
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

**FORM S-8
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

PDL BioPharma, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

94-3023969
(I.R.S. Employer
Identification Number)

932 Southwood Boulevard
Incline Village, Nevada 89351
(Address of Principal Executive Offices) (Zip code)

(775) 832-8500
(Registrant's Telephone Number, Including Area Code)

PDL BioPharma, Inc. Amended and Restated 2005 Equity Incentive Plan
(Full Title of the Plan)

Christopher L. Stone
Vice President, General Counsel and Secretary
932 Southwood Boulevard
Incline Village, Nevada 89351
(Name and Address of Agent for Service)

(775) 832-8500
(Telephone Number, Including Area Code, of Agent for Service)

The commission is requested to mail copies of all orders, notices and communications to:
Cheston Larson, Esq.
Latham & Watkins LLP
12670 High Bluff Drive
San Diego, California 92130

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.01 per share (2)	16,105,900	\$2.65 (4)	\$42,680,635	\$5,314
Common Stock, par value \$0.01 per share (3)	3,894,100	\$2.94 (5)	\$11,448,654	\$1,426

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement on Form S-8 (the "Registration Statement") also covers such indeterminate number of additional shares of the Registrant's Common Stock as may become issuable to prevent dilution in the event of stock splits, stock dividends, or similar transactions pursuant to the terms of the PDL BioPharma, Inc. Amended and Restated 2005 Equity Incentive Plan (the "2005 Plan").
- (2) Represents 16,105,900 shares of our common stock available for future grant under the 2005 Plan.
- (3) Represents 3,894,100 shares of our common stock issuable upon exercise of outstanding stock options granted under the 2005 Plan, subject to stockholder approval. To the extent such outstanding stock options are later forfeited or canceled, the shares of common stock subject to such stock options will be available for future issuance under the 2005 Plan.
- (4) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act, based upon the average of the high and low prices of the Registrant's Common Stock on the NASDAQ Global Select Market on June 6, 2018.
- (5) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act, based upon the weighted average exercise price of \$2.94 per share of the stock options granted under the 2005 Plan.

Proposed sales to take place as soon after the effective date of the registration statement as awards granted under the above-named plans are granted, exercised and/or distributed.

NOTE

This Registration Statement on Form S-8 is filed pursuant to General Instruction E to Form S-8 by PDL BioPharma, Inc. (the “Company” or “Registrant”) for the purpose of registering an additional 20,000,000 shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), which may be issued under the Amended and Restated 2005 Equity Incentive Plan (the “2005 Plan”). In accordance with General Instruction E to Form S-8, the Company hereby incorporates herein by reference the original Form S-8 filed by the Company with respect to the Plan on June 17, 2005 (SEC File No. 333-125906), the additional Form S-8 filed by the Company with respect to the Plan on August 9, 2007 (SEC File No. 333-145262), and the additional Form S-8 filed by the Company with respect to the 2005 Plan on September 7, 2017 (SEC File No. 333-220370), together with all exhibits filed therewith or incorporated therein by reference.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the “SEC”).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

In this registration statement, PDL BioPharma, Inc. is sometimes referred to as the “Company,” “PDL BioPharma,” “registrant,” “we,” “us” or “our.”

Item 3. Incorporation of Documents by Reference.

The SEC allows us to “incorporate by reference” the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this registration statement, and later information filed with the SEC will update and supersede this information. We hereby incorporate by reference into this registration statement the following documents previously filed with the SEC:

- (a) Our Annual Report on Form 10-K for the annual period ended December 31, 2017, filed with the SEC on March 16, 2018;
- (b) Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018, filed with the SEC on May 9, 2018;
- (c) Our Current Reports on Form 8-K, filed with the SEC on April 9, 2018, April 16, 2018 and May 21, 2018; and
- (d) The description of our common stock set forth in our Registration Statement on Form 8-A, filed with the SEC on December 23, 1991, as amended on Form 8-A/A filed with the SEC on January 22, 1992, and any amendment or report filed with the SEC for the purpose of updating the description.

In addition, all documents filed by us with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) subsequent to the filing of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers all securities then remaining unsold shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of filing such documents, except as to specific sections of such statements as set forth therein. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement contained herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in any subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Under no circumstances shall any information furnished under Item 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

PDL BioPharma, Inc.'s certificate of incorporation, as amended, eliminates the personal liability of its directors to the extent permitted by the Delaware General Corporation Law, or DGCL. PDL BioPharma, Inc.'s Bylaws provide that PDL BioPharma, Inc. shall, to the full extent permitted by the

DGCL, indemnify each person who is or was a director or officer of PDL BioPharma, Inc., and each person who is or was serving at the request of PDL BioPharma, Inc. as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. PDL BioPharma, Inc. has entered into an indemnification agreement with each of its directors and executive officers.

Section 145 of the DGCL permits a corporation to indemnify its directors and officers against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties, if such directors or officers acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. In a derivative action, i.e., one by or in the right of the corporation, indemnification may be made only for expenses actually and reasonably incurred by directors and officers in connection with the defense or settlement of an action or suit, and only with respect to a matter as to which they shall have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made if such person shall have been adjudged liable for negligence or misconduct in the performance of his respective duties to the corporation, although the court in which the action or suit was brought may determine upon application that the defendant officers or directors are fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

Section 102(b)(7) of the DGCL provides that a corporation may eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provisions shall not eliminate or limit the liability of a director (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under section 174 of the DGCL, or (4) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective. PDL BioPharma, Inc.'s certificate of incorporation provides for such limitations on liability.

PDL BioPharma, Inc. also has obtained directors and officers liability insurance that provides insurance coverage for certain liabilities which may be incurred by directors and officers of PDL BioPharma, Inc. in their capacity as such.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits

Exhibit No.	Exhibit Description
4.1	Restated Certificate of Incorporation of the Company, effective March 23, 1993 (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K, filed on March 31, 1993).
4.2	Certificate of Amendment to the Certificate of Incorporation, effective August 21, 2001 (incorporated by reference to Exhibit 3.3 to the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission, filed on March 14, 2002).
4.3	Certificate of Amendment to the Certificate of Incorporation, effective January 9, 2006 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed January 10, 2006).
4.4	Third Amended and Restated Bylaws, effective December 4, 2014 (incorporated by reference to Exhibit 99.1 to Current Report on Form 8-K, filed on December 9, 2014).
4.5	Certificate of Amendment of Restated Certificate of Incorporation, effective May 22, 2013 (incorporated by reference to Exhibit 4.4 to Registration Statement on Form S-3, filed on June 21, 2013).
4.6	Specimen of Common Stock Certificate (incorporated by reference to Exhibit 4.9 to Form S-3 ASR, filed on May 9, 2011).
5.1*	Opinion of Latham & Watkins LLP.
23.1*	Consent of Latham & Watkins LLP (included in Exhibit 5.1).
23.2*	Consent of PricewaterhouseCoopers LLP.
24.1*	Power of Attorney (included on signature page hereto).
99.1*	Amended and Restated 2005 Equity Incentive Plan.
99.2*	Form of Stock Option Grant Notice and Stock Option Agreement for use in connection with awards under the Amended and Restated 2005 Equity Incentive Plan.
99.3*	Form of Restricted Stock Grant Notice and Restricted Stock Agreement for use in connection with awards under the Amended and Restated 2005 Equity Incentive Plan.

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement,

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if this registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement, relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Incline Village, State of Nevada, on this 8th day of June, 2018.

PDL BIOPHARMA, INC.

By: /s/ Christopher L. Stone

Christopher L. Stone

Vice President, General Counsel and Secretary

Index to Exhibits

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* Filed herewith.

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 San Diego, California 92130
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LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

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Houston	Shanghai
London	Silicon Valley
Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.

June 8, 2018

PDL BioPharma, Inc.
 932 Southwood Boulevard
 Incline Village, Nevada 89351

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as special counsel to PDL BioPharma, Inc., a Delaware corporation (the “**Company**”), in connection with the proposed issuance of an aggregate of 20,000,000 shares (the “**Shares**”) of common stock, \$0.01 par value per share (the “**Common Stock**”), pursuant to that certain PDL BioPharma, Inc. Amended and Restated 2005 Equity Incentive Plan (as amended and restated, the “**Plan**”). The Shares are included in a registration statement on Form S-8 under the Securities Act of 1933, as amended (the “**Act**”), filed with the Securities and Exchange Commission (the “**Commission**”) on June 8, 2018 (the “**Registration Statement**”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, other than as expressly stated herein with respect to the issuance of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein only as to the General Corporation Law of the State of Delaware, as amended (the “**DGCL**”), and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the recipients, or certificates representing the Shares (in the form of the specimen certificate incorporated by reference as an exhibit to the Company’s most recent Annual Report on Form 10-K) have been manually signed by an authorized officer of the transfer agent and registrar therefor and subject to the Company completing all actions and proceedings required on its part to be taken prior to the issuance of the Shares, and when the Shares have been issued by the Company for legal consideration in excess of par value in the circumstances contemplated by the Plan, the issuance of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued,

fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ LATHAM & WATKINS LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 16, 2018 relating to the consolidated financial statements and the effectiveness of internal control over financial reporting, which appears in PDL BioPharma, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2017.

/s/ PricewaterhouseCoopers LLP
San Francisco, California
June 8, 2018

PDL BIOPHARMA, INC.
AMENDED AND RESTATED 2005 EQUITY INCENTIVE PLAN

ORIGINALLY EFFECTIVE: JUNE 8, 2005
AMENDED EFFECTIVE: JUNE 20, 2007 AND JUNE 4, 2009
AMENDMENT AND RESTATEMENT ADOPTED BY THE BOARD: APRIL 8, 2015
AMENDMENT AND RESTATEMENT APPROVED BY THE STOCKHOLDERS: MAY 28, 2015
AMENDED EFFECTIVE: AUGUST 28, 2018
AMENDMENT AND RESTATEMENT ADOPTED BY THE BOARD: APRIL 4, 2018
AMENDMENT AND RESTATEMENT APPROVED BY THE STOCKHOLDERS: JUNE 8, 2018

1. GENERAL.

(a) **Eligible Award Recipients.** Employees, Directors and Consultants are eligible to receive Awards under the Plan.

(b) **Available Awards.** The Plan provides for the grant of the following types of Awards: (i) Incentive Stock Options; (ii) Nonstatutory Stock Options; (iii) Stock Appreciation Rights; (iv) Restricted Stock Awards; (v) Restricted Stock Unit Awards; (vi) Performance Stock Awards; (vii) Performance Cash Awards; and (viii) Other Stock Awards.

(c) **Purpose.** The Plan, through the granting of Awards, is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and provide a means by which the eligible recipients may benefit from increases in value of the Common Stock.

2. DEFINITIONS. As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

(a) **"Affiliate"** means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405. The Board will have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(b) **"Award"** means a Stock Award or a Performance Cash Award.

(c) **"Award Agreement"** means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award.

(d) **"Board"** means the Board of Directors of the Company.

(e) **"Capitalization Adjustment"** means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(f) **“Cause”** means the occurrence of any of the following: (i) the Participant’s intentional theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit or falsification of any Company documents or records; (ii) 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); (iii) the Participant’s material and intentional unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company (including, without limitation, the Participant’s improper use or disclosure of Company confidential or proprietary information); (iv) any willful act by the Participant that has a material detrimental effect on the Company’s reputation or business; (v) the Participant’s repeated failure or inability to perform any reasonable assigned duties after written notice from the person to whom the Participant reports of, and a reasonable opportunity to cure, such failure or inability; (vi) any material breach by the Participant of any employment, service, non-disclosure, non-competition, non-solicitation or other similar agreement between the Participant and the Company, 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 (vii) 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. For purposes of the foregoing, no act or omission will be deemed ‘willful’ unless done, or omitted to be done, by the Participant without a reasonable good faith belief that the Participant were acting in the best interest of the Company. For purposes of clarity, a termination without Cause does not include a termination that occurs as a result of the Participant’s death or disability. The determination that a termination of the Participant’s Continuous Service is either for Cause or without Cause will be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(g) **“Change in Control”** means, unless such term or an equivalent term is otherwise defined with respect to an Award by the Participant’s Award Agreement or by a written contract of employment or service, the occurrence of any of the following:

(i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person) “beneficial ownership” (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company possessing thirty-five percent (35%) or more of the total combined voting power of the Company’s then-outstanding securities entitled to vote generally in the election of Directors; *provided, however*, that the following acquisitions shall not constitute a Change in Control: (1) an acquisition by any such person who prior to such acquisition is the beneficial owner of thirty-five percent (35%) or more of such voting power, (2) any acquisition directly from the Company, including, without limitation, a public offering of securities, (3) any acquisition by the Company, (4) any acquisition by a trustee or other fiduciary under an employee benefit plan of a Participating Company or (5) 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

(ii) a Corporate Transaction or series of related Corporate Transactions (collectively, a **“Transaction”**) in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the Company or, in the case of a Corporate Transaction described in Section 2(n)(iii), the entity to which the assets of the Company were transferred (the **“Transferee”**), as the case may be; or

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company will otherwise occur.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Committee shall have the right to determine whether multiple sales or exchanges of the voting securities of the Company or multiple Corporate Transactions are related, and its determination shall be final, binding

and conclusive. Notwithstanding the foregoing, to the extent that any amount constituting Section 409A Deferred Compensation would become payable under this Plan 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.

(h) “**Code**” means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(i) “**Committee**” means a committee of one (1) or more Directors to whom authority has been delegated by the Board in accordance with Section 3(c).

(j) “**Common Stock**” means the common stock of the Company.

(k) “**Company**” means PDL BioPharma, Inc., a Delaware corporation.

(l) “**Consultant**” means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a “Consultant” for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company’s securities to such person.

(m) “**Continuous Service**” means that the Participant’s service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant’s service with the Company or an Affiliate, will not terminate a Participant’s Continuous Service; *provided, however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, in its sole discretion, such Participant’s Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director will not constitute an interruption of Continuous Service. A leave of absence will be treated as Continuous Service for purposes of vesting in a Stock Award to such extent as may be provided in the Company’s leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law. Notwithstanding the foregoing, to the extent permitted by law, the Board or the chief executive officer of the Company, in that party’s sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors.

(n) “**Corporate Transaction**” means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale, exchange, transfer or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries (other than a sale, exchange, transfer or other disposition to one or more Subsidiaries);

(ii) a sale or other disposition of more than fifty percent (50%) of the outstanding securities of the Company; or

(iii) a merger, consolidation or similar transaction to which the Company is a party.

(o) “**Director**” means a member of the Board.

(p) “**Disability**” means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months, as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(q) “**Employee**” means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an “Employee” for purposes of the Plan.

(r) “**Entity**” means a corporation, partnership, limited liability company or other entity.

(s) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(t) “**Exchange Act Person**” means any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Restatement Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company’s then outstanding securities.

(u) “**Fair Market Value**” means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock will be, unless otherwise determined by the Board, the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(ii) Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(v) “**Full Value Award**” means a Stock Award that is not an Option or SAR with respect to which the exercise or strike price is at least one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR on the date of grant.

(w) “**Incentive Stock Option**” means an option granted pursuant to Section 6 that is intended to be, and that qualifies as, an “incentive stock option” within the meaning of Section 422 of the Code.

(x) “**Non-Employee Director**” means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate

for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act (“**Regulation S-K**”)), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a “non-employee director” for purposes of Rule 16b-3.

(y) “**Nonstatutory Stock Option**” means any option granted pursuant to Section 6 that does not qualify as an Incentive Stock Option.

(z) “**Officer**” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(aa) “**Option**” means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(bb) “**Option Agreement**” means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

(cc) “**Optionholder**” means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(dd) “**Other Stock Award**” means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 7(d).

(ee) “**Other Stock Award Agreement**” means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement will be subject to the terms and conditions of the Plan.

(ff) “**Own,**” “**Owned,**” “**Owner,**” “**Ownership**” A person or Entity will be deemed to “Own,” to have “Owned,” to be the “Owner” of, or to have acquired “Ownership” of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(gg) “**Participant**” means a person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(hh) “**Performance Cash Award**” means an award of cash granted pursuant to the terms and conditions of Section 7(c)(ii).

(ii) “**Performance Measures**” have the same meanings as used in the Company’s financial statements, or, if such terms are not used in the Company’s financial statements, they shall have the meaning applied pursuant to generally accepted accounting principles, or as used generally in the Company’s industry. Performance Measures may be calculated with respect to the Company and each Subsidiary consolidated therewith for financial reporting purposes or such division or other business unit as may be selected by the Board. For purposes of the Plan, the Performance Measures applicable to a Performance Cash Award or a Performance Stock Award may be calculated in accordance with generally accepted accounting principles, if applicable, but, unless otherwise determined by the Board, prior to the accrual or payment of any Performance Cash Award or a Performance Stock Award for the same Performance Period and excluding the effect (whether positive or negative) of any change in accounting standards or any extraordinary, unusual or nonrecurring item, as determined by the Board, occurring after the establishment of the Performance Goals applicable to the Performance Award. Each such adjustment, if any, may be made solely for the

purpose of providing a consistent basis from period to period for the calculation of Performance Measures in order to prevent the dilution or enlargement of the Participant's rights with respect to a Performance Award. Performance Measures may be, but are not limited to, one or more of the following, as determined by the Board:

- (i) revenue;
- (ii) sales;
- (iii) expenses;
- (iv) operating income;
- (v) gross margin;
- (vi) operating margin;
- (vii) earnings before any one or more of: stock-based compensation expense, interest, taxes, depreciation and amortization;
- (viii) pre-tax profit;
- (ix) net operating income;
- (x) net income;
- (xi) economic value added;
- (xii) free cash flow;
- (xiii) operating cash flow;
- (xiv) stock price;
- (xv) earnings per share;
- (xvi) return on stockholder equity;
- (xvii) return on capital;
- (xviii) return on assets;
- (xix) return on investment;
- (xx) employee satisfaction;
- (xxi) employee retention;
- (xxii) balance of cash, cash equivalents and marketable securities;
- (xxiii) market share;

- (xxiv) product regulatory approvals;
- (xxv) projects in development;
- (xxvi) regulatory filings;
- (xxvii) research and development expenses;
- (xxviii) completion of a joint venture or other corporate transaction;
- (xxix) acquisition of revenue-generating assets;
- (xxx) capital structure financing;
- (xxxi) surplus cash flow to pay dividends;
- (xxxii) hiring of additional employees; and
- (xxxiii) other measures of performance selected by the Board.

(jj) “**Performance Goals**” means, for a Performance Period, the one or more goals established by the Board or the Committee) for the Performance Period. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board or the Committee (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Measures at the time the Performance Measures are established, the Board or Committee may appropriately make adjustments in calculating the attainment of Performance Measures for a Performance Period. The methods for making such adjustments may include, but are not limited to, one or more of the following: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects, as applicable, for non-U.S. dollar denominated Performance Measures; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; and (5) to exclude the effects of any “extraordinary items” as determined under generally accepted accounting principles.

(kk) “**Performance Period**” means the period of time selected by the Board or the Committee over which the attainment of one or more Performance Measures will be measured for the purpose of determining a Participant’s right to and the payment of a Performance Stock Award or a Performance Cash Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board or the Committee.

(ll) “**Performance Stock Award**” means a Stock Award granted under the terms and conditions of Section 7(c)(i).

(mm) “**Plan**” means this PDL BioPharma, Inc. Amended and Restated 2005 Equity Incentive Plan as it may be further amended from time to time. The original 2005 Equity Incentive Plan was originally effective June 8, 2005 (the “**Original Effective Date**”), which plan was amended effective June 20, 2007 and June 4, 2009, and further amended and restated by the Board effective April 8, 2015, with such amendment and restatement approved by the stockholders of the Company on May 28, 2015 (the “**2015 Restatement**”). The 2015 Restatement was amended by the Board effective August 28, 2017 (the “**August 2017 Amendment**”), and further amended and restated by the Board effective April 4, 2018, in each case subject to approval by the stockholders of the Company, which amendment and final amendment and restatement (which includes the share reserve increase pursuant to the August 2017 Amendment) is reflected herein.

(nn) “**Restatement Effective Date**” means April 4, 2018, the date the Board approved this amended and restated Plan, subject to approval by the stockholders of the Company.

(oo) “**Restricted Stock Award**” means an award of shares of Common Stock that is granted pursuant to the terms and conditions of Section 7(a).

(pp) “**Restricted Stock Award Agreement**” means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(qq) “**Restricted Stock Unit Award**” means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 7(b).

(rr) “**Restricted Stock Unit Award Agreement**” means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement will be subject to the terms and conditions of the Plan.

(ss) “**Rule 16b-3**” means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(tt) “**Rule 405**” means Rule 405 promulgated under the Securities Act.

(uu) “**Section 409A Deferred Compensation**” means compensation provided pursuant to the Plan that constitutes deferred compensation subject to and not exempted from the requirements of Section 409A of the Code.

(vv) “**Securities Act**” means the Securities Act of 1933, as amended.

(ww) “**Stock Appreciation Right**” or “**SAR**” means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 6.

(xx) “**Stock Appreciation Right Agreement**” means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement will be subject to the terms and conditions of the Plan.

(yy) “**Stock Award**” means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Stock Appreciation Right, a Restricted Stock Award, a Restricted Stock Unit Award, a Performance Stock Award or any Other Stock Award.

(zz) “**Stock Award Agreement**” means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement will be subject to the terms and conditions of the Plan.

(aaa) “**Subsidiary**” means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

(bbb) “**Ten Percent Stockholder**” means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Affiliate.

(ccc) “**Transaction**” means a Change in Control or a Corporate Transaction.

3. ADMINISTRATION.

(a) **Administration by Board.** The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 3(c).

(b) **Powers of Board.** The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine: (A) who will be granted Awards; (B) when and how each Award will be granted; (C) what type of Award will be granted; (D) the provisions of each Award (which need not be identical), including when a person will be permitted to exercise or otherwise receive cash or Common Stock under the Award; (E) the number of shares of Common Stock subject to, or the cash value of, an Award; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Awards. The Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement, in a manner and to the extent it will deem necessary or expedient to make the Plan or Award fully effective.

(iii) To settle all controversies regarding the Plan and Awards granted under it.

(iv) Subject to Section 9(m), to accelerate, in whole or in part, the time at which an Award may be exercised or vest (or at which cash or shares of Common Stock may be issued).

(v) To suspend or terminate the Plan at any time. Except as otherwise provided in the Plan or an Award Agreement, suspension or termination of the Plan will not impair a Participant’s rights under his or her then-outstanding Award without his or her written consent except as provided in subsection (viii) below.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to make the Plan or Awards granted under the Plan compliant with the requirements for Incentive Stock Options or exempt from or compliant with the requirements for nonqualified deferred compensation under Section 409A of the Code, subject to the limitations, if any, of applicable law. However, if required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan that (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan, (D) materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (E) materially extends the term of the Plan, or (F) materially expands the types of Awards available for issuance under the Plan. Except as provided in the Plan (including Section 3(b)(viii)) or an Award Agreement, no amendment of the Plan will impair a Participant’s rights under an outstanding Award without the Participant’s written consent.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 422 of the Code regarding incentive stock options or Rule 16b-3.

(viii) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the

Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided, however*, that a Participant's rights under any Award will not be impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing. Notwithstanding the foregoing, (1) a Participant's rights will not be deemed to have been impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant's rights, and (2) subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Awards without the affected Participant's consent (A) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (B) to change the terms of an Incentive Stock Option, if such change results in impairment of the Award solely because it impairs the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (C) to clarify the manner of exemption from, or to bring the Award into compliance with, Section 409A of the Code; or (D) to comply with other applicable laws or listing requirements.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement that are required for compliance with the laws of the relevant foreign jurisdiction).

(c) **Delegation to Committee.**

(i) **General.** The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee, as applicable). Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of the Plan, adopted from time to time by the Board or Committee (as applicable). The Committee may, at any time, abolish the subcommittee and/or reconstitute the Committee any powers delegated to the subcommittee. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, reconstitute in the Board some or all of the powers previously delegated.

(ii) **Section 162(m) and Rule 16b-3 Compliance.** The Committee may consist solely two (2) or more Non-Employee Directors, in accordance with Rule 16b-3. Should any Awards made under the Plan prior to November 2, 2017, be intended to qualify as "performance-based compensation" within the meaning of Section 162(m)(4)(C) of the Code prior to its repeal, then all such determinations regarding such Awards will be made solely by a Committee comprised solely of two or more "outside directors" within the meaning of Section 162(m) of the Code.

(d) **Delegation to an Officer.** The Board may delegate to one (1) or more Officers the authority to do one or both of the following: (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by applicable law, other Stock Awards) and, to the extent permitted by applicable law, the terms of such Awards; and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided, however*, that the Board resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Any such Stock Awards will be granted on the form of Award Agreement most recently approved for use by the Committee or the Board, unless otherwise provided in the resolutions approving the delegation authority. The Board may not delegate authority to

an Officer who is acting solely in the capacity of an Officer (and not also as a Director) to determine the Fair Market Value pursuant to Section 2(u)(iii) above.

(e) **Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

(f) **No Cancellation and Re-Grant or Repricing of Stock Awards without Stockholder Approval.** Neither the Board nor any Committee will have the authority to (i) reduce the exercise, purchase or strike price of any outstanding Option or SAR under the Plan, or (ii) cancel any outstanding Option or SAR that has an exercise price or strike price greater than the then-current Fair Market Value of the Common Stock in exchange for cash or other Stock Awards under the Plan, unless the stockholders of the Company have approved such an action within twelve (12) months prior to such an event.

4. SHARES SUBJECT TO THE PLAN.

(a) **Share Reserve.**

(i) Subject to Section 10(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards from and after the Original Effective Date will not exceed twenty-six million two hundred thousand (26,200,000) shares (the "**Share Reserve**"), which number includes the six million two hundred thousand (6,200,000) shares of Common Stock authorized for issuance under the 2015 Restatement prior to the August 2017 Amendment, the five million (5,000,000) shares of Common Stock authorized for issuance pursuant to the August 2017 Amendment, and the additional fifteen million (15,000,000) shares of Common Stock authorized for issuance pursuant to this amendment and restatement.

(ii) For clarity, the Share Reserve in this Section 4(a) is a limitation on the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 4(a) does not limit the granting of Stock Awards except as provided in Section 8(a). Shares may be issued in connection with a merger or acquisition as permitted by NASDAQ Listing Rule 5635(c) or, if applicable, NYSE Listed Company Manual Section 303A.08, AMEX Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

(b) **Reversion of Shares to the Share Reserve.**

(i) **Shares Available For Subsequent Issuance.** If (A) any shares of Common Stock subject to a Stock Award are not issued because such Stock Award or any portion thereof expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or is settled in cash (*i.e.*, the Participant receives cash rather than stock), (B) any shares of Common Stock issued pursuant to a Stock Award are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required for the vesting of such shares, or (C) any shares of Common Stock subject to a Full Value Award are reacquired or withheld (or not issued) by the Company to satisfy a tax withholding obligation in connection with such Award, such shares will again become available for issuance under the Plan; *provided, however*, that, notwithstanding the foregoing, in the event shares of Common Stock are reacquired or withheld (or not issued) to satisfy any tax withholding obligation with respect to a Full Value Award at a tax withholding rate in excess of the employer's minimum statutory withholding rates for federal, state, local and foreign taxes (including the Participant's social security, Medicare and any other employment tax obligation), such shares reacquired or withheld (or not issued) to satisfy the tax withholding at a rate in excess of the employer's minimum statutory withholding obligation shall not be added back to the Share Reserve and shall continue to be counted against the Share Reserve. Notwithstanding anything to the contrary contained herein, the following shares of Common Stock shall not be added back to the Share Reserve and will not be available for future grants of Stock Awards: (i) shares of Common Stock tendered by a Participant or reacquired or withheld (or not issued) by the Company in payment of the exercise or purchase price

of, or tax withholding obligation with respect to, an Option or Stock Appreciation Right, including any shares subject to an Option or Stock Appreciation Right that are not delivered to a Participant because such Option or Stock Appreciation Right is exercised through a reduction of shares subject to such Option or Stock Appreciation right (*i.e.*, “net exercised”); (ii) any shares repurchased by the Company on the open market with the proceeds of the exercise or strike price of an Option or Stock Appreciation Right or otherwise; or (iii) shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right on exercise thereof. Notwithstanding the provisions of this Section 4(b), no shares of Common Stock may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

(c) **Incentive Stock Option Limit.** Subject to the Share Reserve and Section 10(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options will be twenty-six million two hundred thousand (26,200,000) shares of Common Stock.

(d) **Aggregate Limit on Full Value Awards.** In no event shall more than fifty percent (50%) of the Share Reserve be issued pursuant to Full Value Awards.

(e) **Section 162(m) Limitations.** Subject to the Share Reserve and Section 10(a) relating to Capitalization Adjustments, at such time as the Company may be subject to the applicable provisions of Section 162(m) of the Code, the following limitations will apply; *provided, however,* that if any additional Awards are granted to any Participant during any calendar year in excess of the limits below, compensation attributable to such additional Awards will not satisfy the requirements to be considered “qualified performance-based compensation” under Section 162(m) of the Code unless such additional Award is approved by the Company’s stockholders.

(i) A maximum of two million four hundred fifty thousand (2,450,000) shares of Common Stock subject to Options, SARs and Other Stock Awards whose value is determined by reference to an increase over an exercise or strike price of at least one hundred percent (100%) of the Fair Market Value on the date any such Stock Award is granted may be granted to any one Participant during any one calendar year.

(ii) A maximum of two million (2,000,000) shares of Common Stock subject to Performance Stock Awards may be granted to any one Participant during any one calendar year (whether the grant, vesting or exercise is contingent upon the attainment during the Performance Period of the Performance Goals).

(iii) A maximum of five million dollars (\$5,000,000) may be granted as a Performance Cash Award to any one Participant during any one calendar year.

(f) **Limitation on Grants to Non-Employee Directors.** The maximum number of shares subject to Stock Awards granted under this Plan or under any other equity plan maintained by the Company during a single fiscal year to any Non-Employee Director, taken together with any cash fees paid to such Non-Employee Director during the fiscal year, will not exceed eight hundred thousand dollars (\$800,000) in total value (calculating the value of any such Stock Awards based on the grant date fair value of such Stock Awards for financial reporting purposes and excluding, for this purpose, the value of any dividend equivalent payments paid pursuant to any Stock Award granted in a previous fiscal year).

(g) **Section 162(m).** Notwithstanding any other provision of the Plan or any Award, with respect to any Award granted under the Plan prior to November 2, 2017 that is intended to continue to qualify as “performance-based compensation” (as described in Section 162(m)(4)(C) of the Code prior to its repeal) pursuant to the transition relief rules in the Tax Cuts and Jobs Act of 2017, to the extent any of the provisions of the Plan or any Award (or any amendments hereto pursuant to this amendment and restatement of the Plan) would cause such Awards to fail to so qualify, any such provisions shall not apply to such Awards to the extent necessary to ensure the such Awards continue to so qualify. In addition, any Award which is intended to continue to qualify as performance-based compensation (as described in Section 162(m)(4)(C) of the Code prior to its repeal) pursuant to

the transition relief rules in the Tax Cuts and Jobs Act of 2017 shall be subject to any additional limitations as the Committee determines necessary for such Award to continue to so qualify. To the extent permitted by applicable law, and the Plan and any such Awards shall be deemed amended to the extent necessary to conform to such requirements.

(h) **Source of Shares.** The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

5. ELIGIBILITY.

(a) **Eligibility for Specific Stock Awards.** Incentive Stock Options may be granted only to employees of the Company or a “parent corporation” or “subsidiary corporation” thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; *provided, however*, that Stock Awards may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any “parent” of the Company, as such term is defined in Rule 405, unless (i) the stock underlying such Stock Awards is treated as “service recipient stock” under Section 409A of the Code (for example, because the Stock Awards are granted pursuant to a corporate transaction such as a spin off transaction) or (ii) the Company, in consultation with its legal counsel, has determined that such Stock Awards are otherwise exempt from or alternatively comply with the distribution requirements of Section 409A of the Code.

(b) **Ten Percent Stockholders.** A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

6. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option or SAR will be in such form and will contain such terms and conditions as the Board deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; *provided, however*, that each Award Agreement will conform to (through incorporation of provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

(a) **Term.** Subject to the provisions of Section 5(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Award Agreement.

(b) **Exercise Price.** Subject to the provisions of Section 5(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Award is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Award if such Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Section 409A of the Code and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

(c) **Purchase Price for Options.** The purchase price of Common Stock acquired pursuant to the exercise of an Option may be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board will have the authority to

grant Options that do not permit all of the following methods of payment (or that otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to use a particular method of payment. The permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if an Option is a Nonstatutory Stock Option, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company will accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are used to pay the exercise price pursuant to the “net exercise,” (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(v) in any other form of legal consideration that may be acceptable to the Board and specified in the applicable Award Agreement.

(d) **Exercise and Payment of a SAR.** To exercise any outstanding SAR, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Award Agreement evidencing such SAR. The appreciation distribution payable on the exercise of a SAR will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the SAR) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such SAR, and with respect to which the Participant is exercising the SAR on such date, over (B) the aggregate strike price of the number of Common Stock equivalents with respect to which the Participant is exercising the SAR on such date. The appreciation distribution may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Award Agreement evidencing such SAR.

(e) **Transferability of Options and SARs.** The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board will determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs will apply:

(i) **Restrictions on Transfer.** An Option or SAR will not be transferable except by will or by the laws of descent and distribution (and pursuant to Sections 6(e)(ii) and 6(e)(iii) below), and will be exercisable during the lifetime of the Participant only by the Participant (or his or her court-appointed guardian or legal representative). The Board may permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws. Except as explicitly provided in the Plan, neither an Option nor a SAR may be transferred for consideration.

(ii) **Domestic Relations Orders.** Subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a domestic relations order, official marital

settlement agreement or other divorce or separation instrument as permitted by Treasury Regulations Section 1.421-1(b)(2). If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) **Beneficiary Designation.** Subject to the approval of the Board or a duly authorized Officer, a Participant may, by delivering written notice to the Company, in a form approved by the Company (or the designated broker), designate a third party who, upon the death of the Participant, will thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, upon the death of the Participant, the executor or administrator of the Participant's estate will be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

(f) **Vesting Generally.** Subject to Section 9(m), the total number of shares of Common Stock subject to an Option or SAR may vest and become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of Performance Goals or other criteria) as the Board may deem appropriate. Subject to Section 9(m), each Option or SAR may be exercised in whole or in part at the election of the Participant as provided in any Award Agreement. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 6(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) **Termination of Continuous Service.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company or an Affiliate, if a Participant's Continuous Service terminates (other than upon the Participant's death or Disability or upon a Change in Control), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date three (3) months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time frame, the Option or SAR (as applicable) will terminate.

(h) **Extension of Termination Date.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company or an Affiliate, if the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than upon the Participant's death or Disability or upon a Change in Control) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement. In addition, unless otherwise provided in a Participant's Award Agreement, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant's Continuous Service would violate the Company's insider trading policy, then the Option or SAR will terminate on the earlier of (i) the expiration of a period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's insider trading policy, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement.

(i) **Disability of Participant.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company or an Affiliate, if a Participant's Continuous Service

terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time frame, the Option or SAR (as applicable) will terminate.

(j) **Death of Participant.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company or an Affiliate, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Award Agreement for exercisability after the termination of the Participant's Continuous Service (for a reason other than death), then the Participant's Option or SAR may be exercised (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within such period of time ending on the earlier of (i) the date twelve (12) months following the date of death (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of such Option or SAR as set forth in the Award Agreement. If, after the Participant's death, the Option or SAR (as applicable) is not exercised within the applicable time frame, the Option or SAR (as applicable) will terminate.

(k) **Non-Exempt Employees.** If an Option or SAR is granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, the Option or SAR will not be first exercisable for any shares of Common Stock until at least six (6) months following the date of grant of the Option or SAR (although the Award may vest prior to such date). Consistent with the provisions of the Worker Economic Opportunity Act, (i) if such non-exempt employee dies or suffers a Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement, in another agreement between the Participant and the Company or an Affiliate, or, if no such definition, in accordance with the Company's then current employment policies and guidelines), the vested portion of any Options and SARs may be exercised earlier than six (6) months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Stock Award will be exempt from the employee's regular rate of pay, the provisions of this Section 6(k) will apply to all Stock Awards and are hereby incorporated by reference into such Stock Award Agreements.

7. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARs.

(a) **Restricted Stock Awards.** Each Restricted Stock Award Agreement will be in such form and will contain such terms and conditions as the Board deems appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock underlying a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse, or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical. Each Restricted Stock Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) **Consideration.** A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) services rendered to, or for the benefit of, the

Company or an Affiliate, or (C) any other form of legal consideration (including future services) that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) **Vesting.** Subject to Section 9(m), shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to repurchase or forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) **Termination of Participant's Continuous Service.** If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) **Transferability.** Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(v) **Dividends.** A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate. Notwithstanding any other provision of the Plan to the contrary, dividends with respect to a Restricted Stock Award that is subject to vesting that are based on dividends paid prior to the vesting of such Award shall only be paid out to the Participant to the extent that the vesting conditions are subsequently satisfied and the Award vests.

(b) **Restricted Stock Unit Awards.** Each Restricted Stock Unit Award Agreement will be in such form and will contain such terms and conditions as the Board deems appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical. Each Restricted Stock Unit Award Agreement will conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) **Consideration.** At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) **Vesting.** Subject to Section 9(m), at the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) **Payment.** A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) **Additional Restrictions.** At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) **Dividend Equivalents.** Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate. Notwithstanding any other provision of the Plan to the contrary, dividend equivalents with respect to a Restricted Stock Unit Award that is subject to vesting that are based on dividends paid prior to the vesting of such Award shall only be paid out to the Participant to the extent that the vesting conditions are subsequently satisfied and the Award vests. Notwithstanding anything to the contrary contained in the Plan, in no event may dividend equivalents be payable with respect to Options or Stock Appreciation Rights.

(vi) **Termination of Participant's Continuous Service.** Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(c) **Performance Awards.**

(i) **Performance Stock Awards.** A Performance Stock Award is a Stock Award (covering a number of shares not in excess of that set forth in Section 4(e)(ii)) that is payable (including that may be granted, vest or be exercised) contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Stock Award may, but need not, require the Participant's completion of a specified period of Continuous Service. Subject to Section 9(m), the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained will be conclusively determined by the Board or Committee in its sole discretion. In addition, to the extent permitted by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

(ii) **Performance Cash Awards.** A Performance Cash Award is a cash award (for a dollar value not in excess of that set forth in Section 4(e)(iii)) that is payable contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Cash Award may, but need not, require the Participant's completion of a specified period of Continuous Service. Subject to Section 9(m), the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained will be conclusively determined by the Board or the Committee, in its sole discretion. The Board may specify the form of payment of Performance Cash Awards, which may be cash or other property, or may provide for a Participant to have the option for his or her Performance Cash Award, or such portion thereof as the Board may specify, to be paid in whole or in part in cash or other property.

(iii) **Committee and Board Discretion.** The Board or the Committee retains the discretion to reduce or eliminate the compensation or economic benefit due upon the attainment of any Performance Goals and to define the manner of calculating the Performance Measures it selects to use for a Performance Period.

(d) **Other Stock Awards.** Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (*e.g.*, options or stock appreciation rights with an exercise price or strike price less than one hundred percent (100%) of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards granted under Section 6 and this Section 7. Subject to the provisions of the Plan, the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

8. COVENANTS OF THE COMPANY.

(a) **Availability of Shares.** The Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy then-outstanding Stock Awards.

(b) **Securities Law Compliance.** The Company will seek to obtain from each regulatory commission or agency having jurisdiction over the Plan the authority required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however*, that this undertaking will not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of an Award or the subsequent issuance of cash or Common Stock pursuant to the Award if such grant or issuance would be in violation of any applicable securities law.

(c) **No Obligation to Notify or Minimize Taxes.** The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising a Stock Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award.

9. MISCELLANEOUS.

(a) **Use of Proceeds from Sales of Common Stock.** Proceeds from the sale of shares of Common Stock issued pursuant to Stock Awards will constitute general funds of the Company.

(b) **Corporate Action Constituting Grant of Awards.** Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (*e.g.*, Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (*e.g.*, exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the papering of the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

(c) **Stockholder Rights.** No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to an Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares of Common Stock under, the Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to such Award has been entered into the books and records of the Company.

(d) **No Employment or Other Service Rights.** Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) **Change in Time Commitment.** In the event a Participant's regular level of time commitment in the performance of his or her services for the Company or any Affiliate is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee) after the date of grant of any Award to the Participant, the Board has the right in its sole discretion to (x) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (y) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

(f) **Incentive Stock Option Limitations.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds one hundred thousand dollars (\$100,000) (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(g) **Investment Assurances.** The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, will be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(h) **Withholding Obligations.** Unless prohibited by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Stock Award (or allowing the return of shares of Common Stock) having a fair market value equal to the sums required to be withheld; (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Award Agreement. Notwithstanding any other provision of the Plan, the number of shares of Common Stock which may be so withheld or returned pursuant to clause (ii) shall be limited to the number of shares which have a fair market value on the date of withholding or return no greater than the aggregate amount of such liabilities based on the minimum statutory withholding rates for federal and state tax income and payroll tax purposes that are applicable to such supplemental taxable income (or, to the extent provided by the Board or the Committee, such higher withholding rate that is in no event greater than the maximum individual statutory tax rate in the applicable jurisdiction at the time of such withholding (or such other rate as may be required to avoid the liability classification of the applicable award under generally accepted accounting principles in the United States of America)); *provided, however*, to the extent such shares were acquired by the Participant from the Company as compensation, the shares must have been held for the minimum period required by applicable accounting rules to avoid a charge to the Company's earnings for financial reporting purposes; *provided, further*, that, any such shares withheld or returned shall be rounded up to the nearest whole share of Common Stock to the extent rounding up to

the nearest whole share does not result in the liability classification of the applicable Award under generally accepted accounting principles in the United States of America. The Board or the Committee shall determine the fair market value of the shares, consistent with applicable provisions of the Code, for tax withholding obligations due in connection with a broker-assisted cashless Option or Stock Appreciation Right exercise involving the sale of shares to pay the Option or Stock Appreciation Right exercise price or any tax withholding obligation.

(i) **Electronic Delivery.** Any reference herein to a “written” agreement or document will include any agreement or document delivered electronically, filed publicly at www.sec.gov (or any successor website thereto) or posted on the Company’s intranet (or other shared electronic medium controlled by the Company to which the Participant has access).

(j) **Deferrals.** To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant’s termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(k) **Compliance with Section 409A of the Code.** To the extent that the Board determines that any Award granted hereunder is subject to Section 409A of the Code, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Award Agreements will be interpreted in accordance with Section 409A of the Code. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded and a Participant holding an Award that constitutes “deferred compensation” under Section 409A of the Code is a “specified employee” for purposes of Section 409A of the Code, no distribution or payment of any amount will be made upon a “separation from service” before a date that is six (6) months following the date of such Participant’s “separation from service” (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Participant’s death.

(l) **Clawback/Recovery.** All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company adopted in January 2013, and any additional policy that the Company may be required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company’s securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including, but not limited to, a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of an event constituting Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for “good reason” or “constructive termination” (or similar term) under any agreement with the Company.

(m) **Award Vesting Limitations.** Subject to Sections 10(c) and (d), Awards granted under the Plan shall vest no earlier than the first anniversary of the date the Award is granted, and no Award Agreement shall reduce or eliminate the foregoing minimum vesting requirements; *provided, however*, that, notwithstanding the foregoing, (i) Awards granted to any one or more Employees, Directors or Consultants that result in the issuance of an aggregate of up to 5% of the Share Reserve as of the Restatement Effective Date may be granted to any one or more Employees, Directors or Consultants without respect to such minimum vesting requirement, (ii) an Award may provide that such minimum vesting restrictions may lapse or be waived upon a Participant’s death, disability or termination as an Employee, Director or Consultant or in connection with a Transaction, and (iii) for purposes of Awards to Non-Employee Directors, a vesting period will be deemed to be one year if it runs from the date of one

annual meeting of the Company's stockholders to the date of the next annual meeting of the Company's stockholders.

10. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) **Capitalization Adjustments.** In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 4(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 4(c), (iii) the class(es) and maximum number of securities that may be awarded to any person pursuant to Section 4(e), and (iv) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board will make such adjustments, and its determination will be final, binding and conclusive.

(b) **Dissolution or Liquidation.** Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service.

(c) **Corporate Transaction.** The following provisions will apply to Stock Awards in the event of a Transaction unless otherwise provided in the Stock Award Agreement or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board may take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting, in whole or in part, of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Transaction as the Board determines (or, if the Board does not determine such a date, to the date that is five (5) days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Transaction; *provided, however*, that the Board may require Participants to complete and deliver to the Company a notice of exercise before the effective date of a Transaction, which exercise is contingent upon the effectiveness of such Transaction;

(iv) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(v) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Transaction, and pay such cash consideration, if any, as the Board, in its sole discretion, may consider appropriate; and

(vi) make a payment, in such form as may be determined by the Board, equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Stock Award immediately prior to the effective time of the Transaction, over (B) any exercise price payable by such holder in connection with such exercise. For clarity, this payment may be zero (\$0) if the value of the property is equal to or less than the exercise price. Payments under this provision may be delayed to the same extent that payment of consideration to the holders of the Company's Common Stock in connection with the Transaction is delayed as a result of escrows, earn outs, holdbacks or any other contingencies.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants. The Board may take different actions with respect to the vested and unvested portions of a Stock Award.

(d) **Change in Control.** An Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Award Agreement for such Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant or in any director compensation policy of the Company, but in the absence of such provision, no such acceleration will occur.

11. PLAN TERM; EARLIER TERMINATION OR SUSPENSION OF THE PLAN.

(a) **Plan Term.** The Board may suspend or terminate the Plan at any time. No Incentive Stock Option will be granted after August 27, 2027. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) **No Impairment of Rights.** Suspension or termination of the Plan will not impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant or as otherwise permitted in the Plan.

12. EFFECTIVE DATE OF PLAN. This Plan will become effective on the Restatement Effective Date.

13. CHOICE OF LAW. The laws of the State of Delaware will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

14. Approval of Plan by Stockholders. This amended and restated Plan, which includes the increase to the Share Reserve pursuant to the August 2017 Amendment, shall be submitted for the approval of the Company's stockholders within twelve (12) months after August 28, 2017. Awards may be granted or awarded prior to such stockholder approval; *provided* that no shares of Common Stock shall be issued upon the exercise, vesting, distribution or payment of any such Awards prior to the time when such stockholder approval is obtained; and, *provided, further,* that if such approval has not been obtained at the end of said 12-month period, all Awards previously granted or awarded out of the increase to the Share Reserve pursuant to the August 2017 Amendment or under this amended and restated Plan after the Restatement Effective Date and subject to such stockholder approval shall thereupon be canceled and become null and void. If such stockholder approval is not obtained within such 12-month period, the August 2017 Amendment, this amended and restated Plan, and all Awards previously granted or awarded out of the increase to the Share Reserve pursuant to the August 2017 Amendment or under this amended and restated Plan after the Restatement Effective Date shall thereupon be cancelled and become null and void, and the 2015 Restatement, as in effect prior to the August 2017 Amendment, and all Awards thereunder, shall continue in full force and effect in accordance with their terms.

**PDL BioPharma, inc.
Stock Option Grant Notice**

PDL BioPharma, Inc. (the “*Company*”) hereby grants to the undersigned person (“*Participant*”) an option (the “*Option*” or the “*Award*”) to purchase shares of common stock of the Company (the “*Shares*”) to the Participant, as set forth below. This Award is granted under and pursuant to the Company’s Amended and Restated 2005 Equity Incentive Plan (as amended to date, the “*Plan*”). This Award is subject to the terms and conditions set forth in this Stock Option Grant Notice (this “*Notice*”) and the Stock Option Agreement (the “*Stock Option Agreement*”) attached hereto, and the Plan, each of which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Notice and the Stock Option Agreement.

Participant:	_____
Date of Grant:	_____
Number of Option Shares:	_____
Exercise Price:	\$ _____
Option Expiration Date:	_____
Tax Status of Option:	Nonstatutory Stock Option
Vested Shares:	Except as provided in the Stock Option Agreement and provided that Participant’s Continuous Service has not terminated prior to the relevant date set forth below, the Shares subject to the Option shall vest and become “ <i>Vested Shares</i> ” as follows: [Insert Vesting Schedule] In addition, all of the Shares subject to the Option shall become Vested Shares in the event of a Change in Control (as defined in Section 4.1(c) of the Stock Option Agreement) provided that Participant’s Continuous Service has not terminated prior to the date of such Change in Control.

By their signatures below or by electronic acceptance or authentication in a form authorized by the Company, the Company and Participant agree that the Option is governed by this Notice and by the provisions of the Plan and the Stock Option Agreement, which are made a part of this document. Participant acknowledges that copies of the Stock Option Agreement, the Plan and the prospectus for the Plan are available on the Company’s internal web site and may be viewed and printed by Participant for attachment to Participant’s copy of this Notice. Participant represents that Participant has read and is familiar with the provisions of the Stock Option Agreement and the Plan, and hereby accepts the Option subject to all of the terms and conditions hereof and thereof.

PDL BIOPHARMA, INC.

By: _____
Print Name: _____
Title: _____

Date: _____

PARTICIPANT

By: _____
Print Name: _____

Date: _____

ATTACHMENTS: Plan; Stock Option Agreement; Exercise Notice

PDL BioPharma, Inc.
Stock Option Agreement

PDL BioPharma, Inc. (the “**Company**”) has granted to the Participant named in the *Stock Option Grant Notice* (the “**Notice**”) to which this Stock Option Agreement (this “**Agreement**”) is attached an option (the “**Option**”) to purchase certain shares of Common Stock upon the terms and conditions set forth in the Notice and this Agreement. The Option has been granted pursuant to and shall in all respects be subject to the terms and conditions of the Company’s Amended and Restated 2005 Equity Incentive Plan (as amended to date, the “**Plan**”), the provisions of which are incorporated herein by reference. By signing the Notice, the Participant: (a) acknowledges receipt of and represents that Participant has read and is familiar with the Notice, this Agreement and the Plan and the current prospectus for the Plan (the “**Prospectus**”), (b) accepts the Award subject to all of the terms and conditions of the Notice, this Agreement and the Plan and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Notice, this Agreement and the Plan.

1. Definitions and Construction.

1.1 **Defined Terms.** Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in the Notice and the Agreement.

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. 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. In the event of any inconsistency between the Plan and the Notice or this Agreement, the terms of the Plan shall control.

2. Grant of Option.

2.1 **Grant of Option.** In consideration of Participant’s agreement to commence employment with and remain in the employ of the Company or an Affiliate and for other good and valuable consideration, effective as of the Date of Grant set forth in the Notice, the Company has granted to Participant the Option to purchase any part or all of an aggregate of the number of shares of Common Stock set forth in the Notice, upon the terms and conditions set forth in the Notice and this Agreement.

2.2 **Exercise Price.** The Exercise Price per share of the shares of Common Stock subject to the Option shall be as set forth in the Notice.

2.3 **Tax Status of Option.** This Option is intended to be a Nonstatutory Stock Option and shall not be treated as an Incentive Stock Option within the meaning of Section 422(b) of the Code.

3. Administration.

All questions of interpretation concerning the Option and this Agreement shall be determined by the Committee. All determinations by the Committee shall be final and binding upon all persons having an interest in the Option.

4. Exercise of the Option.

4.1 **Right to Exercise.**

(a) **In General.** Except as otherwise provided herein, and subject to Sections 6 and 7, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Notice in an amount not to exceed the number of Vested Shares less the number of Shares previously acquired upon exercise of the Option. In no event shall the Option be exercisable for more Shares than the Number of Option Shares, as adjusted pursuant to Section 8. No portion of the Option which has not become vested and exercisable at the date of Participant's termination of Continuous Service shall thereafter become vested and exercisable, except as may be otherwise provided by the Committee or as set forth in a written agreement between the Company and Participant.

(b) **Vesting Cumulative.** The installments provided for in the vesting schedule set forth in the Notice are cumulative. Each such installment of Shares which becomes Vested Shares pursuant to the vesting schedule set forth in the Notice shall remain Vested Shares until it becomes unexercisable under Section 6 or 7 hereof.

(c) **Change in Control Vesting.** Solely for purposes of the vesting schedule set forth in the Notice (and for the avoidance of doubt, "Change in Control" for any other purposes of the Notice or this Agreement shall continue to have the meaning given to such term in the Plan), a "**Change in Control**" shall be deemed to have occurred as of the first day after the Date of Grant that any one or more of the following conditions is satisfied:

(i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act, other than a trustee or other fiduciary holding securities of the Company under an employee benefit plan of the Company, becomes the "beneficial owner" (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of (i) the outstanding shares of Common Stock of the Company or (ii) the combined voting power of the Company's then-outstanding securities entitled to vote generally in the election of directors; or

(ii) the Company (i) is party to a merger, consolidation or exchange of securities which results in the holders of voting securities of the Company outstanding immediately prior thereto failing to continue to hold at least fifty percent (50%) of the combined voting power of the voting securities of the Company, the surviving entity or a parent of the surviving entity outstanding immediately after such merger, consolidation or exchange, or (ii) sells or disposes of all or substantially all of the Company's assets (or any transaction or combination of transactions having similar effect is consummated), or (iii) the individuals constituting the Board immediately prior to such merger, consolidation, exchange, sale or disposition shall cease to constitute at least fifty percent (50%) of the Board, unless the election of each director who was not a director prior to such merger, consolidation, exchange, sale or disposition was approved by a vote of at least two-thirds of the directors then in office who were directors prior to such merger, consolidation, exchange, sale or disposition.

4.2 **Method of Exercise.** Exercise of the Option shall be by means of electronic or written notice (the "**Exercise Notice**") in a form authorized by the Company. An electronic Exercise Notice must be digitally signed or authenticated by Participant in such manner as required by the notice and transmitted to the Company or an authorized representative of the Company (including a third-party administrator designated by the Company). In the event that Participant is not authorized or is unable to provide an electronic Exercise Notice, the Option shall be exercised by a written Exercise Notice

addressed to the Company, which shall be signed by Participant and delivered in person, by certified or registered mail, return receipt requested, by confirmed facsimile or electronic transmission, or by such other means as the Company may permit, to the Company, or an authorized representative of the Company (including a third-party administrator designated by the Company). Each Exercise Notice, whether electronic or written, must state Participant's election to exercise the Option, the number of whole shares of Common Stock for which the Option is being exercised and such other representations and agreements as to Participant's investment intent with respect to such shares as may be required pursuant to the provisions of this Option Agreement. Further, each Exercise Notice must be received by the Company prior to the termination of the Option as set forth in Section 6 and must be accompanied by full payment of the aggregate Exercise Price for the number of shares of Common Stock being purchased in such form of consideration permitted under Section 4.3(a) and the payment of any applicable withholding tax in accordance with Section 4.4. The Option shall be deemed to be exercised upon receipt by the Company of such electronic or written Exercise Notice, the aggregate Exercise Price and any applicable withholding tax.

4.3 Payment of Exercise Price.

(a) **Forms of Consideration Authorized.** Except as otherwise provided below, payment of the aggregate Exercise Price for the number of shares of Common Stock for which the Option is being exercised shall be made in one of the following forms:

(i) By cash, check, bank draft or money order payable to the Company;

(ii) With the consent of the Committee, by tender to the Company, or attestation to the ownership, of whole shares of Common Stock owned by Participant having a Fair Market Value not less than the aggregate Exercise Price;

(iii) With the consent of the Committee, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of Shares with a Fair Market Value that does not exceed the aggregate Exercise Price; provided, however, that the Company will accept a cash or other payment from Participant to the extent of any remaining balance of the aggregate Exercise Price not satisfied by such reduction in the number of whole Shares to be issued;

(iv) By means of a Cashless Exercise, as defined in Section 4.3(b); or

(v) By any combination of the foregoing.

(b) Limitations on Forms of Consideration.

(i) **Tender of Stock.** Notwithstanding the foregoing, the Option may not be exercised (and any tax withholding obligation may not be satisfied) by tender to the Company, or attestation to the ownership, of shares of Common Stock to the extent such tender or attestation would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company's stock. If required by the Company, the Option may not be exercised (and any tax withholding obligation may not be satisfied) by tender to the Company, or attestation to the ownership, of shares of Common Stock unless such shares either have been owned by Participant for more than six (6) months or such other shorter or longer period, if any, required by the Company (and not used for another option exercise by attestation during such period) or were not acquired, directly or indirectly, from the Company.

(ii) **Cashless Exercise.** A “*Cashless Exercise*” means the delivery of a properly executed notice together with irrevocable instructions to a broker in a form acceptable to the Company providing for the assignment to the Company of the proceeds of a sale with respect to some or all of the shares of Common Stock then issuable upon exercise of the Option pursuant to a program or procedure approved by the Company (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System), and confirmation that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option Exercise Price; provided that payment of such proceeds is then made to the Company at such time as may be required by the Committee, but in any event not later than the settlement of such sale. The Company reserves, at any and all times, the right, in the Company’s sole and absolute discretion, to establish, decline to approve or terminate any such program or procedure, including with respect to Participant notwithstanding that such program or procedures may be available to others.

4.4 Tax Withholding.

(a) **Tax Withholding Right.** At the time the Option is exercised, in whole or in part, or at any time thereafter as requested by the Company or an Affiliate (each, a “*Participating Company*” and together the “*Participating Company Group*”), Participant hereby authorizes withholding from payroll and any other amounts payable to Participant, and otherwise agrees to make adequate provision for (including by means of a Cashless Exercise to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Participating Company Group, if any, which arise in connection with the Option. The Company shall have no obligation to deliver shares of Common Stock until the tax withholding obligations of the Participating Company Group have been satisfied by Participant.

(b) **Forms of Consideration Authorized.** The Company and its Affiliates may withhold or Participant may make such payment in one or more of the forms specified below:

(i) By cash, check, bank draft or money order payable to the Company or its Affiliate with respect to which the withholding obligation arises;

(ii) By the deduction of such amount from other compensation payable to Participant;

(iii) With respect to any withholding taxes arising in connection with the exercise of the Option, with the consent of the Committee, by tendering to the Company, or attestation to the ownership, of whole shares of Common Stock owned by Participant having a Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company and its Affiliates based on the minimum applicable statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes (or such lesser amount as may be necessary to avoid classification of the Option as a liability for financial accounting purposes);

(iv) With the consent of the Committee, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of Shares with a Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company and its Affiliates based on the minimum applicable statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes (or such lesser amount as may be necessary to avoid classification of the Option as a liability for financial accounting purposes); provided, however, that the Company will accept a cash or other payment

from Participant to the extent of any remaining balance of the tax withholding obligation is not satisfied by such reduction in the number of whole Shares to be issued;

(v) With respect to any withholding taxes arising in connection with the exercise of the Option, by means of a Cashless Exercise pursuant to which the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company or the Affiliate with respect to which the withholding obligation arises in satisfaction of such withholding taxes; or

(vi) In any combination of the foregoing.

(c) **Certain Company Rights.** With respect to any withholding taxes arising in connection with the Option, in the event Participant fails to provide timely payment of all sums required pursuant to Section 4(b), the Company shall have the right and option, but not the obligation, to treat such failure as an election by Participant to satisfy all or any portion of Participant's required payment obligation pursuant to Section 4(b)(ii) or Section 4(b)(iv) above, or any combination of the foregoing as the Company may determine to be appropriate.

(d) **Participant Responsibility.** Participant is ultimately liable and responsible for all taxes owed in connection with the Option, regardless of any action the Participating Company Group takes with respect to any tax withholding obligations that arise in connection with the Option. No member of the Participating Company Group makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or exercise of the Option or the subsequent sale of Common Stock. The Participating Company Group does not commit and is under no obligation to structure the Option to reduce or eliminate Participant's tax liability.

4.5 Beneficial Ownership of Shares; Certificate Registration. Participant hereby authorizes the Company, in its sole discretion, to deposit for the benefit of Participant with any broker with which Participant has an account relationship of which the Company has notice any or all shares acquired by Participant pursuant to the exercise of the Option. Except as provided by the preceding sentence, a certificate for the shares as to which the Option is exercised shall be registered in the name of Participant, or, if applicable, in the names of the heirs of Participant.

4.6 Restrictions on Grant of the Option and Issuance of Shares. The grant of the Option and the issuance of shares of Common Stock upon exercise of the Option shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. The Option may not be exercised if the issuance of shares of Common Stock upon exercise would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Common Stock may then be listed. In addition, the Option may not be exercised unless (a) a registration statement under the Securities Act shall at the time of exercise of the Option be in effect with respect to the shares issuable upon exercise of the Option or (b) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Option may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. **PARTICIPANT IS CAUTIONED THAT THE OPTION MAY NOT BE EXERCISED UNLESS THE FOREGOING CONDITIONS ARE SATISFIED. ACCORDINGLY, PARTICIPANT MAY NOT BE ABLE TO EXERCISE THE OPTION WHEN DESIRED EVEN THOUGH THE OPTION IS VESTED.** The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares subject to the Option shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to the exercise of the Option, the Company may require Participant to satisfy any

qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

4.7 **Fractional Shares.** The Company shall not be required to issue fractional shares upon the exercise of the Option.

5. **Nontransferability of the Option.**

During the lifetime of Participant, the Option shall be exercisable only by Participant or Participant's guardian or legal representative. The Option shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of Participant or Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Following the death of Participant, the Option, to the extent provided in Section 7, may be exercised by Participant's legal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.

6. **Termination of the Option.**

The Option shall terminate and may no longer be exercised after the first to occur of (a) the close of business on the Option Expiration Date, or (b) the close of business on the last date for exercising the Option following termination of Participant's Continuous Service as described in Section 7.

7. **Effect of Termination of Continuous Service.**

7.1 **Option Exercisability.** The Option shall terminate immediately upon Participant's termination of Continuous Service to the extent that it is then unvested and shall be exercisable after Participant's termination of Continuous Service to the extent unexercised and exercisable for Vested Shares only during the applicable time period as determined below and thereafter shall terminate.

(a) **Disability.** If Participant's Continuous Service terminates because of the Disability of Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which Participant's Continuous Service terminated, may be exercised by Participant (or Participant's guardian or legal representative) at any time prior to the expiration of twelve (12) months after the date on which Participant's Continuous Service terminated, but in any event no later than the Option Expiration Date.

(b) **Death.** If Participant's Continuous Service terminates because of the death of Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which Participant's Continuous Service terminated, may be exercised by Participant's legal representative or other person who acquired the right to exercise the Option by reason of Participant's death at any time prior to the expiration of twelve (12) months after the date on which Participant's Continuous Service terminated, but in any event no later than the Option Expiration Date. Participant's Continuous Service shall be deemed to have terminated on account of death if Participant dies within three (3) months after Participant's termination of Continuous Service for any reason other than the discharge of Participant by a Participating Company for Cause.

(c) **Cause.** If Participant's Continuous Service terminates because of the discharge of Participant by a Participating Company for Cause, the Option shall terminate immediately upon such termination and may not thereafter be exercised by Participant.

(d) **Other Termination of Continuous Service.** If Participant's Continuous Service terminates for any reason, except Disability, death or by reason of discharge for Cause, the Option, to the extent unexercised and exercisable for Vested Shares by Participant on the date on which Participant's Continuous Service terminated, may be exercised by Participant within three (3) months after the date on which Participant's Continuous Service terminated, but in any event no later than the Option Expiration Date.

8. Adjustments for Changes in Capital Structure; Transactions.

Participant acknowledges that the Award is subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 10 of the Plan.

9. Rights as a Stockholder, Director, Employee or Consultant.

Participant shall have no rights as a stockholder with respect to any Shares covered by the Option until the date of the issuance of the Shares for which the Option has been exercised (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the Shares are issued, except as provided in Section 10 of the Plan. If Participant is an Employee, Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between a Participating Company and Participant, Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon Participant any right to continue in the Continuous Service of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate Participant's Continuous Service as a Director, an Employee or Consultant, as the case may be, at any time.

10. Legends.

The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing shares of Common Stock subject to the provisions of this Agreement. Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to the Option in the possession of Participant in order to carry out the provisions of this Section.

11. Miscellaneous Provisions.

11.1 Termination or Amendment. The Committee may terminate or amend the Plan or this Agreement at any time; provided, however, that, except as provided in Section 8, no such termination or amendment may adversely affect the Option or any unexercised portion hereof without the consent of Participant unless such termination or amendment is necessary to comply with any applicable law or government regulation. No amendment or addition to this Agreement shall be effective unless in writing.

11.2 Further Instruments. The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

11.3 Binding Effect. This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon Participant and Participant's heirs, executors, administrators, successors and assigns.

11.4 Delivery of Documents and Notices. Any documentation relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed

effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for Participant by a Participating Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the Company at its principal executive offices and to Participant at Participant's most-recent address on the Company's personnel records or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery.** The Plan documents, which may include but do not necessarily include: the Plan, the Notice, this Agreement, the Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to Participant electronically. In addition, Participant may deliver electronically the Grant Notice and Exercise Notice called for by Section 4.2 to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) **Consent to Electronic Delivery.** Participant acknowledges that Participant has read Section 11.4(a) of this Agreement and consents to the electronic delivery of the Plan documents, the Notice and the exercise Notice, as described in Section 11.4(a). Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to Participant by contacting the Company by telephone or in writing. Participant further acknowledges that Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, Participant understands that Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. Participant may revoke his or her consent to the electronic delivery of documents described in Section 11.4(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 11.4(a).

11.5 **Clawback/Recovery.** Participant hereby agrees that the Option is subject to the provisions of Section 9(l) of the Plan.

11.6 **Integrated Agreement.** The Notice, this Agreement and the Plan together with any other employment, severance, service or other agreement between Participant and a Participating Company referring to the Option, if any, shall constitute the entire understanding and agreement of Participant and the Participating Company Group with respect to the subject matter contained herein or therein and supersedes any prior agreements, understandings, restrictions, representations, or warranties among Participant and the Participating Company Group with respect to such subject matter other than those as set forth or provided for herein or therein. To the extent contemplated herein or therein, the provisions of the Notice, the Agreement and the Plan shall survive any exercise of the Option and shall remain in full force and effect.

11.7 **Applicable Law.** This Agreement and any controversy arising out of or relating to this Agreement shall be governed by, and construed in accordance with, the General Corporation Law of the State of Delaware, without regard to that state's conflict of law rules.

11.8 **Counterparts.** The Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.9 **Limitation on Participant's Rights.** The grant of the Option confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Participant shall have only the rights of a general unsecured creditor of the Company with respect to the Option.

Participant: _____

Date: _____

STOCK OPTION EXERCISE NOTICE

PDL BioPharma, Inc.
Stock Administrator

Ladies and Gentlemen:

Option. I was granted a nonstatutory stock option (the "**Option**") to purchase shares of the common stock (the "**Shares**") of PDL BioPharma, Inc. (the "**Company**") pursuant to the Company's Amended and Restated 2005 Equity Incentive Plan (as amended and restated to date, the "**Plan**"), the Stock Option Grant Notice (the "**Notice**") and the Stock Option Agreement (the "**Option Agreement**") as follows:

Date of Grant: _____

Number of Option Shares: _____

Exercise Price per Share: \$ _____

Exercise of Option. I hereby elect to exercise the Option to purchase the following number of Shares, all of which are Vested Shares in accordance with the Notice and the Option Agreement:

Total Shares Purchased: _____

Total Exercise Price (Total Shares X Price per Share) \$ _____

Payments. I enclose payment in full of the total exercise price for the Shares in the following form(s), as authorized by my Option Agreement:

Cash: \$ _____

Check: \$ _____

Other: Contract Plan
Administrator

Tax Withholding. I authorize payroll withholding and otherwise will make adequate provision for the federal, state, local and foreign tax withholding obligations of the Company, if any, in connection with the Option.

Participant Information.

My address
is:

My Social Security
Number is:

Binding Effect. I agree that the Shares are being acquired in accordance with and subject to the terms, provisions and conditions of the Notice, the Option Agreement and the Plan, to all of which I hereby expressly assent. This Agreement shall inure to the benefit of and be binding upon my heirs, executors, administrators, successors and assigns.

Very truly yours,

(Signature)

Receipt of the above is hereby acknowledged.

PDL BIOPHARMA, INC.

By: _____

Title: _____

Dated: _____

PDL BioPharma, inc.

Restricted Stock Grant Notice

PDL BioPharma, Inc. (the “**Company**”) the Company hereby grants to the undersigned person (“**Participant**”) an award (the “**Award**”) of shares of common stock of the Company (the “**Shares**”), as set forth below. This Award is granted under and pursuant to the Company’s Amended and Restated 2005 Equity Incentive Plan (as amended to date, the “**Plan**”). This Award is subject to the terms and conditions set forth in this Restricted Stock Grant Notice (this “**Notice**”) and the Restricted Stock Agreement (the “**Restricted Stock Agreement**”) attached hereto, and the Plan, each of which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Notice and the Restricted Stock Agreement.

Participant: _____

Date of Grant: _____

Total Number of Shares: _____

Vesting of Shares: Except as provided in the Restricted Stock Agreement and provided that Participant’s Continuous Service has not terminated prior to the relevant date set forth below, the number of Shares (“**Vested Shares**”) set forth opposite such date shall, on such date, vest and no longer be subject to the Company Reacquisition Right (as defined in the Restricted Stock Agreement):

Vesting Date

No. Shares Vesting

In addition, all of the Shares shall become Vested Shares in the event of a Change in Control (as defined in Section 4 of the Restricted Stock Agreement) provided that Participant’s Continuous Service has not terminated prior to the date of such Change in Control.

By their signatures below or by electronic acceptance or authentication in a form authorized by the Company, the Company and Participant agree that the Award is governed by the terms and conditions of this Notice and the Restricted Stock Agreement, which is made part of this document. Participant acknowledges that copies of the Restricted Stock Agreement and the prospectus for the Award are available on the Company’s internal web site and may be viewed and printed by Participant for attachment to Participant’s copy of this Notice. Participant represents that Participant has read and is familiar with the provisions of the Restricted Stock Agreement, and hereby accepts the Award subject to all of the terms and conditions hereof and thereof.

PDL BIOPHARMA, INC.

By: _____
Print Name: _____
Title: _____

PARTICIPANT

By: _____
Print Name: _____

Date: _____

Date: _____

ATTACHMENTS: Plan; Restricted Stock Agreement; Assignment Separate from Certificate

PDL BioPharma, Inc.
Restricted Stock Agreement

PDL BioPharma, Inc. (the “**Company**”) has granted to the Participant named in the *Restricted Stock Grant Notice* (the “**Notice**”) to which this Restricted Stock Agreement (this “**Agreement**”) is attached an Award of Shares subject to the terms and conditions set forth in the Notice and this Agreement. The Award has been granted pursuant to and shall in all respects be subject to the terms and conditions of the Company’s Amended and Restated 2005 Equity Incentive Plan (as amended to date, the “**Plan**”), the provisions of which are incorporated herein by reference. By signing the Notice, the Participant: (a) acknowledges receipt of and represents that Participant has read and is familiar with the Notice, this Agreement and the Plan and the current prospectus for the Plan (the “**Prospectus**”), (b) accepts the Award subject to all of the terms and conditions of the Notice, this Agreement and the Plan and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Notice, this Agreement and the Plan.

1. Definitions and Construction.

6.1 **Defined Terms.** Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in the Notice and the Agreement.

6.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. 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. In the event of any inconsistency between the Plan and the Notice or this Agreement, the terms of the Plan shall control.

2. Administration.

All questions of interpretation concerning the Notice and this Agreement shall be determined by the Committee. All determinations by the Committee shall be final and binding upon all persons having an interest in the Award.

3. The Award.

3.1 **Grant and Issuance of Shares.** In consideration of Participant’s agreement to commence employment with and remain in the employ of the Company, upon the Date of Grant, Participant shall acquire and the Company shall issue, subject to the provisions of this Agreement, a number of Shares equal to the Total Number of Shares set forth in the Notice. As a condition to the issuance of the Shares, Participant shall execute and deliver to the Company along with the Notice, the Assignment Separate from Certificate duly endorsed (with date and number of shares blank) in the form attached to the Notice.

3.2 **No Monetary Payment Required.** Participant is not required to make any monetary payment (other than to satisfy applicable tax withholding, if any, with respect to the issuance or vesting of the Shares) as a condition to receiving the Shares, the consideration for which shall be past or future services rendered or to be rendered to the Company or an Affiliate or for its benefit, or other legal consideration permitted by the Committee, having a value not less than the par value of the Shares issued pursuant to the Award.

3.3 **Beneficial Ownership of Shares; Certificate Registration.** Participant hereby authorizes the Company, in its sole discretion, to deposit the Shares with the Company's transfer agent, including any successor transfer agent, to be held in book entry form during the term of the Escrow pursuant to Section 6. Furthermore, Participant hereby authorizes the Company, in its sole discretion, to deposit, following the term of such Escrow, for the benefit of Participant with any broker with which Participant has an account relationship of which the Company has notice any or all Shares which are no longer subject to such Escrow. Except as provided by the foregoing, a certificate for the Shares shall be registered in the name of Participant, or, if applicable, in the names of the heirs of Participant.

3.4 **Issuance of Shares in Compliance with Law.** The issuance of the Shares shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. No Shares shall be issued hereunder if their issuance would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Common Stock may then be listed. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance of any Shares shall relieve the Company of any liability in respect of the failure to issue such Shares as to which such requisite authority shall not have been obtained. As a condition to the issuance of the Shares, the Company may require Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

4. Vesting of Shares.

The Shares shall vest and become Vested Shares as provided in the Notice. Solely for purposes of the vesting schedule set forth in the Notice (and for the avoidance of doubt, "Change in Control" for any other purposes of the Notice or this Agreement shall continue to have the meaning given to such term in the Plan), a "**Change in Control**" shall be deemed to have occurred as of the first day after the Date of Grant that any one or more of the following conditions is satisfied:

(a) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act, other than a trustee or other fiduciary holding securities of the Company under an employee benefit plan of the Company, becomes the "beneficial owner" (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of (i) the outstanding shares of Common Stock of the Company or (ii) the combined voting power of the Company's then-outstanding securities entitled to vote generally in the election of directors; or

(b) the Company (i) is party to a merger, consolidation or exchange of securities which results in the holders of voting securities of the Company outstanding immediately prior thereto failing to continue to hold at least fifty percent (50%) of the combined voting power of the voting securities of the Company, the surviving entity or a parent of the surviving entity outstanding immediately after such merger, consolidation or exchange, or (ii) sells or disposes of all or substantially all of the Company's assets (or any transaction or combination of transactions having similar effect is consummated), or (iii) the individuals constituting the Board immediately prior to such merger, consolidation, exchange, sale or disposition shall cease to constitute at least fifty percent (50%) of the Board, unless the election of each director who was not a director prior to such merger, consolidation, exchange, sale or disposition was approved by a vote of at least two-thirds of the directors then in office who were directors prior to such merger, consolidation, exchange, sale or disposition.

5. **Company Recquisition Right.**

5.1 **Grant of Company Recquisition Right.** Except to the extent otherwise provided in a written agreement between the Company and Participant, in the event that (a) Participant's Continuous Service terminates for any reason or no reason, with or without Cause, or (b) Participant, Participant's legal representative, or other holder of the Shares, attempts to sell, exchange, transfer, pledge, or otherwise dispose of (other than pursuant to a Transaction), including, without limitation, any transfer to a nominee or agent of Participant, any Shares which are not Vested Shares ("**Unvested Shares**"), the Company shall automatically reacquire the Unvested Shares, and Participant shall not be entitled to any payment therefor (the "**Company Recquisition Right**").

5.2 **Transaction.** Upon the occurrence of a Transaction or Capitalization Adjustment, any and all new, substituted or additional securities or other property to which Participant is entitled by reason of Participant's ownership of Unvested Shares shall be immediately subject to the Company Recquisition Right and the Escrow and included in the terms "Shares," "Common Stock" and "Unvested Shares" for all purposes of the Company Recquisition Right with the same force and effect as the Unvested Shares immediately prior to the Transaction or Capitalization Adjustment.

6. **Escrow.**

6.1 **Appointment of Agent.** To ensure that Shares subject to the Company Recquisition Right will be available for reacquisition, Participant and the Company hereby appoint the Secretary of the Company, or any other person designated by the Company, as their agent and as attorney-in-fact for Participant (the "**Agent**") to hold any and all Unvested Shares and to sell, assign and transfer to the Company any such Unvested Shares reacquired by the Company pursuant to the Company Recquisition Right. Participant understands that appointment of the Agent is a material inducement to make this Agreement and that such appointment is coupled with an interest and is irrevocable. The Agent shall not be personally liable for any act the Agent may do or omit to do hereunder as escrow agent, agent for the Company, or attorney in fact for Participant while acting in good faith and in the exercise of the Agent's own good judgment, and any act done or omitted by the Agent pursuant to the advice of the Agent's own attorneys shall be conclusive evidence of such good faith. The Agent may rely upon any letter, notice or other document executed by any signature purporting to be genuine and may resign at any time.

6.2 **Establishment of Escrow.** Participant authorizes the Company to deposit the Unvested Shares with the Company's transfer agent to be held in book entry form, as provided in Section 3.3, and Participant agrees to deliver to and deposit with the Agent each certificate, if any, evidencing the Shares and an Assignment Separate from Certificate with respect to such book entry shares and each such certificate duly endorsed (with date and number of Shares blank) in the form attached to the Notice, to be held by the Agent under the terms and conditions of this Section 6 (the "**Escrow**"). The Company shall bear the expenses of the Escrow.

6.3 **Delivery of Shares to Participant.** The Escrow shall continue with respect to any Shares for so long as such Shares remain subject to the Company Recquisition Right. Upon termination of the Recquisition Right with respect to Shares, the Company shall so notify the Agent and direct the Agent to deliver such number of Shares to Participant. As soon as practicable after receipt of such notice, the Agent shall cause to be delivered to Participant the Shares specified by such notice, and the Escrow shall terminate with respect to such Shares.

7. Tax Matters.

7.1 Tax Withholding.

(a) **In General.** At the time the Notice is executed, or at any time thereafter as requested by the Company or an Affiliate (each, a “**Participating Company**” and together the “**Participating Company Group**”), Participant hereby authorizes withholding from payroll and any other amounts payable to Participant, and otherwise agrees to make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Participating Company Group, if any, which arise in connection with the Award, including, without limitation, obligations arising upon (i) the transfer of Shares to Participant, (ii) the lapsing of any restriction with respect to any Shares, (iii) the filing of an election to recognize tax liability, or (iv) the transfer by Participant of any Shares. The Company shall have no obligation to deliver the Shares or to release any Shares from the Escrow established pursuant to Section 6 until the tax withholding obligations of the Participating Company have been satisfied by Participant.

(b) **Withholding in Shares.** Participant may satisfy all or any portion of a Participating Company’s tax withholding obligations by requesting the Company to withhold a number of whole, Vested Shares otherwise deliverable to Participant or by tendering to the Company, or attestation to the ownership, of a number of whole, Vested Shares or vested shares of Common Stock acquired otherwise than pursuant to the Award having, in any such case, a Fair Market Value, as determined by the Company as of the date on which the tax withholding obligations arise, not in excess of the amount of such tax withholding obligations determined by the applicable minimum statutory withholding rates (or such lesser amount as may be necessary to avoid classification of the Award as a liability for financial accounting purposes). Any adverse consequences to Participant resulting from the procedure permitted under this Section, including, without limitation, tax consequences, shall be the sole responsibility of Participant.

(c) **Participant Responsibility.** Participant is ultimately liable and responsible for all taxes owed in connection with the Award, regardless of any action the Participating Company Group takes with respect to any tax withholding obligations that arise in connection with the Award. No member of the Participating Company Group makes any representation or undertaking regarding the treatment of any tax withholding in connection with the Award or the subsequent sale of Common Stock. The Participating Company Group does not commit and is under no obligation to structure the Award to reduce or eliminate Participant’s tax liability.

7.2 Election Under Section 83(b) of the Code.

(a) Participant understands that Section 83 of the Code taxes as ordinary income the difference between the amount paid for the Shares, if anything, and the fair market value of the Shares as of the date on which the Shares are “substantially vested,” within the meaning of Section 83. In this context, “substantially vested” means that the right of the Company to reacquire the Shares pursuant to the Company Reacquisition Right has lapsed. Participant understands that he or she may elect to have his or her taxable income determined at the time he or she acquires the Shares rather than when and as the Company Reacquisition Right lapses by filing an election under Section 83(b) of the Code with the Internal Revenue Service no later than thirty (30) days after the date of acquisition of the Shares. Participant understands that failure to make a timely filing under Section 83(b) will result in his or her recognition of ordinary income, as the Company Reacquisition Right lapses, on the difference between the purchase price, if anything, and the fair market value of the Shares at the time such restrictions lapse.

Participant further understands, however, that if Shares with respect to which an election under Section 83(b) has been made are forfeited to the Company pursuant to its Company Reacquisition Right, such forfeiture will be treated as a sale on which there is realized a loss equal to the excess (if any) of the amount paid (if any) by Participant for the forfeited Shares over the amount realized (if any) upon their forfeiture. If Participant has paid nothing for the forfeited Shares and has received no payment upon their forfeiture, Participant understands that he or she will be unable to recognize any loss on the forfeiture of the Shares even though Participant incurred a tax liability by making an election under Section 83(b).

(b) Participant understands that he or she should consult with his or her tax advisor regarding the advisability of filing with the Internal Revenue Service an election under Section 83(b) of the Code, which must be filed no later than thirty (30) days after the date of the acquisition of the Shares pursuant to this Agreement. Failure to file an election under Section 83(b), if appropriate, may result in adverse tax consequences to Participant. Participant acknowledges that he or she has been advised to consult with a tax advisor regarding the tax consequences to Participant of the acquisition of Shares hereunder. ANY ELECTION UNDER SECTION 83(b) PARTICIPANT WISHES TO MAKE MUST BE FILED NO LATER THAN 30 DAYS AFTER THE DATE ON WHICH PARTICIPANT ACQUIRES THE SHARES. THIS TIME PERIOD CANNOT BE EXTENDED. PARTICIPANT ACKNOWLEDGES THAT TIMELY FILING OF A SECTION 83(b) ELECTION IS PARTICIPANT'S SOLE RESPONSIBILITY, EVEN IF PARTICIPANT REQUESTS THE COMPANY OR ITS REPRESENTATIVE TO FILE SUCH ELECTION ON HIS OR HER BEHALF.

(c) Participant will notify the Company in writing if Participant files an election pursuant to Section 83(b) of the Code. The Company intends, in the event it does not receive from Participant evidence of such filing, to claim a tax deduction for any amount which would otherwise be taxable to Participant in the absence of such an election.

8. Adjustments for Changes in Capital Structure; Transactions.

Participant acknowledges that the Award is subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 10 of the Plan.

9. Rights as a Stockholder, Director, Employee or Consultant.

Participant shall have no rights as a stockholder with respect to any Shares subject to the Award until the date of the issuance the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the Shares are issued, except as provided in Section 10 of the Plan. Subject the provisions of this Agreement, Participant shall exercise all rights and privileges of a stockholder of the Company with respect to Shares deposited in the Escrow pursuant to Section 6. If Participant is an Employee, Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between a Participating Company and Participant, Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon Participant any right to continue in the Continuous Service of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate Participant's Continuous Service at any time.

10. Legends.

The Company may at any time place legends referencing the Company Reacquisition Right and any applicable federal, state or foreign securities law restrictions on all certificates representing the

Shares. Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing the Shares in the possession of Participant in order to carry out the provisions of this Section. Unless otherwise specified by the Company, legends placed on such certificates may include, but shall not be limited to, the following:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS SET FORTH IN AN AGREEMENT BETWEEN THIS CORPORATION AND THE REGISTERED HOLDER, OR HIS PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS CORPORATION.”

11. Transfers in Violation of Agreement.

No Shares may be sold, exchanged, transferred, assigned, pledged, hypothecated or otherwise disposed of, including by operation of law, except pursuant to a Transaction, until the date on which such Shares become Vested Shares, and any such attempted disposition shall be void. The Company shall not be required (a) to transfer on its books any Shares which will have been transferred in violation of any of the provisions set forth in this Agreement or (b) to treat as owner of such Shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such Shares will have been so transferred. In order to enforce its rights under this Section, the Company shall be authorized to give a stop transfer instruction with respect to the Shares to the Company's transfer agent.

12. Miscellaneous Provisions.

12.1 **Termination or Amendment.** The Committee may terminate or amend the Plan or this Agreement at any time; provided, however, that no such termination or amendment may adversely affect Participant's rights under this Agreement without the consent of Participant unless such termination or amendment is necessary to comply with applicable law or government regulation. No amendment or addition to this Agreement shall be effective unless in writing.

12.2 **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

12.3 **Binding Effect.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon Participant and Participant's heirs, executors, administrators, successors and assigns.

12.4 **Delivery of Documents and Notices.** Any documentation relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for Participant by a Participating Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the Company at its principal executive offices and to Participant at Participant's most-recent address on the Company's personnel records or at such other address as such party may designate in writing from time to time to the other party.

a. **Description of Electronic Delivery.** The Plan documents, which may include but do not necessarily include: the Plan, the Notice, this Agreement, the Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to

Participant electronically. In addition, the parties may deliver electronically any notices called for in connection with the Escrow and Participant may deliver electronically the Notice to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

b. **Consent to Electronic Delivery.** Participant acknowledges that Participant has read Section 12.4(a) of this Agreement and consents to the electronic delivery of the Plan documents, the Notice and notices in connection with the Escrow, as described in Section 12.4(a). Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to Participant by contacting the Company by telephone or in writing. Participant further acknowledges that Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, Participant understands that Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. Participant may revoke his or her consent to the electronic delivery of documents described in Section 12.4(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 12.4(a).

12.5 **Clawback/Recovery.** Participant hereby agrees that the Award is subject to the provisions of Section 9(l) of the Plan.

12.6 **Integrated Agreement.** The Notice, this Agreement and the Plan together with any other employment, severance, service or other agreement between Participant and a Participating Company referring to the Award, if any, shall constitute the entire understanding and agreement of Participant and the Participating Company Group with respect to the subject matter contained herein or therein and supersedes any prior agreements, understandings, restrictions, representations, or warranties among Participant and the Participating Company Group with respect to such subject matter other than those as set forth or provided for herein or therein. To the extent contemplated herein or therein, the provisions of the Notice, the Agreement and the Plan shall survive any settlement of the Award and shall remain in full force and effect.

12.7 **Applicable Law.** This Agreement and any controversy arising out of or relating to this Agreement shall be governed by, and construed in accordance with, the General Corporation Law of the State of Delaware, without regard to that state's conflict of law rules.

12.8 **Counterparts.** The Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.9 **Limitation on Participant's Rights.** The grant of the Award confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Participant shall have only the rights of a general unsecured creditor of the Company with respect to the Award.