than Participant) have the right to exercise this option.

(iv) Make appropriate arrangements with the Company (or Parent or Subsidiary employing or retaining Participant) for the satisfaction of all income and employment tax withholding requirements applicable to the option exercise.

(b) As soon as practical after the Exercise Date, the Company shall deliver to or on behalf of Participant (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto, shall effect book-entry registration in the Participant's (or such other person's) name.

(c) In no event may this option be exercised for any fractional shares.

11. **Compliance with Laws and Regulations.**

(a) The exercise of this option and the delivery of the Shares upon such exercise shall be subject to compliance by the Company and Participant with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange on which the Shares may be listed for trading at the time of such exercise and delivery.

(b) The inability of the Company to obtain approval from any regulatory body having authority deemed by the Company to be necessary to the lawful issuance or delivery and sale of any Shares pursuant to this option shall relieve the Company of any liability with respect to the non-issuance, non-delivery or sale of the Shares as to which such approval shall not have been obtained. The Company, however, shall use its best efforts to obtain all such approvals.

12. **Successors and Assigns.** This Award Agreement shall inure to the benefit of, and be binding upon, the Company and its successors and assigns and Participant and Participant's assigns and Beneficiaries.

13. **Notices.** Any notice required to be given or delivered to the Company under the terms of this Award Agreement shall be in writing and addressed to the Company at its principal corporate offices. Any notice required to be given or delivered to Participant shall be in writing and addressed to Participant at the address on file with the Company. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

14. **Construction.** All decisions of the Committee with respect to any question or issue arising under the Plan or this Award Agreement shall be conclusive and binding on all persons having an interest in this option.

15. **Governing Law.** The interpretation, performance and enforcement of this Award Agreement shall be governed by the laws of the State of Delaware without resort to that State's conflict-of-laws rules.

16. **Leave of Absence.** The following provisions shall apply upon Participant's commencement of an authorized leave of absence:

(a) The vesting schedule in effect under the Notice of Grant shall be frozen as of the first day of the authorized leave, and this option shall not become exercisable for any additional installments of the Option Shares during the period Participant remains on such leave.

(b) Should Participant resume active Employee status within sixty (60) days after the start date of the authorized leave, Participant shall, for purposes of the vesting schedule set forth in the Notice of Grant, receive Service credit for the entire period of such leave. If Participant does not resume active Employee status within such sixty (60)-day period, then no Service credit shall be given for the period of such leave.

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EXHIBIT I

NOTICE OF EXERCISE

I hereby notify Windtree Therapeutics, Inc. (the "Company") that I elect to purchase ___ Shares (the "Purchased Shares") at the Option Price of \$_____ per share pursuant to that certain non-qualified stock option (the "Option") granted to me under on _____, ___.

Concurrently with the delivery of this Exercise Notice to the Company, I shall hereby pay to the Company the Option Price for the Purchased Shares in accordance with the provisions of my Notice of Grant and Award Agreement with the Company (or other documents) evidencing the Option and shall deliver whatever additional documents may be required by such agreement as a condition for exercise. Alternatively, if I am eligible I may utilize the net exercise or the special broker-dealer sale and remittance procedure specified in my agreement to effect payment of the Option Price.

Date

Participant

Address: _____

Print name in exact manner it is to appear on the stock certificate:

Address to which certificate is to be sent, if different from address above:

Social Security Number:

Employee Number:



APPENDIX

The following definitions shall be in effect under the Award Agreement:

Award Date shall mean the effective date of grant of the option as specified in the Notice of Grant.

Award Agreement shall mean this Stock Option Agreement and the associated Notice of Grant pursuant to which the Option is granted.

Beneficiary shall mean, in the event the Committee implements a beneficiary designation procedure, the person designated by Participant, pursuant to such procedure, to succeed to such person's rights under any outstanding awards held by Participant at the time of death. In the absence of such procedure or designation, the Beneficiary shall be Participant's personal representative or the person or persons to whom this Option is transferred by will or the laws of descent and distribution.

Exercise Date shall mean the date on which the option shall have been exercised in accordance with Paragraph 10 of this Award Agreement.

Expiration Date shall mean the date on which the option expires as specified in the Notice of Grant.

Notice of Exercise shall mean the notice of exercise in the form attached hereto as Exhibit I.

Notice of Grant shall mean the Notice of Grant of Stock Options accompanying the Award Agreement, pursuant to which Participant has been informed of the basic terms of the option evidenced hereby.

Option Price shall mean the purchase price payable for Option Shares under this option, as specified in the Notice of Grant.

Option Shares shall mean the number of Shares subject to the option as specified in the Notice of Grant.

Service shall mean Participant's performance of services for the Company (or any Subsidiary) in the capacity of Employee, non-employee director or consultant.

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

troutman.com



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 an aggregate 311,000 shares of common stock, par value \$0.001 per share, of the Company (the "**Shares**"), which may be issued pursuant to the exercise of non-qualified stock option awards granted to certain employees as inducements material to the individuals party thereto entering into employment with the Company (the "**Inducement Awards**"). 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.

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 that following (i) effectiveness of the Registration Statement, (ii) issuance of the Shares pursuant to the terms set forth in the stock option award agreements for the Inducement Awards (the “**Inducement Grant Agreements**”), and (iii) receipt by the Company of the consideration for the Shares specified in the resolutions of the Board of Directors or a duly authorized committee thereof, and the Inducement Grant Agreements, 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 Non-Qualified Stock Option Inducement Awards of Windtree Therapeutics, Inc. 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