

**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):

September 24, 2008

PDL BioPharma, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation)

000-19756

(Commission File No.)

94-3023969

(I.R.S. Employer Identification
No.)

**1400 Seaport Boulevard
Redwood City, California 94063**
(Address of principal executive offices)

Registrant's telephone number, including area code:

(650) 454-1000

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))

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

(c) PDL BioPharma, Inc. (the "Company" or "we") entered into an employment offer letter with Faheem Hasnain effective as of September 24, 2008 (the "Offer Letter") pursuant to which Mr. Hasnain has agreed to join the Company as its President and Chief Executive Officer effective October 1, 2008. Mr. Hasnain will also join our Board of Directors (the "Board") on October 1, 2008.

Mr. Hasnain is 50 years old. From October 2004 to September 2008, Mr. Hasnain served at Biogen Idec Inc., most recently as its Executive Vice President, Oncology/Rheumatology Strategic Business Unit. From March 2002 to September 2004, Mr. Hasnain served as President, Oncology Therapeutics Network, at Bristol-Myers Squibb. From January 2001 to February 2002, Mr. Hasnain served as Vice President, Global eBusiness, at GlaxoSmithKline and from 1988 to 2000 he served in key commercial and entrepreneurial roles within GlaxoSmithKline and its predecessor organizations, spanning global eBusiness, international commercial operations, sales and marketing. Mr. Hasnain serves as a member of the Board of Directors of Tercica, Inc., a publicly held biopharmaceutical company. Mr. Hasnain received a B.H.K. and B.Ed. from the University of Windsor Ontario in Canada.

Pursuant to the Offer Letter, we will employ Mr. Hasnain as an at-will employee for an annual base salary of \$550,000. Mr. Hasnain's annual target bonus will be 75% of his annual base salary, with the actual amount earned dependent upon company and individual performance. Mr. Hasnain's bonus with respect to 2008 service would be prorated based on his October 1, 2008 employment commencement date and would be determined by his contribution to the Company's achievement of 2008 goals and objectives and his individual performance during 2008.

Also, we agreed to grant to Mr. Hasnain on his employment commencement date an option to purchase 650,000 shares of common stock of the Company (the "New Hire Option") and a restricted stock award for 125,000 shares of common stock of the Company (the "New Hire RSA"). The New Hire Option will vest over four years, with one-fourth of the shares vesting one year after grant and the remainder vesting in equal monthly increments over the remaining three years. The New Hire RSA will vest with respect to one-fourth of the shares annually following grant.

Mr. Hasnain will receive a monthly housing allowance of \$6,000 beginning on his employment start date and ending on the earlier of his termination of employment or the second anniversary of his employment start date. Also, we agreed to reimburse Mr. Hasnain for reasonable moving expenses.

Mr. Hasnain will participate in the Company's Retention and Severance Plan for Chief Executive Officer (the "Plan"), which provides benefits in connection with a "Change in Control" or Mr. Hasnain's "Involuntary Termination" (as those terms are defined in the Plan).

Under the Plan, if the surviving or acquiring entity in a Change in Control does not assume or substitute equivalent awards for Mr. Hasnain's equity awards whose vesting is based on continued service alone ("service-based equity awards"), then such awards will vest in full immediately prior to the Change in Control. In addition, all equity awards held by Mr. Hasnain whose vesting is based on achievement of performance goals ("performance-based equity awards") would vest in full immediately prior to the Change in Control in an amount that would vest had the target level of performance been achieved.

The Plan also provides for severance, health and life insurance continuation benefits and acceleration of vesting of equity awards in the event of Mr. Hasnain's Involuntary Termination, subject to Mr. Hasnain's execution of a general release of all claims against the Company.

Upon Involuntary Termination within 18 months after a Change in Control, Mr. Hasnain would be entitled to:

- A lump sum payment equal to two years of Mr. Hasnain's annual base salary and two times his annual target bonus;

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- Continuation of health and life insurance benefits for 24 months;
 - 100% of the unvested portion of Mr. Hasnain's equity awards, including awards granted by the surviving or acquiring entity after the Change in Control, would become vested; and
 - Stock options held by Mr. Hasnain would remain exercisable for one year after termination of employment.

If an Involuntary Termination occurs at any time other than within 18 months after a Change in Control, then Mr. Hasnain would be entitled to:

- A lump sum payment equal to 18 months of Mr. Hasnain's annual base salary and 1.5 times his annual target bonus;
- Continuation of health and life insurance benefits for 18 months;
- Any unvested service-based equity awards held by Mr. Hasnain, which would otherwise vest during the 18 months following termination, would become vested;
- Except for awards intended to qualify for exemption under Section 162(m) of the Internal Revenue Code, the vesting of performance-based equity awards would accelerate to the extent that the award would vest had the target level of performance been achieved, subject to proration if the performance period would have continued for more than 18 months beyond the date of Mr. Hasnain's termination of employment;
- Performance-based equity awards intended to qualify for exemption under Section 162(m) of the Internal Revenue Code will vest based upon the actual achievement of the applicable performance goals at the end of the performance period, subject to proration if the performance period extends more than 18 months beyond Mr. Hasnain's termination of employment; and
- Stock options held by Mr. Hasnain would remain exercisable for one year after termination of employment.

Should we complete our planned spin-off of our biotechnology business, (1) Mr. Hasnain will join the distributed corporation at the time of its spin-off as its President and Chief Executive Officer under employment terms substantially similar to those provided by the Offer Letter, (2) the Company will terminate Mr. Hasnain's employment with the Company at that time, and (3) Mr. Hasnain will resign from the Company's Board, at the request of our Board. Mr. Hasnain will be appointed as a member of the Board of Directors of the distributed corporation at or prior to the time of the spin-off. Pursuant to the Offer Letter, Mr. Hasnain agreed that neither the spin-off of our biotechnology business nor his termination of employment with the Company in connection with his assumption of duties with the distributed corporation will entitle him to any rights or benefits under the Plan.

The Offer Letter and the Plan are attached hereto as Exhibits 10.1 and 10.2 to this Current Report on Form 8-K, respectively, and incorporated herein by reference. The foregoing description of the Offer Letter and the Plan is qualified in its entirety by reference to Exhibits 10.1 and 10.2.

The press release announcing the above executive change is furnished as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Offer Letter between PDL BioPharma, Inc. and Faheem Hasnain effective September 24, 2008.
10.2	PDL BioPharma, Inc. Retention and Severance Plan for Chief Executive Officer.
99.1	Press Release issued by PDL BioPharma, Inc. on September 25, 2008.

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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.

Date: September 25, 2008

PDL BioPharma, Inc.

By: /s/ Francis Sarena
Francis Sarena
Vice President, General Counsel and Secretary

September 24, 2008

Mr. Faheem Hasnain

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Dear Faheem:

On behalf of PDL BioPharma, Inc. ("PDL" or "we"), I am pleased to extend to you an employment offer for the position of President and Chief Executive Officer, reporting to our Board of Directors (the "Board"). Also, you will be appointed to the Board effective as of the date you become President and Chief Executive Officer. Your employment with PDL will begin on October 1, 2008 (the "Employment Date").

As we have discussed, PDL is undertaking to spin off of its biotechnology operations into a separate publicly traded company, currently named Facet Biotech Corporation ("Facet"). You and PDL agree that, subject to and in connection with the spin off of Facet, PDL shall cause Facet to offer to employ you as its President and Chief Executive Officer on the terms and conditions set forth in the form of offer letter attached hereto as Exhibit A (the "Facet Offer Letter") and you agree to accept such offer of employment with Facet on such terms and conditions. You and PDL further agree that PDL will terminate your employment with PDL upon your commencement of employment with Facet, and you will resign from PDL's Board upon or after the spin-off at the request of PDL's Board. We intend to appoint you to the Board of Directors of Facet at or prior to the time of the spin-off. While we plan to complete the spin-off transaction by the end of 2008, it is possible for various reasons that the spin-off may not occur by that time or at all. If PDL does not complete the spin-off transaction for any reason, you will remain President and Chief Executive Officer of PDL and a member of the PDL Board.

You agree that you will devote your full business time and efforts to PDL. You agree that you will not engage in any other business or serve in any position with or as a consultant or adviser to any other corporation or entity (including as a member of such corporation's or entity's board of directors or other governing or advising body), without the prior written consent of the Board. Notwithstanding the foregoing, but only for so long as such activities in the aggregate do not materially interfere with your duties hereunder or create a business or fiduciary conflict, you will not be prohibited from (i) participating in charitable, civic, educational, professional, community or industry affairs (including membership on boards of directors), (ii) managing your passive personal investments, and (iii) continuing your service in the positions that you held as of

the date of this offer letter, which positions you have disclosed to the Board, provided that any such service obligation is not materially increased beyond what you have disclosed to us.

Your monthly base salary for this position (as in effect from time to time, "Base Salary") will be \$45,833.33 (\$550,000/annually), less applicable taxes and withholdings, and will be payable in accordance PDL's payroll procedures. Your Base Salary shall be reviewed each year but will not be subject to decrease unless such decrease is part of an overall reduction effected for executive officers of PDL. Your annual target bonus will be set at 75% of your annual Base Salary. Your bonus with respect to 2008 service will be prorated from the Employment Date and based on your contribution to PDL's achievement of its 2008 goals and objectives during 2008 and your individual performance during this period as determined by the Board or the Compensation Committee of the Board. Your annual bonus payout and the applicable performance goals for subsequent years will be determined annually by the Board or the Compensation Committee.

In lieu of your participation in the PDL relocation policy applicable to your position with PDL (except as provided in the next sentence), beginning on the Employment Date and ending on the earlier of the date of your termination of employment with PDL or the second anniversary of the Employment Date, PDL will pay to you a monthly housing allowance of \$6,000.00. In addition, PDL will reimburse you for reasonable moving expenses from your current residence in San Diego, California to the San Francisco Bay area in accordance with PDL's relocation policy applicable to your position with PDL. PDL will reimburse you for actual and reasonable attorney fees incurred by you in connection with your negotiation of this agreement in an amount not to exceed \$7,500. Any reimbursement of expenses or in-kind benefit you are entitled to receive pursuant to this paragraph shall be subject to the following: (i) such reimbursements shall be paid no later than the last day of your taxable year following the taxable year in which the expense was incurred, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, and (iii) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

We also offer to our employees other incentive programs and a benefits package, including a comprehensive medical policy and dental plan, as well as life insurance coverage, in which you will be eligible to participate in accordance with company guidelines.

The Compensation Committee of the Board will grant to you, effective on the Employment Date, (i) an option (the "Option") to purchase 650,000 shares of common stock of PDL under PDL's 1999 Stock Option Plan, with an exercise price per share

equal to the fair market value of a share of our common stock on the grant date, and (ii) a restricted stock award (the "Restricted Stock Award") for 125,000 shares of common stock of PDL under PDL's 2005 Equity Incentive Plan. The Option and Restricted Stock Award will be subject to your execution of a Notice of Grant of Stock Option and Notice of Grant of Restricted Stock Award in the forms attached hereto, respectively, and the terms and conditions of the applicable plan and award agreement and the Retention and Severance Plan for Chief Executive Officer attached hereto as Exhibit B (the "Severance Plan").

Subject to your continued employment with PDL, the Option will vest over four years, with one-fourth of the shares vesting one year after grant and the remainder vesting in equal monthly increments over the remaining three years, and the Restricted Stock Award will vest with respect to one-fourth of the shares annually following grant. You acknowledge that at the time of the termination of your employment with PDL, including in connection with the spin-off of Facet, (i) the unvested portion of the Option will terminate immediately, (ii) the vested portion of the Option will remain exercisable for three months after such employment termination (or for one year in case your employment is terminated because of death or disability) and thereafter will terminate, and (iii) any unvested portion of the Restricted Stock Award will be immediately forfeited and cancelled. Provided that you are still employed with PDL and the spin-off has not occurred, beginning with the second year of your employment with PDL you shall be eligible for annual equity awards in an amount

commensurate with your title and position at PDL, as determined by the Compensation Committee of the Board in its discretion, taking into account your and PDL's performance over the preceding year.

Your employment with PDL will not be for a set term, and you will be an at-will employee. As a PDL employee, you will be free to resign at any time, just as we will be free to terminate your employment at any time, with or without cause. There will be no express or implied agreements to the contrary. In the event that your employment with PDL terminates, you will be entitled to receive the applicable benefits provided under the Severance Plan, subject to its terms and conditions. However, you agree that neither (i) the spin-off of Facet, (ii) the sale, transfer, pledge or other disposition of all or a portion of PDL's rights to receive antibody humanization royalties or a distribution of the proceeds of such monetization or sale, nor (iii) your termination of employment by PDL at the time you commence employment with Facet pursuant to the Facet Offer Letter will entitle you to any rights or benefits under the Severance Plan.

PDL intends that income provided to you pursuant to this letter agreement will not be subject to taxation under Section 409A of the Internal Revenue Code of 1986, as amended. The provisions of this letter agreement shall be interpreted and construed in favor of satisfying any applicable requirements of Section 409A.

For purposes of federal immigration law, you will be required to provide PDL documentary evidence of your identity and eligibility for employment in the United States.

To indicate your acceptance of our offer, please sign and date this letter in the space provided below and return it, along with a signed copy of the enclosed Proprietary Information and Invention Assignment Agreement, to Francis Sarena in the enclosed envelope. This letter, along with the Proprietary Information and Invention Assignment Agreement, supersedes any prior representations or agreements, whether written or oral, with respect to our offer of employment to you. This letter may not be modified or amended except by a written agreement, signed by PDL and you.

We are very excited at the prospect of your joining PDL. This offer will remain open until September 26, 2008, at which time it will expire if not previously accepted,

Sincerely,

PDL BioPharma, Inc.

Accepted by:

/s/ Francis Sarena
Francis Sarena
Vice President, General Counsel
and Secretary

/s/ Faheem Hasnain
Faheem Hasnain

September 24, 2008
Date

Exhibit A

Form of Facet Offer Letter for CEO

[Date]

Mr. Faheem Hasnain
[Address]
[City, State Zip]

Dear Faheem:

On behalf of Facet Biotech Corporation (“Facet” or “we”), I am pleased to extend to you an employment offer for the position of President and Chief Executive Officer, reporting to our Board of Directors (the “Board”). Also, you will be appointed to the Board effective as of the date you become President and Chief Executive Officer. Your employment with Facet will begin on [] (the “Employment Date”).

You agree that you will devote your full business time and efforts to Facet. You agree that you will not engage in any other business or serve in any position with or as a consultant or adviser to any other corporation or entity (including as a member of such corporation's or entity's board of directors or other governing or advising body), without the prior written consent of the Board. Notwithstanding the foregoing, but only for so long as such activities in the aggregate do not materially interfere with your duties hereunder or create a business or fiduciary conflict, you will not be prohibited from (i) participating in charitable, civic, educational, professional, community or industry affairs (including membership on boards of directors), (ii) managing your passive personal investments, and (iii) continuing your service in the positions that you held as of the date of this offer letter, which positions you have disclosed to the Board, provided that any such service obligation is not materially increased beyond what you have disclosed to us.

Your monthly base salary for this position (as in effect from time to time, “Base Salary”) will be \$45,833.33 (\$550,000/annually), less applicable taxes and withholdings, and will be payable in accordance Facet's payroll procedures. Your Base Salary shall be reviewed each year but will not be subject to decrease unless such decrease is part of an overall reduction effected for executive officers of Facet. Your annual target bonus will be set at 75% of your annual Base Salary. Your bonus with respect to 2008 service will be prorated based on your start date with PDL BioPharma, Inc. (“PDL”) and based on your contribution to PDL's and Facet's achievement of 2008 goals and objectives during 2008 and your individual performance during this period as determined by the by the Board or the Compensation Committee of the Board. Your annual bonus payout and the

applicable performance goals for subsequent years will be determined annually by the Board or the Compensation Committee.

In lieu of your participation in the Facet relocation policy applicable to your position with Facet (except as provided in the next sentence), beginning on the commencement of your employment with Facet and ending on the earlier of the date of your termination of employment with Facet or the second anniversary of the date of your commencement of employment with PDL, Facet will pay to you a monthly housing allowance of \$6,000.00 (except to the extent of any such housing allowance pre-paid by PDL). In addition, Facet will reimburse you for reasonable moving expenses from your current residence in San Diego, California to the San Francisco Bay area in accordance with Facet's relocation policy applicable to your position with Facet, reduced by the sum of any such moving expenses reimbursed to you by PDL. Any reimbursement of expenses or in-kind benefit you are entitled to receive pursuant to this paragraph shall be subject to the following: (i) such reimbursements shall be paid no later than the last day of your taxable year following the taxable year in which the expense was incurred, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, and (iii) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

We also offer to our employees other incentive programs and a benefits package, including a comprehensive medical policy and dental plan, as well as life insurance coverage, in which you will be eligible to participate in accordance with company guidelines.

The Compensation Committee of the Board will grant to you (i) an option (the "Facet Option") to purchase 300,000 shares of common stock of Facet, reduced pro rata to the extent that you exercise any portion of the option to purchase shares of common stock of PDL granted to you upon the commencement of your employment with PDL, with an exercise price per share equal to the fair market value of a share of our common stock on the grant date, and (ii) a restricted stock award (the "Facet Stock Award") for 100,000 shares of common stock of Facet, reduced pro rata to the extent that you vest in any of the restricted shares of common stock of PDL granted to you upon the commencement of your employment with PDL. The Facet Option and Facet Stock Award will be granted under Facet's 2008 Equity Incentive Plan (the "Equity Plan") and will be subject to your execution of a Notice of Grant of Stock Option and Notice of Grant of Restricted Stock Award in the forms attached hereto, respectively, and the terms and conditions of the Equity Plan and applicable award agreement and Facet's Retention and Severance Plan (the "Facet Severance Plan"), subject to your entry into an agreement to participate in the Facet Severance Plan. Subject to your continued employment with Facet, the Facet Option will vest with respect to one-fourth of the shares one year after the date you started your employment with PDL (the "PDL Start Date") and the remainder will vest in

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36 equal monthly increments commencing with the month following the first anniversary of the PDL Start Date. Subject to your continued employment with Facet, the Facet Stock Award will vest with respect to one-fourth of the shares annually, with the first such installment vesting on the date one year after the PDL Start Date. We expect that the Facet Option and the Facet Stock Award will be granted approximately 20 trading days after the spin-off of Facet from PDL. Beginning with the second year following the commencement of your employment with PDL, you shall be eligible for annual equity awards in an amount commensurate with your title and position at Facet, as determined by the Compensation Committee of the Board in its discretion, taking into account your, PDL's and Facet's performance over the preceding year.

Your employment with Facet as President and Chief Executive Officer will not be for a set term, and you will be an at-will employee. As a Facet employee, you will be free to resign at any time, just as we will be free to terminate your employment at any time, with or without cause. There will be no express or implied agreements to the contrary. Facet will designate you a "Participant" in the Facet Severance Plan, subject to your entry into an agreement to participate in such plan. The Facet Severance Plan will include, with respect to your participation in such plan, a "gross-up" payment provision substantially similar to that set forth in Section 6.1 of the PDL BioPharma, Inc. Retention and Severance Plan for Chief Executive Officer attached as Exhibit B to the offer letter employment agreement between you and PDL, dated September 17, 2008. In the event that your employment with Facet terminates, you will be entitled to receive the applicable benefits provided under the Facet Severance Plan, subject to its terms and conditions.

Facet intends that income provided to you pursuant to this letter agreement will not be subject to taxation under Section 409A of the Internal Revenue Code of 1986, as amended. The provisions of this letter agreement shall be interpreted and construed in favor of satisfying any applicable requirements of Section 409A.

For purposes of federal immigration law, you will be required to provide Facet documentary evidence of your identity and eligibility for employment in the United States.

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To indicate your acceptance of our offer, please sign and date this letter in the space provided below and return it, along with a signed copy of the enclosed Proprietary Information and Invention Assignment Agreement, to _____ in the enclosed envelope. This letter, along with the Proprietary Information and Invention Assignment Agreement, supersedes any prior representations or agreements, whether written or oral, with respect to our offer of employment to you. This letter may not be modified or amended except by a written agreement, signed by Facet and you.

Sincerely,

Facet Biotech Corporation

Accepted by:

[Exhibit form; do not sign]

[Exhibit form; do not sign]

Chairperson of the Board

Faheem Hasnain

[Exhibit form; do not date]

Exhibit B

**Form of Retention and Severance Plan
for Chief Executive Officer**

**PDL BIOPHARMA, INC.
RETENTION AND SEVERANCE PLAN
FOR CHIEF EXECUTIVE OFFICER**

1. ESTABLISHMENT AND PURPOSE OF PLAN

1.1 **Establishment.** The PDL BioPharma, Inc. Retention and Severance Plan for Chief Executive Officer (the “*Plan*”) is hereby established by the Compensation Committee of the Board of Directors of PDL BioPharma, Inc., effective October 1, 2008 (the “*Effective Date*”).

1.2 **Purpose.** The Company draws upon the knowledge, experience and advice of its officers in order to manage its business for the benefit of the Company’s stockholders. Due to the widespread awareness of the possibility of mergers, acquisitions and other strategic alliances in the Company’s industry, the topics of compensation and other employee benefits in the event of a Change in Control or other circumstances that may result in termination of employment are issues in competitive recruitment and retention efforts. The Committee recognizes that the possibility or pending occurrence of a Change in Control could lead to uncertainty regarding the consequences of such an event and could adversely affect the Company’s ability to attract, retain and motivate present and future officers. The Committee has therefore determined that it is in the best interests of the Company and its stockholders to provide for the continued dedication of its officers notwithstanding the possibility or occurrence of circumstances that may result in termination of employment by establishing this Plan to provide the Chief Executive with enhanced financial security in the event of a termination of employment. The purpose of this Plan is to provide its Participant with specified compensation and benefits in the event of termination of employment under circumstances specified herein.

2. DEFINITIONS AND CONSTRUCTION

2.1 **Definitions.** Whenever used in this Plan, the following terms shall have the meanings set forth below:

(a) “*Applicable Benefit Period*” means:

- (1) with respect to the Participant’s Involuntary Termination Absent a Change in Control, a period of eighteen (18) months; and
- (2) with respect to the Participant’s Involuntary Termination Following a Change in Control, a period of twenty-four (24) months.

(b) “*Base Salary Rate*” means, as applicable, either:

- (1) with respect to the Participant’s Involuntary Termination Absent a Change in Control, the Participant’s monthly base salary rate in effect immediately

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prior to such termination of employment (without giving effect to any reduction in the Participant’s base salary rate constituting Good Reason); or

- (2) with respect to the Participant’s Involuntary Termination Following a Change in Control, the greater of (i) the Participant’s monthly base salary rate in effect immediately prior to such termination of employment (without giving effect to any reduction in the Participant’s base salary rate constituting Good Reason) or (ii) the Participant’s monthly base salary rate in effect immediately prior to the applicable Change in Control.

For this purpose, base salary does not include any bonuses, commissions, fringe benefits, car allowances, other irregular payments or any other compensation except base salary.

(c) “*Board*” means the Board of Directors of the Company.

(d) “*Bonus Rate*” means the quotient determined by dividing whichever of the following amounts is the greatest by twelve (12):

- (1) the aggregate of all annual incentive bonuses earned by the Participant (whether or not actually paid) under the terms of the programs, plans or agreements providing for such bonuses for the fiscal year of the Company immediately preceding the fiscal year of the Change in Control; or
- (2) the aggregate of all annual incentive bonuses earned by the Participant (whether or not actually paid) under the terms of the programs, plans or agreements providing for such bonuses for the fiscal year of the Company immediately preceding the fiscal year of the Participant’s Involuntary Termination Following a Change in Control; or
- (3) the aggregate of all annual incentive bonuses that would be earned by the Participant at the Participant’s annual incentive bonus target rate (assuming attainment of 100% of all applicable performance goals) under the terms of the programs, plans or agreements providing for such bonuses in which the Participant was participating for the fiscal year of the Participant’s Involuntary Termination Following a Change in Control (without giving effect to any reduction in the Participant’s annual incentive bonus target rate constituting Good Reason);

provided, however, that for the purposes of this definition, “annual incentive bonuses” shall not include signing bonuses, retention bonuses or other nonrecurring cash awards that are not part of an annual incentive bonus program.

(e) “*Cause*” means the occurrence of any of the following:

(1) the Participant's intentional theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of any Company Group documents or records; or

(2) the Participant's material failure to abide by the Company's code of conduct or other written policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct); or

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(3) the Participant's material and intentional unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company Group (including, without limitation, the Participant's improper use or disclosure of Company Group confidential or proprietary information); or

(4) any intentional act by the Participant which has a material detrimental effect on the Company Group's reputation or business; or

(5) the Participant's repeated failure or inability to perform any reasonable assigned duties after written notice from the Board of, and a reasonable opportunity to cure, such failure or inability; or

(6) any material breach by the Participant of any employment, service, non-disclosure, non-competition, non-solicitation or other similar agreement between the Participant and a member of the Company Group, which breach is not cured pursuant to the terms of such agreement or within twenty (20) days of receiving written notice of such breach; or

(7) the Participant's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant's ability to perform his or her duties with the Company Group.

(f) **"Change in Control"** means the occurrence of any of the following:

(1) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as such term is defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total fair market value or total combined voting power of the Company's then-outstanding securities entitled to vote generally in the election of directors of the Company; provided, however, that a Change in Control shall not be deemed to have occurred if such degree of beneficial ownership results from any of the following: (i) an acquisition by any person who on the Effective Date is the beneficial owner of more than fifty percent (50%) of such voting power, (ii) any acquisition directly from the Company, including, without limitation, pursuant to or in connection with a public offering of securities, (iii) any acquisition by the Company, (iv) any acquisition by a trustee or other fiduciary under an employee benefit plan of a member of the Company Group or (v) any acquisition by an entity owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the voting securities of the Company; or

(2) the Company is party to a merger, consolidation or similar corporate transaction, or series of related transactions, which results in the holders of the voting securities of the Company outstanding immediately prior to such transaction(s) failing to retain immediately after such transaction(s) direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the securities entitled to vote generally in the election of directors of the Company or the surviving entity outstanding immediately after such transaction(s); or

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(3) the sale, exchange or transfer of all or substantially all of the assets of the Company or consummation of any transaction, or series of related transactions, having similar effect (other than a sale or disposition to one or more subsidiaries of the Company); or

(4) a change in the composition of the Board within any consecutive twelve-month period as a result of which fewer than a majority of the directors are Incumbent Directors;

provided, however, that a Change in Control shall be deemed not to include (i) a transaction described in subsections (1) or (2) of this Section in which a majority of the members of the board of directors of the continuing, surviving or successor entity, or parent thereof, immediately after such transaction is comprised of Incumbent Directors, or (ii) a transaction described in subsection (3) in which the holders of the voting securities of the Company outstanding immediately prior to such transaction(s) retain immediately after such transaction(s) direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the securities entitled to vote generally in the election of directors of the entity to which the assets of the Company were transferred, or (iii) a transaction described in subsection (3) involving the sale, exchange, transfer, pledge or other disposition of all or a portion of the Company Group's rights to receive antibody humanization royalties or a distribution of the proceeds of such monetization or sale.

(g) **"Change in Control Period"** means a period commencing upon the consummation of a Change in Control and ending on the date occurring eighteen (18) months thereafter.

(h) **"Chief Executive Officer"** means the individual appointed by the Board as the Chief Executive Officer of the Company and who is serving in such capacity immediately prior to the first to occur of: (1) a condition constituting Good Reason with respect to such individual, (2) such individual's termination of employment with the Company Group, or (3) the commencement of the applicable Change in Control Period.

(i) **"COBRA"** means the group health plan continuation coverage provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 and any applicable regulations promulgated thereunder.

(j) **"Code"** means the Internal Revenue Code of 1986, as amended, and any applicable regulations or administrative guidelines promulgated thereunder.

(k) **"Committee"** means the Compensation Committee of the Board.

(l) “**Company**” means PDL BioPharma, Inc., a Delaware corporation, and, following a Change in Control, a Successor that agrees to assume all of the rights and obligations of the Company under this Plan or a Successor which otherwise becomes bound by operation of law under this Plan.

(m) “**Company Group**” means the group consisting of the Company and each present or future parent and subsidiary corporation or other business entity thereof.

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(n) “**Equity Award**” means any stock option (excluding, however, an option described in Section 423 of the Code), stock appreciation right, stock bonus, stock purchase, restricted stock, restricted stock unit, performance share, performance unit, phantom stock or other stock-based compensation award of any kind granted by any member of the Company Group and held by the Participant, including any such award which is assumed by, or for which a replacement award is substituted by, the Successor or any other member of the Company Group in connection with a Change in Control.

(o) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

(p) “**Good Reason**” means the occurrence of any of the following conditions without the Participant’s informed written consent:

(1) a material diminution in the Participant’s authority, duties or responsibilities, causing the Participant’s position to be of materially lesser rank or responsibility within the Company Group; or

(2) a requirement that the Participant report to a corporate officer or other employee rather than directly to the Board or the board of directors of the Company’s parent; or

(3) a material reduction in the Participant’s Base Salary Rate or annual incentive bonus target rate, unless reductions comparable in amount and duration are concurrently made for all other officers of the Company Group; or

(4) a change in the Participant’s work location that increases the regular one-way commute distance between the Participant’s residence prior to such change and work location by more than thirty (30) miles; or

(5) any action or inaction by a member of the Company Group that constitutes, with respect to the Participant, a material breach of this Plan or an employment agreement under which the Participant provides services to the Company Group, including a breach described in Section 14.2.

(q) “**Incumbent Director**” means a director who either (1) is a member of the Board as of the Effective Date, or (2) is elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination, but (3) who was not elected or nominated in connection with an actual or threatened proxy contest relating to the election of directors of the Company.

(r) “**Involuntary Termination**” means the occurrence of any of the following events:

(1) termination by the Company Group of the Participant’s employment for any reason other than Cause, the Participant’s death, or the Participant’s Permanent Disability; or

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(2) failure by the Company Group to renew an employment agreement under which the Participant provides services to the Company Group, provided that the Participant was willing and able to execute a new employment agreement providing terms and conditions substantially similar to those of the expiring employment agreement and to continue providing such services; or

(3) the Participant’s resignation for Good Reason from employment with the Company Group within one hundred eighty (180) days following the initial existence of a condition constituting Good Reason, provided that the Participant delivered written notice to the Company of such condition within ninety (90) days after its initial existence and the Company failed to cure such condition within thirty (30) days following such written notice;

provided, however, that Involuntary Termination shall not include any voluntary resignation from employment by the Participant for any reason other than Good Reason.

(s) “**Involuntary Termination Absent a Change in Control**” means an Involuntary Termination that does not occur during a Change in Control Period.

(t) “**Involuntary Termination Following a Change in Control**” means an Involuntary Termination that occurs during a Change in Control Period.

(u) “**Participant**” means the Chief Executive Officer, provided the Chief Executive Officer has executed a Participation Agreement.

(v) “**Participation Agreement**” means an Agreement to Participate in the PDL BioPharma, Inc. Retention and Severance Plan for Chief Executive Officer in the form attached hereto as Exhibit A or in such other form as the Committee may approve from time to time; provided,

however, that, after a Participation Agreement has been entered into between the Participant and the Company, it may be modified only by a supplemental written agreement executed by both the Participant and the Company.

(w) **“Performance-Based Equity Award”** means an Equity Award the vesting or earning of which is conditioned in whole or in part upon the achievement of one or more performance goals (e.g., the attainment of a target stock price, achievement of a corporate financial goal or achievement of an individual goal other than continued performance of services for a specified period of time), notwithstanding that the vesting or earning of such Equity Award may also be conditioned upon the continued performance of services for the Company Group.

(x) **“Permanent Disability”** means the Participant’s incapacity due to bodily injury or physical or mental illness which (1) prevents the Participant from engaging in the full-time performance of the Participant’s duties for a period of six (6) consecutive months and (2) will, in the opinion of a qualified physician, be permanent and continuous during the remainder of the Participant’s life.

(y) **“Release”** means a general release of all known and unknown claims against the Company and its affiliates and their stockholders, directors, officers, employees, agents, successors and assigns substantially in the form attached hereto as Exhibit B

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(“General Release of Claims Age 40 and over”), with any modifications thereto determined by legal counsel to the Company to be necessary or advisable to comply with applicable law or to accomplish the intent of Section 8 (Exclusive Remedy) hereof.

(z) **“Section 409A”** means Section 409A of the Code.

(aa) **“Section 409A Deferred Compensation”** means compensation, benefits or arrangements provided by the Plan or otherwise that constitute or would give rise to deferred compensation subject to and not exempted from the requirements of Section 409A.

(bb) **“Separation from Service”** means a separation from service within the meaning of Section 409A.

(cc) **“Service-Based Equity Award”** means an Equity Award the vesting or earning of which is conditioned solely upon the continued performance of services for the Company Group.

(dd) **“Specified Employee”** means a specified employee within the meaning of Section 409A.

(ee) **“Successor”** means any successor in interest to substantially all of the business and/or assets of the Company.

(ff) **“Target Bonus Rate”** means, with respect to the Participant’s Involuntary Termination Absent a Change in Control, the quotient determined by dividing the following amount by twelve (12): the aggregate of all annual incentive bonuses that would be earned by the Participant at the Participant’s annual incentive bonus target rate (assuming attainment of 100% of all applicable performance goals) under the terms of the programs, plans or agreements providing for such bonuses in which the Participant was participating for the fiscal year of the Participant’s Involuntary Termination Absent a Change in Control (without giving effect to any reduction in the Participant’s annual incentive bonus target rate constituting Good Reason); provided, however, that for the purposes of this definition, “annual incentive bonuses” shall not include signing bonuses, retention bonuses or other nonrecurring cash awards that are not part of an annual incentive bonus program.

2.2 **Construction.** The Company intends that all payments and benefits provided by this Plan be exempt from or comply with all applicable requirements of Section 409A, and any ambiguities in the Plan shall be construed in a manner consistent with such intent. Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

3. **ELIGIBILITY AND PARTICIPATION**

The individual eligible to be designated to participate in the Plan shall be the Chief Executive Officer. The Chief Executive Officer shall become a Participant upon such individual’s execution of a Participation Agreement.

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4. **PAYMENTS AND BENEFITS UPON TERMINATION OF EMPLOYMENT.**

In the event of the Participant’s termination of employment with the Company Group, the Participant shall be entitled to receive the applicable compensation and benefits described in this Section 4.

4.1 **Involuntary Termination Absent a Change in Control.** In the event of the Participant’s Involuntary Termination Absent a Change in Control, the Participant shall be entitled to receive the following compensation and benefits:

(a) **Accrued Obligations.** The Participant shall be entitled to receive:

(1) all salary, commissions, bonuses and accrued but unused vacation earned through the date of the Participant’s termination of employment, which shall be paid at the time required by applicable law or pursuant to the terms and conditions of the plans or agreements providing for such payments; and

(2) reimbursement within ten (10) business days of submission of proper reports, such submission to be made within thirty (30) days following the Participant’s termination of employment, of all business expenses reasonably and necessarily incurred by the Participant in

connection with the business of the Company Group prior to his or her termination of employment in accordance with the Company Group's business expense policy; and

(3) the benefits, if any, under any Company Group retirement plan, nonqualified deferred compensation plan, Equity Award plan or agreement, welfare benefit plan or other Company Group compensation or benefit plan to which the Participant may be entitled pursuant to the terms and conditions of such plans or agreements.

(b) **Severance Benefits.** Provided that the Participant resigns upon such Involuntary Termination Absent a Change in Control from all capacities in which the Participant is then rendering service to the Company Group (including, without limitation, service as a member of the Board), executes the Release and such Release becomes effective in accordance with its terms on or before the sixtieth (60th) day following the date of the Participant's Involuntary Termination Absent a Change in Control, the Participant shall be entitled to receive the following severance payments and benefits to which the Participant would not otherwise be entitled:

(1) **Cash Severance Payments.** Subject to Section 6.2, the Company shall pay to the Participant in a lump sum cash payment on the sixtieth (60th) day following the date of the Participant's termination of employment an amount equal to (i) the sum of the Participant's applicable Base Salary Rate and the Participant's Target Bonus Rate multiplied by (ii) the number of months contained in the Participant's Applicable Benefit Period.

(2) **Health and Life Insurance Benefits.** Subject to Section 6.2, for the period commencing immediately following the Participant's termination of employment and continuing for the duration of the Applicable Benefit Period, the Company shall arrange to provide the Participant and his or her dependents with health benefits (including medical and dental) and life insurance benefits substantially similar to those provided to the

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Participant and his or her dependents immediately prior to the date of such termination of employment or shall reimburse the Participant for the cost of obtaining such benefits to the extent described below. Such benefits shall be provided to the Participant at the same premium cost to the Participant and at the same coverage level as in effect as of the Participant's termination of employment; provided, however, that the Participant shall be subject to any change in the premium cost and/or level of coverage applicable generally to all employees holding the position or comparable position with the Company Group which the Participant held immediately prior to termination of employment. The Company may satisfy its obligation to provide a continuation of health benefits by paying that portion of the Participant's premiums required under COBRA that exceeds the amount of premiums that the Participant would have been required to pay for continuing coverage had he or she continued in employment. If the Company is not reasonably able to continue such coverage under the Company's health benefit plans, the Company shall provide substantially equivalent coverage under other sources or will reimburse (without a tax gross-up) the Participant for premiums (in excess of the Participant's premium cost described above) incurred by the Participant to obtain his or her own such coverage. If the Participant and/or the Participant's dependents become eligible to receive such coverage under another employer's health benefit plans during the Applicable Benefit Period, the Participant shall report such eligibility to the Company, and the Company's obligations under this subsection shall be secondary to the coverage provided by such other employer's plans. For the balance of any period in excess of the Applicable Benefit Period during which the Participant is entitled to continuation coverage under COBRA, the Participant shall be entitled to maintain coverage for himself or herself and the Participant's eligible dependents at the Participant's own expense.

(3) **Outplacement Benefits.** Subject to Section 6.2, for the period commencing immediately following the Participant's termination of employment and continuing for a period of six (6) months, the Company will provide the Participant with reasonable outplacement services from vendors designated by the Company.

(4) **Acceleration of Vesting of Equity Awards.**

(i) **Service-Based Equity Awards.** Notwithstanding any provision to the contrary contained in any plan or agreement evidencing a Service-Based Equity Award, but subject to Section 6.2 and subsections (iv) and (v) below, each of the Participant's Service-Based Equity Awards outstanding at the time of the Participant's termination of employment with the Company Group shall vest effective as of the time of the Participant's termination of employment to the same extent that such Equity Award would have vested in accordance with its terms over the period of eighteen (18) months following the date of the Participant's termination of employment had the Participant's employment with the Company Group continued throughout such period.

(ii) **Performance-Based Equity Awards Other Than Section 162(m) Exempt Awards.** Notwithstanding any provision to the contrary contained in any plan or agreement evidencing a Performance-Based Equity Award, but subject to Section 6.2 and subsection (iv) below, each of the Participant's Performance-Based Equity Awards, other than any such Equity Award intended to result in "qualified performance-based compensation" within the meaning of Section 162(m) of the Code (a "**Section 162(m) Exempt Award**"),

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outstanding at the time of the Participant's termination of employment with the Company Group shall vest effective as of the time of the Participant's termination of employment as follows:

(A) If the performance period of such award is scheduled to end within eighteen (18) months following the date of the Participant's termination of employment, such award shall vest to the same extent that it would have vested had one hundred percent (100%) of the target level of performance been achieved and had the Participant's employment with the Company Group continued through the date on which such award was to be settled in accordance with its terms.

(B) If the performance period of such award is scheduled to end more than eighteen (18) months following the date of the Participant's termination of employment, such award shall vest in an amount equal to the product of: (1) the amount of such award that would have vested had one hundred percent (100%) of the target level of performance been achieved and had the Participant's employment with the Company Group continued through the date on which such award was to be settled in accordance with its terms, and (2) a fraction (not greater than one), the

numerator of which is the number of days from the commencement of the performance period until the date eighteen (18) months following the date of the Participant's termination of employment and the denominator of which is the total number of days contained in the performance period.

(iii) **Performance-Based Equity Awards Which Are Section 162(m) Exempt Awards.** Notwithstanding any provision to the contrary contained in any plan or agreement evidencing a Performance-Based Equity Award, but subject to Section 6.2, each of the Participant's Performance-Based Equity Awards which is a Section 162(m) Exempt Award and is outstanding at the time of the Participant's termination of employment with the Company Group shall continue to remain outstanding and shall vest and be settled as follows:

(A) The Participant shall vest in and be entitled to receive an amount equal to the product of: (1) the amount of such award that would actually vest based upon the extent to which the applicable performance goals are actually attained as of the completion of the applicable performance period and had the Participant's employment with the Company Group continued through the date on which such award was to be settled in accordance with its terms, and (2) a fraction (not greater than one), the numerator of which is the number of days from the commencement of the performance period until the date eighteen (18) months following the date of the Participant's termination of employment and the denominator of which is the total number of days contained in the performance period.

(B) Payment of the amount determined under subsection (A) above shall be made at the same time payments are made to other participants in the plan or arrangement governing such award in accordance with its terms, but in any event no later than the 15th day of the third month following the later of (x) end of the Participant's taxable year in which the performance period ends or (y) the end of the Company's taxable year in which the performance period ends.

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(C) Notwithstanding the foregoing, in the event of the consummation of a Change in Control prior to the date on which payment would otherwise be made in accordance with subsection (B) above, then such award shall vest and be settled as provided by Section 5.2, but subject in any event to Section 6.2.

(iv) **Settlement of Certain Equity Awards Not Subject to Exercise.** Any Equity Award the vesting of which is accelerated by this Section 4.1(b)(4), other than a Section 162(m) Exempt Award, which is an award of restricted stock units, performance shares, performance units, phantom stock or similar stock-based compensation representing a future right to receive shares or other consideration the settlement of which is not determined by its holder's election to exercise such award shall be settled in full on the first to occur of (A) the sixtieth (60th) day following the date of the Participant's termination of employment, and (B) the effective time of a Change in Control, but subject in either case to Section 6.2.

(v) **Extension of Stock Option Exercise Period.** Notwithstanding any provision to the contrary contained in the agreement evidencing any Equity Award which is a stock option, the stock option, to the extent unexercised on the date on which the Participant's employment terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of one (1) year after the date on which the Participant's employment terminated, but in any event no later than the date of expiration of the stock option's term as set forth in the agreement evidencing such stock option.

(5) **Forfeiture of Benefits.** If the Release which is a condition to the Participant's right to payments and benefits pursuant to this Section 4.1(b) does not become effective on or before the sixtieth (60th) day following the date of the Participant's termination of employment, then the Company shall have the right to: (i) terminate any further provision of such severance benefits pursuant to this Plan, (ii) seek reimbursement from the Participant for all such severance benefits previously provided to the Participant pursuant to this Plan, (iii) recover from the Participant all shares of the Company's stock owned by the Participant (or the proceeds therefrom, reduced by any exercise or purchase price paid to acquire such shares) the vesting of which was accelerated pursuant to this Plan, and (iv) to immediately cancel all Equity Awards the vesting of which was accelerated pursuant to this Plan.

4.2 **Involuntary Termination Following a Change in Control.** In the event of the Participant's Involuntary Termination Following a Change in Control, the Participant shall be entitled to receive the following compensation and benefits:

(a) **Accrued Obligations.** The Participant shall be entitled to receive all of the accrued obligations described in Section 4.1(a), which shall be provided in the same manner as described in such Section.

(b) **Severance Benefits.** Provided that the Participant resigns upon such Involuntary Termination Following a Change in Control from all capacities in which the Participant is then rendering service to the Company Group (including, without limitation, service as a member of the Board), executes the Release and such Release becomes effective in

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accordance with its terms on or before the sixtieth (60th) day following the date of the Participant's Involuntary Termination Following a Change in Control, the Participant shall be entitled to receive the following severance payments and benefits to which the Participant would not otherwise be entitled:

(1) **Cash Severance Payments.** Subject to Section 6.2, the Company shall pay to the Participant in a lump sum cash payment on the sixtieth (60th) day following the date of the Participant's termination of employment an amount equal to (i) the sum of the Participant's applicable Base Salary Rate and the Participant's applicable Bonus Rate multiplied by (ii) the number of months contained in the Participant's Applicable Benefit Period.

(2) **Health and Life Insurance Benefits.** Subject to Section 6.2, for the period commencing immediately following the Participant's termination of employment and continuing for the duration of the Applicable Benefit Period, the Company shall arrange to provide the Participant and his or her dependents with health benefits (including medical and dental) and life insurance benefits substantially similar to those provided to the Participant and his or her dependents immediately prior to the date of such termination of employment or shall reimburse the Participant for the cost of obtaining such benefits to the extent described below. Such benefits shall be provided to the Participant at the same premium cost to the Participant and at the same coverage level as in effect as of the Participant's termination of employment; provided, however, that the Participant shall be subject to any change in

the premium cost and/or level of coverage applicable generally to all employees holding the position or comparable position with the Company Group which the Participant held immediately prior to termination of employment. The Company may satisfy its obligation to provide a continuation of health benefits by paying that portion of the Participant's premiums required under COBRA that exceeds the amount of premiums that the Participant would have been required to pay for continuing coverage had he or she continued in employment. If the Company is not reasonably able to continue such coverage under the Company's health benefit plans, the Company shall provide substantially equivalent coverage under other sources or will reimburse (without a tax gross-up) the Participant for premiums (in excess of the Participant's premium cost described above) incurred by the Participant to obtain his or her own such coverage. If the Participant and/or the Participant's dependents become eligible to receive such coverage under another employer's health benefit plans during the Applicable Benefit Period, the Participant shall report such eligibility to the Company, and the Company's obligations under this subsection shall be secondary to the coverage provided by such other employer's plans. For the balance of any period in excess of the Applicable Benefit Period during which the Participant is entitled to continuation coverage under COBRA, the Participant shall be entitled to maintain coverage for himself or herself and the Participant's eligible dependents at the Participant's own expense.

(3) **Outplacement Benefits.** Subject to Section 6.2, for the period commencing immediately following the Participant's termination of employment and continuing for a period of six (6) months, the Company will provide the Participant with reasonable outplacement services from vendors designated by the Company.

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(4) **Acceleration of Vesting of Equity Awards; Extension of Stock Option Exercise Period.**

(i) Notwithstanding any provision to the contrary contained in any plan or agreement evidencing an Equity Award granted to the Participant, but subject to Section 6.2, the vesting of each of the Participant's Equity Awards outstanding at the time of the Participant's termination of employment with the Company Group shall be accelerated in full effective as of the time of the Participant's termination of employment.

(ii) In determining the extent of such acceleration of vesting of any Performance-Based Equity Award, it shall be assumed that one hundred percent (100%) of the target level of performance has been achieved.

(iii) Any Equity Awards the vesting of which is accelerated by this Section 4.2(b)(4) which is an award of restricted stock units, performance shares, performance units, phantom stock or similar stock-based compensation representing a future right to receive shares or other consideration the settlement of which is not determined by its holder's election to exercise such award shall be settled in full on the sixtieth (60th) day following the date of the Participant's termination of employment, subject to Section 6.2.

(iv) Notwithstanding any provision to the contrary contained in the agreement evidencing any Equity Award which is a stock option, the stock option, to the extent unexercised on the date on which the Participant's employment terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of one (1) year after the date on which the Participant's employment terminated, but in any event no later than the date of expiration of the stock option's term as set forth in the agreement evidencing such stock option.

(5) **Forfeiture of Benefits.** If the Release which is a condition to the Participant's rights to payments and benefits pursuant to this Section 4.2(b) does not become effective on or before the sixtieth (60th) day following the date of the Participant's termination of employment, then the Company shall have the right to: (i) terminate any further provision of such severance benefits pursuant to this Plan, (ii) seek reimbursement from the Participant for all such severance benefits previously provided to the Participant pursuant to this Plan, (iii) recover from the Participant all shares of the Company's stock owned by the Participant (or the proceeds therefrom, reduced by any exercise or purchase price paid to acquire such shares) the vesting of which was accelerated pursuant to this Plan, and (iv) to immediately cancel all Equity Awards the vesting of which was accelerated pursuant to this Plan.

4.3 **Other Termination.** In the event of the Participant's termination of employment with the Company Group which is not an Involuntary Termination, the Participant shall be entitled to receive only the accrued obligations described in Section 4.1(a), which shall be provided in the same manner as described in such Section.

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4.4 **Indemnification; Insurance.**

(a) In addition to any rights the Participant may have under any indemnification agreement previously entered into between the Company and such Participant (a "**Prior Indemnity Agreement**"), from and after the date of the Participant's Involuntary Termination Absent a Change in Control or Involuntary Termination Following a Change in Control, the Company shall indemnify and hold harmless the Participant against any costs or expenses (including attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, by reason of the fact that the Participant is or was a director, officer, employee or agent of the Company Group, or is or was serving at the request of the Company Group as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, whether asserted or claimed prior to, at or after the date of the Participant's termination of employment, to the fullest extent permitted under applicable law, and the Company shall also advance fees and expenses (including attorneys' fees) as incurred by the Participant to the fullest extent permitted under applicable law. In the event of a conflict between the provisions of a Prior Indemnity Agreement and the provisions of this Plan, the Participant may elect which provisions shall govern.

(b) For a period of six (6) years from and after the date of the Participant's Involuntary Termination Following a Change in Control, the Company shall use its best efforts to maintain a policy of directors' and officers' liability insurance for the benefit of such Participant which provides him or her with coverage no less favorable than that provided for the Company's continuing officers and directors.

5. **TREATMENT OF EQUITY AWARDS UPON A CHANGE IN CONTROL**

5.1 **Acceleration of Vesting Upon Non-Assumption of Service-Based Equity Awards.** Notwithstanding any provision to the contrary contained in any plan or agreement evidencing a Service-Based Equity Award held by the Participant, but subject to Section 6.2, in the event of a Change in Control in which the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the “*Acquiring Corporation*”), does not assume or continue the Company’s rights and obligations under such then-outstanding Service-Based Equity Award or substitute for such then-outstanding Service-Based Equity Award a substantially equivalent equity award for the Acquiring Corporation’s stock, then the vesting, exercisability and settlement of such Service-Based Equity Award which is not assumed, continued or substituted for shall be accelerated in full effective immediately prior to but conditioned upon the consummation of the Change in Control, provided that the Participant remains an employee or other service provider with the Company Group immediately prior to the Change in Control.

5.2 **Acceleration of Vesting of Performance-Based Equity Awards.** Notwithstanding any provision to the contrary contained in any plan or agreement evidencing a Performance-Based Equity Award held by the Participant, but subject to Section 6.2, in the event of a Change in Control the vesting, exercisability and settlement of such then-outstanding Performance-Based Equity Award shall be accelerated in full immediately prior to but conditioned upon the consummation of the Change in Control (assuming for the purpose of

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determining the extent of such acceleration, if applicable, that one hundred percent (100%) of the target level of performance has been achieved), provided that the Participant remains an employee or other service provider with the Company Group immediately prior to the Change in Control or as otherwise provided by Section 4.1(b)(4)(iii)(C).

6. **CERTAIN FEDERAL TAX CONSIDERATIONS**

6.1 **Federal Excise Tax Under Section 4999 of the Code.**

(a) **Additional Payment.** In the event that any payment or benefit received or to be received by the Participant pursuant to this Plan or otherwise payable to the Participant (collectively, the “*Payments*”) would be subject to the excise tax imposed by Section 4999 of the Code, or any similar or successor provision (the “*Excise Tax*”), the Company shall pay to the Participant within ninety (90) days following the date on which the Participant remits the Excise Tax, an additional amount (the “*Gross-Up Payment*”) such that the net amount retained by the Participant from the Payments and the Gross-Up Payment, after deduction of (a) any Excise Tax on the Payments, (b) any federal, state and local income or employment tax and Excise Tax on the Gross-Up Payment and (c) any interest, penalties or additions to tax payable by the Participant with respect thereto, shall be equal to the Payments. Notwithstanding the foregoing, if the Payments that would otherwise be subject to the Excise Tax do not exceed the greatest amount of Payments that could be paid to the Participant without giving rise to the Excise Tax (the “*Reduced Amount*”) by more than an amount equal to the lesser of \$100,000 or five percent of the Payments, then no Gross-Up Payment shall be payable to the Participant and the Payments, in the aggregate, shall be reduced to the Reduced Amount.

(b) **Determination of Amounts.**

(1) **Determination by Accountants.** All computations and determinations called for by this Section 6.1 shall be promptly determined and reported in writing to the Company and the Participant by independent public accountants selected by the Company and reasonably acceptable to the Participant (the “*Accountants*”). For the purposes of such determinations, the Accountants may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make their required determinations. The Company shall bear all fees and expenses charged by the Accountants in connection with such services.

(2) **Determination of Applicability of Reduced Amount.** For purposes of determining whether the Payments will be reduced to the Reduced Amount, any payments or benefits received or to be received by the Participant in connection with transactions contemplated by a Change in Control event or the Participant’s termination of employment (whether pursuant to the terms of this Plan or any other plan, arrangement or agreement with the Company), shall be treated as “parachute payments” within the meaning of Section 280G of the Code or any similar or successor provision (“*Section 280G*”), and all “excess parachute payments” within the meaning of Section 280G shall be treated as subject to the Excise Tax, except to the extent that, in the opinion of the Accountants, such payments or benefits otherwise constituting excess parachute payments represent (in whole or in part) reasonable compensation

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for services actually rendered within the meaning of Section 280G, or are otherwise not subject to the Excise Tax.

(c) **Notice and Contest of Claim.**

(1) The Participant shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of a Gross-Up Payment. Such notification shall be given as soon as practicable but no later than sixty (60) calendar days after the Participant is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Participant shall not pay such claim prior to the expiration of the thirty (30) day period following the date on which the Participant gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Participant in writing prior to the expiration of such period that it desires to contest such claim, the Participant shall:

(i) give the Company any information reasonably requested by the Company relating to such claim;

(ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company and reasonably satisfactory to the Participant;

(iii) cooperate with the Company in good faith in order to effectively contest such claim; and

- (iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including, but not limited to, additional interest and penalties and related legal, consulting or other similar fees) incurred in connection with such contest and shall indemnify and hold the Participant harmless, on an after-tax basis, for any Excise Tax or other tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses.

(2) The Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Participant to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Participant agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Participant to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Participant on an interest-free basis, and shall indemnify and hold the Participant harmless, on an after-tax basis, from any Excise Tax or other tax (including interest or penalties with respect thereto) imposed with respect

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to such advance or with respect to any imputed income with respect to such advance; and provided, further, that if the Participant is required to extend the statute of limitations to enable the Company to contest such claim, the Participant may limit this extension solely to such contested amount. The Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Participant shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority. In addition, no position may be taken nor any final resolution be agreed to by the Company without the Participant's consent if such position or resolution could reasonably be expected to adversely affect the Participant (including any other tax position of the Participant unrelated to the matters covered hereby).

(3) Except for amounts to be advanced by the Company in accordance with this Section 6.1(c), all payments required to be made by the Company to the Participant pursuant to this Section 6.1(c) shall be made prior to the end of the Participant's taxable year following the Participant's taxable year in which the taxes which are the subject of the claim are remitted by the Participant to the taxing authority, or where no taxes are required to be remitted, the end of the Participant's taxable year following the Participant's taxable year in which the audit is completed or there is a final and nonappealable settlement or other resolution of the litigation.

(d) **Adjustments.**

(1) In the event that the Excise Tax is subsequently determined to be less than the amount taken into account hereunder, the Participant shall repay to the Company, at the time that the amount of such reduction in Excise Tax is finally determined, the portion of the Gross-Up Payment attributable to such reduction (plus the portion of the Gross-Up Payment attributable to the Excise Tax and federal, state and local income and employment taxes imposed on the Gross-Up Payment being repaid by the Participant to the extent that such repayment results in a reduction in Excise Tax and/or a federal, state or local income or employment tax deduction) plus interest on the amount of such repayment at the rate provided in Section 1274(b)(2)(B) of the Code.

(2) In the event that the Excise Tax is subsequently determined to exceed the amount taken into account hereunder (including by reason of any payment the existence or amount of which cannot be determined at the time of the Gross-Up Payment), the Company shall make an additional Gross-Up Payment in respect of such excess (plus any interest, penalties or additions to tax payable by the Participant with respect to such excess) within ninety (90) days following the date on which the Participant remits such additional Excise Tax.

(3) In the event that it is subsequently determined that, notwithstanding the Accountants' good faith determination of the Reduced Amount pursuant to Section 6.1(b), if applicable, the aggregate "parachute payments" within the meaning of Section 280G paid to the Participant are in an amount that would result in any portion of such parachute payments not being deductible by reason of Section 280G, then the Participant shall pay to the Company an amount equal to the sum of (1) the excess of the aggregate parachute payments paid to the Participant over the aggregate parachute payments that could have been paid to the

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Participant without any portion of such parachute payments not being deductible by reason of Section 280G; and (2) interest on the amount determined pursuant to clause (1) of this sentence at the rate provided in Section 1274(b)(2)(B) of the Code from the date of the Participant's receipt of such excess until the date of such payment. Notwithstanding the foregoing, if the aggregate reduction in Payments resulting from the initial application of Section 6.1(a) and the subsequent application of this Section 6.1(d)(3) would exceed the lesser of \$100,000 or five percent of the Payments, then this Section 6.1(d)(3) shall not apply, and the Company shall direct the Accountants to compute and shall pay the Gross-Up Payment in accordance with the provisions of Section 6.1(a).

6.2 Compliance with Section 409A. Notwithstanding any other provision of the Plan to the contrary, the provision, time and manner of payment or distribution of all compensation and benefits provided by the Plan that constitute Section 409A Deferred Compensation shall be subject to, limited by and construed in accordance with the requirements of Section 409A, including but not limited to the following:

(a) **Installment Payments Treated as Series of Separate Payments.** It is the intent of this Plan that any right of the Participant to receive installment payments hereunder shall, for purposes of Section 409A, be treated as a right to a series of separate payments.

(b) **Separation from Service.** Payments and benefits constituting Section 409A Deferred Compensation otherwise payable or provided pursuant to the Plan as a result of the Participant's termination of employment shall be paid or provided only at or following the time that the Participant has experienced a Separation from Service.

(c) **Six-Month Delay Applicable to Specified Employees.** Payments and benefits constituting Section 409A Deferred Compensation to be paid or provided pursuant to the Plan upon or following and due to the Separation from Service of the Participant who is a Specified

Employee shall be paid or provided only upon the later of (1) the date that is six (6) months and one (1) day after the date of such Separation from Service or, if earlier, the date of death of the Participant (in either case, the “**Delayed Payment Date**”), or (2) the date or dates on which such Section 409A Deferred Compensation would otherwise be paid or provided in accordance with the Plan. All such amounts that would, but for this Section, become payable prior to the Delayed Payment Date shall be accumulated and paid on the Delayed Payment Date.

(d) **Limitation on Health and Life Insurance Benefits.** To the extent that all or any portion of the Company’s payment or reimbursement to the Participant for the cost of the Company’s obligation to provide health benefits or life insurance benefits pursuant to Section 4.1(b)(2) or Section 4.2(b)(2) (in either case, the “**Company-Provided Benefits**”) would exceed an amount for which, or continue for a period of time in excess of which, such Company Provided Benefits would qualify for an exemption from treatment as Section 409A Deferred Compensation, the Company shall, for the duration of the Applicable Benefit Period, pay or reimburse the Participant for the Company-Provided Benefits in an amount not to exceed \$150,000 per calendar year or any portion thereof included in the Applicable Benefit Period. The amount of Company-Provided Benefits furnished in any taxable year of the Participant shall not affect the amount of Company-Provided Benefits furnished in

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any other taxable year of the Participant. Any right of the Participant to Company-Provided Benefits shall not be subject to liquidation or exchange for another benefit. Any reimbursement for Company-Provided Benefits to which the Participant is entitled shall be paid no later than the last day of the Participant’s taxable year following the taxable year in which the Participant’s expense for such Company-Provided Benefits was incurred.

(e) **Payment Upon a Change in Control.** Notwithstanding any provision of the Plan to the contrary, to the extent that any amount constituting Section 409A Deferred Compensation would become payable under this Plan solely by reason of a Change in Control, such amount shall become payable only if the event constituting a Change in Control would also constitute a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company within the meaning of Section 409A.

(f) **Equity Awards Constituting Section 409A Deferred Compensation.** The following shall apply to any Equity Award held by the Participant which constitutes Section 409A Deferred Compensation:

(1) The vesting of any Equity Award which constitutes Section 409A Deferred Compensation and which is held by the Participant who is a Specified Employee shall be accelerated upon the Participant’s Involuntary Termination in accordance with Section 4.1(b)(4) or 4.2(b)(4) to the extent applicable; provided, however, that the payment in settlement of such Equity Award shall occur on the Delayed Payment Date or on such later date as provided by such applicable Section.

(2) Any Equity Award which constitutes Section 409A Deferred Compensation and which would vest and become payable upon a Change in Control in accordance with Section 5.1 (subject to the requirement of Section 6.2(e)) shall vest in full as provided by Section 5.1 but shall be converted automatically at the effective time of such Change in Control into a right to receive in cash on the date or dates such award would have been settled in accordance with its then existing settlement schedule (or on such earlier date as provided in Section 4.2(b)(4) or as required by Section 6.2(c)) an amount or amounts equal in the aggregate to the intrinsic value of the Equity Award at the time of the Change in Control.

(3) Equity Awards constituting Section 409A Deferred Compensation which vest and become payable upon a Change in Control in accordance with Section 5.2 shall not be subject to this Section but shall be subject to Section 6.2(e).

7. **CONFLICT IN BENEFITS; NONCUMULATION OF BENEFITS**

7.1 **Effect of Plan.** The terms of this Plan, when accepted by the Participant pursuant to an executed Participation Agreement, shall supersede all prior arrangements, whether written or oral, and understandings regarding the subject matter of this Plan and, subject to Section 7.2, shall be the exclusive agreement for the determination of any payments and benefits due to the Participant upon the events described in Section 4 and Section 5. It is the express intent of the Company and the Participant that the provisions of this Plan applicable to Equity Awards shall be deemed incorporated into any agreement evidencing an Equity Award granted

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to the Participant subsequent to the date of the Participant’s Participation Agreement, notwithstanding any “integration” or other provision of such Equity Award agreement to the contrary or the failure of such Equity Award agreement to make reference to this Plan, excluding only an Equity Award agreement which expressly refers to this Plan and disclaims such incorporation.

7.2 **Noncumulation of Benefits.** Except as expressly provided in a written agreement between the Participant and the Company entered into after the date of such Participant’s Participation Agreement and which expressly disclaims this Section 7.2 and is approved by the Board or the Committee, the total amount of payments and benefits that may be received by the Participant as a result of the events described in Section 4 and Section 5 pursuant to (a) the Plan, (b) any agreement between the Participant and the Company or (c) any other plan, practice or statutory obligation of the Company, shall not exceed the amount of payments and benefits provided by this Plan upon such events (plus any payments and benefits provided pursuant to a Prior Indemnity Agreement, as described in Section 4.4(a)), and the aggregate amounts payable under this Plan shall be reduced to the extent of any excess (but to not less than zero).

8. **EXCLUSIVE REMEDY**

The payments and benefits provided by Section 4 (plus any payments and benefits provided pursuant to a Prior Indemnity Agreement, as described in Section 4.4(a)), if applicable, shall constitute the Participant’s sole and exclusive remedy for any alleged injury or other damages arising out of the cessation of the employment relationship between the Participant and the Company in the event of the Participant’s termination of employment with the Company Group. The Participant shall be entitled to no other compensation, benefits, or other payments from the Company Group as a result of the Participant’s termination of employment with respect to which the payments and benefits provided by this Plan (plus any payments and benefits provided pursuant to a Prior Indemnity Agreement) have been provided to the Participant, except as expressly set forth in this Plan or, subject to the provisions of Section 7.2, in a duly executed employment agreement between Company and the Participant.

9. **PROPRIETARY AND CONFIDENTIAL INFORMATION**

The Participant agrees to continue at all times, during the Participant's employment with the Company Group and following the termination thereof, to abide by the terms and conditions of the confidentiality and/or proprietary rights agreement between the Participant and the Company or any other member of the Company Group.

10. **NONSOLICITATION**

If the Company performs its obligations to deliver the payments and benefits set forth in Section 4 (plus any payments and benefits provided pursuant to an agreement evidencing an Equity Award or a Prior Indemnity Agreement), then for a period equal to the Applicable Benefit Period applicable to the Participant following the Participant's Involuntary Termination, the Participant shall not, directly or indirectly, recruit, solicit or invite the solicitation of any

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employees of any member of the Company Group to terminate their employment relationship with the Company Group.

11. **NO CONTRACT OF EMPLOYMENT**

Neither the establishment of the Plan, nor any amendment thereto, nor the payment or provision of any benefits shall be construed as giving any person the right to be retained by the Company, a Successor or any other member of the Company Group. Except as otherwise established in an employment agreement between the Company and the Participant, the employment relationship between the Participant and the Company is an "at-will" relationship. Accordingly, either the Participant or the Company may terminate the relationship at any time, with or without cause, and with or without notice except as otherwise provided by Section 15. In addition, nothing in this Plan shall in any manner obligate any Successor or other member of the Company Group to offer employment to any Participant or to continue the employment of any Participant which it does hire for any specific duration of time.

12. **CLAIMS FOR BENEFITS**

12.1 **ERISA Plan.** This Plan is intended to be (a) an employee welfare plan as defined in Section 3(1) of Employee Retirement Income Security Act of 1974 ("**ERISA**") and (b) a "top-hat" plan maintained for the benefit of a select group of management or highly compensated employees of the Company Group.

12.2 **Application for Benefits.** All applications for payments and/or benefits under the Plan ("**Benefits**") shall be submitted to the Company's chief human resources officer (the "**Claims Administrator**"), with copies to the Company's chief legal officer and the Committee. Applications for Benefits must be in writing on forms acceptable to the Claims Administrator and must be signed by the Participant or beneficiary. The Claims Administrator reserves the right to require the Participant or beneficiary to furnish such other proof of the Participant's expenses, including without limitation, receipts, canceled checks, bills, and invoices as may be required by the Claims Administrator.

12.3 **Appeal of Denial of Claim.**

(a) If a claimant's claim for Benefits is denied, the Claims Administrator shall provide notice to the claimant in writing of the denial within ninety (90) days after its submission. The notice shall be written in a manner calculated to be understood by the claimant and shall include:

- (1) The specific reason or reasons for the denial;
- (2) Specific references to the Plan provisions on which the denial is based;
- (3) A description of any additional material or information necessary for the applicant to perfect the claim and an explanation of why such material or information is necessary; and

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(4) An explanation of the Plan's claims review procedures and a statement of claimant's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination.

(b) If special circumstances require an extension of time for processing the initial claim, a written notice of the extension and the reason therefor shall be furnished to the claimant before the end of the initial ninety (90) day period. In no event shall such extension exceed ninety (90) days.

(c) If a claim for Benefits is denied, the claimant, at the claimant's sole expense, may appeal the denial to the Committee (the "**Appeals Administrator**") within sixty (60) days of the receipt of written notice of the denial. In pursuing such appeal the applicant or his duly authorized representative:

- (1) may request in writing that the Appeals Administrator review the denial;
- (2) may review pertinent documents; and
- (3) may submit issues and comments in writing.

(d) The decision on review shall be made within sixty (60) days of receipt of the request for review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred

twenty (120) days after receipt of the request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant before the end of the original sixty (60) day period. The decision on review shall be made in writing, shall be written in a manner calculated to be understood by the claimant, and, if the decision on review is a denial of the claim for Benefits, shall include:

- (1) The specific reason or reasons for the denial;
- (2) Specific references to the Plan provisions on which the denial is based;
- (3) A description of any additional material or information necessary for the applicant to perfect the claim and an explanation of why such material or information is necessary; and
- (4) An explanation of the Plan's claims review procedures and a statement of claimant's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination.

13. **ARBITRATION**

13.1 **Disputes Subject to Arbitration.** Any claim, dispute or controversy arising out of this Plan, the interpretation, validity or enforceability of this Plan or the alleged breach thereof shall be submitted by the parties to binding arbitration by the American

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Arbitration Association or as otherwise required by ERISA; provided, however, that (a) the arbitrator shall have no authority to make any ruling or judgment that would confer any rights with respect to trade secrets, confidential and proprietary information or other intellectual property; and (b) this arbitration provision shall not preclude the parties from seeking legal and equitable relief from any court having jurisdiction with respect to any disputes or claims relating to or arising out of the misuse or misappropriation of intellectual property. Judgment may be entered on the award of the arbitrator in any court having jurisdiction.

13.2 **Site of Arbitration.** The site of the arbitration proceeding shall be in San Mateo County, California or any other site mutually agreed to by the Company and the Participant.

13.3 **Costs and Expenses Borne by Company.** All costs and expenses of arbitration, including but not limited to reasonable attorneys' fees and other costs reasonably incurred by the Participant in connection with arbitration in accordance with this Section 13, shall be paid by the Company. Notwithstanding the foregoing, if the Participant initiates the arbitration, and the arbitrator finds that the Participant's claims were totally without merit or frivolous, then the Participant shall be responsible for the Participant's own attorneys' fees and costs

14. **SUCCESSORS AND ASSIGNS**

14.1 **Successors of the Company.** The Company shall require any successor or assign (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, expressly, absolutely and unconditionally to assume and agree to perform this Plan in the same manner and to the same extent that the Company would be required to perform it if no such succession or assignment had taken place.

14.2 **Acknowledgment by Company.** If, after a Change in Control, the Company fails to reasonably confirm in writing to the Participant that it has performed the obligation described in Section 14.1 within twenty (20) days after a written request for such confirmation is delivered by the Participant to the Company in the manner provided by Section 15.1, such failure shall constitute a material breach of this Plan and shall entitle the Participant to resign for Good Reason and to receive the benefits provided under this Plan upon an Involuntary Termination Following a Change in Control.

14.3 **Heirs and Representatives of Participant.** This Plan shall inure to the benefit of and be enforceable by the Participant's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees or other beneficiaries. If the Participant should die while any amount would still be payable to the Participant hereunder (other than amounts which, by their terms, terminate upon the death of the Participant) if the Participant had continued to live, then all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Plan to the executors, personal representatives or administrators of the Participant's estate.

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15. **NOTICES**

15.1 **General.** For purposes of this Plan, notices and all other communications provided for herein shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by United States certified mail, return receipt requested, or by overnight courier, postage prepaid, as follows:

- (a) if to the Company:

PDL BioPharma, Inc.
1400 Seaport Boulevard
Redwood City, California 94063
Attention: General Counsel

- (b) if to the Committee:

Compensation Committee of the
Board of Directors of

- (c) if to the Participant, at the home address which the Participant most recently communicated to the Company in writing.

Either party may provide the other with notices of change of address, which shall be effective upon receipt.

15.2 **Notice of Termination.** Any termination by the Company of the Participant's employment or any resignation of employment by the Participant shall be communicated by a notice of termination or resignation to the other party hereto given in accordance with Section 15.1. Such notice shall indicate the specific termination provision in this Plan relied upon, shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and shall specify the termination date.

16. **TERMINATION AND AMENDMENT OF PLAN**

This Plan and/or any Participation Agreement executed by the Participant may not be terminated with respect to such Participant without the written consent of the Participant and the approval of the Board or the Committee. This Plan and/or any Participation Agreement executed by the Participant may be modified, amended or superseded with respect to such Participant only by a supplemental written agreement between the Participant and the Company approved by the Board or the Committee. Notwithstanding any other provision of the Plan to the contrary, the Committee may, in its sole and absolute discretion and without the consent of any Participant, amend the Plan or any Participation Agreement, to take effect retroactively or otherwise, as it deems necessary or advisable for the purpose of conforming the Plan or such

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Participation Agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder.

17. **MISCELLANEOUS PROVISIONS**

17.1 **Administration.** The Plan shall be administered by the Committee. The Committee shall have the exclusive discretion and authority to establish rules, forms and procedures for the administration of the Plan, to construe and interpret the Plan, and to decide all questions of fact, interpretation, definition, computation or administration arising in connection with the Plan, including, but not limited to, eligibility to participate in the Plan and the type and amount of benefits paid under the Plan. The rules, interpretations and other actions of the Committee shall be binding and conclusive on all persons.

17.2 **Unfunded Obligation.** Any amounts payable to the Participant pursuant to the Plan are unfunded obligations. The Company shall not be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or fiduciary relationship between the Board or the Company and the Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's creditors in any assets of the Company.

17.3 **No Duty to Mitigate; Obligations of Company.** The Participant shall not be required to mitigate the amount of any payment or benefit contemplated by this Plan by seeking employment with a new employer or otherwise, nor shall any such payment or benefit (except for benefits to the extent described in Section 4.1(b)(2) or Section 4.2(b)(2)) be reduced by any compensation or benefits that the Participant may receive from employment by another employer. Except as otherwise provided by this Plan, including, without limitation, the forfeiture of benefits provisions contained in Section 4.1(b)(5) and Section 4.2(b)(5), the obligations of the Company to make payments to the Participant and to make the arrangements provided for herein are absolute and unconditional and may not be reduced by any circumstances, including without limitation any set-off, counterclaim, recoupment, defense or other right which the Company may have against the Participant or any third party at any time.

17.4 **No Representations.** By executing a Participation Agreement, the Participant acknowledges that in becoming the Participant in the Plan, the Participant is not relying and has not relied on any promise, representation or statement made by or on behalf of the Company which is not set forth in this Plan.

17.5 **Waiver.** No waiver by the Participant or the Company of any breach of, or of any lack of compliance with, any condition or provision of this Plan by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

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17.6 **Choice of Law.** The validity, interpretation, construction and performance of this Plan shall be governed by the substantive laws of the State of California, without regard to its conflict of law provisions.

17.7 **Validity.** The invalidity or unenforceability of any provision of this Plan shall not affect the validity or enforceability of any other provision of this Plan, which shall remain in full force and effect.

17.8 **Benefits Not Assignable.** Except as otherwise provided herein or by law, no right or interest of any Participant under the Plan shall be assignable or transferable, in whole or in part, either directly or by operation of law or otherwise, including, without limitation, by execution, levy, garnishment, attachment, pledge or in any other manner, and no attempted transfer or assignment thereof shall be effective. No right or interest of any Participant under the Plan shall be liable for, or subject to, any obligation or liability of such Participant.

17.9 **Tax Withholding.** All payments made pursuant to this Plan will be subject to withholding of applicable income and employment taxes.

17.10 **Consultation with Legal and Financial Advisors.** By executing a Participation Agreement, the Participant acknowledges that this Plan confers significant legal rights, and may also involve the waiver of rights under other agreements; that the Company has encouraged the Participant to consult with the Participant’s personal legal and financial advisors; and that the Participant has had adequate time to consult with the Participant’s advisors before executing the Participation Agreement.

17.11 **Further Assurances.** From time to time, at the Company’s request and without further consideration, the Participant shall execute and deliver such additional documents and take all such further action as reasonably requested by the Company to be necessary or desirable to make effective, in the most expeditious manner possible, the terms of the Plan, the Participant’s Participation Agreement and the Release, and to provide adequate assurance of the Participant’s due performance thereunder.

18. **AGREEMENT**

By executing a Participation Agreement, the Participant acknowledges that the Participant has received a copy of this Plan and has read, understands and is familiar with the terms and provisions of this Plan. This Plan shall constitute an agreement between the Company and the Participant executing a Participation Agreement.

EXHIBIT A

FORM OF

AGREEMENT TO PARTICIPATE IN THE

PDL BIOPHARMA, INC.

RETENTION AND SEVERANCE PLAN FOR CHIEF EXECUTIVE OFFICER

**AGREEMENT TO PARTICIPATE IN THE
PDL BIOPHARMA, INC. RETENTION AND SEVERANCE PLAN
FOR CHIEF EXECUTIVE OFFICER
Effective October 1, 2008**

In consideration of the benefits provided by the PDL BioPharma, Inc. Retention and Severance Plan for Chief Executive Officer (the “*Plan*”), the undersigned employee of PDL BioPharma, Inc. (the “*Company*”) and the Company agree that, as of the date written below, the undersigned shall become the Participant in the Plan and shall be fully bound by and subject to all of its provisions. All references to the “Participant” in the Plan shall be deemed to refer to the undersigned.

The undersigned employee acknowledges that the Plan confers significant legal rights and may also constitute a waiver of rights under other agreements with the Company; that the Company has encouraged the undersigned to consult with the undersigned’s personal legal and financial advisors; and that the undersigned has had adequate time to consult with the undersigned’s advisors before executing this agreement.

The undersigned employee acknowledges that he has received a copy of the Plan and has read, understands and is familiar with the terms and provisions of the Plan. The undersigned employee further acknowledges that (1) by accepting the arbitration provision set forth in Section 13 of the Plan, the undersigned is waiving any right to a jury trial in the event of any dispute covered by such provision and (2) except as otherwise established in an employment agreement between a member of the Company Group and the undersigned, the employment relationship between the undersigned and the Company Group is an “at-will” relationship.

Executed on

Participant

PDL BioPharma, Inc.

Faheem Hasnain

By: _____

Address

Name: _____

Title: _____

EXHIBIT B

GENERAL RELEASE OF CLAIMS
[Age 40 and over]GENERAL RELEASE OF CLAIMS
[Age 40 and over]

This Agreement is by and between [Employee Name] (“Employee”) and [PDL BioPharma, Inc. or successor that agrees to assume the Retention and Severance Plan for Chief Executive Officer following a Change in Control] (the “Company”). This Agreement will become effective on the eighth (8th) day after it is signed by Employee (the “Effective Date”), provided that the Company has signed this Agreement and Employee has not revoked this Agreement (by written notice to [Company Contact Name] at the Company) prior to that date.

RECITALS

- A. Employee was employed by the Company or its subsidiary as of _____, _____.
- B. Employee and the Company entered into an Agreement to Participate in the PDL BioPharma, Inc. Retention and Severance Plan for Chief Executive Officer (such agreement and plan being referred to herein as the “Plan”) effective as of _____, _____ wherein Employee is entitled to receive certain benefits in the event of an Involuntary Termination (as defined by the Plan), provided Employee signs and does not revoke a Release (as defined by the Plan).
- C. [A Change in Control (as defined by the Plan) has occurred as a result of *[briefly describe change in control]*]
- D. Employee’s employment is being terminated as a result of an [Involuntary Termination Absent a Change in Control] [Involuntary Termination Following a Change in Control]. Employee’s last day of work and termination are effective as of _____, _____. Employee desires to receive the payments and benefits provided by the Plan by executing this Release.

NOW, THEREFORE, the parties agree as follows:

- The Company shall provide Employee with the applicable payments and benefits set forth in the Plan in accordance with the terms of the Plan. Employee acknowledges that the payments and benefits made pursuant to this paragraph are made in full satisfaction of the Company’s obligations under the Plan. Employee further acknowledges that Employee has been paid all wages and accrued, unused vacation that Employee earned during his or her employment with the Company or its subsidiary.
- Employee and Employee’s successors release the Company, its respective subsidiaries, stockholders, investors, directors, officers, employees, agents, attorneys, insurers, legal successors and assigns of and from any and all claims, actions and causes of action, whether now known or unknown, which Employee now has, or at any other time had, or shall or may have against those released parties based upon or arising out of any matter, cause, fact, thing, act or omission whatsoever related to Employee’s employment by the Company or a subsidiary or the termination of such employment and occurring or existing at any time up to and

including the date on which Employee signs this Agreement, including, but not limited to, any claims of breach of written, oral or implied contract, wrongful termination, retaliation, fraud, defamation, infliction of emotional distress, or national origin, race, age, sex, sexual orientation, disability or other discrimination or harassment under the Civil Rights Act of 1964, the Age Discrimination In Employment Act of 1967, the Americans with Disabilities Act, the Fair Employment and Housing Act or any other applicable law. Notwithstanding the foregoing, this release shall not apply to (a) any right of the Employee pursuant to Section 4.4 of the Plan or pursuant to a Prior Indemnity Agreement (as such term is defined by the Plan) or (b) any rights or claims that cannot be released by Employee as a matter of law, including, but not limited to, any claims for indemnity under California Labor Code Section 2802.

- Employee acknowledges that he or she has read Section 1542 of the Civil Code of the State of California, which states in full:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Employee waives any rights that Employee has or may have under Section 1542 and comparable or similar provisions of the laws of other states in the United States to the full extent that he or she may lawfully waive such rights pertaining to this general release of claims, and affirms that Employee is releasing all known and unknown claims that he or she has or may have against the parties listed above.

- Employee and the Company acknowledge and agree that they shall continue to be bound by and comply with the terms and their obligations under the following agreements: (i) any proprietary rights or confidentiality agreements between the Company and Employee, (ii) the Plan, (iii) any Prior Indemnity Agreement (as such term is defined by the Plan) to which Employee is a party, and (iv) any agreement between the Company or its subsidiary and Employee evidencing an Equity Award (as such term is defined by the Plan), as modified by the Plan.

- This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors, assigns, heirs and personal representatives.

- The parties agree that any and all disputes that both (i) arise out of the Plan, the interpretation, validity or enforceability of the Plan or the alleged breach thereof and (ii) relate to the enforceability of this Agreement or the interpretation of the terms of this Agreement shall be subject to binding arbitration pursuant to Section 13 of the Plan.

7. The parties agree that any and all disputes that (i) do not arise out of the Plan, the interpretation, validity or enforceability of the Plan or the alleged breach thereof and (ii) relate to the enforceability of this Agreement, the interpretation of the terms of this Agreement or any of the matters herein released or herein described shall be subject to binding arbitration, to the extent permitted by law, in San Mateo County, California or any other site mutually agreed to by the Company and Employee, before the American Arbitration Association, as provided in this

paragraph. The parties agree to and hereby waive their rights to jury trial as to such matters to the extent permitted by law; provided however, that (a) the arbitrator shall have no authority to make any ruling or judgment that would confer any rights with respect to trade secrets, confidential and proprietary information or other intellectual property; and (b) this arbitration provision shall not preclude the parties from seeking legal and equitable relief from any court having jurisdiction with respect to any disputes or claims relating to or arising out of the misuse or misappropriation of intellectual property. The Company shall bear the costs of the arbitrator, forum and filing fees and each party shall bear its own respective attorney fees and all other costs, unless otherwise provided by law and awarded by the arbitrator.

8. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements, whether written or oral, with the exception of any agreements described in paragraph 4 of this Agreement. This Agreement may not be modified or amended except by a document signed by an authorized officer of the Company and Employee. If any provision of this Agreement is deemed invalid, illegal or unenforceable, such provision shall be modified so as to make it valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected.

EMPLOYEE UNDERSTANDS THAT EMPLOYEE SHOULD CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT AND THAT EMPLOYEE IS GIVING UP ANY LEGAL CLAIMS EMPLOYEE HAS AGAINST THE PARTIES RELEASED ABOVE BY SIGNING THIS AGREEMENT. EMPLOYEE FURTHER UNDERSTANDS THAT EMPLOYEE MAY HAVE UP TO [Insert as applicable: 45 DAYS] [21 DAYS] TO CONSIDER THIS AGREEMENT, THAT EMPLOYEE MAY REVOKE IT AT ANY TIME DURING THE 7 DAYS AFTER EMPLOYEE SIGNS IT, AND THAT IT SHALL NOT BECOME EFFECTIVE UNTIL THAT 7-DAY PERIOD HAS PASSED. EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE IS SIGNING THIS AGREEMENT KNOWINGLY, WILLINGLY AND VOLUNTARILY IN EXCHANGE FOR THE COMPENSATION AND BENEFITS DESCRIBED IN PARAGRAPH 1.

Dated: _____ [Employee Name]

[Company]

Dated: _____ By: _____



PDL BIOPHARMA NAMES FAHEEM HASNAIN PRESIDENT AND CHIEF EXECUTIVE OFFICER

Facet Biotech selected as name for spin-off biotechnology company

REDWOOD CITY, Calif., September 25, 2008 — PDL BioPharma, Inc. (NASDAQ: PDLI) today announced that its board of directors has named Faheem Hasnain president and chief executive officer as well as a director of the company, effective October 1. Following the company's planned separation of its biotechnology and royalty operations, Mr. Hasnain will become the president and CEO of the spin-off company, which will be known as Facet Biotech Corporation. Mr. Hasnain brings more than 20 years of biopharmaceutical leadership experience to the role.

"We are delighted to have Faheem join the company to guide our biotechnology operations," said Brad Goodwin, chairman of PDL BioPharma's board of directors. "Faheem's impressive leadership abilities, as well as his deep experience in oncology-focused biologics, will help Facet Biotech deliver on its mission to discover and develop antibody therapeutics targeting oncology and immunologic disease."

Mr. Hasnain served at Biogen Idec from 2004 to 2008, most recently as its executive vice president, Oncology/Rheumatology Strategic Business Unit. From 2002 to 2004, Mr. Hasnain served as president, Oncology Therapeutics Network, at Bristol-Myers Squibb. Previously, he served as vice president, Global eBusiness, at GlaxoSmithKline and in key commercial and entrepreneurial roles within GlaxoSmithKline and its predecessor organizations from 1988 to 2000, spanning global eBusiness, international commercial operations, sales and marketing. Mr. Hasnain serves as a member of the board of directors of Tercica, Inc., a publicly held biopharmaceutical company. Mr. Hasnain received a B.H.K and B.ed. from the University of Windsor, Ontario, Canada.

PDL also has a search ongoing for a CEO to lead the royalty focused entity, which will retain the PDL BioPharma name, subsequent to the planned spin-off transaction.

About PDL BioPharma

PDL BioPharma, Inc. is a biotechnology company focused on the discovery and development of novel antibodies in oncology and immunologic diseases. For more information, please visit www.pdl.com.

Contacts:

Kathleen Rinehart
Corporate Communications
(650)454-2543
kathleen.rinehart@pdl.com

Jean Suzuki
Investor Relations
(650) 454-2648
jean.suzuki@pdl.com
