

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

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

Date of Report (Date of earliest event reported): **February 7, 2005**

**NEUROMETRIX, INC.**

(Exact name of registrant as specified in its charter)

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

**000-50856**  
Commission file number

**04-3308180**  
(I.R.S. Employer  
Identification No.)

**62 Fourth Avenue**  
**Waltham, Massachusetts 02451**  
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code: **(781) 890-9989**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

- Item 1.01. Entry Into a Material Definitive Agreement.
- Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.

NeuroMetrix, Inc. (the "Company") appointed W. Bradford Smith to serve as its Chief Financial Officer effective February 14, 2005. Prior to joining the Company, Mr. Smith, age 49, was the Chief Financial Officer and Executive Vice President at Synarc, Inc., a provider of clinical trials services to the pharmaceutical and biotechnology industries, since May 2003. At Synarc, he was responsible for global financial operations, raised private equity financing from several venture capital firms and completed the acquisition of a medical imaging services company. Prior to Synarc, he had been the Chief Financial Officer at PatientKeeper, Inc., a company providing healthcare professionals with mobile computing solutions, from March 2000 to May 2003. At PatientKeeper, he was instrumental in raising private funding with venture capital and strategic investors and helping the company launch its initial products. Prior to PatientKeeper, Mr. Smith served as Chief Financial Officer at Focal, Inc. from 1993 to 2000, and led the company through several rounds of private and public equity financing including management of its initial public offering.

The Company entered into a letter agreement with Mr. Smith on February 7, 2005, which provides for the Company's employment of Mr. Smith, as its Chief Financial Officer, on an at-will basis beginning on February 14, 2005. Under the letter agreement, Mr. Smith's initial annual salary will be \$220,000, subject to periodic review and adjustment at the discretion of the Company. Under the letter agreement, Mr. Smith will be also eligible to receive an annual cash performance bonus of up to 30% of his annual salary if certain performance objectives determined by Mr. Smith and the Company are met. The Company also agreed to pay Mr. Smith a sign-on bonus of \$80,000, provided that this bonus must be repaid if Mr. Smith does not remain employed by the Company for at least 12 months.

The Company will also grant Mr. Smith stock options to purchase 142,000 shares of common stock at a price equal to the closing price of the Company's common stock on the date Mr. Smith's employment with the Company commences. This stock option will have a term of ten years and vest over four years with 25% of the total award vesting one year after the commencement of Mr. Smith employment with the Company and the remainder vesting ratably over the following three years on a quarterly basis.

Under the terms of the letter agreement, if (1) the Company terminates Mr. Smith's employment for any reason other than cause or (2) Mr. Smith resigns as a result of the Company's material breach of the terms of the letter agreement (each such termination hereafter referred to as a "severance termination"), then Mr. Smith will be entitled to receive his base salary for a period of nine months from the date of the severance termination. Additionally, in the event of a severance termination, Mr. Smith will be entitled to the acceleration of nine months of vesting under the option agreement described above.

If any of the sale transactions described below occurs within the first year of vesting under his option agreement, Mr. Smith's stock option will vest as to 50% of the total award. If a sale transaction occurs on or after the first year of vesting, Mr. Smith will be entitled to acceleration of vesting for 25% of the total award. The following will be considered sale transactions under Mr. Smith's option agreement:

- a sale of substantially all of the Company's assets;
- a merger or combination with another entity, unless the merger or combination does not result in a change in ownership of the Company's voting securities of more than 50%; or
- the sale or transfer of more than 50% of the Company's voting securities.

Mr. Smith also entered into a confidentiality and non-competition agreement with the Company on February 7, 2005, effective as of February 14, 2005, which provides for protection of the Company's confidential information, assignment to the Company of intellectual property developed by Mr. Smith and non-compete and non-solicitation obligations that are effective during, and for 12 months following termination of, Mr. Smith's employment.

The foregoing summary is qualified in its entirety by reference to the copies of the letter agreement, form of option agreement and confidentiality and non-competition agreement, which are attached hereto as Exhibits 99.1, 99.2, and 99.3, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

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Item 9.01. Financial Statements and Exhibits.

(c) Exhibits.

| <u>Exhibit Number</u> | <u>Description</u>   |
|-----------------------|--|
| *99.1                 | Letter Agreement, dated February 7, 2005, by and between NeuroMetrix, Inc. and W. Bradford Smith   |
| *99.2                 | Form of Incentive Stock Option Agreement, under the NeuroMetrix, Inc. 2004 Stock Option and Incentive Plan, by and between NeuroMetrix, Inc. and W. Bradford Smith |
| *99.3                 | NeuroMetrix, Inc. Confidentiality & Non-Compete Agreement, dated as of February 7, 2005, by and between W. Bradford Smith and NeuroMetrix, Inc.                    |

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\*Filed herewith.

[Remainder of page left blank intentionally]

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**SIGNATURE**

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

NEUROMETRIX, INC.

Dated: February 11, 2005

By: /s/ Shai N. Gozani, M.D., Ph.D.  
Shai N. Gozani, M.D., Ph.D.  
President and Chief Executive Officer

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**EXHIBIT INDEX**

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\*99.2 Form of Incentive Stock Option Agreement, under the NeuroMetrix, Inc. 2004 Stock Option and Incentive Plan, by and between NeuroMetrix, Inc. and W. Bradford Smith

\*99.3 NeuroMetrix, Inc. Confidentiality & Non-Compete Agreement, dated as of February 7, 2005, by and between W. Bradford Smith and NeuroMetrix, Inc.

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\*Filed herewith.

February 7, 2005

Mr. Brad Smith  
36 Powder Hill Road  
Bedford, NH 03110

Dear Brad:

On behalf of NeuroMetrix, Inc. (the "Company") and its Board of Directors, I am pleased to offer you the position of Chief Financial Officer. The terms of this employment offer are as follows:

- *Start date:* We will agree on a mutually acceptable start date ("Start Date") which shall be no later than February 14, 2005.
- *Title & Responsibilities:* Your initial title will be Chief Financial Officer. In this position, you will report to the Company's Chief Executive Officer. The Chief Financial Officer is responsible for overseeing the Company's Finance Department, Investor Relations group, Corporate Legal Department, Human Resources Department and its Manufacturing/Shipping Operations. You also will be responsible for performing any other services and duties in connection with the business, affairs and operations of NeuroMetrix as may be assigned or delegated to you that are not inconsistent with your title and responsibilities from time to time by or under the authority of the Chief Executive Officer or Board of Directors.
- *Base Salary:* The Company will pay you a salary ("Base Salary") at a semi-monthly rate of \$9,166.66 (\$220,000 annualized), subject to periodic review and adjustment at the discretion of the Company.
- *Sign On Bonus:* You will be eligible to receive a "sign on" bonus of up to \$80,000. The first \$30,000 of the Sign-On Bonus shall be paid to you within five (5) business days of your Start Date. The remaining \$50,000 shall be paid to you three months after your Start Date, provided that you remain in the Company's employ on such date. In the event that your employment with the Company terminates at any time before the one-year anniversary of your Start Date, unless you are terminated by the Company without Cause (as defined below), you shall be required to repay to the Company the Sign-On Bonus amounts that you received within seven (7) days of the termination of your employment. To the extent you fail to remit the full amount to the Company, the Company will retain the right to offset any amounts that you continue to owe against any monies due to you by the Company after your termination, in addition to any other legal remedies that the Company may pursue.

- *Variable Compensation:* You will be eligible to receive an annual cash performance bonus of up to 30% of your Base Salary. The Company shall consider and make a bonus determination not later than 60 days after the end of each fiscal year during which you are employed by the Company, starting with the fiscal year ending December 31, 2005. Bonus awards shall be based upon your performance as measured against objective and reasonable criteria mutually agreed and approved in advance by you and the Company.
- *Stock Option:* Subject to approval by the Board of Directors, on the Start Date the Company will issue you a ten-year incentive stock option (the "Option") to purchase 142,000 shares of the Company's Common Stock to be sold pursuant to a stock option agreement (the "Option Agreement") under the Company's 2004 Stock Option and Incentive Plan (the "Plan"). The Option Agreement shall be in the form that is attached to this Offer Letter at **Tab A**. The exercise price on any shares sold pursuant to the Option Agreement shall equal the fair market value of the Company's shares at the close of business on the Start Date. Your participation in the Plan and the grant of the Option is subject to all terms of the Plan and the Option Agreement and is further contingent upon your execution of the Company's standard stock-related agreements.
- *Benefits:* The Company will provide medical insurance coverage and other benefits on the same terms and conditions as provided to the Company's employees or other senior executives from time to time.
- *Paid Time Off:* You also will be eligible to receive paid vacation time. Currently, you will be eligible for 15 days of paid vacation per year, which shall accrue on a prorated basis. You also will be eligible for paid-time-off holidays and personal days recognized by the Company.
- *Representation Regarding Other Obligations:* This offer is conditioned on your representation that you are not subject to any confidentiality or non-competition agreement or any other similar type of restriction that would affect your ability to devote full time and attention to your work at the Company. As soon as possible, but in no event later than the tenth business day prior to Start Date, you agree to provide the Company with a copy of any confidentiality or non-competition agreement into which you previously have entered and will be subject to at any time on or after the Start Date.
- *Other Terms:* Your employment with the Company shall be on an at-will basis. In other words, you or the Company may terminate employment for any reason and at any time, with or without notice. Similarly, the terms of employment outlined in this letter are subject to change at any time. You also will be required to sign the Company's standard form of Confidentiality and Non-Compete Agreement. A copy of that Agreement is enclosed at **Tab B**. In addition, as with all employees, our offer to you is contingent on your submission of satisfactory proof of your identity and your legal authorization to work in the United States.

- *Severance:* If (i) the Company terminates your employment for any reason other than Cause or (ii) you resign following not less than thirty (30) days' prior written notice to the Company that the Company has materially breached this agreement (with such written notice to describe such material breach in detail) and provided that such material breach has, in fact, occurred and remains uncured by the Company during such thirty (30) day period, then you will be entitled to receive continuation of your Base Salary for a period of nine months from the date of termination (the "Severance Period") and, as set forth in more detail in the attached Option Agreement, the Company will accelerate your right to exercise shares under the Option Agreement as if you had continued to work for the Company during the Severance Period. During the Severance Period, the Company will continue to contribute to your medical insurance coverage, which, subject to your eligibility, will be extended to you under the law known as COBRA at the same rate as if you

continued to be employed by the Company. For purposes of this letter, "Cause" shall mean a vote by the Board resolving that you shall be dismissed as a result of (i) your material breach of any agreement between you and the Company; (ii) your conviction of or plea of nolo contendere to a felony or a crime involving moral turpitude; or (iii) any material misconduct or willful and deliberate non-performance (other than by reason of disability) by you of your duties to the Company. Notwithstanding the foregoing, your receipt of the severance benefits described in this paragraph will be subject, in all cases, to your execution of a release of any and all claims that you may then have against the Company in connection with your employment (the "Release").

- *Arbitration of Disputes:* Any dispute arising hereunder or arising out of your employment, termination thereof, or any other relations with the Company, whether sounding in tort or contract, by statute or otherwise, including, but not limited to claims of employment discrimination, shall be settled by arbitration in Boston, Massachusetts, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association before a single Arbitrator. Notwithstanding the foregoing, disputes arising under the Confidentiality and Non-compete Agreement shall not be subject to arbitration.
- *Taxation:* You understand that payments made pursuant to this agreement may be subject to applicable federal and state withholdings.
- *Entire Agreement:* This Agreement, the Confidentiality and Non-Compete Agreement and the Option Agreement set forth the entire agreement and understanding between you and the Company regarding all subjects covered herein, the terms of which may not be changed or modified except by agreement in writing signed by you and an appropriate designee of the Board of Directors.
- *Severability:* Should any provision of this agreement, or portion thereof, be found invalid and unenforceable, the remaining provisions shall continue in force and effect.

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- *Governing Law:* This agreement shall be governed, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to principles of conflict of law.

Please contact me if you have any questions regarding this offer. Should the above meet with your approval, please acknowledge your acceptance of this offer by signing as indicated below. This offer shall expire if not accepted in writing within seven days of the date of this letter.

We are delighted to offer you the opportunity to join NeuroMetrix. We are confident that you will find the work challenging and rewarding and that you will bring real value to NeuroMetrix.

Sincerely,

/s/ Shai N. Gozani

Shai N. Gozani, M.D., Ph.D.  
President and Chief Executive Officer

ACCEPTED:

/s/ W. Bradford Smith

Brad Smith

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## INCENTIVE STOCK OPTION AGREEMENT

UNDER THE NEUROMETRIX, INC.  
2004 STOCK OPTION AND INCENTIVE PLAN

Name of Optionee:  
 No. of Option Shares:  
 Option Exercise Price per Share:  
 Grant Date:  
 Expiration Date:

Pursuant to the NeuroMetrix, Inc. 2004 Stock Option Incentive Plan (the "Plan") as amended through the date hereof, NeuroMetrix, Inc. (the "Company") hereby grants to the Optionee named above an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of shares of Common Stock, par value \$0.0001 per share (the "Stock") of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan.

1. Exercisability Schedule. No portion of this Stock Option may be exercised until such portion shall have become exercisable. Except as otherwise set forth below, and subject to the discretion of the Administrator (as defined in Section 2 of the Plan) to accelerate the exercisability schedule hereunder, this Stock Option shall be exercisable with respect to Option Shares (25% of the total Option Shares) on **[1 year after Grant Date]** and an additional 1/16th of the total Option Shares on each **[1<sup>st</sup> quarterly anniversary of Grant Date]**, **[2<sup>nd</sup> quarterly anniversary of Grant Date]**, **[3<sup>rd</sup> quarterly anniversary of Grant Date]**, and **[4<sup>th</sup> quarterly anniversary of Grant Date]**, thereafter until the Stock Option has become exercisable with respect to all of the Option Shares; provided that the total number of Option Shares for which this Stock Option is exercisable will be rounded down to the nearest whole Option Share.

Once exercisable, this Stock Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Acceleration of Exercisability upon Sale. If a Sale occurs within one year of the Grant Date and prior to the termination of the Optionee's employment with the Company or a Subsidiary (as defined in the Plan), then, subject to the consummation of the Sale, this Stock Option will be exercisable with respect to 50% of the total Option Shares. If a Sale occurs on or after the first anniversary of the Grant Date and prior to the termination of the Grantee's employment with the Company or a Subsidiary, then, subject to the consummation of the Sale, the number of Option Shares for which this Stock Option is exercisable will be increased by one-fourth of the total Option Shares, provided that such increased number of Option Shares will not

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exceed the total number of Option Shares, less the number of Option Shares as to which this Stock Option has been previously exercised. A "Sale" shall mean the sale of all or substantially all of the Company's assets, a merger or combination with or into another entity, unless such merger or combination does not result in a change in ownership of the Company's voting securities of more than 50%, or the sale or transfer of more than 50% of the Company's voting securities.

3. Manner of Exercise.

(a) The Optionee may exercise this Stock Option only in the following manner: from time to time on or prior to the Expiration Date of this Stock Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the Optionee on the open market or that have been beneficially owned by the Optionee for at least six months and are not then subject to any restrictions under any Company plan; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; or (iv) a combination of (i), (ii) and (iii) above. Payment instruments will be received subject to collection.

The delivery of certificates representing the Option Shares will be contingent upon the Company's receipt from the Optionee of full payment for the Option Shares, as set forth above and any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Stock to be purchased pursuant to the exercise of Stock Options under the Plan and any subsequent resale of the shares of Stock will be in compliance with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the Optionee upon the exercise of the Stock Option shall be net of the shares attested to.

(b) Certificates for the shares of Stock purchased upon exercise of this Stock Option shall be issued and delivered to the Optionee upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such issuance and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Stock subject to this Stock Option unless and until this Stock Option shall have been exercised pursuant to the terms hereof, the Company shall have issued and delivered the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of

record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such shares of Stock.

(c) The minimum number of shares with respect to which this Stock Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Stock Option is being exercised is the total number of shares subject to exercise under this Stock Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Stock Option shall be exercisable after the Expiration Date hereof.

4. **Termination of Employment.** If the Optionee's employment by the Company or a Subsidiary is terminated, the period within which to exercise the Stock Option may be subject to earlier termination as set forth below.

(a) **Termination Due to Death.** If the Optionee's employment terminates by reason of death, any Stock Option held by the Optionee shall become fully exercisable and may thereafter be exercised by the Optionee's legal representative or legatee for a period of 12 months from the date of death or until the Expiration Date, if earlier.

(b) **Termination Due to Disability.** If the Optionee's employment terminates by reason of disability (as determined by the Administrator), any Stock Option held by the Optionee shall become fully exercisable and may thereafter be exercised by the Optionee for a period of 12 months from the date of termination or until the Expiration Date, if earlier. The death of the Optionee during the 12-month period provided in this Section 3(b) shall extend such period for another 12 months from the date of death or until the Expiration Date, if earlier.

(c) **Termination for Cause.** If the Optionee's employment terminates for Cause, any Stock Option held by the Optionee shall terminate immediately and be of no further force and effect. For purposes hereof, "Cause" shall mean a vote by the Board resolving that the Optionee shall be dismissed as a result of (i) any material breach by the Optionee of any agreement between the Optionee and the Company; (ii) the conviction of or plea of nolo contendere by the Optionee to a felony or a crime involving moral turpitude; or (iii) any material misconduct or willful and deliberate non-performance (other than by reason of disability) by the Optionee of the Optionee's duties to the Company.

(d) **Termination by the Company Other than for Cause.** If the Optionee's employment is terminated by the Company other than for Cause, this Stock Option may be exercised for a period of three months from the date of termination or until the Expiration Date, if earlier. In such case, the number of Option Shares for which this Stock Option is exercisable will equal the number of Option Shares for which this Stock Option was exercisable on the date of termination plus an additional 3/16ths of the total Option Shares, provided that such increased number of Option Shares will not exceed the total number of Option Shares, less the number of Option Shares as to which this Stock Option has been previously exercised, provided further that if such termination occurs prior to the first anniversary of the Grant Date, this Stock Option may be exercised with respect to: (i) 1/16<sup>th</sup> of the total Option Shares for each three-month period after the Grant Date that the Optionee remained employed by the Company or a Subsidiary plus

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(ii) an additional 3/16ths of the total Option Shares. Notwithstanding the foregoing, the Optionee will not be entitled to exercise this Stock Option with respect to the additional 3/16ths of the total Option Shares provided for above unless the Optionee has executed the Release (as defined in the letter dated February 7, 2005 to the Optionee regarding the Optionee's terms of employment (the "Offer Letter")). For the purposes hereof, if the Optionee resigns following not less than thirty (30) days' prior written notice to the Company that the Company has materially breached the terms of the Offer Letter (with such written notice to describe such material breach in detail) and provided that such material breach has, in fact, occurred and remains uncured by the Company during such thirty (30) day period, then such resignation will be deemed to be termination by the Company other than for Cause.

(e) **Other Termination.** If the Optionee's employment terminates for any reason other than those specified in paragraphs (a)-(d) above, and unless otherwise determined by the Administrator, any Stock Option held by the Optionee may be exercised, to the extent exercisable on the date of termination, for a period of three months from the date of termination or until the Expiration Date, if earlier. Any Stock Option that is not exercisable at such time shall terminate immediately and be of no further force or effect.

The Administrator's determination of the reason for termination of the Optionee's employment shall be conclusive and binding on the Optionee and his or her representatives or legatees.

5. **Incorporation of Plan.** Notwithstanding anything herein to the contrary, this Stock Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. **Transferability.** This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Stock Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

7. **Status of the Stock Option.** This Stock Option is intended to qualify as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), but the Company does not represent or warrant that this Stock Option qualifies as such. The Optionee should consult with his or her own tax advisors regarding the tax effects of this Stock Option and the requirements necessary to obtain favorable income tax treatment under Section 422 of the Code, including, but not limited to, holding period requirements. If the Optionee intends to dispose or does dispose (whether by sale, gift, transfer or otherwise) of any Option Shares within the one-year period beginning on the date after the transfer of such shares to him or her, or within the two-year period beginning on the day after the grant of this Stock Option, he or she will notify the Company within 30 days after such disposition.

8. **Tax Withholding.** The Optionee shall, not later than the date as of which the exercise of this Stock Option becomes a taxable event for Federal income tax purposes, pay to

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the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Optionee may elect to have the minimum required tax withholding obligation satisfied, in whole or in part, by (i) authorizing the Company to withhold from shares of Stock to be issued, or (ii) transferring to the Company, a number of shares of Stock with an aggregate Fair Market Value that would satisfy the withholding amount due.

9. Miscellaneous.

(a) Notice hereunder shall be given to the Company at its principal place of business, and shall be given to the Optionee at the address set forth below, or in either case at such other address as one party may subsequently furnish to the other party in writing.

(b) This Stock Option does not confer upon the Optionee any rights with respect to continuance of employment by the Company or any Subsidiary.

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Optionee's Signature

Optionee's name and address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## NEUROMETRIX, INC.

## CONFIDENTIALITY &amp; NON-COMPETE AGREEMENT

In consideration of and as a condition to my employment, or if now employed in consideration of and as a condition to my continued employment, by NeuroMetrix, Inc. (the "Company"), the granting of shares of common, no par value stock of the Company, and the compensation now and hereafter paid to me by the Company and other good and valuable consideration, the sufficiency of which I hereby acknowledge, I hereby execute this Confidentiality & Non-Compete Agreement (the "Agreement") and agree to the following:

1. *Confidential Information.*

- a) *Company Information.* I agree at all times during the term of my employment and thereafter to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm or corporation without the prior written authorization of a duly authorized officer of the Company, any Confidential Information of the Company. I understand that "Confidential Information" means any Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research and development information, product plans, products, services, customer lists and customers, Work Product (as defined below), suppliers, software developments, inventions, processes, formulas, technology, designs, drawings, engineering information, hardware configuration information, marketing information, costs, pricing, finances or other business information disclosed to me by the Company either directly or indirectly in writing, orally or by drawings or inspection of parts or equipment either before or after the commencement of my employment. I further agree that all Confidential Information shall at all times remain the property of the Company. I understand that Confidential Information does not include any of the foregoing items which has become publicly known or made generally available through no wrongful act of mine.
- b) *Third-Party Information.* I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out my work for the Company consistent with the Company's agreement with such third party.

2. *Work Product.*

- a) *Assignment of Work Product.* I agree that I will promptly make full written disclosure to the Company and will hold in trust for the sole right and benefit of the Company, and I hereby assign to the Company, or its designee, all my right, title and interest in and to any and all inventions, original works of authorship, developments, concepts,

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improvements or trade secrets, of whatever nature and whether or not patentable or registrable under copyright or similar laws, which I may solely or jointly with others conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time I am in the employ of the Company (collectively referred to as "Work Product"); and I further agree that the foregoing shall also apply to Work Product which relates the business of the Company or to the Company's anticipated business as of the end of my employment and which is conceived, developed, or reduced to practice during a period of one (1) year after the end of my employment. Without limiting the foregoing, I further acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by copyright are "works made for hire", as that term is defined in the United States Copyright Act.

- b) *Maintenance of Records.* I agree to keep and maintain adequate and current written records of all Work Product made by me (solely or jointly with others) during the term of my employment by the Company. The records will be in form of notes, sketches, drawings, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.
- c) *Patent and Copyright Registrations.* I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Work Product and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto and the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees to sole and exclusive rights, title and interest in and to such Work Product, and any copyright, patents, mask work rights or other intellectual property rights relating thereto. This provision shall survive the termination of my employment by the Company, whether with or without cause.
3. *Returning Company Property.* I agree that, at any time upon request of the Company, and in any event at the time of the termination of my employment by Company, I will deliver to the Company (and will not keep in my possession or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any of the aforementioned items, containing Confidential Information or otherwise belonging to the Company, its successors or assigns, whether prepared by me or supplied to me by the Company.

4. *Conflicts*

- a) *Conflicting Employment.* I agree that, during the term of my employment by the Company, I will not engage in any other employment, occupation, consulting or other business activity related to the business in which the Company is now involved or

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becomes involved during the term of my employment, nor will I engage in any other activities that conflict with my obligations to Company.

b) *No Restrictions.* I am subject to no contractual or other restriction or obligation which will in any way limit my activities on behalf of the Company. I hereby represent and warrant to the Company that I do not claim rights in, or otherwise exclude from this Agreement, any Work Product (as defined above) or previous work completed by me except the following (*Note: if none, please write "None"; or additional information is provided on a separate sheet, please so indicate*):

5. *Covenant Against Competition.*

a) For the purposes of this Section:

- i) "Competing Product" means any product, process, or service of any person or organization other than the Company, in existence or under development, (A) which is identical to, substantially the same as, or an adequate substitute for any product, process, or service of the Company, in existence or under development, on which I work during the time of my employment by the Company or about which I acquire Confidential Information, and (B) which is (or could reasonably be anticipated to be) marketed or distributed in such a manner and in such a geographic area as to actually compete with such product, process or services of the Company.
- ii) "Competing Organization" means any person or organization, including myself, engaged in, or about to become engaged in, research on or the acquisition, development, production, distribution, marketing, or providing of a Competing Product.

b) As a material inducement to the Company to employ me, and in order to protect the Company's Confidential Information and good will, I agree to the following stipulations:

- i) For a period of twelve (12) months after termination of my employment by the Company, whether with or without cause, I will not directly or indirectly solicit or divert or accept business relating in any manner to Competing Products or to products, processes or services of the Company from any of the customers or accounts of the Company with which I had any contact as a result of my employment.
- ii) For a period of twelve (12) months after termination of my employment by the Company or its affiliates for any reason, whether with or without cause, I will not render services, directly or indirectly, as an employee, consultant or otherwise, to any Competing Organization in connection with research on or the acquisition,

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development, production, distribution, marketing, or production of any Competing Product.

- iii) For a period of twelve (12) months after termination of my employment by the Company, whether with or without cause, I will not directly or indirectly solicit or take away, or attempt to solicit or take away, employees of the Company, either for my own business or for any other person or entity.

6. *Enforceability and Severability.* In the event that any provision of this Agreement shall be determined to be unenforceable by any court of competent jurisdiction by reason of its extending for too great a period of time or over too large a geographic area or over too great a range of activities, it shall be interpreted to extend only over the maximum period of time, geographic area or range of activities as to which it may be enforceable.

If any provision of this Agreement shall be determined to be invalid, illegal or otherwise unenforceable by any court of competent jurisdiction, the validity, legality and enforceability of the other provisions of this Agreement shall not be affected thereby. Any invalid, illegal or unenforceable provision of this Agreement shall be severable, and after any such severance, all other provisions hereof shall remain in full force and effect.

7. *Breach.*

- a) *Equitable Remedies.* I hereby expressly acknowledge that any breach or threatened breach of any of the terms and/or conditions set forth in this Agreement will result in substantial, continuing and irreparable injury to the Company. Therefore, I hereby agree that, in addition to any other remedy that may be available to the Company, the Company shall be entitled to injunctive or other equitable relief by a court of appropriate jurisdiction in the event of breach or threatened breach of the terms of this Agreement.
- b) *Tolling.* If any provisions of this Agreement are violated, then the time limitations set forth in this Agreement shall be extended for a period of time equal to the period of time during which such breach occurs, and, in the event the Company is required to seek relief from such breach before any court, board or other tribunal, then the time limitation shall be extended for a period of time equal to the pendency of such proceedings, including all appeals.

8. *General Provisions*

- a) *Entire Agreement.* This Agreement supersedes all previous agreements, written or oral, between the Company and me relating to the subject matter of this Agreement, sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us with respect hereto. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party to be

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charged. Any subsequent change or changes in my duties, job title or compensation will not affect the validity or scope of this Agreement.

- b) *Successors and Assigns.* This Agreement shall inure to the benefit of the Company and its legal representatives, successors and assigns, and shall be binding upon me and my heirs, legal representatives, successors and assigns.

- c) *Governing Law.* This Agreement will be governed by the laws of the Commonwealth of Massachusetts, without regard to conflicts of law principles.
- d) *Headings.* The headings in this Stockholders Agreement are for convenience of reference only, and they shall not limit or otherwise affect the interpretation of any term or provision hereof.

I ACKNOWLEDGE THAT BEFORE PLACING MY SIGNATURE HEREUNDER, I HAVE READ ALL OF THE PROVISIONS OF THIS AGREEMENT AND HAVE RECEIVED A COPY HEREOF TODAY. **I FURTHER ACKNOWLEDGE THAT ALTHOUGH THIS AGREEMENT HAS BEEN SIGNED AFTER THE COMMENCEMENT OF MY EMPLOYMENT, IT APPLIES TO ANY AND ALL INFORMATION RECEIVED BY ME DURING MY EMPLOYMENT.**

Executed as a document under seal effective as Start Date.

Signed:

/s/ W. Bradford Smith  
[Employee's Signature]

36 Powder Hill Road  
[Address]

Bedford, NH 03110  
[City, State and Zip Code]

For NeuroMetrix, Inc.

/s/ Shai N. Gozani  
Authorized Signature

February 7, 2005