
**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): **April 26, 2019**

INCYTE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

001-12400
(Commission File Number)

94-3136539
(I.R.S. Employer
Identification No.)

**1801 Augustine Cut-Off
Wilmington, DE**
(Address of principal executive offices)

19803
(Zip Code)

(302) 498-6700
(Registrant's telephone number,
including area code)

N/A
(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 obligations 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.

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

2010 Stock Incentive Plan Amendments

At the Annual Meeting of Stockholders of Incyte Corporation (the “Company”) held on April 26, 2019 (the “Annual Meeting”), the stockholders of the Company approved the following amendments to the Company’s 2010 Stock Incentive Plan (the “Plan”): (a) an increase in the number of shares available for issuance under the Plan by 7,700,000 shares, from 36,753,475 shares to 44,453,475 shares, (b) the replacement of the current limitation of 3,500,000 shares that may be issued pursuant to so-called “full value” awards with a flexible or “fungible” share pool approach, pursuant to which each full value award will reduce the total share pool available under the Plan by 2.0 shares and each stock option and any other non-full value award will reduce the total share pool by 1.0 share for each underlying award share granted, (c) the restructuring of the automatic grants of equity awards to outside (non-employee and non-consultant) directors, to provide that such directors will receive annual grants with an aggregate grant date fair value of \$500,000 and entitling the recipient to a mix, based on grant date fair value, of 75% stock options and 25% restricted stock units, and with outside directors who are not initially elected at a regular annual meeting receiving prorated grants, and (d) extending the termination date of the Plan from March 18, 2020 to March 18, 2021. A copy of the Plan, as amended, is attached hereto as Exhibit 10.1 and incorporated herein by reference.

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

The following actions were taken at the Annual Meeting:

1. The following Directors were elected:

	For	Against	Abstain	Broker Non-Votes
Julian C. Baker	166,931,639	8,797,226	263,876	14,593,906
Jean-Jacques Bienaimé	172,903,049	2,700,327	389,365	14,593,906
Paul A. Brooke	166,749,486	8,954,880	288,375	14,593,906
Paul J. Clancy	170,837,454	4,797,817	357,470	14,593,906
Wendy L. Dixon	119,906,981	55,601,224	484,536	14,593,906
Jacquelyn A. Fouse	165,292,205	10,314,115	386,421	14,593,906
Paul A. Friedman	111,075,847	64,629,591	287,303	14,593,906
Hervé Hoppenot	167,102,284	7,936,723	953,734	14,593,906

2. The compensation of the Company’s named executive officers was approved, on a non-binding advisory basis.

For	Against	Abstain	Broker Non-Votes
121,302,426	54,063,479	626,836	14,593,906

3. The amendments to the Company’s Amended and Restated 2010 Stock Incentive Plan were approved.

For	Against	Abstain	Broker Non-Votes
155,874,360	19,789,890	328,491	14,593,906

4. The appointment of Ernst & Young LLP as the Company’s independent registered public accounting firm for the 2018 fiscal year was ratified.

For	Against	Abstain
186,225,826	4,059,412	301,409

5. The stockholder proposal on whether the chairman of the board should be an independent director was not approved.

For	Against	Abstain	Broker Non-Votes
58,823,782	116,757,549	411,410	14,593,906

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

10.1 [Incyte Corporation Amended and Restated 2010 Stock Incentive Plan, as amended.](#)

SIGNATURE

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.

Dated: April 30, 2019

INCYTE CORPORATION

By: _____ /s/ Maria E. Pasquale
Maria E. Pasquale
Executive Vice President and
General Counsel

INCYTE CORPORATION
AMENDED AND RESTATED 2010 STOCK INCENTIVE PLAN

(As Amended and Restated on March 18, 2019)

Table of Contents

	<u>Page</u>
SECTION 1. ESTABLISHMENT AND PURPOSE	1
SECTION 2. DEFINITIONS	1
(a) “Affiliate”	1
(b) “Award”	1
(c) “Board of Directors”	1
(d) “Change in Control”	1
(e) “Code”	2
(f) “Committee”	2
(g) “Corporation”	2
(h) “Consultant”	2
(i) “Employee”	3
(j) “Exchange Act”	3
(k) “Exercise Price”	3
(l) “Fair Market Value”	3
(m) “ISO”	3
(n) “Nonstatutory Option” or “NSO”	4
(o) “Offeree”	4
(p) “Option”	4
(q) “Optionee”	4
(r) “Outside Director”	4
(s) “Parent”	4
(t) “Participant”	4
(u) “Performance Shares”	4
(v) “Performance Share Agreement”	4
(w) “Plan”	4
(x) “Purchase Price”	4
(y) “Qualifying Performance Criteria”	4
(z) “Restricted Share”	4
(aa) “Restricted Share Agreement”	5
(bb) “Restricted Stock Unit”	5
(cc) “Restricted Stock Unit Agreement”	5
(dd) “SAR”	5

(ee)	“SAR Agreement”	5
(ff)	“Service”	5
(gg)	“Share”	5
(hh)	“Stock”	5
(ii)	“Stock Option Agreement”	5
(jj)	“Subsidiary”	5
(kk)	“Total and Permanent Disability”	6
SECTION 3.	ADMINISTRATION	6
(a)	<i>Committee Composition</i>	6
(b)	<i>Committee for Non-Officer Grants</i>	6
(c)	<i>Committee Procedures</i>	6
(d)	<i>Committee Responsibilities</i>	7
SECTION 4.	ELIGIBILITY	8
(a)	<i>General Rule</i>	8
(b)	<i>Ten-Percent Stockholders</i>	8
(c)	<i>Attribution Rules</i>	8
(d)	<i>Outstanding Stock</i>	8
SECTION 5.	STOCK SUBJECT TO PLAN	8
(a)	<i>Basic Limitation</i>	8
(b)	<i>Award Limitation</i>	9
(c)	<i>Additional Shares</i>	9
SECTION 6.	RESTRICTED SHARES	9
(a)	<i>Restricted Share Agreement</i>	9
(b)	<i>Payment for Awards</i>	10
(c)	<i>Vesting</i>	10
(d)	<i>Voting and Dividend Rights</i>	10
(e)	<i>Restrictions on Transfer of Shares</i>	10
SECTION 7.	TERMS AND CONDITIONS OF OPTIONS	10
(a)	<i>Stock Option Agreement</i>	10
(b)	<i>Number of Shares</i>	10
(c)	<i>Exercise Price</i>	11
(d)	<i>Withholding Taxes</i>	11
(e)	<i>Exercisability and Term</i>	11
(f)	<i>Exercise of Options</i>	11
(g)	<i>Effect of Change in Control</i>	11
(h)	<i>No Rights as a Stockholder</i>	12

(i)	<i>Modification, Extension and Assumption of Options</i>	12
(j)	<i>Restrictions on Transfer of Shares</i>	12
(k)	<i>Buyout Provisions</i>	12
SECTION 8.	PAYMENT FOR SHARES	12
(a)	<i>General Rule</i>	12
(b)	<i>Surrender of Stock</i>	12
(c)	<i>Services Rendered</i>	13
(d)	<i>Cashless Exercise</i>	13
(e)	<i>Exercise/Pledge</i>	13
(f)	<i>Promissory Note</i>	13
(g)	<i>Other Forms of Payment</i>	13
(h)	<i>Limitations under Applicable Law</i>	13
SECTION 9.	STOCK APPRECIATION RIGHTS	13
(a)	<i>SAR Agreement</i>	13
(b)	<i>Number of Shares</i>	13
(c)	<i>Exercise Price</i>	14
(d)	<i>Exercisability and Term</i>	14
(e)	<i>Effect of Change in Control</i>	14
(f)	<i>Exercise of SARs</i>	14
(g)	<i>Modification or Assumption of SARs</i>	14
(h)	<i>Buyout Provisions</i>	14
SECTION 10.	RESTRICTED STOCK UNITS	15
(a)	<i>Restricted Stock Unit Agreement</i>	15
(b)	<i>Payment for Awards</i>	15
(c)	<i>Vesting Conditions</i>	15
(d)	<i>Voting and Dividend Rights</i>	15
(e)	<i>Form and Time of Settlement of Restricted Stock Units</i>	15
(f)	<i>Death of Recipient</i>	16
(g)	<i>Creditors' Rights</i>	16
SECTION 11.	PERFORMANCE SHARES	16
(a)	<i>Performance Shares and Performance Share Agreement</i>	16
(b)	<i>Payment for Awards</i>	16
(c)	<i>Terms of Performance Share Awards</i>	17
(d)	<i>Voting and Dividend Rights</i>	17
(e)	<i>Form and Time of Settlement of Performance Shares</i>	17
(f)	<i>Death of Recipient</i>	18

(g)	<i>Creditors' Rights</i>	18
SECTION 12.	AUTOMATIC GRANTS TO OUTSIDE DIRECTORS	18
(a)	<i>Annual Grants</i>	18
(b)	<i>Vesting Conditions</i>	19
(c)	<i>Award Agreement</i>	19
(d)	<i>Additional Grants</i>	19
SECTION 13.	ADJUSTMENT OF SHARES; REORGANIZATIONS	19
(a)	<i>Adjustments</i>	19
(b)	<i>Dissolution or Liquidation</i>	20
(c)	<i>Reorganizations</i>	20
(d)	<i>Reservation of Rights</i>	22
SECTION 14.	DEFERRAL OF AWARDS	22
(a)	<i>Committee Powers</i>	22
(b)	<i>General Rules</i>	22
(c)	<i>Code Section 409A</i>	23
SECTION 15.	PAYMENT OF DIRECTOR'S FEES IN SECURITIES	23
(a)	<i>Effective Date</i>	23
(b)	<i>Elections to Receive NSOs, Restricted Shares or Restricted Stock Units</i>	23
(c)	<i>Number and Terms of NSOs, Restricted Shares or Restricted Stock Units</i>	23
SECTION 16.	AWARDS UNDER OTHER PLANS	23
SECTION 17.	LEGAL AND REGULATORY REQUIREMENTS	24
SECTION 18.	WITHHOLDING TAXES	24
(a)	<i>General</i>	24
(b)	<i>Share Withholding</i>	24
SECTION 19.	OTHER PROVISIONS APPLICABLE TO AWARDS	24
(a)	<i>Transferability</i>	24
(b)	<i>Qualifying Performance Criteria</i>	25
(c)	<i>Vesting Restrictions on Awards</i>	26
SECTION 20.	NO EMPLOYMENT RIGHTS	26
SECTION 21.	APPLICABLE LAW	26
SECTION 22.	DURATION AND AMENDMENTS	26
(a)	<i>Term of the Plan</i>	26
(b)	<i>Right to Amend or Terminate the Plan</i>	26
(c)	<i>Effect of Termination</i>	26

INCYTE CORPORATION

AMENDED AND RESTATED 2010 STOCK INCENTIVE PLAN

SECTION 1. ESTABLISHMENT AND PURPOSE.

The Plan was adopted by the Board of Directors on March 19, 2010, amended and restated on March 8, 2011, April 18, 2012, and April 17, 2013, amended on January 7, 2014, March 4, 2014, April 22, 2014, March 16, 2016 and March 2, 2018, and further amended and restated on March 18, 2019. The purpose of the Plan is to promote the long-term success of the Corporation and the creation of stockholder value by (a) encouraging Employees, Outside Directors and Consultants to focus on critical long-range objectives, (b) encouraging the attraction and retention of Employees, Outside Directors and Consultants with exceptional qualifications and (c) linking Employees, Outside Directors and Consultants directly to stockholder interests through increased stock ownership. The Plan seeks to achieve this purpose by providing for Awards in the form of Restricted Shares, Restricted Stock Units, Performance Shares, Options (which may constitute ISOs or NSOs) and SARs.

SECTION 2. DEFINITIONS.

- (a) *"Affiliate"* shall mean any entity other than a Subsidiary, if the Corporation and/or one or more Subsidiaries own not less than 50% of such entity.
- (b) *"Award"* shall mean any award of an Option, a SAR, Restricted Shares, Restricted Stock Units or Performance Shares under the Plan.
- (c) *"Board of Directors"* shall mean the Board of Directors of the Corporation, as constituted from time to time.
- (d) *"Change in Control"* shall mean the occurrence of any of the following events:
 - (i) A change in the composition of the Board of Directors, as a result of which fewer than one-half of the incumbent directors are directors who either:
 - (A) Had been directors of the Corporation 24 months prior to such change; or
 - (B) Were elected, or nominated for election, to the Board of Directors with the affirmative votes of at least a majority of the directors who had been directors of the Corporation 24 months prior to such change and who were still in office at the time of the election or nomination; or
 - (ii) Any "person" (as defined below) by the acquisition or aggregation of securities is or becomes the beneficial owner (as defined in Rule 13d-3 of

the Exchange Act), directly or indirectly, of securities of the Corporation representing 50% or more of the combined voting power of the Corporation's then outstanding securities ordinarily (and apart from rights accruing under special circumstances) having the right to vote at elections of directors (the "Base Capital Stock"); except that any change in the relative beneficial ownership of the Corporation's securities by any person resulting solely from a reduction in the aggregate number of outstanding shares of Base Capital Stock, and any decrease thereafter in such person's ownership of securities, shall be disregarded until such person increases in any manner, directly or indirectly, such person's beneficial ownership of any securities of the Corporation; or

- (iii) The consummation of a merger or consolidation of the Corporation with or into another entity or any other corporate reorganization, if persons who were not stockholders of the Corporation immediately prior to such merger, consolidation or other reorganization own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of (A) the continuing or surviving entity and (B) any direct or indirect parent corporation of such continuing or surviving entity; or
- (iv) The consummation of the sale, transfer or other disposition of all or substantially all of the assets of the Corporation.

For purposes of subsection (d)(ii) above, the term "person" shall have the same meaning as when used in Sections 13(d) and 14(d) of the Exchange Act but shall exclude (1) a trustee or other fiduciary holding securities under an employee benefit plan maintained by the Corporation or a Parent or Subsidiary and (2) a corporation owned directly or indirectly by the stockholders of the Corporation in substantially the same proportions as their ownership of the Stock.

Any other provision of this Section 2(d) notwithstanding, a transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Corporation's securities immediately before such a transaction.

- (e) "*Code*" shall mean the Internal Revenue Code of 1986, as amended.
- (f) "*Committee*" shall mean the committee designated by the Board of Directors to administer the Plan, as described in Section 3 hereof (or in the absence of such designation, the Board of Directors itself).
- (g) "*Corporation*" shall mean Incyte Corporation, a Delaware corporation.
- (h) "*Consultant*" shall mean a consultant or advisor who provides bona fide services to the Corporation, a Parent, a Subsidiary or an Affiliate as an independent

contractor (not including service as a member of the Board of Directors) or a member of the board of directors of a Parent or a Subsidiary, in each case who is not an Employee.

- (i) *“Employee”* shall mean any individual who is a common-law employee of the Corporation, a Parent, a Subsidiary or an Affiliate.
- (j) *“Exchange Act”* shall mean the Securities Exchange Act of 1934, as amended.
- (k) *“Exercise Price”* shall mean (a) in the case of an Option, the amount for which one Share may be purchased upon exercise of such Option, as specified in the applicable Stock Option Agreement, and (b) in the case of a SAR, an amount, as specified in the applicable SAR Agreement, which is subtracted from the Fair Market Value of one Share in determining the amount payable upon exercise of such SAR.
- (l) *“Fair Market Value”* with respect to a Share, shall mean the market price of one Share, determined by the Committee as follows:
 - (i) If the Stock was traded on The Nasdaq Stock Market, then the Fair Market Value shall be equal to the last reported sale price reported for such date by The Nasdaq Stock Market; or
 - (ii) If the Stock was not traded on The Nasdaq Stock Market but was traded on another United States stock exchange on the date in question, then the Fair Market Value shall be equal to the closing price reported for such date by the applicable composite-transactions report; or
 - (iii) If the Stock was traded over-the-counter on the date in question, then the Fair Market Value shall be equal to the last reported sale price reported for such date by the OTC Bulletin Board or, if not so reported, shall be equal to the closing sale price quoted for such date by OTC Markets Group Inc. or similar organization or, if no last reported or closing sale price is reported, shall be equal to the mean between the last reported representative bid and asked prices quoted for such date by the OTC Bulletin Board or, if the Stock is not quoted on the OTC Bulletin Board, by OTC Markets Group Inc. or similar organization; or
 - (iv) If none of the foregoing provisions is applicable, then the Fair Market Value shall be determined by the Committee in good faith on such basis as it deems appropriate.

In all cases, the determination of Fair Market Value by the Committee shall be conclusive and binding on all persons.

- (m) *“ISO”* shall mean an employee incentive stock option described in Section 422 of the Code.

- (n) “*Nonstatutory Option*” or “*NSO*” shall mean an employee stock option that is not an ISO.
- (o) “*Offeree*” shall mean an individual to whom the Committee has offered the right to acquire Shares under the Plan (other than upon exercise of an Option).
- (p) “*Option*” shall mean an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.
- (q) “*Optionee*” shall mean an individual or estate who holds an Option or SAR.
- (r) “*Outside Director*” shall mean a member of the Board of Directors who is not an Employee or a Consultant.
- (s) “*Parent*” shall mean any corporation or other entity (other than the Corporation) in an unbroken chain of corporations or other entities ending with the Corporation, if each of the corporations or other entities other than the Corporation owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation or other entity that attains the status of a Parent on a date after the adoption of the Plan shall be a Parent commencing as of such date.
- (t) “*Participant*” shall mean an individual or estate who holds an Award.
- (u) “*Performance Shares*” shall mean a bookkeeping entry representing the Corporation’s obligation to deliver Shares (or distribute cash) on a future date in accordance with the provisions of a Performance Share Agreement.
- (v) “*Performance Share Agreement*” shall mean the agreement between the Corporation and the recipient of Performance Shares that contains the terms, conditions and restrictions pertaining to such Performance Shares.
- (w) “*Plan*” shall mean this Amended and Restated 2010 Stock Incentive Plan of Incyte Corporation, as amended from time to time.
- (x) “*Purchase Price*” shall mean the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Committee.
- (y) “*Qualifying Performance Criteria*” shall have the meaning set forth in Section 19(b).
- (z) “*Restricted Share*” shall mean a Share awarded under the Plan and subject to the terms, conditions and restrictions set forth in a Restricted Share Agreement.

- (aa) *“Restricted Share Agreement”* shall mean the agreement between the Corporation and the recipient of a Restricted Share that contains the terms, conditions and restrictions pertaining to such Restricted Shares.
- (bb) *“Restricted Stock Unit”* shall mean a bookkeeping entry representing the Corporation’s obligation to deliver one Share (or distribute cash) on a future date in accordance with the provisions of a Restricted Stock Unit Agreement.
- (cc) *“Restricted Stock Unit Agreement”* shall mean the agreement between the Corporation and the recipient of a Restricted Stock Unit that contains the terms, conditions and restrictions pertaining to such Restricted Stock Unit.
- (dd) *“SAR”* shall mean a stock appreciation right granted under the Plan.
- (ee) *“SAR Agreement”* shall mean the agreement between the Corporation and an Optionee that contains the terms, conditions and restrictions pertaining to his or her SAR.
- (ff) *“Service”* shall mean service as an Employee, Consultant or Outside Director, subject to such further limitations as may be set forth in the Plan or the applicable Stock Option Agreement, SAR Agreement, Restricted Share Agreement, Restricted Stock Unit Agreement or Performance Share Agreement. Service does not terminate when an Employee goes on a bona fide leave of absence, that was approved by the Corporation in writing, if the terms of the leave provide for continued Service crediting, or when continued Service crediting is required by applicable law. However, for purposes of determining whether an Option is entitled to ISO status, an Employee’s employment will be treated as terminating 90 days after such Employee went on leave, unless such Employee’s right to return to active work is guaranteed by law or by a contract. Service terminates in any event when the approved leave ends, unless such Employee immediately returns to active work. The Corporation shall be entitled to determine in its sole discretion which leaves of absence count toward Service, and when Service terminates for all purposes under the Plan.
- (gg) *“Share”* shall mean one share of Stock, as adjusted in accordance with Section 13 (if applicable).
- (hh) *“Stock”* shall mean the common stock of the Corporation, \$.001 par value per share.
- (ii) *“Stock Option Agreement”* shall mean the agreement between the Corporation and an Optionee that contains the terms, conditions and restrictions pertaining to such Option.
- (jj) *“Subsidiary”* shall mean any corporation, if the Corporation or one or more other Subsidiaries own not less than 50% of the total combined voting power of all classes of outstanding stock of such corporation. A corporation that attains the

status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

- (kk) *“Total and Permanent Disability”* shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last for a continuous period of not less than one year.

SECTION 3. ADMINISTRATION.

- (a) *Committee Composition.* The Plan shall be administered by the Board of Directors or a Committee appointed by the Board of Directors. The Committee shall consist of two or more members of the Board of Directors. In addition, to the extent required by the Board of Directors, the composition of the Committee shall satisfy (i) such requirements as the Securities and Exchange Commission may establish for administrators acting under plans intended to qualify for exemption under Rule 16b-3 (or its successor) under the Exchange Act; and (ii) such requirements as the Internal Revenue Service may establish for outside directors acting under plans intended to qualify for exemption under Section 162(m)(4)(C) of the Code.
- (b) *Committee for Non-Officer Grants.* The Board of Directors may also appoint one or more separate committees of the Board of Directors, each composed of one or more members of the Board of Directors who need not satisfy the requirements of Section 3(a), who may administer the Plan with respect to Employees who are not considered officers or directors of the Corporation under Section 16 of the Exchange Act, may grant Awards under the Plan to such Employees and may determine all terms of such grants. Within the limitations of the preceding sentence, any reference in the Plan to the Committee shall include such committee or committees appointed pursuant to the preceding sentence. To the extent permitted by applicable laws, the Board of Directors may also authorize one or more officers of the Corporation to designate Employees, other than persons subject to Section 16 of the Exchange Act, to receive Awards and to determine the number of such Awards to be received by such Employees.
- (c) *Committee Procedures.* The Board of Directors shall designate one of the members of the Committee as chairman. The Committee may hold meetings at such times and places as it shall determine. The acts of a majority of the Committee members present at meetings at which a quorum exists, or acts reduced to or approved in writing (including via email) by all Committee members, shall be valid acts of the Committee.

- (d) *Committee Responsibilities.* Subject to the provisions of the Plan, the Committee shall have full authority and discretion to take the following actions:
- (i) To interpret the Plan and to apply its provisions;
 - (ii) To adopt, amend or rescind rules, procedures and forms relating to the Plan;
 - (iii) To adopt, amend or terminate sub-plans established for the purpose of satisfying applicable foreign laws, including qualifying for preferred tax treatment under applicable foreign tax laws;
 - (iv) To authorize any person to execute, on behalf of the Corporation, any instrument required to carry out the purposes of the Plan;
 - (v) To determine when Awards are to be granted under the Plan;
 - (vi) To select the Offerees and Optionees;
 - (vii) To determine the number of Shares to be made subject to each Award;
 - (viii) To prescribe the terms and conditions of each Award, including the Exercise Price, the Purchase Price, the performance criteria, the performance period, and the vesting or duration of the Award (including accelerating the vesting of Awards, either at the time of the Award or thereafter, without the consent of the Participant), to determine whether an Option is to be classified as an ISO or as a Nonstatutory Option, and to specify the provisions of the agreement relating to such Award;
 - (ix) To amend any outstanding Award agreement, subject to applicable legal restrictions and to the consent of the Participant if the Participant's rights or obligations would be materially impaired;
 - (x) To prescribe the consideration for the grant of each Award or other right under the Plan and to determine the sufficiency of such consideration;
 - (xi) To determine the disposition of each Award or other right under the Plan in the event of a Participant's divorce or dissolution of marriage;
 - (xii) To determine whether Awards under the Plan will be granted in replacement of other grants under an incentive or other compensation plan of an acquired business;
 - (xiii) To correct any defect, supply any omission, or reconcile any inconsistency in the Plan or any Award agreement;

- (xiv) To establish or verify the extent of satisfaction of any performance goals or other conditions applicable to the grant, issuance, exercisability, vesting and/or ability to retain any Award; and
- (xv) To take any other actions deemed necessary or advisable for the administration of the Plan.

Subject to the requirements of applicable law, the Committee may designate persons other than members of the Committee to carry out its responsibilities and may prescribe such conditions and limitations as it may deem appropriate, except that the Committee may not delegate its authority with regard to the selection for participation of or the granting of Awards under the Plan to persons subject to Section 16 of the Exchange Act. All decisions, interpretations and other actions of the Committee shall be final and binding on all Participants, and all persons deriving their rights from a Participant. No member of the Committee shall be liable for any action that he or she has taken or has failed to take in good faith with respect to the Plan or any Award.

SECTION 4. ELIGIBILITY.

- (a) *General Rule.* Only Employees shall be eligible for the grant of ISOs. Only Employees, Consultants and Outside Directors shall be eligible for the grant of Restricted Shares, Restricted Stock Units, Performance Shares, Nonstatutory Options or SARs.
- (b) *Ten-Percent Stockholders.* An Employee who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Corporation, a Parent or Subsidiary shall not be eligible for the grant of an ISO unless such grant satisfies the requirements of Section 422(c)(5) of the Code.
- (c) *Attribution Rules.* For purposes of Section 4(b) above, in determining stock ownership, an Employee shall be deemed to own the stock owned, directly or indirectly, by or for such Employee's brothers, sisters, spouse, ancestors and lineal descendants. Stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be deemed to be owned proportionately by or for its stockholders, partners or beneficiaries.
- (d) *Outstanding Stock.* For purposes of Section 4(b) above, "outstanding stock" shall include all stock actually issued and outstanding immediately after the grant but shall not include shares authorized for issuance under outstanding options held by the Employee or by any other person.

SECTION 5. STOCK SUBJECT TO PLAN.

- (a) *Basic Limitation.* Shares offered under the Plan shall be authorized but unissued Shares or treasury Shares. The aggregate number of Shares authorized for issuance as Awards under the Plan shall not exceed 44,453,475. The limitation of this Section 5(a) shall be subject to adjustment pursuant to Section 13. Any

Shares issued in connection with Options and SARs shall be counted against this limitation as one Share for every one Share so issued. Any Shares issued in connection with Awards other than Options and SARs shall be counted against this limitation as 2.0 Shares for every one Share so issued. The number of Shares that are subject to Awards outstanding at any time under the Plan shall not exceed the number of Shares which then remain available for issuance under the Plan. The Corporation, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares tendered or withheld in full or partial payment of the Exercise Price of an Award or to satisfy tax withholding obligations in connection with an Award, and Shares issued under an Award that are purchased by the Corporation on the open market, shall not be available for future issuance under the Plan.

- (b) *Award Limitation.* Subject to the provisions of Section 13, no Participant may receive Awards under the Plan in any calendar year that relate to more than 800,000 Shares.
- (c) *Additional Shares.* If an Award expires or becomes unexercisable without having been exercised in full, or, with respect to Restricted Shares, Restricted Stock Units or Performance Shares, is forfeited to or repurchased by the Corporation due to failure to vest, the unpurchased Shares (or for Awards other than Options or SARs the forfeited or repurchased Shares) which were subject thereto will become available for future grant or sale under the Plan (unless the Plan has terminated). With respect to SARs, when a stock settled SAR is exercised, all of the Shares subject to the SAR shall be counted against the number of Shares available for future grant or sale under the Plan, regardless of the number of Shares actually issued pursuant to such exercise. Shares that have actually been issued under the Plan under any Award will not be returned to the Plan and will not become available for future distribution under the Plan; provided, however, that if Shares issued pursuant to Awards of Restricted Shares, Restricted Stock Units or Performance Shares are repurchased by the Corporation or are forfeited to the Corporation, such Shares will become available for future grant under the Plan. To the extent an Award under the Plan is paid out in cash rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under the Plan.

SECTION 6. RESTRICTED SHARES.

- (a) *Restricted Share Agreement.* Each grant of Restricted Shares under the Plan shall be evidenced by a Restricted Share Agreement between the recipient and the Corporation. Such Restricted Shares shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Restricted Share Agreements entered into under the Plan need not be identical.

- (b) *Payment for Awards.* Restricted Shares may be sold or awarded under the Plan for such consideration as the Committee may determine, including cash, cash equivalents, full-recourse promissory notes, past services and future services.
- (c) *Vesting.* Each Award of Restricted Shares shall vest over a minimum period of three years of the Participant's Service, subject to Section 19(c). Vesting shall occur, in full or in installments, upon satisfaction of such Service requirement and such other conditions specified in the Restricted Share Agreement. A Restricted Share Agreement may provide for accelerated vesting in the event of the Participant's death, Total and Permanent Disability or retirement or other events. The Committee may determine, at the time of granting Restricted Shares or thereafter, that all or part of such Restricted Shares shall become vested upon a Change in Control. Except as may be set forth in a Restricted Share Agreement, vesting of the Restricted Shares shall cease on the termination of the Participant's Service.
- (d) *Voting and Dividend Rights.* The holders of Restricted Shares awarded under the Plan shall have the same voting, dividend and other rights as the Corporation's other stockholders. A Restricted Share Agreement, however, may require that the holders of Restricted Shares invest any cash dividends received in additional Restricted Shares. Such additional Restricted Shares shall be subject to the same conditions and restrictions as the Award with respect to which the dividends were paid.
- (e) *Restrictions on Transfer of Shares.* Restricted Shares shall be subject to such rights of repurchase, rights of first refusal or other restrictions as the Committee may determine. Such restrictions shall be set forth in the applicable Restricted Share Agreement and shall apply in addition to any general restrictions that may apply to all holders of Shares.

SECTION 7. TERMS AND CONDITIONS OF OPTIONS.

- (a) *Stock Option Agreement.* Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Corporation. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Committee deems appropriate for inclusion in a Stock Option Agreement. The Stock Option Agreement shall specify whether the Option is an ISO or an NSO. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical. Options may be granted in consideration of a reduction in the Optionee's other compensation.
- (b) *Number of Shares.* Each Stock Option Agreement shall specify the number of Shares that are subject to the Option (subject to adjustment in accordance with Section 13).

- (c) *Exercise Price.* Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an ISO shall not be less than 100% of the Fair Market Value of a Share on the date of grant, except as otherwise provided in Section 4(b), and the Exercise Price of an NSO shall not be less than 100% of the Fair Market Value of a Share on the date of grant. Subject to the foregoing in this Section 7(c), the Exercise Price under any Option shall be determined by the Committee at its sole discretion. The Exercise Price shall be payable in one of the forms described in Section 8.
- (d) *Withholding Taxes.* As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Corporation may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such exercise. The Optionee shall also make such arrangements as the Corporation may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option.
- (e) *Exercisability and Term.* Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable, subject to Section 12(c) in the case of automatic Option grants to Outside Directors and to Section 19(c) for all other Option grants. The Stock Option Agreement shall also specify the term of the Option; provided, however, that the term of an ISO shall in no event exceed 10 years from the date of grant (five years for Employees described in Section 4(b)). A Stock Option Agreement may provide for accelerated exercisability in the event of the Optionee's death, Total and Permanent Disability or retirement or other events and may provide for expiration prior to the end of its term in the event of the termination of the Optionee's Service. Options may be awarded in combination with SARs, and such an Award may provide that the Options will not be exercisable unless the related SARs are forfeited. Subject to the foregoing in this Section 7(e), the Committee at its sole discretion shall determine when all or any installment of an Option is to become exercisable and when an Option is to expire.
- (f) *Exercise of Options.* Each Stock Option Agreement shall set forth the extent to which the Optionee shall have the right to exercise the Option following termination of the Optionee's Service with the Corporation and its Subsidiaries, and the right to exercise the Option of any executors or administrators of the Optionee's estate or any person who has acquired such Option(s) directly from the Optionee by bequest or inheritance. 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.
- (g) *Effect of Change in Control.* The Committee may determine, at the time of granting an Option or thereafter, that such Option shall become exercisable as to all or part of the Shares subject to such Option upon a Change in Control.

- (h) *No Rights as a Stockholder.* An Optionee, or a permitted transferee of an Optionee, shall have no rights as a stockholder of the Corporation with respect to any Shares covered by the Option until the date of the issuance of the Shares underlying the Option upon a valid exercise thereof.
- (i) *Modification, Extension and Assumption of Options.* Within the limitations of the Plan, the Committee may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Corporation or another issuer) in return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price; provided, however, that the Committee may not modify outstanding Options to lower the Exercise Price nor may the Committee assume or accept the cancellation of outstanding Options in return for the grant of new Options or SARs with a lower Exercise Price, unless such action has been approved by the Corporation's stockholders. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, materially impair such Optionee's rights or increase his or her obligations under such Option.
- (j) *Restrictions on Transfer of Shares.* Any Shares issued upon exercise of an Option shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Committee may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any general restrictions that may apply to all holders of Shares.
- (k) *Buyout Provisions.* Except with respect to an Option whose Exercise Price exceeds the Fair Market Value of the Shares subject to the Option, the Committee may at any time (a) offer to buy out for a payment in cash or cash equivalents an Option previously granted or (b) authorize an Optionee to elect to cash out an Option previously granted, in either case at such time and based upon such terms and conditions as the Committee shall establish.

SECTION 8. PAYMENT FOR SHARES.

- (a) *General Rule.* The entire Exercise Price or Purchase Price of Shares issued under the Plan shall be payable in lawful money of the United States of America at the time when such Shares are purchased, except as provided in Section 8(b) through Section 8(g) below.
- (b) *Surrender of Stock.* To the extent that a Stock Option Agreement so provides, payment may be made all or in part by surrendering, or attesting to the ownership of, Shares which have already been owned by the Optionee or his representative. Such Shares shall be valued at their Fair Market Value on the date when the new Shares are purchased under the Plan. The Optionee shall not surrender, or attest to the ownership of, Shares in payment of the Exercise Price if such action would cause the Corporation to recognize compensation expense (or additional

compensation expense) with respect to the Option for financial reporting purposes.

- (c) *Services Rendered.* At the discretion of the Committee, Shares may be awarded under the Plan in consideration of services rendered to the Corporation or a Subsidiary prior to the award. If Shares are awarded without the payment of a Purchase Price in cash, the Committee shall make a determination (at the time of the award) of the value of the services rendered by the Offeree and the sufficiency of the consideration to meet the requirements of Section 6(b).
- (d) *Cashless Exercise.* To the extent that a Stock Option Agreement so provides, payment may be made all or in part by delivery (on a form prescribed by the Committee) of an irrevocable direction to a securities broker to sell Shares and to deliver all or part of the sale proceeds to the Corporation in payment of the aggregate Exercise Price.
- (e) *Exercise/Pledge.* To the extent that a Stock Option Agreement so provides, payment may be made all or in part by delivery (on a form prescribed by the Committee) of an irrevocable direction to a securities broker or lender to pledge Shares, as security for a loan, and to deliver all or part of the loan proceeds to the Corporation in payment of the aggregate Exercise Price.
- (f) *Promissory Note.* To the extent that a Stock Option Agreement or Restricted Share Agreement so provides, payment may be made all or in part by delivering (on a form prescribed by the Corporation) a full-recourse promissory note.
- (g) *Other Forms of Payment.* To the extent that a Stock Option Agreement or Restricted Share Agreement so provides, payment may be made in any other form that is consistent with applicable laws, regulations and rules.
- (h) *Limitations under Applicable Law.* Notwithstanding anything herein or in a Stock Option Agreement or Restricted Share Agreement to the contrary, payment may not be made in any form that is unlawful, as determined by the Committee in its sole discretion.

SECTION 9. STOCK APPRECIATION RIGHTS.

- (a) *SAR Agreement.* Each grant of a SAR under the Plan shall be evidenced by a SAR Agreement between the Optionee and the Corporation. Such SAR shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various SAR Agreements entered into under the Plan need not be identical. SARs may be granted in consideration of a reduction in the Optionee's other compensation.
- (b) *Number of Shares.* Each SAR Agreement shall specify the number of Shares to which the SAR pertains and shall provide for the adjustment of such number in accordance with Section 13.

- (c) *Exercise Price.* Each SAR Agreement shall specify the Exercise Price, which shall not be less than 100% of the Fair Market Value of a Share on the date of grant. A SAR Agreement may specify an Exercise Price that varies in accordance with a predetermined formula while the SAR is outstanding.
- (d) *Exercisability and Term.* Each SAR Agreement shall specify the date when all or any installment of the SAR is to become exercisable, subject to Section 19(c). The SAR Agreement shall also specify the term of the SAR. A SAR Agreement may provide for accelerated exercisability in the event of the Optionee's death, Total and Permanent Disability or retirement or other events. Except as may be set forth in a SAR Agreement, vesting of the SAR shall cease on the termination of the Participant's Service. SARs may be awarded in combination with Options, and such an Award may provide that the SARs will not be exercisable unless the related Options are forfeited. A SAR may be included in an ISO only at the time of grant but may be included in an NSO at the time of grant or thereafter. A SAR granted under the Plan may provide that it will be exercisable only in the event of a Change in Control.
- (e) *Effect of Change in Control.* The Committee may determine, at the time of granting a SAR or thereafter, that such SAR shall become fully exercisable as to all Shares subject to such SAR upon a Change in Control.
- (f) *Exercise of SARs.* Upon exercise of a SAR, the Optionee (or any person having the right to exercise the SAR after his or her death) shall receive from the Corporation (a) Shares, (b) cash or (c) a combination of Shares and cash, as the Committee shall determine. The amount of cash and/or the Fair Market Value of Shares received upon exercise of SARs shall, in the aggregate, be equal to the amount by which the Fair Market Value (on the date of surrender) of the Shares subject to the SARs exceeds the Exercise Price.
- (g) *Modification or Assumption of SARs.* Within the limitations of the Plan, the Committee may modify, extend or assume outstanding SARs or may accept the cancellation of outstanding SARs (whether granted by the Corporation or by another issuer) in return for the grant of new SARs for the same or a different number of Shares and at the same or a different exercise price; provided, however, that the Committee may not modify outstanding SARs to lower the Exercise Price nor may the Committee assume or accept the cancellation of outstanding SARs in return for the grant of new SARs or Options with a lower Exercise Price, unless such action has been approved by the Corporation's stockholders. The foregoing notwithstanding, no modification of a SAR shall, without the consent of the holder, materially impair his or her rights or obligations under such SAR.
- (h) *Buyout Provisions.* Except with respect to a SAR whose Exercise Price exceeds the Fair Market Value of the Shares subject to the SAR, the Committee may at any time (a) offer to buy out for a payment in cash or cash equivalents a SAR

previously granted, or (b) authorize an Optionee to elect to cash out a SAR previously granted, in either case at such time and based upon such terms and conditions as the Committee shall establish.

SECTION 10. RESTRICTED STOCK UNITS.

- (a) *Restricted Stock Unit Agreement.* Each grant of Restricted Stock Units under the Plan shall be evidenced by a Restricted Stock Unit Agreement between the recipient and the Corporation. Such Restricted Stock Units shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Restricted Stock Unit Agreements entered into under the Plan need not be identical. Restricted Stock Units may be granted in consideration of a reduction in the recipient's other compensation.
- (b) *Payment for Awards.* To the extent that an Award is granted in the form of Restricted Stock Units, no cash consideration shall be required of the Award recipients.
- (c) *Vesting Conditions.* Each Award of Restricted Stock Units shall vest over a minimum period of three years of the Participant's Service, subject to Section 19(c). Vesting shall occur, in full or in installments, upon satisfaction of such Service requirement and such other conditions specified in the Restricted Stock Unit Agreement. A Restricted Stock Unit Agreement may provide for accelerated vesting in the event of the Participant's death, Total and Permanent Disability or retirement or other events. The Committee may determine, at the time of granting Restricted Stock Units or thereafter, that all or part of such Restricted Stock Units shall become vested in the event that a Change in Control occurs with respect to the Corporation. Except as may be set forth in a Restricted Stock Unit Agreement, vesting of the Restricted Stock Units shall cease on the termination of the Participant's Service.
- (d) *Voting and Dividend Rights.* The holders of Restricted Stock Units shall have no voting rights. Prior to settlement or forfeiture, any Restricted Stock Unit awarded under the Plan may, at the Committee's discretion, carry with it a right to dividend equivalents. Such right entitles the holder to be credited with an amount equal to all cash dividends paid on one Share while the Restricted Stock Unit is outstanding. Dividend equivalents may be converted into additional Restricted Stock Units. Settlement of dividend equivalents may be made in the form of cash, in the form of Shares, or in a combination of both. Prior to distribution, any dividend equivalents which are not paid shall be subject to the same conditions and restrictions (including without limitation, any forfeiture conditions) as the Restricted Stock Units to which they attach.
- (e) *Form and Time of Settlement of Restricted Stock Units.* Settlement of vested Restricted Stock Units may be made in the form of (a) cash, (b) Shares or (c) any

combination of both, as determined by the Committee. The actual number of Restricted Stock Units eligible for settlement may be larger or smaller than the number included in the original Award, based on predetermined performance factors. Methods of converting Restricted Stock Units into cash may include (without limitation) a method based on the average Fair Market Value of Shares over a series of trading days. A Restricted Stock Unit Agreement may provide that vested Restricted Stock Units may be settled in a lump sum or in installments. A Restricted Stock Unit Agreement may provide that the distribution may occur or commence when all vesting conditions applicable to the Restricted Stock Units have been satisfied or have lapsed, or it may be deferred to any later date. The amount of a deferred distribution may be increased by an interest factor or by dividend equivalents. Until an Award of Restricted Stock Units is settled, the number of such Restricted Stock Units shall be subject to adjustment pursuant to Section 13.

- (f) *Death of Recipient.* Any Restricted Stock Units that become payable after the recipient's death shall be distributed to the recipient's beneficiary or beneficiaries. Each recipient of Restricted Stock Units under the Plan shall designate one or more beneficiaries for this purpose by filing the prescribed form with the Corporation. A beneficiary designation may be changed by filing the prescribed form with the Corporation at any time before the Award recipient's death. If no beneficiary was designated or if no designated beneficiary survives the Award recipient, then any Restricted Stock Units that become payable after the recipient's death shall be distributed to the recipient's estate.
- (g) *Creditors' Rights.* A holder of Restricted Stock Units shall have no rights other than those of a general creditor of the Corporation. Restricted Stock Units represent an unfunded and unsecured obligation of the Corporation, subject to the terms and conditions of the applicable Restricted Stock Unit Agreement.

SECTION 11. PERFORMANCE SHARES.

- (a) *Performance Shares and Performance Share Agreement.* Each grant of Performance Shares under the Plan shall be evidenced by a Performance Share Agreement between the recipient and the Corporation. Such Performance Shares shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Performance Share Agreements entered into under the Plan need not be identical. Performance Shares may be granted in consideration of a reduction in the recipient's other compensation.
- (b) *Payment for Awards.* To the extent that an Award is granted in the form of Performance Shares, no cash consideration shall be required of the Award recipients.

- (c) *Terms of Performance Share Awards.* The Committee shall determine the terms of Performance Share Awards, which may include subjecting such Awards to the attainment of “Qualifying Performance Criteria” as described in Section 19(b) of the Plan. Each Performance Share Agreement shall set forth the number of Shares subject to such Performance Share Award, the Qualifying Performance Criteria and the performance period. Subject to Section 19(c), the Participant shall be required to perform Service for the entire performance period (or if less, one year) in order to be eligible to receive payment under the Performance Share Award. Except as otherwise provided in the Performance Share Agreement, the Performance Share Award shall terminate upon the termination of the Participant’s Service. Prior to settlement, the Committee shall determine the extent to which Performance Shares have been earned. Performance periods may overlap and the holders may participate simultaneously with respect to Performance Shares Awards that are subject to different performance periods and different Qualifying Performance Criteria. The number of Shares may be fixed or may vary in accordance with such Qualifying Performance Criteria as may be determined by the Committee. A Performance Share Agreement may provide for accelerated vesting in the event of the Participant’s death, Total and Permanent Disability or retirement or other events. The Committee may determine, at the time of granting Performance Share Awards or thereafter, that all or part of the Performance Shares shall become vested upon a Change in Control.
- (d) *Voting and Dividend Rights.* The holders of Performance Shares shall have no voting rights with respect to such Performance Shares. Prior to settlement or forfeiture, any Performance Share awarded under the Plan may, at the Committee’s discretion, carry with it a right to dividend equivalents. Such right entitles the holder to be credited with an amount equal to all cash dividends paid on one Share while the Performance Share is outstanding. Dividend equivalents may be converted into additional Performance Shares. Settlement of dividend equivalents may be made in the form of cash, in the form of Shares, or in a combination of both. Prior to distribution, any dividend equivalents which are not paid shall be subject to the same conditions and restrictions (including without limitation, any forfeiture conditions) as the Performance Shares to which they attach.
- (e) *Form and Time of Settlement of Performance Shares.* Settlement of Performance Shares may be made in the form of (a) cash, (b) Shares or (c) any combination of both, as determined by the Committee and set forth in the Performance Share Agreements. The actual number of Performance Shares eligible for settlement may be larger or smaller than the number included in the original Award, based on the Qualifying Performance Criteria. Methods of converting Performance Shares into cash may include (without limitation) a method based on the average Fair Market Value of Shares over a series of trading days. A Performance Share Agreement may provide that Performance Shares may be settled in a lump sum or in installments. A Performance Share Agreement may provide that the distribution may occur or commence when all vesting conditions applicable to the

Performance Shares have been satisfied or have lapsed, or it may be deferred to any later date. The amount of a deferred distribution may be increased by an interest factor or by dividend equivalents. Until an Award of Performance Shares is settled, the number of such Performance Shares shall be subject to adjustment pursuant to Section 13.

- (f) *Death of Recipient.* Any Performance Share Award that becomes payable after the recipient's death shall be distributed to the recipient's beneficiary or beneficiaries. Each recipient of a Performance Share Award under the Plan shall designate one or more beneficiaries for this purpose by filing the prescribed form with the Corporation. A beneficiary designation may be changed by filing the prescribed form with the Corporation at any time before the Award recipient's death. If no beneficiary was designated or if no designated beneficiary survives the Award recipient, then any Performance Share Award that becomes payable after the recipient's death shall be distributed to the recipient's estate.
- (g) *Creditors' Rights.* A holder of Performance Shares shall have no rights other than those of a general creditor of the Corporation. Performance Shares represent an unfunded and unsecured obligation of the Corporation, subject to the terms and conditions of the applicable Performance Share Agreement.

SECTION 12. AUTOMATIC GRANTS TO OUTSIDE DIRECTORS

- (a) *Annual Grants.* On the first business day following the conclusion of each regular annual meeting of the Corporation's stockholders beginning with the 2019 annual meeting, each Outside Director who will continue serving as a member of the Board of Directors thereafter shall receive Awards having an aggregate grant date fair value of \$500,000, of which 75% shall be Nonstatutory Options and 25% shall be Restricted Stock Units. The number of Shares subject to such Nonstatutory Options shall be determined by dividing 75% of \$500,000 (or \$375,000) by the Black-Scholes value of one such Option, based on the average closing sale price for the Stock on The Nasdaq Global Select Market (or such other United States stock exchange or over-the-counter market on which the Stock is then traded) over the 30 consecutive trading days concluding with the last trading day prior to the grant date, rounded down to the nearest whole Share. The number of Shares subject to such Restricted Stock Units shall be determined by dividing 25% of \$500,000 (or \$125,000) by such 30 trading day average price, rounded down to the nearest whole Share. Each Outside Director who is not initially elected at a regular annual meeting of the Corporation's stockholders in 2019 or a subsequent year shall receive Awards within 10 business days of his or her election having an aggregate grant date fair value of a pro rata portion of \$500,000, such pro rata portion to be determined based on the number of full calendar months remaining from the date of election until the next regular annual meeting of the Corporation's stockholders divided by 12. Such Outside Director's Awards shall consist of 75% Nonstatutory Options and 25% Restricted Stock Units determined in a manner similar to that used for the annual Awards to

Outside Directors following the conclusion of the regular annual meeting of the Corporation's stockholders, except that the values of the Awards to such Outside Director shall be determined as of the grant date of such Awards.

- (b) *Vesting Conditions.* Except as set forth in the next succeeding sentence and in the last sentence of this Subsection (b), each Award granted under Subsection (a) of this Section 12 shall become vested and (in the case of Options) exercisable in full on the first anniversary of the date of grant; provided, however, that each such Award shall become vested and exercisable in full immediately prior to the next regular annual meeting of the Corporation's stockholders following such date of grant in the event such meeting occurs prior to such first anniversary date. Except as set forth in the last sentence of this Subsection (b), each Award granted under Subsection (a) to Outside Directors who were not initially elected at a regular annual meeting of the Corporation's stockholders shall become vested and exercisable in full immediately prior to the next regular annual meeting of the Corporation's stockholders following the date of grant. Notwithstanding the foregoing, each Award granted under Subsection (a) above that is outstanding shall become vested and exercisable in full in the event that a Change in Control occurs with respect to the Corporation.
- (c) *Award Agreement.* All grants to Outside Directors under this Section 12 shall be evidenced by a Stock Option Agreement or Restricted Stock Unit Agreement, as applicable, between the Outside Director and the Corporation. Such Awards shall be subject to all applicable terms and conditions of the Plan and may be subject to other terms and conditions that are not inconsistent with the Plan and that the Board of Directors deems appropriate for inclusion in a Stock Option Agreement or Restricted Stock Unit Agreement, as applicable.
- (d) *Additional Grants.* Notwithstanding the foregoing provisions of this Section 12, the Board of Directors may from time to time increase the amount of the annual grant of Awards under Section 12(a) to any Outside Director to the extent the Board of Directors determines necessary to induce an Outside Director to become or remain an Outside Director or to reflect an increase in the duties or responsibilities of the Outside Director, subject to all terms and conditions of the Plan otherwise applicable to grants of Awards. Each such Award may become vested and exercisable on the same schedule as set forth in Section 12(b) or on a different schedule, as the Board of Directors in each case shall determine.

SECTION 13. ADJUSTMENT OF SHARES; REORGANIZATIONS.

- (a) *Adjustments.* In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a declaration of a dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of Shares, a combination or consolidation of the outstanding Stock (by reclassification or otherwise) into a lesser number of Shares, a recapitalization, a

spin-off or a similar occurrence, the Committee shall make appropriate and equitable adjustments in:

- (i) The numerical limitations set forth in Sections 5(a) and (b);
 - (ii) The number of Shares covered by all outstanding Awards; and
 - (iii) The Exercise Price under each outstanding Option and SAR.
- (b) *Dissolution or Liquidation.* To the extent not previously exercised or settled, all outstanding Awards shall terminate immediately prior to the dissolution or liquidation of the Corporation.
- (c) *Reorganizations.* In the event the Corporation is party to a merger or other reorganization, subject to any vesting acceleration provisions in an Award agreement, outstanding Awards shall be treated in the manner provided in the agreement of merger or reorganization (including as the same may be amended). Such agreement shall not be required to treat all Awards or individual types of Awards similarly in the merger or reorganization; provided, however, that such agreement shall provide for one of the following with respect to all outstanding Awards (as applicable):
- (i) The continuation of the outstanding Award by the Corporation, if the Corporation is a surviving corporation;
 - (ii) The assumption of the outstanding Award by the surviving corporation or its parent or subsidiary;
 - (iii) The substitution by the surviving corporation or its parent or subsidiary of its own award for the outstanding Award;
 - (iv) Full exercisability or vesting and accelerated expiration of the outstanding Award, followed by the cancellation of such Award;
 - (v) The cancellation of an outstanding Option or SAR and a payment to the Optionee equal to the excess of (i) the Fair Market Value of the Shares subject to such Option or SAR (whether or not such Option or SARs is then exercisable or such Shares are then vested) as of the closing date of such merger or reorganization over (ii) its aggregate Exercise Price. Such payment may be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Option or SAR would have become exercisable or such Shares would have vested. Such payment may be subject to vesting based on the Optionee's continuing Service, provided that the vesting schedule shall not be less favorable to the Optionee than the schedule under which such Option or SAR would

have become exercisable or such Shares would have vested (including any vesting acceleration provisions). If the Exercise Price of the Shares subject to any Option or SAR exceeds the Fair Market Value of the Shares subject thereto, then such Option or SAR may be cancelled without making a payment to the Optionee with respect thereto. For purposes of this Subsection (v), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security;

- (vi) The cancellation of an outstanding Restricted Stock Unit and a payment to the Participant equal to the Fair Market Value of the Shares subject to such Restricted Stock Unit (whether or not such Restricted Stock Unit is then vested) as of the closing date of such merger or other reorganization. Such payment may be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Restricted Stock Unit would have vested. Such payment may be subject to vesting based on the Participant's continuing Service, provided that the vesting schedule shall not be less favorable to the Participant than the schedule under which such Restricted Stock Unit would have vested (including any vesting acceleration provisions). For purposes of this Subsection (vi), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security; or
- (vii) The cancellation of an outstanding Performance Share Award and a payment to the Participant equal to the Fair Market Value of the target Shares subject to such Performance Share Award (whether or not such Performance Share Award is then vested) as of the closing date of such merger or reorganization. Such payment may be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Performance Share Award would have settled. Such payment may be subject to the Participant's continuing Service and the achievement of performance criteria that are based on the performance criteria set forth in the Performance Share Award, with such changes that may necessary to give effect to the merger or other reorganization, provided that the performance period shall not be less favorable to the Participant than the performance period under such Performance Share Award (including any vesting acceleration provisions). For purposes of this Subsection (vii), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

- (d) *Reservation of Rights.* Except as provided in Section 13, a Participant shall have no rights by reason of the occurrence of (or relating to) any merger or other reorganization, any transaction described in Section 13(a), or any transaction that results in an increase or decrease in the number of shares of stock of any class of the Corporation. Any issue by the Corporation of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, Awards. The grant of an Award pursuant to the Plan shall not affect in any way the right or power of the Corporation to effect any merger or other reorganization, any transaction described in Section 13(a), any dissolution or liquidation of the Corporation or any transaction that results in an increase or decrease in the number of shares of stock of any class of the Corporation.

SECTION 14. DEFERRAL OF AWARDS.

- (a) *Committee Powers.* The Committee in its sole discretion may permit or require a Participant to:
- (i) Have cash that otherwise would be paid to such Participant as a result of the exercise of a SAR or the settlement of Restricted Stock Units or Performance Shares credited to a deferred compensation account established for such Participant by the Committee as an entry on the Corporation's books;
 - (ii) Have Shares that otherwise would be delivered to such Participant as a result of the exercise of an Option or SAR converted into an equal number of Restricted Stock Units; or
 - (iii) Have Shares that otherwise would be delivered to such Participant as a result of the exercise of an Option or SAR or the settlement of Restricted Stock Units or Performance Shares converted into amounts credited to a deferred compensation account established for such Participant by the Committee as an entry on the Corporation's books. Such amounts shall be determined by reference to the Fair Market Value of such Shares as of the date when they otherwise would have been delivered to such Participant.
- (b) *General Rules.* A deferred compensation account established under this Section 14 may be credited with interest or other forms of investment return, as determined by the Committee. A Participant for whom such an account is established shall have no rights other than those of a general creditor of the Corporation. Such an account shall represent an unfunded and unsecured obligation of the Corporation and shall be subject to the terms and conditions of the applicable agreement between such Participant and the Corporation. If the deferral or conversion of Awards is permitted or required, the Committee in its sole discretion may establish rules, procedures and forms pertaining to such

Awards, including (without limitation) the settlement of deferred compensation accounts established under this Section 14.

- (c) *Code Section 409A.* Notwithstanding the foregoing, any deferrals of Award payments in respect of an Award held by a Participant who is subject to United States federal income tax shall be subject to the applicable requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. To the extent that the Committee determines that any Award granted under the Plan is subject to Section 409A of the Code, the Award agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A of the Code. In the event that following the grant of an Award the Committee determines that such Award may be subject to Section 409A of the Code, the Committee may adopt such amendments to the applicable Award agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Committee determines are necessary or appropriate to (a) exempt the Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (b) comply with the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder and thereby avoid the application of any penalty taxes under such Section.

SECTION 15. PAYMENT OF DIRECTOR'S FEES IN SECURITIES

- (a) *Effective Date.* No provision of this Section 15 shall be effective unless and until the Board has determined to implement such provision.
- (b) *Elections to Receive NSOs, Restricted Shares or Restricted Stock Units.* An Outside Director may elect to receive his or her annual retainer payment and/or meeting fees from the Corporation in the form of cash, NSOs, Restricted Shares or Restricted Stock Units, or a combination thereof, as determined by the Board. Such NSOs, Restricted Shares or Restricted Stock Units shall be issued under the Plan. An election under this Section 15 shall be filed with the Corporation on the prescribed form. For the avoidance of doubt, any Awards issued to an Outside Director pursuant to this Section 15 shall not be counted towards the limit on annual Awards to the Outside Director prescribed by Section 12(a).
- (c) *Number and Terms of NSOs, Restricted Shares or Restricted Stock Units.* The number of NSOs, Restricted Shares or Restricted Stock Units to be granted to Outside Directors in lieu of annual retainers and meeting fees that would otherwise be paid in cash shall be calculated in a manner determined by the Board. The term of such NSOs, Restricted Shares or Restricted Stock Units shall also be determined by the Board.

SECTION 16. AWARDS UNDER OTHER PLANS.

The Corporation may grant awards under other plans or programs. Such awards may be settled in the form of Shares issued under this Plan. Such Shares shall be treated for all purposes under the Plan like Shares issued in settlement of Restricted Stock Units and shall, when issued, reduce the number of Shares available under Section 5.

SECTION 17. LEGAL AND REGULATORY REQUIREMENTS.

Shares shall not be issued under the Plan unless the issuance and delivery of such Shares complies with (or is exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations and the regulations of any stock exchange on which the Corporation's securities may then be listed, and the Corporation has obtained the approval or favorable ruling from any governmental agency which the Corporation determines is necessary or advisable. The Corporation shall not be liable to a Participant or other persons as to: (a) the non-issuance or sale of Shares as to which the Corporation has been unable to obtain from any regulatory body having jurisdiction the authority deemed by the Corporation's counsel to be necessary to the lawful issuance and sale of any Shares under the Plan; and (b) any tax consequences expected, but not realized, by any Participant or other person due to the receipt, exercise or settlement of any Award granted under the Plan.

SECTION 18. WITHHOLDING TAXES.

- (a) *General.* To the extent required by applicable federal, state, local or foreign law, a Participant or his or her successor shall make arrangements satisfactory to the Corporation for the satisfaction of any withholding tax obligations that arise in connection with the Plan. The Corporation shall not be required to issue any Shares or make any cash payment under the Plan until such obligations are satisfied.
- (b) *Share Withholding.* The Corporation may permit a Participant to satisfy all or part of his or her withholding or income tax obligations by having the Corporation withhold all or a portion of any Shares that otherwise would be issued to him or her or by surrendering all or a portion of any Shares that he or she previously acquired. Such Shares shall be valued at their Fair Market Value on the date when taxes otherwise would be withheld in cash. In no event may a Participant have Shares withheld that would otherwise be issued to him or her in excess of the number necessary to satisfy the legally required minimum tax withholding.

SECTION 19. OTHER PROVISIONS APPLICABLE TO AWARDS.

- (a) *Transferability.* Unless the agreement evidencing an Award (or an amendment thereto authorized by the Committee) expressly provides otherwise, no Award granted under this Plan, nor any interest in such Award, may be assigned, conveyed, gifted, pledged, hypothecated or otherwise transferred in any manner (prior to the vesting and lapse of any and all restrictions applicable to Shares issued under such Award), other than by will, by designation of a beneficiary

(which shall be a family member or family trust) delivered to the Company, or by the laws of descent and distribution; provided, however, that an ISO may be transferred or assigned only to the extent consistent with Section 422 of the Code. Notwithstanding the foregoing, in no event may a Participant sell or otherwise transfer for value any Award granted under the Plan or any interest in such an Award, other than Shares issued to the Participant that are no longer subject to vesting or other restrictions under the terms of the applicable Award. Any purported sale, assignment, conveyance, gift, pledge, hypothecation or transfer in violation of this Section 19(a) shall be void and unenforceable against the Corporation.

- (b) *Qualifying Performance Criteria.* The number of Shares or other benefits granted, issued, retainable and/or vested under an Award may be made subject to the attainment of performance goals for a specified period of time relating to one or more of the following performance criteria, either individually, alternatively or in any combination, applied to either the Corporation as a whole or to a business unit or Subsidiary, either individually, alternatively or in any combination, and measured either annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years' or quarter's results or to the performance of one or more comparable companies or a designated comparison group or index, in each case as specified by the Committee in the Award: (a) cash flow (including operating cash flow), (b) earnings per share, (c) (i) earnings before interest, (ii) earnings before interest and taxes, (iii) earnings before interest, taxes and depreciation, (iv) earnings before interest, taxes, depreciation and amortization, or (v) earnings before any combination of such expenses or deductions, (d) return on equity, (e) total stockholder return, (f) share price performance, (g) return on capital, (h) return on assets or net assets, (i) revenue, (j) income or net income, (k) operating income or net operating income, (l) operating profit or net operating profit, (m) operating margin or profit margin (including as a percentage of revenue), (n) return on operating revenue, (o) return on invested capital, (p) market segment shares, (q) economic profit, (r) achievement of target levels of discovery and/or development of products, including but not limited to regulatory achievements, (s) achievement of research and development objectives, or (t) formation of joint ventures, strategic relationships or other commercial, research or development collaborations ("*Qualifying Performance Criteria*"). The Committee may appropriately adjust any evaluation of performance under a Qualifying Performance Criteria to exclude any of the following events that occur during a performance period: (i) asset write-downs, (ii) litigation or claim judgments or settlements, (iii) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reported results, (iv) accruals for reorganization and restructuring programs and (v) any extraordinary, nonrecurring items to be disclosed in the Corporation's financial statements (including footnotes) for the applicable year and/or in management's discussion and analysis of the financial condition and results of operations appearing in the Corporation's annual report to stockholders for the applicable year. If applicable, the Committee shall determine the

Qualifying Performance Criteria and any permitted exclusions pursuant to the preceding sentence not later than the 90th day of the performance period, and shall determine and certify, for each Participant (or for all Participants), the extent to which the Qualifying Performance Criteria have been met. The Committee may not in any event increase the amount of compensation payable under the Plan upon the attainment of a Qualifying Performance Criteria to a Participant who is a “covered employee” within the meaning of Section 162(m) of the Code.

- (c) *Vesting Restrictions on Awards.* Except with respect to a maximum of five percent (5%) of the total number of Shares authorized under the Plan or, in the case of automatic grants to Outside Directors, as otherwise permitted under Section 12(b), no Award may vest sooner than twelve (12) months from the date of grant.

SECTION 20. NO EMPLOYMENT RIGHTS.

No provision of the Plan, nor any Award granted under the Plan, shall be construed to give any person any right to become, to be treated as, or to remain an Employee. The Corporation and its Subsidiaries reserve the right to terminate any person’s Service at any time and for any reason, with or without notice.

SECTION 21. APPLICABLE LAW.

The Plan shall be construed and enforced in accordance with the law of the State of Delaware, without reference to its principles of conflicts of law.

SECTION 22. DURATION AND AMENDMENTS.

- (a) *Term of the Plan.* The Plan, as set forth herein, shall terminate automatically on June 30, 2021 and may be terminated on any earlier date pursuant to Subsection (b) below.
- (b) *Right to Amend or Terminate the Plan.* The Board of Directors may amend or terminate the Plan at any time and from time to time. Rights and obligations under any Award granted before amendment of the Plan shall not be materially impaired by such amendment, except with consent of the Participant. An amendment of the Plan shall be subject to the approval of the Corporation’s stockholders only to the extent required by applicable laws, regulations or rules.
- (c) *Effect of Termination.* No Awards shall be granted under the Plan after the termination thereof. The termination of the Plan shall not affect Awards previously granted under the Plan.