

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): May 22, 2018



**PERNIX THERAPEUTICS HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

<u>Maryland</u>	<u>001-14494</u>	<u>33-0724736</u>
(State or Other Jurisdiction)	(Commission File Number)	(IRS Employer Identification No.)
<u>10 North Park Place, Suite 201, Morristown, NJ</u>		<u>07960</u>
(Address of principal executive offices)		(Zip Code)

Registrant's telephone number, including area code: **(800) 793-2145**

(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 (*see* General Instruction A.2. below):

- 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

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**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On May 22, 2018, the Board of Directors (the "Board") of Pemix Therapeutics Holdings, Inc. (the "Company") appointed Glenn Whaley as the Company's Vice President of Finance, Principal Accounting Officer and Controller, effective immediately.

He was previously the Vice President of Finance, Interim Principal Accounting Officer and Corporate Controller, effective November 29, 2017. Mr. Whaley joined the Company in March 2015 as the Company's Vice President of Financial Planning and Analysis. Prior to joining the Company, Mr. Whaley was Vice President, Finance for Alvogen, Inc. ("Alvogen"), a global pharmaceutical company, from May 2011 until March 2015. His responsibilities included serving as Vice President, Finance of U.S. Operations from August 2013 to March 2015 and Global Corporate Controller from May 2011 to August 2013. Prior to Alvogen, Mr. Whaley served as Corporate Controller for ImClone Systems Incorporated ("ImClone"), a biopharmaceutical company dedicated to developing biologic medicines in the area of oncology, from January 2007 to May 2011, and Senior Director of Financial Reporting from January 2005 to December 2006. Prior to ImClone, Mr. Whaley served in a variety of financial roles at increasing levels of responsibility in public accounting and the pharmaceutical and telecommunications industries. Mr. Whaley, age 50, is a member of the New Jersey Society of Certified Public Accountants and the American Institute of Certified Public Accountants. Mr. Whaley holds a Bachelor of Science degree from Rutgers University Business School.

There is no arrangement or understanding between Mr. Whaley and any other person pursuant to which Mr. Whaley was appointed as Vice President of Finance, Principal Accounting Officer and Corporate Controller of the Company and Mr. Whaley does not have any familial relationship with any director or executive officer of the Company. In addition, there are no transactions between Mr. Whaley and the Company that are required to be disclosed pursuant to item 404(a) of Regulation S-K under the Securities Exchange Act of 1934, as amended.

**Item 5.07 Submission of Matters to a Vote of Security Holders.**

On May 22, 2018, the Company held its annual meeting of stockholders (the "Annual Meeting"). As of March 25, 2018, the record date for the Annual Meeting, there were 11,873,562 shares of common stock issued and outstanding and entitled to vote on the proposals presented at the Annual Meeting, of which 9,275,679, or 78.12%, were present in person or represented by proxy, which constituted a quorum. The holders of shares of our common stock are entitled to one vote for each share held and cumulative voting for directors is not permitted. Set forth below are the final voting results for each of the proposals submitted to a vote of the Company's stockholders at the Annual Meeting.

1. The Company's stockholders elected the five directors listed below to the Board. The votes regarding this proposal were as follows:

<u>Nominee</u>	<u>For</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
John A. Sedor	4,513,427	145,121	4,617,131
Dennis H. Langer	4,515,181	143,367	4,617,131
John R. Leone	4,515,178	143,370	4,617,131
Gabriel Leung	4,513,302	145,246	4,617,131
Douglas J. Swirsky	4,515,710	142,838	4,617,131

2. The Company's stockholders approved an amendment to the Company's 2017 Omnibus Incentive Plan (the "Plan") to increase the number of shares reserved under the Plan. The votes regarding this proposal were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
3,793,193	796,976	68,379	4,617,131

3. The Company's stockholders did not approve an amendment to the Company's charter to provide for a majority voting standard with respect to stockholder approval of business combinations and certain other extraordinary corporate action. The votes regarding this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
4,326,597	305,621	26,330	4,617,131

4. The Company's stockholders ratified the Board's approval of an amendment to the Company's by-laws to designate Maryland as the exclusive forum for certain legal actions. The votes regarding this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
4,125,188	491,426	41,934	4,617,131

5. The Company's stockholders approved, in an advisory (non-binding) vote the compensation of the Company's named executive officers as disclosed in the proxy statement. The votes regarding this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
3,906,952	700,598	50,998	4,617,131

6. The Company's stockholders ratified the selection of Cherry Bekaert LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2018. The votes regarding this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
8,987,211	208,197	80,271	0

#### 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	<a href="#">Pemix Therapeutics Holdings, Inc. 2017 Omnibus Incentive Plan, as amended.</a>
10.2	<a href="#">Form of Restricted Stock Unit Agreement under Pemix Therapeutics Holdings, Inc. 2017 Omnibus Incentive Plan, as amended.</a>
10.3	<a href="#">Form of Nonqualified Stock Option Agreement under Pemix Therapeutics Holdings, Inc. 2017 Omnibus Incentive Plan, as amended.</a>

**SIGNATURES**

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

**PERNIX THERAPEUTICS HOLDINGS,  
INC.**

Date: May 22, 2018

By: /s/ John A Sedor

Name: John A Sedor

Title: Chief Executive Officer

## PERNIX THERAPEUTICS HOLDINGS, INC.

## 2017 OMNIBUS INCENTIVE PLAN, AS AMENDED

**1. PURPOSE**

The Plan is intended to (a) provide eligible individuals with an incentive to contribute to the success of the Company and to operate and manage the Company's business in a manner that will provide for the Company's long-term growth and profitability and that will benefit its shareholders and other important stakeholders, including its employees and customers, and (b) provide a means of recruiting, rewarding, and retaining key personnel. To this end, the Plan provides for the grant of Awards of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Deferred Stock Units, Unrestricted Stock, Dividend Equivalent Rights, Performance Shares and other Performance-Based Awards, Other Equity-Based Awards, and cash bonus awards. Any of these Awards may, but need not, be made as performance incentives to reward the holders of such Awards for the achievement of performance goals in accordance with the terms of the Plan. Options granted under the Plan may be Non-qualified Stock Options or Incentive Stock Options, as provided herein.

**2. DEFINITIONS**

For purposes of interpreting the Plan documents, including the Plan and Award Agreements, the following capitalized terms shall have the meanings specified below, unless the context clearly indicates otherwise:

**2.1 "Affiliate"** shall mean any Person that controls, is controlled by, or is under common control with the Company within the meaning of Rule 405 of Regulation C under the Securities Act, including any Subsidiary. For purposes of grants of Options or Stock Appreciation Rights, an entity may not be considered an Affiliate unless the Company holds a Controlling Interest in such entity.

**2.2 "Applicable Laws"** shall mean the legal requirements relating to the Plan and the Awards under (a) applicable provisions of the Code, the Securities Act, the Exchange Act, any rules or regulations thereunder, and any other laws, rules, regulations, and government orders of any jurisdiction applicable to the Company or its Affiliates, (b) applicable provisions of the corporate, securities, tax, and other laws, rules, regulations, and government orders of any jurisdiction applicable to Awards granted to residents thereof, and (c) the rules of any Stock Exchange or Securities Market on which the Stock is listed or publicly traded.

**2.3 "Award"** shall mean a grant under the Plan of an Option, a Stock Appreciation Right, Restricted Stock, a Restricted Stock Unit, a Deferred Stock Unit, Unrestricted Stock, a Dividend Equivalent Right, a Performance Share or other Performance-Based Award, an Other Equity-Based Award, or cash.

**2.4 "Award Agreement"** shall mean the written agreement, in such written, electronic, or other form as determined by the Committee, between the Company and a Grantee that evidences and sets forth the terms and conditions of an Award.

**2.5 "Beneficial Owner"** shall have the meaning set forth in Rule 13d-3 under the Exchange Act.

**2.6 "Benefit Arrangement"** shall mean any formal or informal plan or other arrangement for the direct or indirect provision of compensation to a Grantee (including groups or classes of Grantees or beneficiaries of which the Grantee is a member), whether or not such compensation is deferred, is in cash, or is in the form of a benefit to or for the Grantee.

**2.7 "Board"** shall mean the Board of Directors of the Company.

**2.8 "Cause"** shall have the meaning set forth in the Grantee's employment agreement with the Company, as in effect on the date an Award is granted; provided that if no such agreement or definition exists, "Cause" shall mean, unless otherwise specified in the Award Agreement: (a) conviction of any felony or indictable offense (other than one related to a vehicular offense) or other criminal act involving fraud; (b) willful misconduct that results in a material economic detriment to the Company; (c) material violation of Company policies and directives, which is not cured after written notice and an opportunity for cure; (d) continued refusal by the Grantee to perform the Grantee's duties after written notice identifying the deficiencies and an opportunity for cure; (e) a material violation by the Grantee of any material covenants to the Company and (f) such other actions constituting cause under applicable common law. No action or inaction shall be deemed willful if not demonstrably willful and if taken or not taken by the Grantee in good faith and with the understanding that such action or inaction was not adverse to the best interests of the Company. Reference in this definition to the Company shall also include direct and indirect Subsidiaries of the Company, and materiality shall be measured based on the action or inaction and the impact upon the Company taken as a whole. Any determination by the Committee regarding whether an event constituting Cause shall have occurred shall be final, binding, and conclusive.

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**2.9 "Capital Stock"** shall mean, with respect to any Person, any and all shares, interests, participations, or other equivalents (however designated, whether voting or non-voting) in equity of such Person, whether outstanding on the Effective Date or issued thereafter, including, without limitation, all shares of Stock.

**2.10 "Change in Control"** shall mean, subject to **Section 18.11**, the occurrence of any of the following:

(a) the acquisition (other than from the Company), by any person (as such term is defined in Section 13(c) or 14(d) of the Exchange Act) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities;

(b) the individuals who, as of the Effective Date, are members of the Board (the "**Incumbent Board**"), cease for any reason to constitute at least a majority of the Board, unless the election, or nomination for election by the Company's shareholders, of any new director was approved by a vote of at least a majority of the Incumbent Board, and such new director shall be considered as a member of the Incumbent Board;

(c) the closing of a merger or similar business combination (each, an "**Business Combination**") involving the Company if (i) the shareholders of the Company, immediately before such Business Combination, do not, as a result of such Business Combination, own, directly or indirectly, more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the entity resulting from such Business Combination in substantially the same proportion as their ownership of the combined voting power of the voting securities of the Company outstanding immediately before such Business Combination or (ii) immediately following the Business Combination, the individuals who comprised the Board immediately prior thereto do not constitute at least a majority of the board of directors of the entity resulting from such Business Combination (or, if the entity resulting from such Business Combination is then a subsidiary, the ultimate parent thereof); or

(d) a complete liquidation or dissolution of the Company or the closing of an agreement for the sale or other disposition of all or substantially all of the assets of the Company.

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities is acquired by (i) a trustee or other fiduciary holding securities under one or more employee benefit plans maintained by the Company or any of its subsidiaries or (ii) any corporation which, immediately prior to such acquisition, is owned directly or indirectly by the shareholders of the Company in the same proportion as their ownership of shares in the Company immediately prior to such acquisition.

**2.11 "Code"** shall mean the Internal Revenue Code of 1986, as amended, as now in effect or as hereafter amended, and any successor thereto. References in the Plan to any Code Section shall be deemed to include, as applicable, regulations and guidance promulgated under such Code Section.

**2.12 "Committee"** shall mean a committee of, and designated from time to time by resolution of, the Board, which shall be constituted as provided in **Section 3.1.2** and **Section 3.1.3** (or, if no Committee has been so designated, the Board).

**2.13 "Company"** shall mean Pemix Therapeutics Holdings, Inc. and any successor thereto.

**2.14 "Controlling Interest"** shall have the meaning set forth in Treasury Regulation Section 1.414(c)-2(b)(2)(i); provided that (a) except as specified in clause (b) below, an interest of "at least 50 percent" shall be used instead of an interest of "at least 80 percent" in each case where "at least 80 percent" appears in Treasury Regulation Section 1.414(c)-2(b)(2)(i), and (b) where a grant of Options or Stock Appreciation Rights is based upon a legitimate business criterion, an interest of "at least 20 percent" shall be used instead of an interest of "at least 80 percent" in each case where "at least 80 percent" appears in Treasury Regulation Section 1.414(c)-2(b)(2)(i).

**2.15 "Covered Employee"** shall mean a Grantee who is, or could become, a "covered employee" within the meaning of Code Section 162(m)(3).

**2.16 "Deferred Stock Unit"** shall mean a Restricted Stock Unit, the terms of which provide for delivery of the underlying shares of Stock, cash, or a combination thereof subsequent to the date of vesting, at a time or times consistent with the requirements of Code Section 409A.

**2.17 "Disability"** shall mean, unless otherwise provided in an Award Agreement, that the Grantee is (a) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months or (b) by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the Company; provided, that, if applicable to the Award, "Disability" shall be determined in a manner consistent with Section 409A of the Code.

**2.18 "Disqualified Individual"** shall have the meaning set forth in Code Section 280G(c).

**2.19 "Dividend Equivalent Right"** shall mean a right, granted to a Grantee pursuant to **Article 12**, entitling the Grantee thereof to receive, or to receive credits for the future payment of, cash, Stock, other Awards, or other property equal in value to dividend payments or distributions, or other periodic payments, declared or paid with respect to a number of shares of Stock specified in such Dividend Equivalent Right (or other Award to which such Dividend Equivalent Right relates) as if such shares of Stock had been issued to and held by the Grantee of such Dividend Equivalent Right as of the record date.

**2.20 "Effective Date"** shall mean November 15, 2017, subject to approval of the Plan by the Company's shareholders on such date, the Plan having been approved by the Board on September 19, 2017.

**2.21 "Employee"** shall mean, as of any date of determination, an employee (including an officer) of the Company or an Affiliate.

**2.22 "Exchange Act"** shall mean the Securities Exchange Act of 1934, as amended, as now in effect or as hereafter amended, and any successor thereto.

**2.23 "Fair Market Value"** shall mean the fair market value of a share of Stock for purposes of the Plan, which shall be, as of any date of determination:

(a) If on such date the shares of Stock are listed on a Stock Exchange, or are publicly traded on another Securities Market, the Fair Market Value of a share of Stock shall be the closing price of the Stock as reported on such Stock Exchange or such Securities Market (provided that, if there is more than one such Stock Exchange or Securities Market, the Committee shall designate the appropriate Stock Exchange or Securities Market for purposes of the Fair Market Value determination). If there is no such reported closing price on such date, the Fair Market Value of a share of Stock shall be the closing price of the Stock on the next preceding day on which any sale of Stock shall have been reported on such Stock Exchange or such Securities Market.

(b) If on such date the shares of Stock are not listed on a Stock Exchange or publicly traded on a Securities Market, the Fair Market Value of a share of Stock shall be the value of the Stock as determined by the Committee by the reasonable application of a reasonable valuation method, in a manner consistent with Code Section 409A.

Notwithstanding this **Section 23** or **Section 18.3**, for purposes of determining taxable income and the amount of the related tax withholding obligation pursuant to **Section 18.3**, the Fair Market Value shall be determined by the Committee in good faith using any reasonable method as it deems appropriate, to be applied consistently with respect to Grantees; provided, further, that the Committee shall determine the Fair Market Value of shares of Stock for tax withholding obligations due in connection with sales, by or on behalf of a Grantee, of such shares of Stock subject to an Award to pay the Option Price, SAR Price, and/or any tax withholding obligation on the same date on which such shares may first be sold pursuant to the terms of the applicable Award Agreement (including broker-assisted cashless exercises of Options and Stock Appreciation Rights, as described in **Section 14.3**, and sell-to-cover transactions) in any manner consistent with applicable provisions of the Code, including but not limited to using the sale price of such shares on such date (or if sales of such shares are effectuated at more than one sale price, the weighted average sale price of such shares on such date) as the Fair Market Value of such shares, so long as such Grantee has provided the Company, or its designee or agent, with advance written notice of such sale.

**2.24 "Family Member"** shall mean, with respect to any Grantee as of any date of determination, (a) a Person who is a spouse, former spouse, child, stepchild, grandchild, parent, stepparent, grandparent, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law, or sister-in-law, including adoptive relationships, of such Grantee, (b) any Person sharing such Grantee's household (other than a tenant or employee), (c) a trust in which any one or more of the Persons specified in clauses (a) and (b) above (and such Grantee) own more than fifty percent (50%) of the beneficial interest, (d) a foundation in which any one or more of the Persons specified in clauses (a) and (b) above (and such Grantee) control the management of assets, and (e) any other entity in which one or more of the Persons specified in clauses (a) and (b) above (and such Grantee) own more than fifty percent (50%) of the voting interests.

**2.25 "Good Reason"** shall have the meaning set forth in the Grantee's employment agreement with the Company, as in effect on the date an Award is granted; provided that if no such agreement or definition exists, "Good Reason" shall mean, unless otherwise specified in the Award Agreement, the occurrence of any of the events or conditions described in clauses (a) and (b) immediately below which are not cured by the Company (if susceptible to cure by the Company) within thirty (30) days after the Company has received written notice from the Grantee which notice must be provided by the Grantee within ninety (90) days of the initial existence of the event or condition constituting Good Reason specifying the particular events or conditions which constitute Good Reason and the specific cure requested by the Grantee: (a) any material reduction in the Grantee's duties or responsibilities as in effect immediately prior thereto; provided that diminution of responsibility shall not include any such diminution resulting from a promotion, death or Disability, the termination of the Grantee's employment for Cause, or the Grantee's termination of employment other than for Good Reason; and (b) any reduction in the Grantee's base salary or target bonus opportunity which is not comparable to reductions in the base salary or target bonus opportunity of other similarly-situated employees at the Company.

**2.26 "Grant Date"** shall mean, as determined by the Committee, the latest to occur of (a) the date as of which the Committee approves the Award, (b) the date on which the recipient of an Award first becomes eligible to receive an Award under **Article 6** hereof (e.g., in the case of a new hire, the first date on which such new hire performs any Service), or (c) such subsequent date specified by the Committee in the corporate action approving the Award.

**2.27 "Grantee"** shall mean a Person who receives or holds an Award under the Plan.

**2.28 "Incentive Stock Option"** shall mean an "incentive stock option" within the meaning of Code Section 422.

**2.29 "Non-qualified Stock Option"** shall mean an Option that is not an Incentive Stock Option.

**2.30 "Non-Employee Director"** shall have the meaning set forth in Rule 16b-3 under the Exchange Act.

**2.31 "Officer"** shall have the meaning set forth in Rule 16a-1(f) under the Exchange Act.

**2.32 "Option"** shall mean an option to purchase one or more shares of Stock at a specified Option Price awarded to a Grantee pursuant to **Article 8**.

**2.33 "Option Price"** shall mean the per share exercise price for shares of Stock subject to an Option.

**2.34 "Other Agreement"** shall mean any agreement, contract, or understanding heretofore or hereafter entered into by a Grantee with the Company or an Affiliate, except an agreement, contract, or understanding that expressly addresses Code Section 280G and/or Code Section 4999.

**2.35 "Other Equity-Based Award"** shall mean an Award representing a right or other interest that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to Stock, other than an Option, a Stock Appreciation Right, Restricted Stock, a Restricted Stock Unit, a Deferred Stock Unit, Unrestricted Stock, a Dividend Equivalent Right, or a Performance Share.

**2.36 "Outside Director"** shall have the meaning set forth in Code Section 162(m)(4)(C)(i).

**2.37 "Parachute Payment"** shall mean a "parachute payment" within the meaning of Code Section 280G(b)(2).

**2.38 "Performance-Based Award"** shall mean an Award of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Deferred Stock Units, Performance Shares, Other Equity-Based Awards, or cash made subject to the achievement of performance goals (as provided in **Article 13**) over a Performance Period specified by the Committee.

- 2.39 "Performance-Based Compensation"** shall mean compensation under an Award that is intended to satisfy the requirements of Code Section 162(m) for Qualified Performance-Based Compensation paid to Covered Employees. Notwithstanding the foregoing, nothing in the Plan shall be construed to mean that an Award which does not satisfy the requirements for Qualified Performance-Based Compensation does not constitute performance-based compensation for other purposes, including the purposes of Code Section 409A.
- 2.40 "Performance Measures"** shall mean measures as specified in **Section 13.6.4** on which the performance goal or goals under Performance-Based Awards are based and which are approved by the Company's shareholders pursuant to, and to the extent required by, the Plan in order to qualify such Performance-Based Awards as Performance-Based Compensation.
- 2.41 "Performance Period"** shall mean the period of time, up to ten (10) years, during or over which the performance goals under Performance-Based Awards must be met in order to determine the degree of payout and/or vesting with respect to any such Performance-Based Awards.
- 2.42 "Performance Shares"** shall mean a Performance-Based Award representing a right or other interest that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to Stock, made subject to the achievement of performance goals (as provided in **Article 13**) over a Performance Period.
- 2.43 "Person"** shall mean an individual, a corporation, a partnership, a limited liability company, an association, a trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof; provided that, for purposes of **Section 10(a)**, **Section 2.10(c)** and **Section 10(d)**, Person shall have the meaning set forth in Sections 13(d) and 14(d)(2) of the Exchange Act.
- 2.44 "Plan"** shall mean this Pernix Therapeutics Holdings, Inc. 2017 Omnibus Incentive Plan, as amended from time to time.
- 2.45 "Prior Plans"** shall mean the Amended and Restated Pernix Therapeutics Holdings, Inc. 2015 Omnibus Incentive Plan and the Amended and Restated Pernix Therapeutics Holdings, Inc. 2009 Stock Incentive Plan.
- 2.46 "Qualified Performance-Based Compensation"** shall have the meaning set forth in Code Section 162(m).
- 2.47 "Restricted Period"** shall mean a period of time established by the Committee during which an Award of Restricted Stock, Restricted Stock Units, or Deferred Stock Units is subject to restrictions.
- 2.48 "Restricted Stock"** shall mean shares of Stock awarded to a Grantee pursuant to **Article 10**.
- 2.49 "Restricted Stock Unit"** shall mean a bookkeeping entry representing the equivalent of one (1) share of Stock awarded to a Grantee pursuant to **Article 10** that may be settled, subject to the terms and conditions of the applicable Award Agreement, in shares of Stock, cash, or a combination thereof.
- 2.50 "SAR Price"** shall mean the per share exercise price of a SAR.
- 2.51 "Securities Act"** shall mean the Securities Act of 1933, as amended, as now in effect or as hereafter amended, and any successor thereto.
- 2.52 "Securities Market"** shall mean an established securities market.
- 2.53 "Separation from Service"** shall have the meaning set forth in Code Section 409A.
- 2.54 "Service"** shall mean service qualifying a Grantee as a Service Provider to the Company or an Affiliate. Unless otherwise provided in the applicable Award Agreement, a Grantee's change in position or duties shall not result in interrupted or terminated Service, so long as such Grantee continues to be a Service Provider to the Company or an Affiliate. Subject to the preceding sentence, any determination by the Committee whether a termination of Service shall have occurred for purposes of the Plan shall be final, binding, and conclusive. If a Service Provider's employment or other Service relationship is with an Affiliate and the applicable entity ceases to be an Affiliate, a termination of Service shall be deemed to have occurred when such entity ceases to be an Affiliate unless the Service Provider transfers his or her employment or other Service relationship to the Company or any other Affiliate.

**2.55 "Service Provider"** shall mean (a) an Employee or director of the Company or an Affiliate, or (b) a consultant or adviser to the Company or an Affiliate (i) who is a natural person, (ii) who is currently providing bona fide services to the Company or an Affiliate, and (iii) whose services are not in connection with the Company's sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company's Capital Stock.

**2.56 "Service Recipient Stock"** shall have the meaning set forth in Code Section 409A.

**2.57 "Share Limit"** shall have the meaning set forth in **Section 4.1**.

**2.58 "Short-Term Deferral Period"** shall have the meaning set forth in Code Section 409A.

**2.59 "Stock"** shall mean the common stock, par value \$0.01 per share, of the Company, or any security into which shares of Stock may be changed or for which shares of Stock may be exchanged as provided in **Section 16.1**.

**2.60 "Stock Appreciation Right" or "SAR"** shall mean a right granted to a Grantee pursuant to **Article 9**.

**2.61 "Stock Exchange"** shall mean the New York Stock Exchange, the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market, or another established national or regional stock exchange.

**2.62 "Subsidiary"** shall mean any corporation (other than the Company) or non-corporate entity with respect to which the Company owns, directly or indirectly, fifty percent (50%) or more of the total combined voting power of all classes of Voting Stock. In addition, any other entity may be designated by the Committee as a Subsidiary, provided that (a) such entity could be considered as a subsidiary according to generally accepted accounting principles in the United States of America and (b) in the case of an Award of Options or Stock Appreciation Rights, such Award would be considered to be granted in respect of Service Recipient Stock under Code Section 409A.

**2.63 "Substitute Award"** shall mean an Award granted upon assumption of, or in substitution for, outstanding awards previously granted under a compensatory plan of the Company, an Affiliate, or a business entity acquired or to be acquired by the Company or an Affiliate or with which the Company or an Affiliate has combined or will combine.

**2.64 "Ten Percent Shareholder"** shall mean a natural Person who owns more than ten percent (10%) of the total combined voting power of all classes of Voting Stock of the Company, the Company's parent (if any), or any of the Company's Subsidiaries. In determining stock ownership, the attribution rules of Code Section 424(d) shall be applied.

**2.65 "Unrestricted Stock"** shall mean Stock that is free of any restrictions.

**2.66 "Voting Stock"** shall mean, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers, or other voting members of the governing body of such Person.

### **3. ADMINISTRATION OF THE PLAN**

#### **3.1 Committee.**

##### **3.1.1 Powers and Authorities.**

The Committee shall administer the Plan and shall have such powers and authorities related to the administration of the Plan as are consistent with the Company's articles of incorporation and bylaws and Applicable Laws. Without limiting the generality of the foregoing, the Committee shall have full power and authority to take all actions and to make all determinations required or provided for under the Plan, any Award, or any Award Agreement and shall have full power and authority to take all such other actions and to make all such other determinations not inconsistent with the specific terms and provisions of the Plan which the Committee deems to be necessary or appropriate to the administration of the Plan, any Award, or any Award Agreement. All such actions and determinations shall be made by (a) the affirmative vote of a majority of the members of the Committee present at a meeting at which a quorum is present, or (b) the unanimous consent of the members of the Committee executed in writing or evidenced by electronic transmission in accordance with the Company's articles of incorporation and bylaws and Applicable Laws. Unless otherwise expressly determined by the Board, the Committee shall have the authority to interpret and construe all provisions of the Plan, any Award, and any Award Agreement, and any such interpretation or construction, and any other determination contemplated to be made under the Plan or any Award Agreement, by the Committee shall be final, binding, and conclusive on all Persons, whether or not expressly provided for in any provision of the Plan, such Award, or such Award Agreement.

In the event that the Plan, any Award, or any Award Agreement provides for any action to be taken by the Board or any determination to be made by the Board, such action may be taken or such determination may be made by the Committee constituted in accordance with this **Section 3.1** if the Board has delegated the power and authority to do so to such Committee.

### **3.1.2 Composition of the Committee.**

The Committee shall be a committee composed of not fewer than two (2) directors of the Company designated by the Board to administer the Plan. Each member of the Committee shall be (a) a Non-Employee Director, (b) an Outside Director, and (c) an independent director in accordance with the rules of any Stock

Exchange on which the Stock is listed; provided that any action taken by the Committee shall be valid and effective whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this **Section 3.1.2** or otherwise provided in any charter of the Committee. Without limiting the generality of the foregoing, the Committee may be the Compensation Committee of the Board or a subcommittee thereof if the Compensation Committee of the Board or such subcommittee satisfies the foregoing requirements.

### **3.1.3 Other Committees.**

The Board also may appoint one or more committees of the Board, each composed of one or more directors of the Company who need not be Outside Directors, which (a) may administer the Plan with respect to Grantees who are not Officers or directors of the Company, (b) may grant Awards under the Plan to such Grantees, and (c) may determine all terms of such Awards, in each case, excluding (for the avoidance of doubt) Performance-Based Awards intending to constitute Qualified Performance-Based Compensation and subject, if applicable, to the requirements of Rule 16b-3 under the Exchange Act and the rules of any Stock Exchange or Securities Market on which the Stock is listed or publicly traded.

### **3.1.4 Delegation by the Committee.**

To the extent permitted by Applicable Laws, the Committee may, by resolution, delegate some or all of its authority with respect to the Plan and Awards to the Chief Executive Officer of the Company and/or any other officer of the Company designated by the Committee, provided that the Committee may not delegate its authority hereunder (a) to make Awards to directors of the Company, (b) to make Awards to Employees who are (i) Officers, (ii) Covered Employees, or (iii) officers of the Company who are delegated authority by the Committee pursuant to this **Section 3.1.4**, or (c) to interpret the Plan, any Award, or any Award Agreement. Any delegation hereunder shall be subject to the restrictions and limits that the Committee specifies at the time of such delegation or thereafter. Nothing in the Plan shall be construed as obligating the Committee to delegate authority to any officer of the Company, and the Committee may at any time rescind the authority delegated to an officer of the Company appointed hereunder and delegate authority to one or more other officers of the Company. At all times, an officer of the Company delegated authority pursuant to this **Section 3.1.4** shall serve in such capacity at the pleasure of the Committee. Any action undertaken by any such officer of the Company in accordance with the Committee's delegation of authority shall have the same force and effect as if undertaken directly by the Committee, and any reference in the Plan to the "Committee" shall, to the extent consistent with the terms and limitations of such delegation, be deemed to include a reference to each such officer.

## **3.2 Board.**

The Board, from time to time, may exercise any or all of the powers and authorities related to the administration and implementation of the Plan, as set forth in **Section 3.1** and other applicable provisions of the Plan, as the Board shall determine, consistent with the Company's articles of incorporation and bylaws and Applicable Laws.

### 3.3 Terms of Awards.

#### 3.3.1 Committee Authority.

Subject to the other terms and conditions of the Plan, the Committee shall have full and final authority to:

- a. designate Grantees;
- b. determine the type or types of Awards to be made to a Grantee;
- c. determine the number of shares of Stock to be subject to an Award or to which an Award relates;
- d. establish the terms and conditions of each Award (including the Option Price, the SAR Price, and the purchase price for applicable Awards; the nature and duration of any restriction or condition (or provision for lapse thereof) relating to the vesting, exercise, transfer, or forfeiture of an Award or the shares of Stock subject thereto; the treatment of an Award in the event of a Change in Control (subject to applicable agreements); and any terms or conditions that may be necessary to qualify Options as Incentive Stock Options);
- e. prescribe the form of each Award Agreement evidencing an Award;
- f. subject to the limitation on repricing in **Section 3.4**, amend, modify, or supplement the terms of any outstanding Award, which authority shall include the authority, in order to effectuate the purposes of the Plan but without amending the Plan, to make Awards or to modify outstanding Awards made to eligible natural Persons who are foreign nationals or are natural Persons who are employed outside the United States to reflect differences in local law, tax policy, or custom; provided that, notwithstanding the foregoing, no amendment, modification, or supplement of the terms of any outstanding Award shall, without the consent of the Grantee thereof, materially impair such Grantee's rights under such Award; and
- g. make Substitute Awards.

#### 3.3.2 Forfeiture; Recoupment.

The Committee may reserve the right in an Award Agreement to cause a forfeiture of the gain realized by a Grantee with respect to an Award thereunder on account of actions taken by, or failed to be taken by, such Grantee in violation or breach of, or in conflict with, any (a) employment agreement, (b) non-competition agreement, (c) agreement prohibiting solicitation of Employees or clients of the Company or an Affiliate, (d) confidentiality obligation with respect to the Company or an Affiliate, (e) Company or Affiliate policy or procedure, (f) other agreement, or (g) other obligation of such Grantee to the Company or an Affiliate, as and to the extent specified in such Award Agreement. If the Grantee of an outstanding Award is an Employee of the Company or an Affiliate and such Grantee's Service is terminated for Cause, the Committee may annul such Grantee's outstanding Award as of the date of the Grantee's termination of Service for Cause.

Any Award granted pursuant to the Plan shall be subject to mandatory repayment by the Grantee to the Company (x) to the extent set forth in an Award Agreement or (y) to the extent the Grantee is, or in the future becomes, subject to (1) any Company or Affiliate "clawback" or recoupment policy that is adopted to comply with the requirements of any Applicable Laws, or (2) any Applicable Laws which impose mandatory recoupment, under circumstances set forth in such Applicable Laws, and in the event of an inconsistency between (x), (y)(1) and (y)(2), the provision of broadest applicability shall apply.

#### 3.4 No Repricing.

Except in connection with a corporate transaction involving the Company (including, without limitation, any stock dividend, distribution (whether in the form of cash, shares of Stock, other securities, or other property), stock split, extraordinary dividend, recapitalization, Change in Control, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of shares of Stock, or other securities or similar transaction), the Company may not: (a) amend the terms of outstanding Options or SARs to reduce the Option Price or SAR Price, as applicable, of such outstanding Options or SARs; (b) cancel outstanding Options or SARs in exchange for or substitution of Options or SARs with an Option Price or SAR Price, as applicable, that is less than the Option Price or SAR Price, as applicable, of the original Options or SARs; or (c) cancel outstanding Options or SARs with an Option Price or SAR Price, as applicable, above the current Fair Market Value in exchange for cash or other securities, in each case, unless such action is subject to and approved by the Company's shareholders.

### 3.5 Deferral Arrangement.

The Committee may permit or require the deferral of any payment pursuant to any Award into a deferred compensation arrangement, subject to such rules and procedures as it may establish, which may include provisions for the payment or crediting of interest or Dividend Equivalent Rights and, in connection therewith, provisions for converting such credits into Deferred Stock Units and for restricting deferrals to comply with hardship distribution rules affecting tax-qualified retirement plans subject to Code Section 401(k)(2)(B)(IV); provided that no Dividend Equivalent Rights may be granted in connection with, or related to, an Award of Options or SARs. Any such deferrals shall be made in a manner that complies with Code Section 409A, including, if applicable, with respect to when a Separation from Service occurs.

### 3.6 Registration; Share Certificates.

Notwithstanding any provision of the Plan to the contrary, the ownership of the shares of Stock issued under the Plan may be evidenced in such a manner as the Committee, in its sole discretion, deems appropriate, including by book-entry or direct registration (including transaction advices) or the issuance of one or more share certificates.

## 4. STOCK SUBJECT TO THE PLAN

### 4.1 Number of Shares of Stock Available for Awards.

Subject to such additional shares of Stock as shall be available for issuance under the Plan pursuant to **Section 4.2**, and subject to adjustment pursuant to **Section 16**, the maximum number of shares of Stock reserved for issuance under the Plan shall be amended from 1.0 million to 1.6 million shares plus (i) the number of shares of Stock available for future awards under the Prior Plans as of the Effective Date, plus (ii) the number of shares of Stock related to awards outstanding under the Prior Plans as of the Effective Date that thereafter terminate by expiration or forfeiture, cancellation, or otherwise without the issuance of such shares of Stock (collectively, the "**Share Limit**"). Such shares of Stock may be authorized and unissued shares of Stock, treasury shares of Stock, or any combination of the foregoing, as may be determined from time to time by the Board or by the Committee. Any of the shares of Stock reserved and available for issuance under the Plan may be used for any type of Award under the Plan, and any or all of the shares of Stock reserved for issuance under the Plan shall be available for issuance pursuant to Incentive Stock Options.

### 4.2 Adjustments in Authorized Shares of Stock.

In connection with mergers, reorganizations, separations, or other transactions to which Code Section 424(a) applies, the Committee shall have the right to cause the Company to assume awards previously granted under a compensatory plan of another business entity that is a party to such transaction and to grant Substitute Awards under the Plan for such awards. The Share Limit shall neither be increased nor decreased by the number of shares of Stock subject to any such assumed awards and Substitute Awards. Shares available for issuance under a shareholder-approved plan of a business entity that is a party to such transaction (as appropriately adjusted, if necessary, to reflect such transaction) may be used for Awards under the Plan and shall not reduce the number of shares of Stock otherwise available for issuance under the Plan, subject to applicable rules of any Stock Exchange or Securities Market on which the Stock is listed or publicly traded.

### 4.3 Share Usage.

- a. Shares of Stock subject to an Award shall be counted as used as of the Grant Date for purposes of calculating the number of shares of Stock available for issuance under **Section 4.1**.
- b. Any shares of Stock that are subject to Awards, including shares of Stock acquired through dividend reinvestment pursuant to **Article 10**, shall be counted against the Share Limit as one (1) share of Stock for every one (1) share of Stock subject to an Award. The number of shares of Stock subject to an Award of Stock-settled SARs shall be counted against the Share Limit as one (1) share of Stock for every one (1) share of Stock subject to such Award regardless of the number of shares of Stock actually issued to settle such SARs upon the exercise of the SARs. A number of shares of Stock at least equal to the target number of shares issuable under Performance Shares shall be counted against the Share Limit as of the Grant Date, but such number shall be adjusted to equal the actual number of shares issued upon settlement of the Performance Shares to the extent different from such number of shares. Awards that do not entitle the Grantee thereof to receive or purchase shares of Stock and Awards that are settled in cash shall not be counted against the Share Limit set forth in **Section 4.1**.

- c. If any shares of Stock subject to an Award are not purchased or are forfeited or expire or if an Award otherwise terminates without delivery of any Stock subject thereto or is settled in cash in lieu of shares, then the number of shares of Stock counted against the Share Limit with respect to such Award shall, to the extent of any such forfeiture, termination, expiration, or settlement, again be available for making Awards under the Plan.
- d. The number of shares of Stock available for issuance under the Plan shall not be increased by the number of shares of Stock (i) tendered, withheld, or subject to an Option granted under the Plan surrendered in connection with the payment of the Option Price upon exercise of an Option or in connection with the Company's tax withholding obligations with respect to Options or Stock-settled SARs, (ii) that were not issued upon the net settlement or net exercise of a Stock-settled SAR granted under the Plan, (iii) deducted or delivered from payment of an Award granted under the Plan in connection with the Company's tax withholding obligations as provided in **Section 18.3**, or (iv) purchased by the Company with proceeds from Option exercises.

## **5. TERM; AMENDMENT, SUSPENSION, AND TERMINATION**

### **5.1 Term.**

The Plan shall become effective as of the Effective Date. Following the Effective Date, no awards shall be made under the Prior Plans. The Plan shall terminate on the first to occur of (a) the day before the tenth (10th) anniversary of the Effective Date, (b) the date determined in accordance with **Section 5.2**, and (c) the date determined in accordance with **Section 16.3**; provided, however, that Incentive Stock Options may not be granted under the Plan after the tenth (10th) anniversary of the date of the Board's adoption of the Plan. Upon such termination of the Plan, all outstanding Awards shall continue to have full force and effect in accordance with the provisions of the terminated Plan and the applicable Award Agreement (or other documents evidencing such Awards).

### **5.2 Amendment, Suspension, and Termination.**

The Board may, at any time and from time to time, amend, suspend, or terminate the Plan; provided that, with respect to Awards theretofore granted under the Plan, no amendment, suspension, or termination of the Plan shall, without the consent of the Grantee, materially impair the rights or obligations under any such Award. The effectiveness of any amendment to the Plan shall be contingent on approval of such amendment by the Company's shareholders to the extent provided by the Board or required by Applicable Laws; provided that no amendment shall be made to the repricing provisions of **Section 3.4**, the Option Pricing provisions of **Section 8.1**, or the SAR Pricing provisions of **Section 9.1** without the approval of the Company's shareholders.

## **6. AWARD ELIGIBILITY AND LIMITATIONS**

### **6.1 Eligible Grantees.**

Subject to this **Article 6**, Awards may be made under the Plan to (a) any Service Provider, as the Committee shall determine and designate from time to time, and (b) any other individual whose participation in the Plan is determined to be in the best interests of the Company by the Committee.

### **6.2 Limitation on Shares of Stock Subject to Awards and Cash Awards.**

During any time when the Company has any class of common equity securities registered under Section 12 of the Exchange Act, but subject to adjustment as provided in **Article 16**:

- a. The maximum number of shares of Stock that may be granted under the Plan, pursuant to Options or SARs, in a calendar year to any Person eligible for an Award under **Section 6.1**, other than a non-employee director of the Company, is five hundred thousand (500,000) shares;
- b. The maximum number of shares of Stock that may be granted under the Plan, pursuant to Awards other than Options or SARs that are intended to be Qualified Performance-Based Compensation and are Stock-denominated and are either Stock- or cash-settled, in a calendar year to any Person eligible for an Award under **Section 6.1** who is a Covered Employee is five hundred thousand (500,000) shares;
- c. The maximum number of shares of Stock subject to Awards granted during a single calendar year to any non-employee director, taken together with any cash fees paid to such non-employee director during the calendar year, shall not exceed five hundred thousand dollars (\$500,000) in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes); and

- d. The maximum amount that may be paid as a cash-denominated Performance-Based Award (whether or not cash-settled) that is intended to qualify as Performance-Based Compensation for a Performance Period of twelve (12) months or less to any Person eligible for an Award under **Section 6.1** who is a Covered Employee shall be ten million dollars (\$10,000,000), and the maximum amount that may be paid as a cash-denominated Performance-Based Award (whether or not cash-settled) that is intended to qualify as Performance-Based Compensation for a Performance Period of greater than twelve (12) months to any Person eligible for an Award under **Section 6.1** who is a Covered Employee shall be ten million dollars (\$10,000,000) times the number of years in the Performance Period.

### **6.3 Stand-Alone, Additional, Tandem, and Substitute Awards.**

Subject to **Section 3.4**, Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution or exchange for, (a) any other Award, (b) any award granted under another plan of the Company, an Affiliate, or any business entity that has been a party to a transaction with the Company or an Affiliate, or (c) any other right of a Grantee to receive payment from the Company or an Affiliate. Such additional, tandem, exchange, or Substitute Awards may be granted at any time. If an Award is granted in substitution or exchange for another Award, or for an award granted under another plan of the Company, an Affiliate, or any business entity that has been a party to a transaction with the Company or an Affiliate, the Committee shall require the surrender of such other Award or award under such other plan in consideration for the grant of such exchange or Substitute Award. In addition, Awards may be granted in lieu of cash compensation, including in lieu of cash payments under other plans of the Company or an Affiliate. Notwithstanding **Section 8.1** and **Section 9.1**, but subject to **Section 3.4**, the Option Price of an Option or the SAR Price of a SAR that is a Substitute Award may be less than one hundred percent (100%) of the Fair Market Value of a share of Stock on the original Grant Date; provided that such Option Price or SAR Price is determined in accordance with the principles of Code Section 424 for any Incentive Stock Option and consistent with Code Section 409A for any other Option or SAR.

## **7. AWARD AGREEMENT**

Each Award granted pursuant to the Plan shall be evidenced by an Award Agreement, which shall be in such form or forms as the Committee shall from time to time determine. Award Agreements utilized under the Plan from time to time or at the same time need not contain similar provisions but shall be consistent with the terms of the Plan. Each Award Agreement evidencing an Award of Options shall specify whether such Options are intended to be Non-qualified Stock Options or Incentive Stock Options, and, in the absence of such specification, such Options shall be deemed to constitute Non-qualified Stock Options. In the event of any inconsistency between the Plan and an Award Agreement, the provisions of the Plan shall control.

## **8. TERMS AND CONDITIONS OF OPTIONS**

### **8.1 Option Price.**

The Option Price of each Option shall be fixed by the Committee and stated in the Award Agreement evidencing such Option. Except in the case of Substitute Awards, the Option Price of each Option shall be at least the Fair Market Value of one (1) share of Stock on the Grant Date; provided that, in the event that a Grantee is a Ten Percent Shareholder, the Option Price of an Option granted to such Grantee that is intended to be an Incentive Stock Option shall be not less than one hundred ten percent (110%) of the Fair Market Value of one (1) share of Stock on the Grant Date. In no case shall the Option Price of any Option be less than the par value of one (1) share of Stock.

### **8.2 Vesting and Exercisability.**

Subject to **Sections 8.3** and **16.3**, each Option granted under the Plan shall become vested and/or exercisable at such times and under such conditions as shall be determined by the Committee and stated in the Award Agreement, in another agreement with the Grantee, or otherwise in writing.

### **8.3 Term.**

Each Option granted under the Plan shall terminate, and all rights to purchase shares of Stock thereunder shall cease, on the day before the tenth (10th) anniversary of the Grant Date of such Option, or under such circumstances and on such date prior thereto as is set forth in the Plan or as may be fixed by the Committee and stated in the Award Agreement relating to such Option; provided that, in the event that the Grantee is a Ten Percent Shareholder, an Option granted to such Grantee that is intended to be an Incentive Stock Option shall not be exercisable after the day before the fifth (5th) anniversary of the Grant Date of such Option.

#### **8.4 Termination of Service.**

Each Award Agreement with respect to the grant of an Option shall set forth the extent to which the Grantee thereof, if at all, shall have the right to exercise such Option following termination of such Grantee's Service. Such provisions shall be determined in the sole discretion of the Committee, need not be uniform among all Options issued pursuant to the Plan, and may reflect distinctions based on the reasons for termination of Service.

#### **8.5 Limitations on Exercise of Option.**

Notwithstanding any provision of the Plan to the contrary, in no event may any Option be exercised, in whole or in part, after the occurrence of an event referred to in **Article 16** which results in the termination of such Option.

#### **8.6 Method of Exercise.**

Subject to the terms of **Article 14** and **Section 18.3**, an Option that is exercisable may be exercised by the Grantee's delivery to the Company or its designee or agent of notice of exercise on any business day, at the Company's principal office or the office of such designee or agent, on the form specified by the Company and in accordance with any additional procedures specified by the Committee. Such notice shall specify the number of shares of Stock with respect to which such Option is being exercised and shall be accompanied by payment in full of the Option Price of the shares of Stock for which such Option is being exercised, plus the amount (if any) of federal and/or other taxes which the Company may, in its judgment, be required to withhold with respect to the exercise of such Option.

#### **8.7 Rights of Holders of Options.**

Unless otherwise stated in the applicable Award Agreement, a Grantee or other Person holding or exercising an Option shall have none of the rights of a shareholder of the Company (for example, the right to receive cash or dividend payments or distributions attributable to the shares of Stock subject to such Option, to direct the voting of the shares of Stock subject to such Option, or to receive notice of any meeting of the Company's shareholders) until the shares of Stock subject thereto are fully paid and issued to such Grantee or other Person. Except as provided in **Article 16**, no adjustment shall be made for dividends, distributions, or other rights with respect to any shares of Stock subject to an Option for which the record date is prior to the date of issuance of such shares of Stock.

#### **8.8 Delivery of Stock.**

Promptly after the exercise of an Option by a Grantee and the payment in full of the Option Price with respect thereto, such Grantee shall be entitled to receive such evidence of such Grantee's ownership of the shares of Stock subject to such Option as shall be consistent with **Section 3.6**.

#### **8.9 Transferability of Options.**

Except as provided in **Section 8.10**, during the lifetime of a Grantee of an Option, only such Grantee (or, in the event of such Grantee's legal incapacity or incompetency, such Grantee's guardian or legal representative) may exercise such Option. Except as provided in **Section 8.10**, no Option shall be assignable or transferable by the Grantee to whom it is granted, other than by will or the laws of descent and distribution.

#### **8.10 Family Transfers.**

If authorized in the applicable Award Agreement or by the Committee, in its sole discretion, a Grantee may transfer, not for value, all or part of an Option which is not an Incentive Stock Option to any Family Member. For the purpose of this **Section 8.10**, a transfer "not for value" is a transfer which is (a) a gift, (b) a transfer under a domestic relations order in settlement of marital property rights, or (c) unless Applicable Laws do not permit such transfer, a transfer to an entity in which more than fifty percent (50%) of the voting interests are owned by Family Members (and/or the Grantee) in exchange for an interest in such entity. Following a transfer under this **Section 8.10**, any such Option shall continue to be subject to the same terms and conditions as were applicable immediately prior to such transfer. Subsequent transfers of transferred Options shall be prohibited except to Family Members of the original Grantee in accordance with this **Section 8.10** or by will or the laws of descent and distribution. The provisions of **Section 8.4** relating to termination of Service shall continue to be applied with respect to the original Grantee of the Option, following which such Option shall be exercisable by the transferee only to the extent, and for the periods specified, in **Section 8.4**.

### **8.11 Limitations on Incentive Stock Options.**

An Option shall constitute an Incentive Stock Option only (a) if the Grantee of such Option is an Employee of the Company or any corporate Subsidiary, (b) to the extent specifically provided in the related Award Agreement, and (c) to the extent that the aggregate Fair Market Value (determined at the time such Option is granted) of the shares of Stock with respect to which all Incentive Stock Options held by such Grantee become exercisable for the first time during any calendar year (under the Plan and all other plans of the Company and its Affiliates) does not exceed one hundred thousand dollars (\$100,000). Except to the extent provided in the regulations under Code Section 422, this limitation shall be applied by taking Options into account in the order in which they were granted.

### **8.12 Notice of Disqualifying Disposition.**

If any Grantee shall make any disposition of shares of Stock issued pursuant to the exercise of an Incentive Stock Option under the circumstances provided in Code Section 421(b) (relating to certain disqualifying dispositions), such Grantee shall notify the Company of such disposition immediately but in no event later than ten (10) days thereafter.

## **9. TERMS AND CONDITIONS OF STOCK APPRECIATION RIGHTS**

### **9.1 Right to Payment and SAR Price.**

A SAR shall confer on the Grantee to whom it is granted a right to receive, upon exercise thereof, the excess of (a) the Fair Market Value of one (1) share of Stock on the date of exercise, over (b) the SAR Price as determined by the Committee. The Award Agreement for a SAR shall specify the SAR Price, which shall be no less than the Fair Market Value of one (1) share of Stock on the Grant Date of such SAR. SARs may be granted in tandem with all or part of an Option granted under the Plan or at any subsequent time during the term of such Option, in combination with all or any part of any other Award, or without regard to any Option or other Award; provided that a SAR that is granted in tandem with all or part of an Option shall have the same term, and expire at the same time, as the related Option.

### **9.2 Other Terms.**

The Committee shall determine, on the Grant Date or thereafter, the time or times at which, and the circumstances under which, a SAR may be exercised in whole or in part (including based on achievement of performance goals and/or future Service requirements); the time or times at which SARs shall cease to be or become exercisable following termination of Service or upon other conditions; the method of exercise, method of settlement, form of consideration payable in settlement, method by or forms in which shares of Stock shall be delivered or deemed to be delivered to Grantees, whether or not a SAR shall be granted in tandem or in combination with any other Award; and any and all other terms and conditions of any SAR; provided that no SARs shall be granted to Grantees who are entitled to overtime under Applicable Laws that will vest or be exercisable within a six (6)-month period starting on the Grant Date.

### **9.3 Term.**

Each SAR granted under the Plan shall terminate, and all rights thereunder shall cease, on the day before the tenth (10th) anniversary of the Grant Date of such SAR or under such circumstances and on such date prior thereto as is set forth in the Plan or as may be fixed by the Committee and stated in the Award Agreement relating to such SAR.

### **9.4 Rights of Holders of SARs.**

Unless otherwise stated in the applicable Award Agreement, a Grantee or other Person holding or exercising a SAR shall have none of the rights of a shareholder of the Company (for example, the right to receive cash or dividend payments or distributions attributable to the shares of Stock underlying such SAR, to direct the voting of the shares of Stock underlying such SAR, or to receive notice of any meeting of the Company's shareholders) until the shares of Stock underlying such SAR, if any, are issued to such Grantee or other Person. Except as provided in **Article 16**, no adjustment shall be made for dividends, distributions, or other rights with respect to any shares of Stock underlying a SAR for which the record date is prior to the date of issuance of such shares of Stock, if any.

## **9.5 Transferability of SARs.**

Except as provided in **Section 9.6**, during the lifetime of a Grantee of a SAR, only the Grantee (or, in the event of such Grantee's legal incapacity or incompetency, such Grantee's guardian or legal representative) may exercise such SAR. Except as provided in **Section 9.6**, no SAR shall be assignable or transferable by the Grantee to whom it is granted, other than by will or the laws of descent and distribution.

## **9.6 Family Transfers.**

If authorized in the applicable Award Agreement or by the Committee, in its sole discretion, a Grantee may transfer, not for value, all or part of a SAR to any Family Member. For the purpose of this **Section 9.6**, a transfer "not for value" is a transfer which is (a) a gift, (b) a transfer under a domestic relations order in settlement of marital property rights, or (c) unless Applicable Laws do not permit such transfer, a transfer to an entity in which more than fifty percent (50%) of the voting interests are owned by Family Members (and/or the Grantee) in exchange for an interest in such entity. Following a transfer under this **Section 9.6**, any such SAR shall continue to be subject to the same terms and conditions as were in effect immediately prior to such transfer. Subsequent transfers of transferred SARs shall be prohibited except to Family Members of the original Grantee in accordance with this **Section 9.6** or by will or the laws of descent and distribution.

## **10. TERMS AND CONDITIONS OF RESTRICTED STOCK, RESTRICTED STOCK UNITS, AND DEFERRED STOCK UNITS**

### **10.1 Grant of Restricted Stock, Restricted Stock Units, and Deferred Stock Units.**

Awards of Restricted Stock, Restricted Stock Units, and Deferred Stock Units may be made for consideration or for no consideration, other than the par value of the shares of Stock, which shall be deemed paid by past Service or, if so provided in the related Award Agreement or a separate agreement, the promise by the Grantee to perform future Service to the Company or an Affiliate.

### **10.2 Restrictions.**

At the time a grant of Restricted Stock, Restricted Stock Units, or Deferred Stock Units is made, the Committee may, in its sole discretion, (a) establish a Restricted Period applicable to such Restricted Stock, Restricted Stock Units, or Deferred Stock Units and (b) prescribe restrictions in addition to or other than the expiration of the Restricted Period, including the achievement of corporate or individual performance goals, which may be applicable to all or any portion of such Restricted Stock, Restricted Stock Units, or Deferred Stock Units as provided in **Article 13**. Awards of Restricted Stock, Restricted Stock Units, and Deferred Stock Units may not be sold, transferred, assigned, pledged, or otherwise encumbered or disposed of during the Restricted Period or prior to the satisfaction of any other restrictions prescribed by the Committee with respect to such Awards.

### **10.3 Registration; Restricted Stock Certificates.**

Pursuant to **Section 3.6**, to the extent that ownership of Restricted Stock is evidenced by a book-entry registration or direct registration (including transaction advices), such registration shall be notated to evidence the restrictions imposed on such Award of Restricted Stock under the Plan and the applicable Award Agreement. Subject to **Section 3.6** and the immediately following sentence, the Company may issue, in the name of each Grantee to whom Restricted Stock has been granted, certificates representing the total number of shares of Restricted Stock granted to the Grantee, as soon as reasonably practicable after the Grant Date of such Restricted Stock. The Committee may provide in an Award Agreement with respect to an Award of Restricted Stock that either (a) the Secretary of the Company shall hold such certificates for such Grantee's benefit until such time as such shares of Restricted Stock are forfeited to the Company or the restrictions applicable thereto lapse and such Grantee shall deliver a stock power to the Company with respect to each certificate, or (b) such certificates shall be delivered to such Grantee, provided that such certificates shall bear legends that comply with Applicable Laws and make appropriate reference to the restrictions imposed on such Award of Restricted Stock under the Plan and such Award Agreement.

### **10.4 Rights of Holders of Restricted Stock.**

Unless the Committee provides otherwise in an Award Agreement and subject to the restrictions set forth in the Plan, any applicable Company program, and the applicable Award Agreement, holders of Restricted Stock shall have the right to vote such shares of Restricted Stock and the right to receive any dividend payments or distributions declared or paid with respect to such shares of Restricted Stock. The Committee may provide in an Award Agreement evidencing a grant of Restricted Stock that (a) any cash dividend payments or distributions paid on Restricted Stock shall be reinvested in shares of Stock, which may or may not

be subject to the same vesting conditions and restrictions as applicable to such underlying shares of Restricted Stock or (b) any dividend payments or distributions declared or paid on shares of Restricted Stock shall only be made or paid upon satisfaction of the vesting conditions and restrictions applicable to such shares of Restricted Stock. Notwithstanding the foregoing, cash dividends declared or paid on shares of Restricted Stock shall not vest or become payable unless and until the shares of Restricted Stock to which the dividends apply become vested and nonforfeitable. All stock dividend payments or distributions, if any, received by a Grantee with respect to shares of Restricted Stock as a result of any stock split, stock dividend, combination of stock, or other similar transaction shall be subject to the same vesting conditions and restrictions as applicable to such underlying shares of Restricted Stock.

## **10.5 Rights of Holders of Restricted Stock Units and Deferred Stock Units.**

### **10.5.1 Voting and Dividend Rights.**

Holders of Restricted Stock Units and Deferred Stock Units shall have no rights as shareholders of the Company (for example, the right to receive dividend payments or distributions attributable to the shares of Stock underlying such Restricted Stock Units and Deferred Stock Units, to direct the voting of the shares of Stock underlying such Restricted Stock Units and Deferred Stock Units, or to receive notice of any meeting of the Company's shareholders). The Committee may provide in an Award Agreement evidencing an Award of Restricted Stock Units or Deferred Stock Units that the holder thereof shall be entitled to receive Dividend Equivalent Rights with respect to each Restricted Stock Unit or Deferred Stock Unit.

### **10.5.2 Creditor's Rights.**

A holder of Restricted Stock Units or Deferred Stock Units shall have no rights other than those of a general unsecured creditor of the Company. Restricted Stock Units and Deferred Stock Units represent unfunded and unsecured obligations of the Company, subject to the terms and conditions of the applicable Award Agreement.

## **10.6 Termination of Service.**

Unless the Committee provides otherwise in an Award Agreement, in another agreement with the Grantee, or otherwise in writing after such Award Agreement is issued, but prior to termination of Grantee's Service, upon the termination of such Grantee's Service, any Restricted Stock, Restricted Stock Units, or Deferred Stock Units held by such Grantee that have not vested, or with respect to which all applicable restrictions and conditions have not lapsed, shall immediately be deemed forfeited. Upon forfeiture of such Restricted Stock, Restricted Stock Units, or Deferred Stock Units, the Grantee thereof shall have no further rights with respect thereto, including any right to vote such Restricted Stock or any right to receive dividends or Dividend Equivalent Rights, as applicable, with respect to such Restricted Stock, Restricted Stock Units, or Deferred Stock Units.

## **10.7 Purchase of Restricted Stock and Shares of Stock Subject to Restricted Stock Units and Deferred Stock Units.**

The Grantee of an Award of Restricted Stock, vested Restricted Stock Units, or vested Deferred Stock Units shall be required, to the extent required by Applicable Laws, to purchase such Restricted Stock or the shares of Stock subject to such vested Restricted Stock Units or Deferred Stock Units from the Company at a purchase price equal to the greater of (x) the aggregate par value of the shares of Stock represented by such Restricted Stock or such vested Restricted Stock Units or Deferred Stock Units or (y) the purchase price, if any, specified in the Award Agreement relating to such Restricted Stock or such vested Restricted Stock Units or Deferred Stock Units. Such purchase price shall be payable in a form provided in **Article 14** or, in the sole discretion of the Committee, in consideration for Service rendered or to be rendered by the Grantee to the Company or an Affiliate.

## **10.8 Delivery of Shares of Stock.**

Upon the expiration or termination of any Restricted Period and the satisfaction of any other conditions prescribed by the Committee, including, without limitation, any performance goals or delayed delivery period, the restrictions applicable to Restricted Stock, Restricted Stock Units, or Deferred Stock Units settled in shares of Stock shall lapse, and, unless otherwise provided in the applicable Award Agreement, a book-entry or direct registration (including transaction advices) or a certificate evidencing ownership of such shares of Stock shall, consistent with **Section 3.6**, be issued, free of all such restrictions, to the Grantee thereof or such Grantee's beneficiary or estate, as the case may be. Neither the Grantee, nor the Grantee's beneficiary or estate, shall have any further rights with regard to a Restricted Stock Unit or Deferred Stock Unit once the shares of Stock represented by such Restricted Stock Unit or Deferred Stock Unit have been delivered in accordance with this **Section 10.8**.

## 11. TERMS AND CONDITIONS OF UNRESTRICTED STOCK AWARDS AND OTHER EQUITY-BASED AWARDS

### 11.1 Unrestricted Stock Awards.

The Committee may, in its sole discretion, grant (or sell at the par value of a share of Stock or at such other higher purchase price as shall be determined by the Committee) an Award to any Grantee pursuant to which such Grantee may receive shares of Unrestricted Stock under the Plan. Awards of Unrestricted Stock may be granted or sold to any Grantee as provided in the immediately preceding sentence in respect of Service rendered or, if so provided in the related Award Agreement or a separate agreement, to be rendered by the Grantee to the Company or an Affiliate or other valid consideration, in lieu of or in addition to any cash compensation due to such Grantee.

### 11.2 Other Equity-Based Awards.

The Committee may, in its sole discretion, grant Awards in the form of Other Equity-Based Awards, as deemed by the Committee to be consistent with the purposes of the Plan. Awards granted pursuant to this **Section 11.2** may be granted with vesting, value, and/or payment contingent upon the achievement of one or more performance goals. The Committee shall determine the terms and conditions of Other Equity-Based Awards on the Grant Date or thereafter. Unless the Committee provides otherwise in an Award Agreement, in another agreement with the Grantee, or otherwise in writing after such Award Agreement is issued, but prior to termination of the Grantee's Service, upon the termination of a Grantee's Service, any Other Equity-Based Awards held by such Grantee that have not vested, or with respect to which all applicable restrictions and conditions have not lapsed, shall immediately be deemed forfeited. Upon forfeiture of any Other Equity-Based Award, the Grantee thereof shall have no further rights with respect to such Other Equity-Based Award.

## 12. TERMS AND CONDITIONS OF DIVIDEND EQUIVALENT RIGHTS

### 12.1 Dividend Equivalent Rights.

A Dividend Equivalent Right may be granted hereunder, provided that no Dividend Equivalent Rights may be granted in connection with, or related to, an Award of Options or SARs. The terms and conditions of Dividend Equivalent Rights shall be specified in the Award Agreement therefor. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently (with or without being subject to forfeiture or a repayment obligation) or may be deemed to be reinvested in additional shares of Stock or Awards, which may thereafter accrue additional Dividend Equivalent Rights (with or without being subject to forfeiture or a repayment obligation). Dividend Equivalent Rights may be settled in cash, shares of Stock, or a combination thereof, in a single installment or in multiple installments, all as determined in the sole discretion of the Committee. A Dividend Equivalent Right granted as a component of another Award may (a) provide that such Dividend Equivalent Right shall be settled upon exercise, settlement, or payment of, or lapse of restrictions on, such other Award and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other Award or (b) contain terms and conditions which are different from the terms and conditions of such other Award, provided that Dividend Equivalent Rights granted as a component of another Award shall not vest or become payable unless and until the Award to which the Dividend Equivalent Rights correspond becomes vested and settled.

### 12.2 Termination of Service.

Unless the Committee provides otherwise in an Award Agreement, in another agreement with the Grantee, or otherwise in writing after such Award Agreement is issued, a Grantee's rights in all Dividend Equivalent Rights shall automatically terminate upon such Grantee's termination of Service for any reason.

## 13. TERMS AND CONDITIONS OF PERFORMANCE-BASED AWARDS

### 13.1 Grant of Performance-Based Awards.

Subject to the terms and provisions of the Plan, the Committee, at any time and from time to time, may grant Performance-Based Awards in such amounts and upon such terms as the Committee shall determine.

### **13.2 Value of Performance-Based Awards.**

Each grant of a Performance-Based Award shall have an initial cash value or an actual or target number of shares of Stock that is established by the Committee as of the Grant Date. The Committee shall set performance goals in its discretion which, depending on the extent to which they are achieved, shall determine the value and/or number of shares of Stock subject to a Performance-Based Award that shall be paid out to the Grantee thereof.

### **13.3 Earning of Performance-Based Awards.**

Subject to the terms of the Plan, in particular **Section 13.6.3**, after the applicable Performance Period has ended, the Grantee of a Performance-Based Award shall be entitled to receive a payout of the value earned under such Performance-Based Award by such Grantee over such Performance Period.

### **13.4 Form and Timing of Payment of Performance-Based Awards.**

Payment of the value earned under Performance-Based Awards shall be made, as determined by the Committee, in the form, at the time, and in the manner described in the applicable Award Agreement. Subject to the terms of the Plan, the Committee, in its sole discretion, (i) may pay the value earned under Performance-Based Awards in the form of cash, shares of Stock, other Awards, or a combination thereof, including shares of Stock and/or Awards that are subject to any restrictions deemed appropriate by the Committee, and (ii) shall pay the value earned under Performance-Based Awards at the close of the applicable Performance Period, or as soon as reasonably practicable after the Committee has determined that the performance goal or goals relating thereto have been achieved; provided that, unless specifically provided in the Award Agreement for such Performance-Based Awards, such payment shall occur no later than the fifteenth (15<sup>th</sup>) day of the third (3<sup>rd</sup>) month following the end of the calendar year in which such Performance Period ends. The determination of the Committee with respect to the form of payout of such Performance-Based Awards shall be set forth in the Award Agreement therefor.

### **13.5 Performance Conditions.**

The right of a Grantee to exercise or to receive a grant or settlement of any Performance-Based Award, and the timing thereof, may be subject to such performance conditions as may be specified by the Committee. The Committee may use such business criteria and other measures of performance as it may deem appropriate in establishing any performance conditions. If and to the extent required under Code Section 162(m), any power or authority relating to an Award intended to qualify under Code Section 162(m) shall be exercised by the Committee and not by the Board.

### **13.6 Performance-Based Awards Granted to Designated Covered Employees.**

If and to the extent that the Committee determines that a Performance-Based Award to be granted to a Grantee should constitute Qualified Performance-Based Compensation for purposes of Code Section 162(m), the grant, exercise, and/or settlement of such Performance-Based Award shall be contingent upon achievement of pre-established performance goals and other terms set forth in this **Section 13.6**.

#### **13.6.1 Performance Goals Generally.**

The performance goals for Performance-Based Awards shall consist of one or more business criteria and a targeted level or levels of performance with respect to each of such criteria, as specified by the Committee consistent with this **Section 13.6**. Performance goals shall be objective and shall otherwise meet the requirements of Code Section 162(m), including the requirement that the level or levels of performance targeted by the Committee result in the achievement of performance goals being "substantially uncertain." The Committee may determine that such Awards shall be granted, exercised, and/or settled upon achievement of any single performance goal or of two (2) or more performance goals. Performance goals may differ for Performance-Based Awards granted to any one Grantee or to different Grantees.

#### **13.6.2 Timing For Establishing Performance Goals.**

Performance goals for any Performance-Based Award shall be established not later than the earlier of (a) ninety (90) days after the beginning of any Performance Period applicable to such Performance-Based Award, and (b) the date on which twenty-five percent (25%) of any Performance Period applicable to such Performance-Based Award has expired, or at such other date as may be required or permitted for compensation payable to a Covered Employee to constitute Performance-Based Compensation.

### 13.6.3 Payment of Awards; Other Terms.

Payment of Performance-Based Awards shall be in cash, shares of Stock, other Awards, or a combination thereof, including shares of Stock and/or Awards that are subject to any restrictions deemed appropriate by the Committee, in each case as determined in the sole discretion of the Committee. The Committee may, in its sole discretion, reduce the amount of a payment otherwise to be made in connection with such Performance-Based Awards. The Committee shall specify the circumstances in which such Performance-Based Awards shall be paid or forfeited in the event of termination of Service by the Grantee prior to the end of a Performance Period or settlement of such Performance-Based Awards. In the event payment of the Performance-Based Award is made in the form of another Award subject to Service-based vesting, the Committee shall specify the circumstances in which the payment Award shall be paid or forfeited in the event of a termination of Service.

### 13.6.4 Performance Measures.

The performance goals upon which the vesting or payment of a Performance-Based Award to a Covered Employee that is intended to qualify as Performance-Based Compensation may be conditioned shall be limited to the following Performance Measures, with or without adjustment (including pro forma adjustments):

- a. revenues, income before taxes and extraordinary items, net income, operating income, earnings before income tax, earnings before interest, taxes, depreciation and amortization, cash flow or a combination of any or all of the foregoing;
- b. after-tax or pre-tax profits including, without limitation, that attributable to continuing and/or other operations;
- c. the level of the Company's bank debt or other long-term or short-term public or private debt or other similar financial obligations of the Company either in absolute terms or as it relates to a profitability ratio including operating income or EBITDA;
- d. return on capital employed, return on assets, or return on invested capital;
- e. after-tax or pre-tax return on stockholders' equity;
- f. economic value added targets based on a cash flow return on investment formula;
- g. Stock price, including growth measures and total shareholder return;
- h. the market capitalization or enterprise value of the Company, either in amount or relative to industry peers;
- i. the value of an investment in the Stock assuming the reinvestment of dividends;
- j. the achievement of operating margin targets or other measures of improving profitability;
- k. the filing of one or more new marketing application(s) or the approval of one or more marketing application(s) by the U.S. Food and Drug Administration;
- l. the achievement of, or progress toward, a launch of one or more new drug(s);
- m. the achievement of research and development milestones;
- n. the achievement of other strategic milestones including, without limitation, the achievement of specific synergy capture and cost savings realization relating to integrations and the successful creation or execution of a restructuring plan for a specific business or function;
- o. the successful completion of clinical trial phases;
- p. licensing or acquiring new products or product platforms;
- q. acquisition or divestiture of products or business;
- r. the entering into new, or exiting from existing, geographic markets or industry segments; or
- s. the attainment of a certain level of, reduction of, or other specified objectives with regard to limiting the level in or increase in, all or a portion of controllable expenses or costs or other expenses or costs.

Performance under any of the foregoing Performance Measures (a) may be used to measure the performance of (i) the Company, its Subsidiaries, and other Affiliates as a whole, (ii) the Company, any Subsidiary, any other Affiliate, or any combination thereof, or (iii) any one or more business units or operating segments of the Company, any Subsidiary,

and/or any other Affiliate, in each case as the Committee, in its sole discretion, deems appropriate, (b) may be compared to the performance of one or more other companies or one or more published or special indices designated or approved by the Committee for such comparison, as the Committee, in its sole discretion, deems appropriate, and (c) may be stated as a combination of one or more Performance Measures, and on an absolute or relative basis. In addition, the Committee, in its sole discretion, may select performance under the Performance Measure specified in clause (g) above for comparison to performance under one or more stock market indices designated or approved by the Committee. The Committee shall also have the authority to provide for accelerated vesting of any Performance-Based Award based on the achievement of performance goals pursuant to the Performance Measures specified in this **Article 13**.

#### **13.6.5 Evaluation of Performance.**

The Committee may provide in any Performance-Based Award that any evaluation of performance may include or exclude any of the following events that occur during a Performance Period: (a) asset write-downs; (b) litigation or claims, judgments, or settlements; (c) the effect of changes in tax laws, accounting principles, or other laws or provisions affecting reported results; (d) any reorganization or restructuring events or programs; (e) extraordinary, non-core, non-operating, or non-recurring items and items that are either of an unusual nature or of a type that indicates infrequency of occurrence as a separate component of income from continuing operations; (f) acquisitions or divestitures; (g) foreign exchange gains and losses; (h) impact of shares of Stock purchased through share repurchase programs; (i) tax valuation allowance reversals; (j) impairment expense; and (k) environmental expense. To the extent such inclusions or exclusions affect Awards to Covered Employees that are intended to qualify as Performance-Based Compensation, such inclusions or exclusions shall be prescribed in a form that meets the requirements of Code Section 162(m) for deductibility.

#### **13.6.6 Adjustment of Performance-Based Compensation.**

The Committee shall have the sole discretion to adjust Awards that are intended to qualify as Performance-Based Compensation, either on a formula or discretionary basis, or on any combination thereof, as the Committee determines consistent with the requirements of Code Section 162(m) for deductibility.

#### **13.6.7 Committee Discretion.**

In the event that Applicable Laws change to permit Committee discretion to alter the governing Performance Measures without obtaining shareholder approval of such changes, the Committee shall have sole discretion to make such changes without obtaining shareholder approval, provided that the exercise of such discretion shall not be inconsistent with the requirements of Code Section 162(m). In addition, in the event that the Committee determines that it is advisable to grant Awards that shall not qualify as Performance-Based Compensation, the Committee may make such grants without satisfying the requirements of Code Section 162(m) and base vesting on Performance Measures other than those set forth in **Section 13.6.4**.

#### **13.6.8 Status of Awards Under Code Section 162(m).**

It is the intent of the Company that Performance-Based Awards under **Section 13.6** granted to Grantees who are designated by the Committee as likely to be Covered Employees shall, if so designated by the Committee, constitute Qualified Performance-Based Compensation. Accordingly, the terms of **Section 13.6**, including the definitions of Covered Employee and other terms used therein, shall be interpreted in a manner consistent with Code Section 162(m). If any provision of the Plan, the applicable Award Agreement, or any other agreement relating to any such Performance-Based Award does not comply or is inconsistent with the requirements of Code Section 162(m), such provision shall be construed or deemed amended to the extent necessary to conform to such requirements.

### **14. FORMS OF PAYMENT**

#### **14.1 General Rule.**

Payment of the Option Price for the shares of Stock purchased pursuant to the exercise of an Option or the purchase price, if any, for Restricted Stock, vested Restricted Stock Units, and/or vested Deferred Stock Units shall be made in cash or in cash equivalents acceptable to the Company.

#### **14.2 Surrender of Shares of Stock.**

To the extent that the applicable Award Agreement so provides, payment of the Option Price for shares of Stock purchased pursuant to the exercise of an Option or the purchase price, if any, for Restricted Stock, vested Restricted Stock Units, and/or vested Deferred Stock Units may be made all or in part through the tender or attestation to the Company of shares of Stock, which shall be valued, for purposes of determining the extent to which such Option Price or purchase price has been paid thereby, at their Fair Market Value on the date of such tender or attestation.

#### **14.3 Cashless Exercise.**

To the extent permitted by Applicable Laws and to the extent the Award Agreement so provides, payment of the Option Price for shares of Stock purchased pursuant to the exercise of an Option may be made all or in part by delivery (on a form acceptable to the Committee) of an irrevocable direction to a licensed securities broker acceptable to the Company to sell shares of Stock and to deliver all or part of the proceeds of such sale to the Company in payment of such Option Price and/or any withholding taxes described in **Section 18.3**.

#### **14.4 Other Forms of Payment.**

To the extent that the applicable Award Agreement so provides and/or unless otherwise specified in an Award Agreement, payment of the Option Price for shares of Stock purchased pursuant to exercise of an Option or the purchase price, if any, for Restricted Stock, vested Restricted Stock Units, and/or vested Deferred Stock Units may be made in any other form that is consistent with Applicable Laws, including (a) with respect to Restricted Stock, vested Restricted Stock Units, and/or vested Deferred Stock Units only, Service rendered or to be rendered by the Grantee thereof to the Company or an Affiliate and (b) with the consent of the Company, by withholding the number of shares of Stock that would otherwise vest or be issuable in an amount equal in value to the Option Price or purchase price and/or the required tax withholding amount.

### **15. REQUIREMENTS OF LAW**

#### **15.1 General.**

The Company shall not be required to offer, sell, or issue any shares of Stock under any Award, whether pursuant to the exercise of an Option, a SAR, or otherwise, if the offer, sale, or issuance of such shares of Stock would constitute a violation by the Grantee, the Company, an Affiliate, or any other Person of any provision of the Company's articles of incorporation or bylaws or of Applicable Laws, including any federal or state securities laws or regulations. If at any time the Company shall determine, in its discretion, that the listing, registration, or qualification of any shares of Stock subject to an Award upon any Stock Exchange or Securities Market or under any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the offering, sale, issuance, or purchase of shares of Stock in connection with any Award, no shares of Stock may be offered, sold, or issued to the Grantee or any other Person under such Award, whether pursuant to the exercise of an Option, a SAR, or otherwise, unless such listing, registration, or qualification shall have been effected or obtained free of any conditions not acceptable to the Company, and any delay caused thereby shall in no way affect the date of termination of such Award. Without limiting the generality of the foregoing, upon the exercise of any Option or any SAR that may be settled in shares of Stock or the delivery of any shares of Stock underlying an Award, unless a registration statement under the Securities Act is in effect with respect to the shares of Stock subject to such Award, the Company shall not be required to offer, sell, or issue such shares of Stock unless the Committee shall have received evidence satisfactory to it that the Grantee or any other Person exercising such Option or SAR or accepting delivery of such shares may acquire such shares of Stock pursuant to an exemption from registration under the Securities Act. Any determination by the Committee in connection with the foregoing shall be final, binding, and conclusive. The Company may register, but shall in no event be obligated to register, any shares of Stock or other securities issuable pursuant to the Plan pursuant to the Securities Act. The Company shall not be obligated to take any affirmative action in order to cause the exercise of an Option or a SAR or the issuance of shares of Stock or other securities issuable pursuant to the Plan or any Award to comply with any Applicable Laws. As to any jurisdiction that expressly imposes the requirement that an Option or SAR that may be settled in shares of Stock shall not be exercisable until the shares of Stock subject to such Option or SAR are registered under the securities laws thereof or are exempt from such registration, the exercise of such Option or SAR under circumstances in which the laws of such jurisdiction apply shall be deemed conditioned upon the effectiveness of such registration or the availability of such an exemption.

### **15.2 Rule 16b-3.**

During any time when the Company has any class of common equity securities registered under Section 12 of the Exchange Act, it is the intention of the Company that Awards pursuant to the Plan and the exercise of Options and SARs granted hereunder that would otherwise be subject to Section 16(b) of the Exchange Act shall qualify for the exemption provided by Rule 16b-3 under the Exchange Act. To the extent that any provision of the Plan or action by the Committee does not comply with the requirements of such Rule 16b-3, such provision or action shall be deemed inoperative with respect to such Awards to the extent permitted by Applicable Laws and deemed advisable by the Committee and shall not affect the validity of the Plan. In the event that such Rule 16b-3 is revised or replaced, the Committee may exercise its discretion to modify the Plan in any respect necessary or advisable in its judgment to satisfy the requirements of, or to permit the Company to avail itself of the benefits of, the revised exemption or its replacement.

## **16. EFFECT OF CHANGES IN CAPITALIZATION**

### **16.1 Changes in Stock.**

If the number of outstanding shares of Stock is increased or decreased or the shares of Stock are changed into or exchanged for a different number of shares or kind of Capital Stock or other securities of the Company on account of any merger, reorganization, recapitalization, reclassification, stock split, reverse stock split, spin-off, combination of stock, exchange of stock, stock dividend or other distribution payable in capital stock, or other increase or decrease in shares of Stock effected without receipt of consideration by the Company occurring after the Effective Date, the number and kinds of shares of Capital Stock for which grants of Options and other Awards may be made under the Plan, including the Share Limit set forth in **Section 4.1** and the individual share limitations set forth in **Section 6.2**, shall be adjusted proportionately and accordingly by the Committee. In addition, the number and kind of shares of Capital Stock for which Awards are outstanding shall be adjusted proportionately and accordingly by the Committee so that the proportionate interest of the Grantee therein immediately following such event shall, to the extent practicable, be the same as immediately before such event. Any such adjustment in outstanding Options or SARs shall not change the aggregate Option Price or SAR Price payable with respect to shares that are subject to the unexercised portion of such outstanding Options or SARs, as applicable, but shall include a corresponding proportionate adjustment in the per share Option Price or SAR Price, as the case may be. The conversion of any convertible securities of the Company shall not be treated as an increase in shares effected without receipt of consideration. Notwithstanding the foregoing, in the event of any distribution to the Company's shareholders of securities of any other entity or other assets (including an extraordinary dividend, but excluding a non-extraordinary dividend, declared and paid by the Company) without receipt of consideration by the Company, the Board or the Committee constituted pursuant to **Section 3.1.2** shall, in such manner as the Board or the Committee deems appropriate, adjust (a) the Share limit set forth in **Section 4.1** and the individual share limitations set forth in **Section 6.2**, (b) the number and kind of shares of Capital Stock subject to outstanding Awards and/or (c) the aggregate and per share Option Price of outstanding Options and the aggregate and per share SAR Price of outstanding SARs as required to reflect such distribution.

### **16.2 Reorganization in Which the Company Is the Surviving Entity Which Does Not Constitute a Change in Control.**

Subject to **Section 16.3**, if the Company shall undergo any reorganization, merger, or consolidation of the Company with one or more other entities which does not constitute a Change in Control, any Award theretofore granted pursuant to the Plan shall pertain to and apply to the Capital Stock to which a holder of the number of shares of Stock subject to such Award would have been entitled immediately following such reorganization, merger, or consolidation, with a corresponding proportionate adjustment of the per share Option Price or SAR Price of any outstanding Option or SAR so that the aggregate Option Price or SAR Price thereafter shall be the same as the aggregate Option Price or SAR Price of the shares of Stock remaining subject to the Option or SAR as in effect immediately prior to such reorganization, merger, or consolidation. Subject to any contrary language in an Award Agreement, in another agreement with the Grantee, or as otherwise set forth in writing, any restrictions applicable to such Award shall apply as well to any replacement shares of Capital Stock subject to such Award, or received by the Grantee, as a result of such reorganization, merger, or consolidation. In the event of any reorganization, merger, or consolidation of the Company referred to in this **Section 16.2**, Performance-Based Awards shall be adjusted (including any adjustment to the Performance Measures applicable to such Awards deemed appropriate by the Committee) so as to apply to the Capital Stock that a holder of the number of shares of Stock subject to the Performance-Based Awards would have been entitled to receive immediately following such reorganization, merger, or consolidation.

### **16.3 Change in Control in Which Awards Are Not Assumed.**

Except as otherwise provided in the applicable Award Agreement, in another agreement with the Grantee, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Awards are not being assumed or continued, the following provisions shall apply to such Award, to the extent not assumed or continued:

- a. Immediately prior to the occurrence of such Change in Control, in each case with the exception of Performance-Based Awards, all outstanding shares of Restricted Stock, and all Restricted Stock Units, Deferred Stock Units, and Dividend Equivalent Rights shall be deemed to have vested, and all shares of Stock and/or cash subject to such Awards shall be delivered; and either or both of the following two (2) actions shall be taken:
- i. At least fifteen (15) days prior to the scheduled consummation of such Change in Control, all Options and SARs outstanding hereunder shall become immediately exercisable and shall remain exercisable for a period of fifteen (15) days. Any exercise of an Option or SAR during this fifteen (15)-day period shall be conditioned upon the consummation of the applicable Change in Control and shall be effective only immediately before the consummation thereof, and upon consummation of such Change in Control, the Plan and all outstanding but unexercised Options and SARs shall terminate, with or without consideration (including, without limitation, consideration in accordance with clause (ii) below) as determined by the Committee in its sole discretion. The Committee shall send notice of an event that shall result in such a termination to all Persons who hold Options and SARs not later than the time at which the Company gives notice thereof to its shareholders.
- and/or
- ii. The Committee may elect, in its sole discretion, to cancel any outstanding Awards of Options, SARs, Restricted Stock, Restricted Stock Units, Deferred Stock Units, and/or Dividend Equivalent Rights and pay or deliver, or cause to be paid or delivered, to the holder thereof an amount in cash or Capital Stock having a value (as determined by the Committee acting in good faith), in the case of Restricted Stock, Restricted Stock Units, Deferred Stock Units, and Dividend Equivalent Rights (for shares of Stock subject thereto), equal to the formula or fixed price per share paid to holders of shares of Stock pursuant to such Change in Control and, in the case of Options or SARs, equal to the product of the number of shares of Stock subject to such Options or SARs multiplied by the amount, if any, by which (x) the formula or fixed price per share paid to holders of shares of Stock pursuant to such transaction exceeds (y) the Option Price or SAR Price applicable to such Options or SARs. For the avoidance of doubt, if the formula or fixed price per share paid to holders of shares of Stock pursuant to such transaction is equal to or less than the Option Price or SAR Price applicable to a given Option or SAR, then such Option or SAR may be cancelled without payment therefore.
- b. Performance-Based Awards shall vest on a pro rata basis determined based on the portion of the applicable Performance Period that has elapsed through the date of the consummation of the Change in Control, as determined by the Committee in its sole discretion. Actual performance to date shall be determined as of a date reasonably proximal to the date of consummation of the Change in Control as determined by the Committee, in its sole discretion, and that level of performance thus determined shall be treated as achieved immediately prior to occurrence of the Change in Control. For purposes of the preceding sentence, if, based on the discretion of the Committee, actual performance is not determinable, the Performance-Based Awards shall be treated as though target performance has been achieved. After application of this **Section 16.3(b)**, if any Awards arise from application of this **Article 16**, such Awards shall be settled under the applicable provision of **Section 16.3(a)**.
- c. Other Equity-Based Awards shall be governed by the terms of the applicable Award Agreement.

#### **16.4 Change in Control in Which Awards Are Assumed.**

Except as otherwise provided in the applicable Award Agreement, in another agreement with the Grantee, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Awards are being assumed or continued, the following provisions shall apply to such Award, to the extent assumed or continued:

The Plan and the Options, SARs, Restricted Stock, Restricted Stock Units, Deferred Stock Units, Dividend Equivalent Rights, and Other Equity-Based Awards granted under the Plan shall continue in the manner and under the terms so provided in the event of any Change in Control to the extent that provision is made in writing in connection with such Change in Control for the assumption or continuation of such Options, SARs, Restricted Stock, Restricted Stock Units, Deferred Stock Units, Dividend Equivalent Rights, and Other Equity-Based Awards, or for the substitution for such Options, SARs, Restricted Stock, Restricted Stock Units, Deferred Stock Units, Dividend Equivalent Rights, and Other Equity-Based Awards of new stock options, stock appreciation rights, restricted stock, restricted stock units, deferred stock units, dividend equivalent rights, and other equity-based awards relating to the Capital Stock of a successor entity, or a parent or subsidiary thereof, with appropriate adjustments as to the number of shares (disregarding any consideration that is not common stock) and exercise prices of options and stock appreciation rights.

In the event an Award (other than a Performance-Based Award) is assumed, continued, or substituted upon the consummation of any Change in Control and the Service of such Grantee with the Company or an Affiliate is terminated without Cause or for Good Reason, in each case within twelve (12) months following the consummation of such Change in Control, (i) such Award shall become fully vested and exercisable, and (ii) the restrictions, payment conditions, and forfeiture conditions applicable to any such Award shall lapse. In the event a Performance-Based Award is assumed, continued, or substituted upon the consummation of any Change in Control and the Service of such Grantee with the Company or an Affiliate is terminated without Cause or for Good Reason, in each case within twelve (12) months following the consummation of such Change in Control, (i) such Performance-Based Award shall become vested and exercisable on a pro rata basis determined based on the portion of the applicable Performance Period that has elapsed through the date of the Grantee's termination of Service, as determined by the Committee in its sole discretion, (ii) the restrictions, payment conditions, and forfeiture conditions applicable to any such Performance-Based Award shall lapse on the same pro rata basis, and (iii) actual performance to date shall be determined as of a date reasonably proximal to the date of the Grantee's termination of Service as determined by the Committee, in its sole discretion, and that level of performance thus determined shall be treated as achieved immediately prior to occurrence of the Grantee's termination of Service; provided, that, if, based on the discretion of the Committee, actual performance is not determinable, the Performance-Based Award shall be treated as though target performance has been achieved.

#### **16.5 Adjustments.**

Adjustments under this **Article 16** related to shares of Stock or other Capital Stock of the Company shall be made by the Committee, whose determination in that respect shall be final, binding, and conclusive. No fractional shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole share. The Committee may provide in the applicable Award Agreement as of the Grant Date, in another agreement with the Grantee, or otherwise in writing at any time thereafter with the consent of the Grantee, for different provisions to apply to an Award in place of those provided in **Sections 16.1, 16.2, 16.3, and 16.4**. This **Article 16** shall not limit the Committee's ability to provide for alternative treatment of Awards outstanding under the Plan in the event of an internal reorganization change in control event involving the Company that is not a Change in Control.

#### **16.6 No Limitations on Company.**

The making of Awards pursuant to the Plan shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure or to merge, consolidate, dissolve, or liquidate, or to sell or transfer all or any part of its business or assets (including all or any part of the business or assets of any Subsidiary or other Affiliate) or to engage in any other transaction or activity.

### **17. PARACHUTE LIMITATIONS**

If any Grantee is a Disqualified Individual, then, notwithstanding any other provision of the Plan or of any Other Agreement to the contrary and notwithstanding any Benefit Arrangement, any right of the Grantee to any exercise, vesting, payment, or benefit under the Plan shall be reduced or eliminated:

- a. to the extent that such right to exercise, vesting, payment, or benefit, taking into account all other rights, payments, or benefits to or for the Grantee under the Plan, all Other Agreements, and all Benefit Arrangements, would cause any exercise, vesting, payment, or benefit to the Grantee under the Plan to be considered a Parachute Payment; and
- b. if, as a result of receiving such Parachute Payment, the aggregate after-tax amounts received by the Grantee from the Company under the Plan, all Other Agreements, and all Benefit Arrangements would be less than the maximum after-tax amount that could be received by the Grantee without causing any such payment or benefit to be considered a Parachute Payment.

Except as required by Code Section 409A or to the extent that Code Section 409A permits discretion, the Committee shall have the right, in the Committee's sole discretion, to designate those rights, payments, or benefits under the Plan, all Other Agreements, and all Benefit Arrangements that should be reduced or eliminated so as to avoid having such rights, payments, or benefits be considered a Parachute Payment; provided, however, to the extent any payment or benefit constitutes deferred compensation under Code Section 409A, in order to comply with Code Section 409A, the Company shall instead accomplish such reduction by first reducing or eliminating any cash payments (with the payments to be made furthest in the future being reduced first), then by reducing or eliminating any accelerated vesting of Performance-Based Awards, then by reducing or eliminating any accelerated vesting of Options or SARs, then by reducing or eliminating any accelerated vesting of Restricted Stock, Restricted Stock Units, or Deferred Stock Units, then by reducing or eliminating any other remaining Parachute Payments.

## 18. GENERAL PROVISIONS

### 18.1 Disclaimer of Rights.

No provision in the Plan, any Award, or any Award Agreement shall be construed (a) to confer upon any individual the right to remain in the Service of the Company or an Affiliate, (b) to interfere in any way with any contractual or other right or authority of the Company or an Affiliate either to increase or decrease the compensation or other payments to any Person at any time, or (c) to terminate any Service or other relationship between any Person and the Company or an Affiliate. In addition, notwithstanding any provision of the Plan to the contrary, unless otherwise stated in the applicable Award Agreement, in another agreement with the Grantee, or otherwise in writing, no Award granted under the Plan shall be affected by any change of duties or position of the Grantee thereof, so long as such Grantee continues to provide Service. The obligation of the Company to pay any benefits pursuant to the Plan shall be interpreted as a contractual obligation to pay only those amounts provided herein, in the manner and under the conditions prescribed herein. The Plan and Awards shall in no way be interpreted to require the Company to transfer any amounts to a third-party trustee or otherwise hold any amounts in trust or escrow for payment to any Grantee or beneficiary under the terms of the Plan.

### 18.2 Nonexclusivity of the Plan.

Neither the adoption of the Plan nor the submission of the Plan to the shareholders of the Company for approval shall be construed as creating any limitations upon the right and authority of the Board or the Committee to adopt such other incentive compensation arrangements (which arrangements may be applicable either generally to a class or classes of individuals or specifically to a particular individual or particular individuals) as the Board or the Committee in their discretion determine desirable.

### 18.3 Withholding Taxes.

The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to a Grantee any federal, state, or local taxes of any kind required by Applicable Laws to be withheld with respect to the vesting of or other lapse of restrictions applicable to an Award or upon the issuance of any shares of Stock upon the exercise of an Option or pursuant to any other Award. At the time of such vesting, lapse, or exercise, the Grantee shall pay in cash to the Company or an Affiliate, as the case may be, any amount that the Company or such Affiliate may reasonably determine to be necessary to satisfy such withholding obligation; provided that if there is a same-day sale of shares of Stock subject to an Award, the Grantee shall pay such withholding obligation on the day on which such same-day sale is completed. Subject to the prior approval of the Company or an Affiliate, which may be withheld by the Company or such Affiliate, as the case may be, in its sole discretion, the Grantee may elect to satisfy such withholding obligation, in whole or in part, (a) by causing the Company or such Affiliate to withhold shares of Stock otherwise issuable to the Grantee or (b) by delivering to the Company or such Affiliate shares of Stock already owned by the Grantee. The shares of Stock so withheld or delivered shall have an aggregate Fair Market Value equal to such withholding obligation. The Fair Market Value of the shares of Stock used to satisfy such withholding obligation shall be determined by the Company or such Affiliate as of the date on which the amount of tax to be withheld is to be determined. A Grantee who has made an election pursuant to this **Section 18.3** may satisfy such Grantee's withholding obligation only with shares of Stock that are not subject to any repurchase, forfeiture, unfulfilled vesting, or other similar requirements. The maximum number of shares of Stock that may be withheld from any Award to satisfy any federal, state, or local tax withholding requirements upon the exercise, vesting, or lapse of restrictions applicable to any Award or payment of shares of Stock pursuant to such Award, as applicable, may not exceed such number of shares of Stock having a Fair Market Value equal to the maximum statutory amount required by the Company or the applicable Affiliate to be withheld and paid to any such federal, state, or local taxing authority with respect to such exercise, vesting, lapse of restrictions, or payment of shares of Stock.

### 18.4 Captions.

The use of captions in the Plan or any Award Agreement is for convenience of reference only and shall not affect the meaning of any provision of the Plan or such Award Agreement.

### 18.5 Construction.

Unless the context otherwise requires, all references in the Plan to "including" shall mean "including without limitation."

## **18.6 Other Provisions.**

Each Award granted under the Plan may contain such other terms and conditions not inconsistent with the Plan as may be determined by the Committee, in its sole discretion.

## **18.7 Number and Gender.**

With respect to words used in the Plan, the singular form shall include the plural form, and the masculine gender shall include the feminine gender, as the context requires.

## **18.8 Severability.**

If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

## **18.9 Governing Law.**

The validity and construction of the Plan and the instruments evidencing the Awards hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of Maryland, other than any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of the Plan and the instruments evidencing the Awards granted hereunder to the substantive laws of any other jurisdiction.

## **18.10 Foreign Jurisdictions.**

To the extent the Committee determines that the material terms set by the Committee imposed by the Plan preclude the achievement of the material purposes of the Plan in jurisdictions outside the United States, the Committee shall have the authority and discretion to modify those terms and provide for such additional terms and conditions as the Committee determines to be necessary, appropriate, or desirable to accommodate differences in local law, policy, or custom or to facilitate administration of the Plan. The Committee may adopt or approve sub-plans, appendices, or supplements to, or amendments, restatements, or alternative versions of the Plan as in effect for any other purposes. The special terms and any appendices, supplements, amendments, restatements, or alternative versions, however, shall not include any provisions that are inconsistent with the terms of the Plan as in effect, unless the Plan could have been amended to eliminate such inconsistency without further approval by the Company's stockholders.

## **18.11 Section 409A of the Code.**

The Plan is intended to comply with Code Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance with Code Section 409A. Any payments described in the Plan that are due within the Short-Term Deferral Period shall not be treated as deferred compensation unless Applicable Laws require otherwise. Notwithstanding any provision of the Plan to the contrary, to the extent required to avoid accelerated taxation and tax penalties under Code Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six (6)-month period immediately following the Grantee's Separation from Service shall instead be paid on the first payroll date after the six (6)-month anniversary of the Grantee's Separation from Service (or the Grantee's death, if earlier).

Furthermore, notwithstanding anything in the Plan to the contrary, in the case of an Award that is characterized as deferred compensation under Code Section 409A, and pursuant to which settlement and delivery of the cash or shares of Stock subject to the Award is triggered based on a Change in Control, in no event shall a Change in Control be deemed to have occurred for purposes of such settlement and delivery of cash or shares of Stock if the transaction is not also a "change in the ownership or effective control of" the Company or "a change in the ownership of a substantial portion of the assets of" the Company as determined under Treasury Regulation Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder). If an Award characterized as deferred compensation under Code Section 409A is not settled and delivered on account of the provision of the preceding sentence, the settlement and delivery shall occur on the next succeeding settlement and delivery triggering event that is a permissible triggering event under Code Section 409A. No provision of this paragraph shall in any way affect the determination of a Change in Control for purposes of vesting in an Award that is characterized as deferred compensation under Code Section 409A. Notwithstanding the foregoing, neither the Company nor the Committee shall have any obligation to take any action to prevent the assessment of any excise tax or penalty on any Grantee under Code Section 409A, and neither the Company or an Affiliate nor the Board or the Committee shall have any liability to any Grantee for such tax or penalty.

**18.12 Limitation on Liability.**

No member of the Board or the Committee shall be liable for any action or determination made in good faith with respect to the Plan, any Award, or any Award Agreement. Notwithstanding any provision of the Plan to the contrary, neither the Company, an Affiliate, the Board, the Committee, nor any person acting on behalf of the Company, an Affiliate, the Board, or the Committee shall be liable to any Grantee or to the estate or beneficiary of any Grantee or to any other holder of an Award under the Plan by reason of any acceleration of income, or any additional tax (including any interest and penalties), asserted by reason of the failure of an Award to satisfy the requirements of Code Section 422 or Code Section 409A or by reason of Code Section 4999, or otherwise asserted with respect to the Award; provided, that this **Section 18.12** shall not affect any of the rights or obligations set forth in an applicable agreement between the Grantee and the Company or an Affiliate.

To record adoption of the Plan by the Board as of September 19, 2017 and approval of the Plan by the Company's shareholders as of November 15, 2017, the Company has caused its authorized officer to execute the Plan.

**PERNIX THERAPEUTICS HOLDINGS, INC.**

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

PERNIX THERAPEUTICS HOLDINGS, INC.  
2017 OMNIBUS INCENTIVE PLAN

FORM OF RESTRICTED STOCK UNIT AGREEMENT

Pernix Therapeutics Holdings, Inc., a Maryland corporation (the "**Company**"), hereby grants restricted stock units relating to shares of its common stock, par value \$0.01 per share (the "**Common Shares**"), to the Grantee named below (the "**RSUs**"). Additional terms and conditions of the grant are set forth on this cover sheet and in the attached Restricted Stock Unit Agreement (together, the "**Agreement**"), and in the Company's 2017 Omnibus Incentive Plan (as further amended from time to time, the "**Plan**").

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

Grant Date: \_\_\_\_\_

Number of Restricted Stock Units: \_\_\_\_\_

Vesting Start Date: \_\_\_\_\_

Vesting Schedule: \_\_\_\_\_

*By your signature below, you agree to all of the terms and conditions described in the Agreement and in the Plan, a copy of which will be provided on request. You acknowledge that you have carefully reviewed the Plan and agree that the Plan will control in the event any provision of this Agreement should appear to be inconsistent with the Plan. Certain capitalized terms used in this Agreement are defined in the Plan and have the meaning set forth in the Plan.*

Grantee: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Company: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)  
[Name]  
[Title]

*Attachment*

*This is not a share certificate or a negotiable instrument.*

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**PERNIX THERAPEUTICS HOLDINGS, INC.  
2017 OMNIBUS INCENTIVE PLAN**

**RESTRICTED STOCK UNIT AGREEMENT**

<b>Restricted Stock Units</b>	This Agreement evidences the grant of RSUs in the number set forth on the cover sheet of this Agreement and subject to the vesting and other terms and conditions set forth in this Agreement and in the Plan. Each RSU represents the right to receive one Common Share, subject to the terms and conditions set forth in this Agreement and the Plan.
<b>Vesting</b>	<p>The RSUs will vest in accordance with the Vesting Schedule set forth on the cover sheet of this Agreement, subject to your continued Service through the applicable vesting date.</p> <p>Unless the termination of your Service triggers accelerated vesting or other treatment of your RSUs pursuant to the terms of the Plan, you immediately and automatically will forfeit to the Company all of your unvested RSUs in the event your Service terminates for any reason.</p>
<b>Change in Control</b>	In the event of a Change in Control, your RSUs will be treated in the manner provided in Sections 16.3 and 16.4 of the Plan.
<b>Leaves of Absence</b>	For purposes of the RSUs, your Service does not terminate when you go on a <i>bona fide</i> employee leave of absence that the Company approves in writing if the terms of the leave provided for continued Service crediting or when continued Service crediting is required by Applicable Law or contract. Your Service terminates in any event when the approved leave ends unless you immediately return to active employment. The Company, in its sole discretion, determines which leave counts for this purpose and when your Service terminates for all purposes under the Plan.
<b>Dividend Equivalents</b>	If the Company declares one or more ordinary cash dividends on the Common Shares during the period commencing on the Grant Date and ending on and including the day immediately preceding the day on which the Common Shares subject to the RSUs are issued to you, then, on the date each such dividend is paid to the holders of Common Shares, the Company shall credit to a dividend equivalent bookkeeping account the value of each such dividend that would have been paid to you if the outstanding RSUs at the time of the declaration of the dividend were outstanding Common Shares. At the same time that the corresponding RSUs are converted to Common Shares and issued to you, the Company shall pay to you a lump sum cash payment equal to the value of the dividend equivalents credited to your dividend equivalent bookkeeping account that correspond to such RSUs that have become vested; provided, however, that any dividend equivalents that were credited to your dividend equivalent bookkeeping account that are attributable to RSUs that have been forfeited shall be forfeited and not be payable to you. No interest shall accrue on any dividend equivalents credited to your dividend equivalent bookkeeping account. Notwithstanding anything to the contrary in this Agreement, if the RSUs are scheduled to vest and be settled between a dividend record date and a dividend payment date, then dividend equivalents with respect to such dividend will be credited to your dividend equivalent bookkeeping account and paid to you on the dividend payment date for such dividend, but in no event later than March 15th following the date on which the RSUs vest.

<b>Evidence of Issuance</b>	The issuance of Common Shares with respect to the RSUs will be evidenced in such a manner as the Committee, in its discretion, deems appropriate, including, without limitation, by book-entry or direct registration (including transaction advices), or the issuance of one or more share certificates.
<b>Issuance</b>	Issuance of the Common Shares underlying your vested RSUs shall be made within thirty (30) days after the applicable vesting date of your RSUs.
<b>Withholding</b>	The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to you any federal, state, or local taxes of any kind required by Applicable Laws to be withheld with respect to the vesting of or other lapse of restrictions applicable to the RSUs. At the time of such vesting or lapse, you shall pay in cash to the Company or an Affiliate, as the case may be, any amount that the Company or such Affiliate may reasonably determine to be necessary to satisfy such withholding obligation; provided that if there is a same-day sale of Common Shares subject to the RSUs, you shall pay such withholding obligation on the day on which such same-day sale is completed. Subject to the prior approval of the Company or an Affiliate, which may be withheld by the Company or such Affiliate, as the case may be, in its sole discretion, you may elect to satisfy such withholding obligation, in whole or in part, (a) by causing the Company or such Affiliate to withhold Common Shares otherwise issuable to you or (b) by delivering to the Company or such Affiliate Common Shares already owned by you. The Common Shares so withheld or delivered shall have an aggregate Fair Market Value equal to such withholding obligation. The Fair Market Value of the Common Shares used to satisfy such withholding obligation shall be determined by the Company or such Affiliate as of the date on which the amount of tax to be withheld is to be determined. If you make such an election pursuant to this Agreement, then you may satisfy your withholding obligation only with Common Shares that are not subject to any repurchase, forfeiture, unfulfilled vesting, or other similar requirements. The maximum number of Common Shares that may be withheld to satisfy any federal, state, or local tax withholding requirements upon the vesting or lapse of restrictions applicable to the RSUs or the payment of Common Shares pursuant to the RSUs, as applicable, may not exceed such number of Common Shares having a Fair Market Value equal to the maximum statutory amount required by the Company or the applicable Affiliate to be withheld and paid to any such federal, state, or local taxing authority with respect to such vesting, lapse of restrictions, or payment of Common Shares.
<b>Transferability</b>	To the extent not yet vested, the RSUs may not be sold, pledged, hypothecated, assigned, margined or otherwise transferred or encumbered by you in any manner, whether by operation of law or otherwise. Any attempted assignment, transfer, pledge, hypothecation or other disposition of the RSUs, or levy of attachment or similar process upon the RSUs, shall be null and void and without effect.

- Retention Rights** This Agreement and the grant of the RSUs do not give you the right to be retained by the Company or any Affiliate in any capacity. Unless otherwise specified in any employment or other written agreement between you and the Company or any Affiliate, the Company and any Affiliate, as applicable, reserve the right to terminate your Service at any time and for any reason.
- Shareholder Rights** You have no rights as a shareholder of the Company until the Common Shares have been issued to you upon vesting of the RSUs and either a certificate evidencing the Common Shares has been issued to you or an appropriate entry has been made on the Company's books. No adjustments are made for dividends, distributions, or other rights if the applicable record date occurs before your certificate is issued or the appropriate book entry is made, except as described in the Plan.
- The RSUs shall be subject to the terms of any applicable agreement of merger, liquidation, or reorganization in the event that the Company is subject to such corporate activity.
- Clawback** The RSUs are subject to mandatory repayment by you to the Company to the extent you are or in the future become subject to (x) any Company or Affiliate "clawback" or recoupment policy that is adopted to comply with the requirements of any Applicable Laws, or (y) any Applicable Laws which impose mandatory recoupment, under circumstances set forth in such Applicable Laws, and in the event of an inconsistency between (x) and (y), the provision of broader applicability shall apply.
- Applicable Law** The validity and construction of this Agreement will be governed by, and construed and interpreted in accordance with, the laws of the State of Maryland, other than any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive laws of any other jurisdiction.
- Entire Agreement** This Agreement and the Plan constitute the entire understanding between you and the Company regarding the RSUs. Any prior agreements, commitments, or negotiations concerning the RSUs are superseded; except that any written employment, consulting, confidentiality, non-competition, non-solicitation, and/or severance agreement or any other written agreement between you and the Company or any Affiliate, as applicable, will supersede this Agreement with respect to its subject matter.

**Data Privacy** To administer the Plan, the Company may process personal data about you. This data includes, without limitation, information provided in this Agreement and any changes to such information, other appropriate personal and financial data about you, including your contact information, payroll information and any other information that the Company deems appropriate to facilitate the administration of the Plan.

By accepting the RSUs, you give explicit consent to the Company to process any such personal data.

**Code Section 409A** The grant of your RSUs under this Agreement is intended to comply with Section 409A of the Code ("**Section 409A**") or an exemption to Section 409A, and, accordingly, to the maximum extent permitted, this Agreement will be interpreted and administered in accordance with such intent. Notwithstanding anything to the contrary in this Agreement, neither the Company, any Affiliate, the Board, nor the Committee will have any obligation to take any action to prevent the assessment of any excise tax or penalty on you under Section 409A and neither the Company, any Affiliate, the Board, nor the Committee will have any liability to you for such tax or penalty.

To the extent that the RSUs constitute "deferred compensation" under Section 409A, a termination of Service occurs only upon an event that would be a "separation from service" within the meaning of Section 409A. If, at the time of your separation from service, (i) you are a "specified employee" within the meaning of Section 409A, and (ii) the Company makes a good faith determination that an amount payable on account of your separation from service constitutes deferred compensation (within the meaning of Section 409A), the payment of which is required to be delayed pursuant to the six (6)-month delay rule set forth in Section 409A to avoid taxes or penalties under Section 409A (the "**Delay Period**"), then the Company will not pay such amount on the otherwise scheduled payment date but will instead pay it in a lump sum on the first business day after the Delay Period (or upon your death, if earlier), without interest. Each installment of RSUs that vests under this Agreement (if there is more than one installment) will be considered one of a series of separate payments for purposes of Section 409A.

**Disclaimer of Rights** The grant of RSUs under this Agreement will in no way be interpreted to require the Company to transfer any amounts to a third-party trustee or otherwise hold any amounts in trust or escrow for payment to you. You will have no rights under this Agreement or the Plan other than those of a general unsecured creditor of the Company. RSUs represent unfunded and unsecured obligations of the Company, subject to the terms and conditions of the Plan and this Agreement.

**Notice Delivery** By accepting the RSUs, you agree that notices may be given to you in writing either at your home or mailing address as shown in the records of the Company or any Affiliate or by electronic transmission (including e-mail or reference to a web site or other URL) sent to you through the normal process employed by the Company or any Affiliate, as applicable, for communicating electronically with its employees.

*By signing this Agreement, you agree to all of the terms and conditions described above and in the Plan.*

PERNIX THERAPEUTICS HOLDINGS, INC.  
2017 OMNIBUS INCENTIVE PLAN

FORM OF NONQUALIFIED STOCK OPTION AGREEMENT  
(EMPLOYEES)

Pernix Therapeutics Holdings, Inc., a Maryland corporation (the "*Company*"), hereby grants a nonqualified stock option to purchase shares of its common stock, par value \$0.01 per share (the "*Common Shares*"), to the Grantee named below (the "*Option*"). Additional terms and conditions of the grant are set forth on this cover sheet and in the attached Nonqualified Stock Option Agreement (together, the "*Agreement*"), and in the Company's 2017 Omnibus Incentive Plan (as further amended from time to time, the "*Plan*").

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

Grant Date: \_\_\_\_\_

Number of Common Shares: \_\_\_\_\_

Option Price per Common Share: \$ \_\_\_\_ . \_\_\_\_ (must be at least 100% of Fair Market Value on the Grant Date)

Vesting Start Date: \_\_\_\_\_

Vesting Schedule: One-fourth (1/4) of the Option shall vest on each of the first, second, third and fourth anniversaries of the Vesting Start Date, subject to your continued Service through the applicable vesting date.

Expiration Date: \_\_\_\_\_ (the day before the tenth anniversary of the Grant Date)

*By your signature below, you agree to all of the terms and conditions described in the Agreement and in the Plan, a copy of which will be provided on request. You acknowledge that you have carefully reviewed the Plan and agree that the Plan will control in the event any provision of this Agreement should appear to be inconsistent with the Plan. Certain capitalized terms used in this Agreement are defined in the Plan and have the meaning set forth in the Plan.*

Grantee: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Company: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)  
[Name]  
[Title]

*Attachment*

*This is not a share certificate or a negotiable instrument.*

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PERNIX THERAPEUTICS HOLDINGS, INC.  
2017 OMNIBUS INCENTIVE PLAN

NONQUALIFIED STOCK OPTION AGREEMENT  
(EMPLOYEES)

**Nonqualified Stock Option** This Agreement evidences the grant of an Option exercisable for the number of Common Shares set forth on the cover sheet of this Agreement and subject to the vesting and other terms and conditions set forth in this Agreement and in the Plan. The Option is not intended to be an incentive stock option under Section 422 of the Code and will be interpreted accordingly.

**Vesting** The Option will vest in accordance with the Vesting Schedule set forth on the Cover Sheet, subject to your continued Service through the applicable vesting date.

Unless the termination of your Service triggers accelerated vesting or other treatment of your Option pursuant to the terms of the Plan, you immediately and automatically will forfeit to the Company the unvested portion of your Option in the event your Service terminates for any reason.

**Change in Control** In the event of a Change in Control, your Option will be treated in the manner provided in Sections 16.3 and 16.4 of the Plan.

**Expiration of Option** The Option will expire on the Expiration Date set forth on the Cover Sheet of this Agreement. However, the Option will expire earlier if your Service terminates, as described below.

*Termination Other than for Cause or due to Death or Disability.* If your Service is terminated for any reason other than for Cause or due to death or Disability, you may exercise the vested portion of the Option, but only within the time period ending on the date that is three (3) months after the termination of your Service.

*Termination due to Death or Disability.* If your Service terminates because of your death or Disability, or if you die during the three (3)-month period after the termination of your Service for any reason (other than for Cause), you (or your estate or heirs, as applicable) may exercise the vested portion of your Option, but only within the time period ending on the date that is twelve (12) months after the termination of your Service.

*Termination for Cause.* If your Service is terminated for Cause, the Option (including vested and unvested portions) will immediately terminate and no longer be exercisable.

- Leaves of Absence** For purposes of the Option, your Service does not terminate when you go on a *bona fide* employee leave of absence that the Company approves in writing if the terms of the leave provided for continued Service crediting or when continued Service crediting is required by Applicable Law or contract. Your Service terminates in any event when the approved leave ends unless you immediately return to active employment. The Company, in its sole discretion, determines which leave counts for this purpose and when your Service terminates for all purposes under the Plan.
- Notice of Exercise** The Option may be exercised, in whole or in part, to purchase a whole number of vested Common Shares of not less than 100 shares, unless the number of vested Common Shares purchased is the total number available for purchase under the Option, by following the procedures described in the Plan and in this Agreement.
- When you wish to exercise the Option, you must exercise in the manner required or permitted by the Company.
- If someone other than you exercises the Option after your death, that person must submit documentation reasonably acceptable to the Company verifying that the person has the legal authority to exercise the Option.
- Form of Payment** When you exercise the Option, you must include payment of the Option Price indicated on the cover sheet of this Agreement for the Common Shares that you are purchasing. Payment may be made in one (or a combination) of the following forms:
- i. Cash, your personal check, a cashier's check, a money order, or another cash equivalent acceptable to the Company.
  - ii. Common Shares that you already own or that are subject to the vested portion of the Option and that you surrender to the Company. The value of the Common Shares, determined on the date of exercise of the Option, will be applied to the Option Price.
  - iii. To the extent a public market exists for the Common Shares, as determined by the Company, delivery (on a form prescribed or accepted by the Company) of an irrevocable direction to a licensed securities broker acceptable to the Company to sell the Common Shares subject to the Option and to deliver all or part of the sale proceeds to the Company in payment of the aggregate Option Price.
- Evidence of Issuance** The issuance of Common Shares upon exercise of the Option will be evidenced in such a manner as the Company, in its discretion, deems appropriate, including, without limitation, by book-entry or direct registration (including transaction advices), or the issuance of one or more share certificates.

**Withholding**

The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to you any federal, state, or local taxes of any kind required by Applicable Laws to be withheld upon the issuance of any Common Shares upon exercise of the Option. At the time of such exercise, you shall pay in cash to the Company or an Affiliate, as the case may be, any amount that the Company or such Affiliate may reasonably determine to be necessary to satisfy such withholding obligation; provided that if there is a same-day sale of Common Shares subject to the Option, you shall pay such withholding obligation on the day on which such same-day sale is completed. Subject to the prior approval of the Company or an Affiliate, which may be withheld by the Company or such Affiliate, as the case may be, in its sole discretion, you may elect to satisfy such withholding obligation, in whole or in part, (a) by causing the Company or such Affiliate to withhold Common Shares otherwise issuable to you or (b) by delivering to the Company or such Affiliate Common Shares already owned by you. The Common Shares so withheld or delivered shall have an aggregate Fair Market Value equal to such withholding obligation. The Fair Market Value of the Common Shares used to satisfy such withholding obligation shall be determined by the Company or such Affiliate as of the date on which the amount of tax to be withheld is to be determined. If you make such an election pursuant to this Agreement, then you may satisfy your withholding obligation only with Common Shares that are not subject to any repurchase, forfeiture, unfulfilled vesting, or other similar requirements. The maximum number of Common Shares that may be withheld to satisfy any federal, state, or local tax withholding requirements upon exercise of the Option may not exceed such number of Common Shares having a Fair Market Value equal to the maximum statutory amount required by the Company or the applicable Affiliate to be withheld and paid to any such federal, state, or local taxing authority with respect to such exercise.

**Transfer of Option**

Except as provided in this section, during your lifetime, only you (or in the event of your legal incapacity or incompetency, your guardian or legal representative) may exercise the Option, and the Option may not be assigned or transferred by you, other than by designation of beneficiary, will, or the laws of descent and distribution. You may transfer all or part of the Option, "not for value" (as defined below) to any Family Member, provided that you provide prior written notice to the Company, in a form satisfactory to the Company, of such transfer. For purposes of this section, a "not for value" transfer is a transfer that is (i) a gift, (ii) a transfer under a domestic relations order in settlement of marital property rights, or (iii) unless Applicable Laws do not permit such transfer, a transfer to an entity in which more than 50% of the voting interests are owned by you or your Family Members in exchange for an interest in such entity. Subsequent transfers of the transferred Option are prohibited except to your Family Members in accordance with this section or by will or the laws of descent and distribution.

In the event of your termination of Service, this Agreement will continue to be applied with respect to you, following which the Option will be exercisable by the transferee only to the extent and for the periods specified in this Agreement.

**Retention Rights**

This Agreement and the grant of the Option do not give you the right to be retained by the Company or any Affiliate in any capacity. Unless otherwise specified in any employment or other written agreement between you and the Company or any Affiliate, the Company and any Affiliate, as applicable, reserve the right to terminate your Service at any time and for any reason.

- Shareholder Rights** You, or your estate or heirs, have no rights as a shareholder of the Company until the Common Shares have been issued upon exercise of the Option and either a certificate evidencing the Common Shares has been issued or an appropriate entry has been made on the Company's books. No adjustments are made for dividends, distributions, or other rights if the applicable record date occurs before your certificate is issued or the appropriate book entry is made, except as described in the Plan.
- The Option will be subject to the terms of any applicable agreement of merger, liquidation, or reorganization in the event that the Company is subject to such corporate activity.
- Clawback** The Option is subject to mandatory repayment by you to the Company to the extent you are or in the future become subject to (x) any Company or Affiliate "clawback" or recoupment policy that is adopted to comply with the requirements of any Applicable Laws, or (y) any Applicable Laws which impose mandatory recoupment, under circumstances set forth in such Applicable Laws, and in the event of an inconsistency between (x) and (y), the provision of broader applicability shall apply.
- Applicable Law** The validity and construction of this Agreement will be governed by, and construed and interpreted in accordance with, the laws of the State of Maryland, other than any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive laws of any other jurisdiction.
- Entire Agreement** This Agreement and the Plan constitute the entire understanding between you and the Company regarding the Option. Any prior agreements, commitments, or negotiations concerning the Option are superseded; except that any written employment, consulting, confidentiality, non-competition, non-solicitation, and/or severance agreement or any other written agreement between you and the Company or any Affiliate, as applicable, will supersede this Agreement with respect to its subject matter.
- Data Privacy** To administer the Plan, the Company may process personal data about you. This data includes, without limitation, information provided in this Agreement and any changes to such information, other appropriate personal and financial data about you, including your contact information, payroll information and any other information that the Company deems appropriate to facilitate the administration of the Plan.
- By accepting the Option, you give explicit consent to the Company to process any such personal data.
- Code Section 409A** It is intended that the Option be exempt from Section 409A of the Code ("Section 409A"), and, accordingly, to the maximum extent permitted, this Agreement will be interpreted and administered consistent with such intent. Notwithstanding anything to the contrary in this Agreement, neither the Company, any Affiliate, the Board, nor the Committee will have any obligation to take any action to prevent the assessment of any excise tax or penalty on you under Section 409A and neither the Company, any Affiliate, the Board, nor the Committee will have any liability to you for such tax or penalty.

**Notice Delivery** By accepting the Option, you agree that notices may be given to you in writing either at your home or mailing address as shown in the records of the Company or any Affiliate or by electronic transmission (including e-mail or reference to a web site or other URL) sent to you through the normal process employed by the Company or any Affiliate, as applicable, for communicating electronically with its employees.

*By signing this Agreement, you agree to all of the terms and conditions described above and in the Plan.*