
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 20, 2017



Tellurian Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-5507
(Commission File Number)

06-0842255
(I.R.S. Employer
Identification No.)

1201 Louisiana Street, Suite 3100, Houston, TX
(Address of principal executive offices)

77002
(Zip Code)

Registrant's telephone number, including area code: (832) 962-4000

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

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

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

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

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in Item 5.03 is incorporated by reference in this item.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.*Amended and Restated Tellurian 2016 Omnibus Incentive Compensation Plan*

On September 20, 2017, Tellurian Inc. (the “Company”) held its 2017 annual meeting of stockholders (the “Annual Meeting”). Pursuant to the vote described in Item 5.07 below, the stockholders approved the Amended and Restated Tellurian 2016 Omnibus Incentive Compensation Plan (the “Plan”) at the Annual Meeting and, upon such approval, the Plan, as amended, became effective. The Compensation Committee of the Company’s board of directors (the “Compensation Committee”) acts as the administrator of the Plan. Awards under the Plan may be made in the form of, among other things, stock options, stock appreciation rights, restricted stock and restricted stock units. The maximum number of shares issuable under the Plan is 40,000,000, plus any remaining shares of authorized common stock available under a prior equity compensation plan. Shares subject to awards of options or stock appreciation rights will be counted as 0.4 shares for every share granted, and any shares subject to other types of awards will be counted as one share for every share granted. The Plan imposes certain limits on the maximum awards that can be made to any individual Plan participant.

The foregoing description of the Plan is not complete and is qualified in its entirety by reference to the text of the Plan, which is attached hereto as Exhibit 10.1.

Long-Term Incentive Program

Also on September 20, 2017, the Compensation Committee adopted the Tellurian Inc. 2017-2021 Long Term Incentive Plan, a sub-plan under the Plan (the “LTIP”), which provides for a performance-based equity incentive structure for certain awards under the Plan. The LTIP consists of five consecutive annual performance periods beginning on January 1, 2017. Under the LTIP, an aggregate share pool will be established for each performance period. The aggregate share pool for a performance period will consist of a number of shares of common stock having a value generally equal to 8.5% of the growth in the Company’s “total shareholder value” attributable to such performance period. The Compensation Committee will allocate the aggregate share pool among the participants with respect to each performance period, although it may elect to allocate less than all of the pool in any period. Participants will then be awarded their allocated number of shares under the pool in the form of restricted stock. The restricted stock will generally vest in equal annual increments over a four-year period, subject to possible forfeiture or accelerated vesting in certain circumstances.

Authorization of Non-Qualified Options

Also on September 20, 2017, the Compensation Committee authorized the issuance of 2,015,150 non-qualified options under the Plan to the Company’s employees, of which up to 495,000 in the aggregate may be allocated to the Company’s named executive officers. The allocation of such options among the named executive officers has not been determined. The

options will have a term of ten years and one-third of each grant will vest in each of the first three years following the grant date. The options are expected to be issued to the named executive officers in October 2017.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Pursuant to the vote described in Item 5.07 below, the stockholders approved the changes to the Company's certificate of incorporation described in the Company's proxy statement for the Annual Meeting (the "Proxy Statement"), and those changes became effective on the date of the meeting. As a result, the changes to the Company's bylaws described in the Proxy Statement also became effective as of the same date. Among other things, the certificate of incorporation was amended to:

- Increase (i) the number of shares of common stock the Company is authorized to issue from 300 million to 400 million and (ii) the number of shares of preferred stock the Company is authorized to issue from 50 million to 100 million;
- eliminate the right of the holders of common stock to vote with respect to future amendments to the certificate of incorporation that relate solely to the terms of any outstanding shares of preferred stock;
- add a provision giving the board of directors the exclusive authority to set the size of the board;
- add provisions relating to the Company's classified board structure, the filling of vacancies and the removal of directors that were previously set forth in the bylaws;
- add a provision that permits stockholder action by written consent only if such action and the taking of such action by written consent have been previously approved by the board of directors;
- add a "forum selection clause" pursuant to which certain legal actions will be subject to the exclusive jurisdiction of the Court of Chancery of the State of Delaware; and
- make certain non-substantive amendments to eliminate provisions that are no longer necessary due to changes in applicable law, merely repeat what Delaware law otherwise provides, or are otherwise unnecessary or outdated, and to provide additional clarity and/or to address minor matters.

Among other things, the bylaws were amended to:

- provide for a time period of not earlier than 120 days nor later than 90 days prior to the first anniversary of the preceding year's annual meeting during which notice of any stockholder-proposed business or nominations must be provided;
- set forth additional information that must be included in the notice provided by stockholders proposing business or a nomination at an annual or special meeting;

- provide that a stockholder proposing business or a nomination at an annual or special meeting, or such stockholder's qualified representative, must appear at the meeting to present such business or nomination;
- clarify that the board of directors may postpone, reschedule, adjourn, recess or cancel any annual or special meeting previously scheduled by the board;
- clarify that the person presiding over the meeting of stockholders has the authority to make determinations with respect to the rules and conduct of meetings of stockholders;
- clarify that the applicable voting standard for the election of directors is a plurality of the votes cast;
- provide that the applicable voting standard for all other matters will be a majority of votes cast (unless a different or minimum vote is provided by the certificate of incorporation, the bylaws or any rules or regulations applicable to the Company or its securities, in which case such different or minimum vote shall be the applicable vote on the matter); and
- provide for mandatory indemnification and advancement of expenses for directors and officers of the Company.

The foregoing description of the Company's certificate of incorporation and bylaws is not complete and is qualified in its entirety by reference to the text of the amended documents, which are attached hereto as Exhibits 3.1 and 3.2, respectively.

Item 5.07 Submission of Matters to a Vote of Security Holders

As noted in Item 5.02 above, the Annual Meeting was held on September 20, 2017. Holders of 210,909,739 shares of the Company's common stock outstanding at the close of business on the record date of August 7, 2017 were entitled to vote at the meeting, of which 164,936,660 shares, or approximately 78.20% of those entitled to vote, were represented in person or by proxy at the Annual Meeting.

The certified results of the matters voted upon at the Annual Meeting, which are more fully described in the Proxy Statement, are as follows:

Proposal 1 – Election of Directors

Diana Dercyz-Kessler

<u>For</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
146,151,296	118,069	18,667,295

Dillon J. Ferguson

<u>For</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
142,625,731	3,643,634	18,667,295

Meg A. Gentle

<u>For</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
144,770,054	1,499,311	18,667,295

Proposal 2 – To ratify the appointment of Deloitte & Touche LLP as the Company’s independent registered public accounting firm for the year ending December 31, 2017

<u>For</u>	<u>Against</u>	<u>Abstain</u>
164,871,646	51,597	13,417

Proposal 3 – To adopt an Amended and Restated Certificate of Incorporation

Sub-proposal 3A – to increase the number of shares of common stock and preferred stock the Company is authorized to issue

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
141,217,189	5,041,322	10,854	18,667,295

Sub-proposal 3B – elimination of rights of holders of common stock to vote on amendments to terms of preferred stock

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
141,042,735	5,215,117	11,513	18,667,295

Sub-proposal 3C – addition of a provision giving the board of directors the exclusive authority to set the size of the board

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
141,095,250	5,160,476	13,639	18,667,295

Sub-proposal 3D – the addition of provisions relating to the Company’s classified board structure, the filling of vacancies and the removal of directors

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
141,115,679	5,133,955	19,731	18,667,295

Sub-proposal 3E – the addition of certain limits on stockholders’ ability to act by written consent

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
141,474,067	4,748,812	46,486	18,667,295

Sub-proposal 3F – the addition of a “forum selection clause”

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
144,025,163	2,224,402	19,800	18,667,295

Sub-proposal 3G – certain non-substantive amendments

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
145,479,805	772,685	16,875	18,667,295

Proposal 4 – To approve and adopt an Amended and Restated Tellurian Omnibus Incentive Compensation Plan

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
142,826,295	3,424,584	18,486	18,667,295

Proposal 5 – To approve, on a non-binding advisory basis, the compensation of the Company’s named executive officers

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
146,144,084	105,144	20,137	18,667,295

Proposal 6 – To approve, on a non-binding advisory basis, the frequency of future advisory votes on the compensation of the Company’s named executive officers

<u>3 Years</u>	<u>2 Years</u>	<u>1 Year</u>	<u>Abstain</u>
141,693,456	387,883	4,164,958	23,068

With respect to Proposal 6, the Company’s board of directors, after considering the advisory vote of the stockholders, has determined to provide for an advisory stockholder vote on the compensation of the Company’s named executive officers on a triennial basis.

Item 8.01 Other Events.

On September 20, 2017, the board of directors of the Company approved a form of indemnification agreement to be entered into with certain officers of the Company. The agreement generally provides that the Company will indemnify, and advance expenses to, the officer to the fullest extent permitted under Delaware law in connection with legal proceedings arising from or relating to his or her role as an officer of the Company.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	<u>Amended and Restated Certificate of Incorporation of Tellurian Inc.</u>
3.2	<u>Amended and Restated Bylaws of Tellurian Inc.</u>
10.1†	<u>Amended and Restated Tellurian Inc. 2016 Omnibus Incentive Compensation Plan</u>

† Management contract or compensatory plan or arrangement.

SIGNATURES

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

TELLURIAN INC.

By: /s/ Antoine J. Lafargue

Name: Antoine J. Lafargue

Title: Senior Vice President and
Chief Financial Officer

Date: September 22, 2017

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF
TELLURIAN INC.**

Tellurian Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies that:

1. The present name of the Corporation is Tellurian Inc. The Corporation was incorporated under the name "Magellan Petroleum Corporation" by the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware on August 17, 1967.

2. This Amended and Restated Certificate of Incorporation of the Corporation, which restates and integrates and also further amends the provisions of the Corporation's Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").

3. The Certificate of Incorporation of the Corporation is hereby amended, integrated and restated to read in its entirety as follows:

FIRST: The name of the Corporation is Tellurian Inc.

SECOND: The address of its registered office in the State of Delaware is 1675 South State Street, Suite B, in the City of Dover, County of Kent, 19901. The name of its registered agent at such address is Capitol Services, Inc.

THIRD: The nature of the business, and objects or purposes proposed to be transacted, promoted or carried on, is to engage in any lawful acts and activities for which corporations may be organized under the DGCL.

FOURTH:

(a) The total number of shares of stock which the Corporation shall have authority to issue is five hundred million (500,000,000), of which four hundred million (400,000,000) shares shall be common stock, par value of one cent (\$0.01) per share (the "Common Stock"), and one hundred million (100,000,000) shares shall be preferred stock, par value of one cent (\$0.01) per share (the "Preferred Stock").

(b) The board of directors of the Corporation (the "Board of Directors") is hereby expressly authorized, by resolution or resolutions thereof, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers (if any) of the shares of such series, and the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

(c) Except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Certificate of Designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Certificate of Designations relating to any series of Preferred Stock) or pursuant to the DGCL.

FIFTH:

(a) The Board of Directors shall consist of one or more members, the number thereof to be determined from time to time solely by resolution of the Board of Directors.

(b) The directors are divided into three classes, as nearly equal in number as possible. At each annual meeting of stockholders, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election and until their respective successors are duly elected and have qualified or upon their earlier death, resignation or removal. Notwithstanding the foregoing, directors elected by holders of Preferred Stock, if any, shall not be assigned to classes, but shall be subject to election and removal, and shall have terms of office, as specified herein. In case of any increase or decrease, from time to time, in the number of directors (other than directors elected by holders of Preferred Stock, if any), the number of directors in each class shall be apportioned as nearly equal as possible.

(c) Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(d) Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, any director, or the entire Board, may be removed from office at any time, but only for cause and only by the affirmative vote of at least a majority of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

SIXTH: No action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting of stockholders, unless the action to be effected by written consent of stockholders and the taking of such action by such written consent have expressly been approved in advance by the Board of Directors.

SEVENTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to make, alter, amend and repeal the By-Laws of the Corporation.

In addition to the powers and authorities herein or by statute expressly conferred upon them, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the express provisions of the DGCL, this Certificate of Incorporation and the By-Laws of the Corporation.

EIGHTH: Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

NINTH: The By-Laws of this Corporation may be altered, amended or repealed by the Board of Directors. Notwithstanding any other provision in the Certificate of Incorporation to the contrary, and subject to the rights of the holders of any series of Preferred Stock then outstanding, the By-Laws of this Corporation may also be altered, amended or repealed by the stockholders by the affirmative vote of the holders of sixty-six and two-thirds percent (66 2/3%) of the voting power of all outstanding voting stock of the Corporation generally entitled to vote on the matter.

TENTH: A director of this Corporation shall not be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any

breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL hereafter is amended, changed or modified in any way to further eliminate or limit the liability of directors to the Corporation or its stockholders or third parties, then directors of the Corporation, in addition to the circumstances in which directors are not personally liable as set forth in the preceding sentence, shall also not be personally liable to the Corporation or its stockholders or third parties for monetary damages to such further extent permitted by such amendment, change or modification.

Any amendment, repeal or modification of the foregoing paragraph shall not adversely affect the rights of any director of the Corporation relating to claims arising in connection with events which took place prior to the date of such amendment, repeal or modification.

ELEVENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the By-Laws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article ELEVENTH.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation as of this 20th day of September, 2017.

TELLURIAN INC.

By: /s/ Meg Gentle

Name: Meg Gentle

Title: President and Chief Executive Officer

AMENDED AND RESTATED BY-LAWS

OF

TELLURIAN INC.

Effective as of September 20, 2017

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AMENDED AND RESTATED BY-LAWS

OF

TELLURIAN INC.

ARTICLE I

Offices

SECTION 1. Registered Office.

The registered office of the corporation shall be as set forth in the Certificate of Incorporation of the corporation, as it may be amended from time to time (the "Certificate of Incorporation").

SECTION 2. Other Offices.

The corporation may also have other offices at such other places within or without the State of Delaware as the board of directors may from time to time determine.

ARTICLE II

Meetings of Stockholders

SECTION 1. Place of Meetings.

All meetings of the stockholders of the corporation may be held at such place, if any, within or without the State of Delaware, as the board of directors may from time to time determine.

The board of directors may, in its sole discretion, determine that any meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with the General Corporation Law of the State of Delaware (the "DGCL"). If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder; (ii) the corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

SECTION 2. Annual Meeting.

The annual meeting of the stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held on such date and time as the board of directors shall fix. The date, hour and place, if any, of each annual meeting and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting shall be specified in the notice of annual meeting. Unless otherwise required law, such notice shall be given not

less than ten (10) nor more than sixty (60) days before the date of the annual meeting to each stockholder entitled to vote at the meeting as of the record date for determining stockholders entitled to notice of the meeting. The board of directors may postpone, reschedule, adjourn, recess or cancel any annual meeting of stockholders previously scheduled by the board of directors.

At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board of directors, (b) brought by or at the direction of the board of directors or any duly authorized committee thereof, or (c) brought by a stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this Section 2 is delivered to the secretary of the corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2. For any business (other than nominations of persons for election to the board of directors, which is provided for in Section 3 of Article II of these By-Laws) to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of the preceding sentence, the stockholder must have given timely notice thereof in writing to the secretary of the corporation and any such proposed business must constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to the secretary of the corporation at the principal executive offices of the corporation, not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred and twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, for notice by the stockholder to be timely it must be so delivered not earlier than the close of business on the one hundred and twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public disclosure of the date of such meeting is first made by the corporation. For purposes of this Section 2 and Sections 3 and 4 of Article II of these By-Laws, public disclosure shall include disclosure in a press release reported by the Dow Jones News Services, Associated Press, Reuters Information Services, Inc. or other national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

A stockholder's notice to the secretary of the corporation shall set forth the following as to each matter the stockholder proposes to bring before the annual meeting:

(a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting;

(b) the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event such business includes a proposal to amend the By-Laws of the corporation, the language of the proposed amendment); and

(c) any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made.

A stockholder's notice to the secretary of the corporation shall set forth the following as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made:

(a) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner;

(b) the class or series and number of shares of the corporation which are owned beneficially and of record by the stockholder and the beneficial owner;

(c) a description of any agreement, arrangement or understanding with respect to the proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing;

(d) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owner, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of the corporation;

(e) a representation that the stockholder is a holder of record of capital stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to present such business;

(f) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (i) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal and/or (ii) otherwise to solicit proxies or votes from stockholders in support of such proposal; and

(g) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

Notwithstanding anything in the By-Laws to the contrary and except as otherwise expressly provided in Rule 14a-8 of the Exchange Act, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 2. The presiding officer of an annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this Section 2, and if the presiding officer should so determine, the presiding officer shall so declare at the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 2, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the corporation to present the proposed business, such proposed business shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of this Section 2 and Sections 3 and 4 of Article II of these By-Laws, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

Notwithstanding the foregoing provisions of this Section 2, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2; provided, however, that any references in these By-Laws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to proposals of business to be considered pursuant to this Section 2, and compliance with this Section 2 shall be the exclusive means for a stockholder to submit business other than nominations (other than business brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 2 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 of the Exchange Act.

SECTION 3. Notice of Stockholder Nominees.

Only persons who are nominated in accordance with the procedures set forth in these By-Laws shall be eligible for election as directors. Nominations of persons for election to the board of directors of the corporation may be made at an annual meeting of stockholders only (a) by or at the direction of the board of directors or any duly authorized committee thereof or (b) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this Section 3 is delivered to the secretary of the corporation, who is entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Section 3. Nominations by stockholders shall be made pursuant to timely notice in writing to the secretary of the corporation. To be timely, a stockholder's notice shall be delivered to the secretary of the corporation at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day, nor earlier than the close of business on the one hundred and twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred and twentieth (120th) day and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public disclosure of the date of such meeting was first made by the corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

A stockholder's notice to the secretary of the corporation shall set forth the following as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made:

(a) the name and address of such stockholder, as they appear on the corporation's books, and the name and address of such beneficial owner;

(b) the class or series and number of shares of the corporation which are owned beneficially and of record by the stockholder and the beneficial owner;

(c) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of the corporation;

(d) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to make the nomination;

(e) a description of any agreement, arrangement or understanding with respect to the nomination between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including the nominee;

(f) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (i) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to elect the nominee and/or (ii) otherwise to solicit proxies or votes from stockholders in support of such nomination; and

(g) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

In addition, the corporation may require any proposed nominee to furnish such other information as the corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the corporation.

A stockholder's notice to the secretary of the corporation shall set forth the following as to each person the stockholder proposes to nominate for election as a director:

(a) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with the Exchange Act, and the rules and regulations promulgated thereunder, and

(b) such person's written consent to being named in a proxy statement and to serving as a director of the corporation if elected.

Notwithstanding anything in the first paragraph of this Section 3 to the contrary, in the event that the number of directors to be elected to the board of directors of the corporation at the annual meeting is increased effective after the time period for which nominations would otherwise be due under the first paragraph of this Section 3 and there is no public disclosure by the corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 3 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the secretary of the corporation at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public disclosure is first made by the corporation.

No person shall be eligible for election as a director of the corporation at an annual meeting unless nominated in accordance with the procedures set forth in these By-Laws. The presiding officer of the meeting shall, if the facts warrant, determine and declare at the meeting that nomination was not made in accordance with the procedures prescribed by these By-Laws, and if the presiding officer should so determine, the presiding officer shall so declare at the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 3, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the corporation to present a nomination, such nomination shall be disregarded and such nomination shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.

Notwithstanding the foregoing provisions of this Section 3, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 3; provided, however, that any references in these By-Laws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations to be considered pursuant to this Section 3, and compliance with Section 3 shall be the exclusive means for a stockholder to make nominations at an annual meeting of stockholders. Nothing in this Section 3 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

SECTION 4. Special Meetings; Notice.

Special meetings of the stockholders for any purpose or purposes may be called at any time by the chairman of the board of directors, or by the President of the corporation, or by the board of directors pursuant to a resolution approved by a majority of the entire board of directors. Unless otherwise required by law, notice of every special meeting, stating the date, time and place, if any, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the purpose or purposes of such meeting, shall be given not less than ten (10) days nor more than sixty (60) days before each such meeting to each stockholder of the corporation entitled to vote at the meeting as of the record

date for determining stockholders entitled to notice of the meeting. The board of directors may postpone, reschedule, adjourn, recess or cancel any special meeting previously scheduled by the board of directors.

Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the board of directors may be made at a special meeting of stockholders at which directors are to be selected pursuant to the notice of meeting (a) by or at the direction of the board of directors or any duly authorized committee thereof or (b) provided that the board of directors has determined that directors shall be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 4 is delivered to the secretary of the corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 4. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the board of directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by Article II, Section 3 of these By-Laws shall be delivered to the secretary of the corporation at the principal executive offices of the corporation not earlier than the close of business on the one hundred and twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public disclosure is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

No person shall be eligible for election as a director of the corporation at a special meeting unless nominated in accordance with the procedures set forth in these By-Laws. The presiding officer of the meeting shall, if the facts warrant, determine and declare at the meeting that the nomination was not made in accordance with the procedures prescribed by these By-Laws, and if the presiding officer should so determine, the presiding officer shall so declare at the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the special meeting of stockholders of the corporation to present a nomination, such nomination shall be disregarded and such nomination shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.

Notwithstanding the foregoing provisions of this Section 4, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 4; provided, however, that any references in these By-Laws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations to be considered pursuant to this Section 4, and compliance with Section 4 shall be the exclusive means for a stockholder to make nominations at a special meeting of stockholders. Nothing in this Section 4 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

SECTION 5. Waiver of Notice of Meetings.

Any waiver of notice given by a stockholder entitled to notice of a meeting, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a stockholder at a meeting shall constitute a waiver of notice thereof, except when the stockholder attends a meeting for the express purposes of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any annual or special meeting of the stockholders need be specified in a waiver of notice.

SECTION 6. Quorum.

The holders of at least thirty-three and one-third percent (33 1/3%) in voting power of the total number of shares of stock issued and outstanding and entitled to be voted at the meeting, present in person or by proxy, shall constitute a quorum for the transaction of business. In the absence of a quorum, the person presiding at the meeting of stockholders or the stockholders so present may, by a majority in voting power thereof, adjourn the meeting from time to time in accordance with applicable law until a quorum shall be present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted by a quorum of the stockholders at the meeting as originally convened.

SECTION 7. Voting at Stockholders' Meetings.

Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, at all meetings of the stockholders, each holder of stock of the corporation having the right to vote at such meeting shall be entitled to one vote for each share of stock registered in his, her or its name on the record date for such meeting.

SECTION 8. Proxies and Voting.

At any meeting of the stockholders, every stockholder entitled to vote may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Except as otherwise provided by these By-Laws, each director shall be elected by the vote of the majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present, provided that if, as of the tenth (10th) day preceding the date the corporation first mails its notice of meeting for such meeting to the stockholders of the corporation, the number of nominees exceeds the number of directors to be elected (a "Contested Election"), the directors shall be elected by the vote of a plurality of the votes cast. For purposes of this Section 8, a majority of the votes cast shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election (with "abstentions" and "broker non-votes" not counted as a vote cast either "for" or "against" that director's election). All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall be decided by a majority of the votes cast with respect thereto (and abstentions shall not be considered votes cast), unless a different or minimum vote is required or provided by the Certificate of Incorporation, these By-Laws, the rules or regulations of any stock exchange applicable to the corporation, or any law or regulation applicable to the corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter.

SECTION 9. Manner of Voting.

In the election of directors and in voting on any question on which a vote by written ballot is required by law or is demanded by any stockholder, the voting shall be by written ballot; on all other questions, voting may, but need not, be conducted by written ballot.

SECTION 10. Stock Register.

The corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting at least ten (10) days prior to the meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (b) during

ordinary business hours at the principal place of business of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 10 or to vote in person or by proxy at any meeting of the stockholders.

SECTION 11. Record Date for Meetings of Stockholders.

In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

SECTION 12. Record Date for Stockholder Action by Written Consent.

If the board of directors determines that an action be submitted to stockholders for adoption by written consent in lieu of a meeting of stockholders pursuant to Article Sixth of the Certificate of Incorporation, in order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors within ten (10) days of the date on which the board of directors approves the taking of such action by written consent in lieu of a meeting of stockholders, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts the resolution approving the taking of such action.

SECTION 13. Presiding Officer and Secretary; Conduct of Business.

The chairman of the board of directors, or in the chairman's absence, the president, shall call meetings of the stockholders to order and shall act as chairman of the meetings; but in the absence of the chairman and the president, the board of directors may appoint any person to act as the chairman of the meeting, and, in the absence of such an appointment by the board of directors of a chairman, the stockholders may elect a chairman to preside at the meeting. The secretary of the corporation shall act as secretary of all meetings of the stockholders, but in the secretary's absence the presiding officer may appoint any person to act as secretary of the meeting.

The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting by the person presiding over the meeting. The board of directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the board of directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the board of directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare at the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare at the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the board of directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

ARTICLE III

Board of Directors

SECTION 1. Number and Election of Directors.

The powers of the corporation shall be exercised by the board of directors, except such as are by law or by the Certificate of Incorporation or by the By-Laws of the corporation reserved to the stockholders. The number of directors shall be fixed in the manner provided in the Certificate of Incorporation. Directors shall be elected as set forth in the Certificate of Incorporation.

SECTION 2. Quorum.

A majority of the total number of directors shall constitute a quorum of the board of directors for the conduct of business of the corporation. In the absence of a quorum the director or directors present in person, at the time and place at which the meeting shall have been called, may adjourn the meeting from time to time, and from place to place until a quorum shall be present. The act of a majority of the directors present in person at a meeting at which a quorum is present shall be the act of the board of directors.

SECTION 3. Voting by Proxy.

Directors may not be represented and may not vote by proxy at directors' meetings.

SECTION 4. Regular Meetings.

Regular meetings of the board may be held upon such notice, or without notice, as the board of directors may by resolution from time to time determine.

SECTION 5. Special Meetings.

Special meetings of the board shall be held whenever called by the chairman of the board of directors, the president or a majority of the entire board of directors. Notice of special meetings of the board of directors shall be given by the person or persons calling the meeting in person or by mail, telephone or electronic transmission at least twenty-four (24) hours before the special meeting. Special meetings of the board may be held for any purpose, without notice, whenever all of the directors are present in person (except when a director attends for the express purposes of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened), or shall waive notice thereof.

SECTION 6. Place of Meeting.

Any meeting of the board of directors may be held at such place or places as may from time to time be established by resolution of the board, or as may be fixed in the notice of such meeting.

SECTION 7. Compensation.

The board of directors shall have authority to fix fees of directors in compensation for their service as directors and as members of special or standing committees of the board of directors, including reasonable allowance of expenses actually incurred in connection with their duties.

SECTION 8. Committees.

The corporation hereby elects to be governed by Section 142(c)(2) of the DGCL. The board of directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the board of directors, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.

SECTION 9. Chairman of the Board of Directors.

The board of directors shall elect from among its members a chairman of the board of directors. The chairman, if present, shall preside over all meetings of the stockholders and meetings of the board of directors. The chairman shall have such other duties as determined by the board of directors and, if not so determined, as generally pertain to the chairman of the board of directors of a corporation.

ARTICLE IV**Officers****SECTION 1. Election, Term and Vacancies.**

The board of directors shall annually elect the officers of the corporation which shall include a president, a secretary and a treasurer and which may include such other officers as the board of directors may deem necessary. Such officers shall have such authority and perform such duties as may from time to time be prescribed by the board of directors, and, to the extent not so prescribed, as generally pertain to their respective offices, subject to the control of the board of directors. Officers shall hold office for one year or until their successors are elected and qualified, provided, that any officer may be removed at any time by the board of directors. Vacancies occurring in the offices of the corporation shall be filled by the board of directors. No officer need be a director and any person may hold two or more offices, except those of president and vice president.

SECTION 2. President.

The president shall be the chief executive officer of the corporation. In the absence of the chairman of the board of directors, the president shall preside at all meetings of the directors (assuming that the president is also a director of the corporation) and stockholders at which the president is present. The president shall have general management of the business of the corporation, subject to the board of directors, and shall see that all orders and resolutions of the board are carried into effect. The president shall execute contracts and other obligations authorized by the board, and may, without previous authority of the board, make such contracts as the ordinary business of the corporation shall require. The president shall have the usual powers and duties vested in the office of president of a corporation, but may delegate any of such powers to one or more of the vice presidents. The president shall have power to appoint all other officers and agents of the corporation except for the secretary, the treasurer, and such other officers as may be elected by the board of directors. The president shall have power to remove any officers and agents appointed by the president, and to make new appointments to fill vacancies in any such offices.

SECTION 3. Vice Presidents.

The vice presidents of the corporation, if any, shall be vested with such powers and duties as the board of directors may from time to time decide.

SECTION 4. Secretary.

The secretary shall attend all meetings of the stockholders, of the board of directors and of any committees of the board of directors, and record the votes and proceedings of such meetings in books to be kept for that purpose. The secretary shall keep the corporate seal in safe custody and affix it to any instrument requiring the same. The secretary shall attend to the giving and serving of notices of meetings, and shall have charge of such books and papers as properly belong to such office, or as may be committed to the secretary's care by the board of directors or any committee thereof. The secretary shall also perform such other duties as pertain to the office or as may be required by the board of directors, or as may be delegated to the secretary from time to time by the president.

SECTION 5. Treasurer.

The treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in banks belonging to the corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. The treasurer shall disburse the funds of the corporation as may be ordered by the board of directors or the president, taking proper vouchers for such disbursements, and shall render to the president or board of directors, whenever they require it, an account of all the treasurer's transactions as treasurer and of the financial condition of the corporation.

SECTION 6. Assistant Secretary and Assistant Treasurer.

The assistant secretary shall perform such duties as may be delegated to the assistant secretary by the secretary, or as may be required by the board of directors, and shall in the absence of the secretary perform all the functions and have all the duties and responsibilities of secretary. The assistant treasurer shall perform such duties as may be delegated to the assistant treasurer by the treasurer, and shall also perform such other duties as may be required by the board of directors. In the absence of the treasurer, the assistant treasurer shall have all the powers and all the duties and responsibilities of the treasurer. One person may hold the offices of assistant secretary and assistant treasurer.

SECTION 7. Oaths and Bonds.

The board of directors may by resolution require any officers, agents or employees of the corporation to give oaths or to furnish bonds for the faithful performance of their respective duties.

SECTION 8. Signatures.

All checks, drafts or orders for the payment of money, and all acceptances, bills of exchange and promissory notes may be signed by any officer or officers of the corporation, or by any other person designated by resolution of the board of directors.

SECTION 9. Delegation of Duties.

In the event of death, resignation, retirement, disqualification, disability, sickness, absence, removal from office or refusal to act of any officer or agent of the corporation, or for any reason that the board of directors may deem sufficient, the board of directors may delegate the powers and duties of such officer or agent to any other officer or agent, or to any director, for the time being.

ARTICLE V**Shares of Stock****SECTION 1. Stock Certificates; Uncertificated Stock.**

The shares of the corporation's capital stock shall be certificated provided that the board of directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Except as otherwise provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificated shares of the same class and series shall be identical. Each holder of stock represented by certificates shall be entitled to a certificate of the capital stock of the corporation in such form, not inconsistent with law and the Certificate of Incorporation of the corporation, as may be approved by the board of directors. Certificates shall be signed by or in the name of the corporation by any two authorized officers of the corporation, including, but not limited to, the chairperson of the board of directors, the vice-chairperson of the board of directors, the president, a vice-president, the treasurer, an assistant treasurer, the secretary or an assistant secretary of the corporation. Any or all the signatures on the certificate may be a facsimile. Certificates shall be consecutively numbered, and the names of the persons owning the shares represented thereby, together with the number of such shares and the date of issue, shall be entered on the books of the corporation. Every certificate for shares of stock which are subject to any restriction on transfer shall contain such legend with respect thereto as is required by law. The corporation shall be permitted to issue fractional shares.

SECTION 2. Registered Stockholders.

The corporation shall be entitled to treat the holder of record of any share or shares of stock in this corporation as the holder in fact thereof, and shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

SECTION 3. Replacement of Certificates; Lost Certificates.

In case of the alleged loss, destruction or mutilation of a certificate of stock, a new certificate may be issued in place thereof, upon such terms as the board of directors may prescribe; provided, however, that if such class or series of shares have ceased to be certificated, a new uncertificated share may be issued upon such terms as the board of directors may prescribe. Any owner of such shares, or such owner's legal representative, shall make an affidavit or affirmation of that fact, and shall advertise the same in such manner as the board of directors may require, and shall, if the board of directors so requires, give the corporation a bond of indemnity in such sum as they may direct.

SECTION 4. Transfer of Shares.

Subject to applicable law and any restrictions on transfer and unless otherwise provided by the board of directors, shares of stock may be transferred only on the books of the corporation, if such shares are certificated, by the surrender to the corporation or its transfer agent of the certificate therefor properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, or upon proper instructions from the holder of uncertificated shares, in each case with such proof of the authenticity of signature as the corporation or its transfer agent may reasonably require.

SECTION 5. Addresses of Stockholders.

Notices may be sent to stockholders at their last known address, except as otherwise provided in these By-Laws or by applicable law.

SECTION 6. Transfer Agents; Rules and Regulations.

The board of directors may appoint a transfer agent or one or more co-transfer agents and a registrar or one or more co-registrars and may make, or may authorize such agents and registrars to make, all such rules and regulations, subject to applicable law, as they may deem expedient governing the issue, transfer and registration of the certificates for shares of the capital stock of the corporation.

SECTION 7. Voting Securities Held by the Corporation.

Unless otherwise provided by resolution adopted by the board of directors, the president may from time to time cast the votes which the corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the corporation, at meetings of the holders of the stock or other securities of such other corporation or other entity, or to consent in writing, in the name of the corporation as such holder, to any action by such other corporation or other entity, and may execute or cause to be executed in the name and on behalf of the corporation and under its corporate seal or otherwise, all such written proxies or other instruments as the president may deem necessary or proper. The voting and other rights set forth in this Section 7 may be delegated by the president to a duly authorized officer or an attorney or agent.

ARTICLE VI**Indemnification and Advancement of Expenses****SECTION 1. Right to Indemnification.**

The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article VI, the corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the board of directors of the corporation. For purposes of this Article VI only, an officer is any person holding a title specified in Article IV of these By-Laws.

SECTION 2. Advancement of Expenses

The corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

SECTION 3. Claims.

If a claim for indemnification under this Article VI (following the final disposition of such proceeding) is not paid in full within sixty (60) days after the corporation has received a claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Article VI is not paid in full within thirty (30) days after the corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action, the corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law. With respect to claims for indemnification, neither the failure of the corporation (including by its directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of any action that indemnification is proper in the circumstances because the Covered Person has met the applicable standard of conduct, nor an actual determination by the corporation (including by its directors, independent legal counsel or its stockholders) that the Covered Person has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the Covered Person has not met the applicable standard of conduct.

SECTION 4. Non-exclusivity of Rights.

The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 5. Other Sources.

The corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

SECTION 6. Amendment or Repeal.

Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these By-Laws after the occurrence of the act or omission that is the subject of the action, suit or proceeding for which indemnification or advancement of expenses is sought.

SECTION 7. Other Indemnification and Advancement of Expenses.

This Article VI shall not limit the right of the corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

SECTION 8. Agreements for Indemnification and Advancement of Expenses.

The corporation may enter into agreements with its directors and officers (and with such other employees and agents as the board of directors deems appropriate in its sole and exclusive discretion) both to indemnify such directors and officers (and such other employees and agents, if any) and to advance to such directors and officers (and such other employees and agents, if any) the funds for litigation expenses to the fullest extent permitted by the laws of the State of Delaware, as the same presently exist or may hereafter be amended, changed or modified.

ARTICLE VII

Dividends

SECTION 1. Dividends and Reserves.

Before payment of any dividend, the board of directors may set aside out of the surplus or net profits of the corporation, such sum or sums as in their absolute discretion they may deem proper as a reserve fund for depreciation, renewal, repair and maintenance or for such other purposes as the directors shall think conducive to the interests of the corporation. Dividends upon the issued and outstanding stock of the corporation may be declared by the board of directors in accordance with applicable law.

SECTION 2. Stock Dividends.

When the directors shall so determine, dividends may be paid in stock of the corporation; provided the stock requisite for such purpose shall be authorized and provided that the capital of the corporation shall equal at least the aggregate par value of all of the issued shares of stock of the corporation.

SECTION 3. Record Date for Payment of Dividends and Other Rights

In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action not otherwise addressed in these By-Laws, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

ARTICLE VIII

Fiscal Year

The fiscal year of the corporation shall end on the last day of December in each year or as otherwise determined by resolution of the board of directors.

ARTICLE IX

Seal

The corporate seal is, and until otherwise ordered and directed by the board of directors shall be, an impression upon paper or wax, bearing the name of the corporation, the year of its organization and the words "Corporate Seal Delaware."

ARTICLE X

Amendments

These By-Laws may be altered, amended or repealed by the board of directors. Notwithstanding any other provision in these By-Laws to the contrary and subject to the rights of the holders of any series of Preferred Stock then outstanding, these By-Laws may also be altered, amended or repealed by the stockholders by the favorable vote of sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the voting power of all outstanding voting stock of the corporation generally entitled to vote on the matter.

AMENDED AND RESTATED

TELLURIAN INC.

2016 OMNIBUS INCENTIVE COMPENSATION PLAN

(Effective as of February 9, 2017; Amended and Restated as of September 20, 2017)

SECTION 1 PURPOSES

The purposes of the Tellurian Inc. Amended and Restated 2016 Omnibus Incentive Compensation Plan (as amended and/or restated, the "*Plan*") are to promote the interests of Tellurian Inc., a Delaware corporation (the "*Company*"), and its stockholders by strengthening its ability to attract, retain, and motivate Employees, members of the Board, and Consultants of the Company and any Subsidiary by furnishing suitable recognition of their performance, ability, and experience, to align their interests and efforts to the long-term interests of the Company's stockholders, and to provide them with a direct incentive to achieve the Company's strategic and financial goals. In furtherance of these purposes, the Plan provides for the grant of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Shares, Performance Units, Incentive Awards, Cash Awards, and Other Stock-Based Awards to Participants in accordance with the terms and conditions set forth below.

SECTION 2 DEFINITIONS

Unless otherwise required by the context, the following terms when used in the Plan shall have the meanings set forth in this Section 2:

1. Affiliate

Any person that directly or indirectly controls, is controlled by or is under common control with the Company. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting or other securities, by contract or otherwise.

2. Award

Any Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Performance Share, Performance Unit, Incentive Award, Cash Award, or Other Stock-Based Award granted pursuant to the terms of this Plan, in each case payable in Common Stock and/or in cash as may be designated by the Plan Administrator.

3. Award Agreement

The written agreement setting forth the terms, conditions, rights, and duties applicable to an Award granted under the Plan. All Award Agreements shall be deemed to incorporate the provisions of the Plan. An Award Agreement need not be identical to other Award Agreements either in form or substance. To the extent permitted by law, the Plan Administrator may, in its discretion, provide for the use of electronic, internet, or other non-paper Award Agreements, and provide that execution of an Award Agreement may be evidenced by any appropriate form of electronic signature or affirmative email or other electronic response attached to or logically associated with such Award Agreement, which is executed or adopted by a party with an indication of the intention by such party to execute or adopt such Award Agreement for purposes of execution thereof.

4. Beneficiary

The person or persons designated by the Participant pursuant to Section 7.3(f) or Section 18.8 of this Plan to whom payments are to be paid pursuant to the terms of the Plan in the event of the Participant's death.

5. Board

The Board of Directors of the Company.

6. Cash Awards

As defined in Section 13.1 of this Plan.

7. Cause

"Cause" shall have the meaning ascribed thereto in any Award Agreement, or in any Individual Agreement, or, in the absence of such Individual Agreement, a termination of a Participant's employment with the Company and its Subsidiaries resulting from (a) Participant's indictment for, conviction of, or pleading of guilty or nolo contendere to, any felony or any crime involving fraud, dishonesty or moral turpitude; (b) Participant's gross negligence with regard to the Company or any Affiliate in respect of their duties for the Company or any Affiliate; (c) Participant's willful misconduct having or, which in the good faith discretion of the Board could have, an adverse impact on the Company or any Affiliate economically or reputation-wise; (d) Participant's material breach of their respective Award Agreement, any Individual Agreement entered into with the Company or any Affiliate or material breach of any code of conduct or ethics or any other policy of the Company, which breach (if curable in the good faith discretion of the Board) has remained uncured for a period of ten (10) days following the Company's delivery of written notice to Participant specifying the manner in which the agreement or policy has been materially breached; or (e) Participant's failure to perform their reasonably assigned duties to the Company or Affiliate, including by reason of their habitual absenteeism or due to their insubordination (other than such failure resulting from their incapacity due to physical or mental illness), which failure has continued for a period of at least ten (10) days following the Company's delivery of written notice to Participant specifying the manner in which the Company believes Participant has not performed their duties. With respect to a Consultant, Cause shall also include a breach by the Consultant of the applicable consulting or similar service agreement. With respect to a Participant's Termination of Directorship, such termination for "cause" shall be determined in accordance with the provisions of Section 141(k) of the Delaware General Corporation Law. Whether a Participant has been terminated for Cause will be determined by the Board in its sole discretion with respect to a Section 16 Insider, and, with respect to all other Participants, by the Company's Chief Executive Officer (or his or her designee) in his or her sole discretion.

8. Change in Capitalization

Any increase or reduction in the number of shares of Common Stock, any change (including, without limitation, in the case of a spin-off, dividend, or other distribution in respect of shares, a change in value) in the shares of Common Stock, or any exchange of shares of Common Stock for a different number or kind of shares of Common Stock or other securities of the Company or another corporation, by reason of a reclassification, recapitalization, merger, consolidation, reorganization, spin-off, split-up, issuance of warrants, rights, or debentures, stock dividend, stock split or reverse stock split, extraordinary cash dividend, property dividend, combination, or exchange of shares, change in corporate structure, or otherwise.

9. Change of Control

The occurrence of any of the following after the Effective Date:

(a) any individual, entity, or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Person") acquires beneficial ownership (within the meaning of Rule 13d-3 promulgated under the

Exchange Act) of 20% or more of either (i) the then outstanding shares of Common Stock of the Company (the “*Outstanding Company Common Stock*”) or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “*Outstanding Company Voting Securities*”); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change of Control: (1) any acquisition directly from the Company or its Affiliates, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any entity controlled by the Company, (4) any acquisition pursuant to a transaction which complies with clauses (i), (ii), and (iii) of Section 2.9(c) of this Plan, below, or (5) any acquisition of additional securities by any Person who, as of the Restatement Effective Date, held 15% or more of either (x) the Outstanding Company Common Stock or (y) the Outstanding Company Voting Securities; or

(b) individuals who, as of the Effective Date, constitute the Board (the “*Incumbent Board*”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board;

(c) or consummation by the Company of a reorganization, merger, or consolidation, or sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets of another entity (a “*Business Combination*”), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of Common Stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or any Person who, as of the Restatement Effective Date, held 15% or more of either (x) the Outstanding Company Common Stock or (y) the Outstanding Company Voting Securities) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of Common Stock of the entity resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such entity, except to the extent that such ownership existed prior to the Business Combination, and (iii) at least a majority of the members of the board of directors (or equivalent governing authority) of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(d) approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

Notwithstanding the foregoing, with respect to an Award that is (A) subject to Section 409A and (B) a Change of Control would accelerate the timing of payment thereunder, the settlement of such Award shall not occur until the earliest of (1) the Change of Control if such Change of Control constitutes a “change in the ownership of the corporation,” a “change in effective control of the corporation” or a “change in the ownership of a substantial portion of the assets of the corporation,” within the meaning of Section 409A(a)(2)(A)(v) of the Code, (2) the date such Award would otherwise be settled pursuant to the terms of the applicable Award Agreement and (3) the Participant’s “separation of service” within the meaning of Section 409A.

10. Code

The U.S. Internal Revenue Code of 1986, as amended from time to time, and any successor thereto, the Treasury Regulations thereunder and other relevant interpretive guidance issued by the Internal Revenue Service or the Treasury Department. Reference to any specific section of the Code shall be deemed to include such regulations and guidance, as well as any successor provision of the Code.

11. Common Stock

The Common Stock of the Company, \$0.01 par value per share, or such other class of shares or other securities as may be applicable pursuant to the provisions of Section 5 of this Plan.

12. Company

As defined in Section 1 of this Plan.

13. Compensation Committee

The Compensation Committee of the Board.

14. Consultant

Any consultant, agent, advisor, or independent contractor who renders services to the Company or any Subsidiary and who is a natural person and otherwise qualifies as a consultant under the applicable rules of the U.S. Securities and Exchange Commission for registration of Common Stock on a Form S-8 Registration Statement.

15. Covered Employee

With respect to any grant of an Award, the Chief Executive Officer of the Company and any other Participant who the Plan Administrator deems, at the time of grant, is or may be a "covered employee" as defined in Section 162(m) in the year of payment of the Award.

16. Director

Any individual who is a member of the Board of Directors of the Company or of any Subsidiary.

17. Disability

"Disability" shall have the meaning ascribed thereto in any Award Agreement, or in any Individual Agreement, or, in the absence of such Individual Agreement, shall mean that the Participant has experienced a "permanent and total disability" within the meaning of Section 22(e)(3) of the Code. The determination of whether a Participant has experienced a Disability shall be determined under procedures established by the Compensation Committee. Notwithstanding the foregoing, for an Award under the Plan that provides for vesting and/or payment or settlement triggered upon a Disability and that constitutes a Section 409A Covered Award (as hereinafter defined), the foregoing definition shall apply for purposes of vesting of such Award, provided that for purposes of payment or settlement of such Award, such Award shall not be paid (or otherwise settled) until the earliest of: (A) the Participant's "disability" within the meaning of Section 409A(a)(2)(C)(i) or (ii) of the Code, (B) the Participant's "separation from service" within the meaning of Section 409A and (C) the date such Award would otherwise be settled pursuant to the terms of the Award Agreement.

18. Effective Date

The effective date of the Plan is February 9, 2017, the date on which it was approved by the stockholders of the Company.

19. Employee

Any employee of the Company or of any Subsidiary. An Employee on a leave of absence for such periods and purposes conforming to the personnel policy of the Company may be considered still in the employ of the Company or a Subsidiary for purposes of eligibility for participation in this Plan.

20. Employer

As to any Participant on any date, the Company or a Subsidiary that employs or retains the Participant on such date.

21. Exchange Act

The U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

22. Fair Market Value

As of any given date, the closing sales price at which Common Stock is sold on such date (a) as reported on the principal national securities exchange in the United States on which it is then traded (currently, the the Nasdaq Stock Market); or (b) if not traded on any such national securities exchange, as quoted on an automated quotation system sponsored by the Financial Industry Regulatory Authority, or if the Common Stock shall not have been reported or quoted on such date, on the first day prior thereto on which the Common Stock was reported or quoted. If the Common Stock is not traded, listed or otherwise reported or quoted, then Fair Market Value means the fair market value of the Common Stock as determined by the Plan Administrator in good faith in whatever manner it considers appropriate taking into account the requirements of Section 409A or Section 422 of the Code, as applicable.

23. Incentive Award

A percentage of total compensation (including base salary, any bonuses, and other compensation paid to the Participant), a fixed dollar amount, or other measure of compensation which Participants are eligible to receive, in cash, shares of Common Stock and/or other Awards under the Plan, if certain performance measures are achieved.

24. Incentive Stock Option

An Option intended to meet the requirements of an "incentive stock option" as defined in Section 422 of the Code, as in effect at the time of grant of such Option, or any statutory provision that may hereafter replace such section.

25. Individual Agreement

An employment, consulting or similar agreement between a Participant and the Company or one of its Subsidiaries or Affiliates.

26. Maximum Grant

The maximum grants set forth in Section 5.2 of this Plan.

27. **Nonqualified Option**

An Option which is not intended to, or which fails to, meet the requirements of an “incentive stock option” as defined in Section 422 of the Code.

28. **Option**

An Incentive Stock Option or a Nonqualified Option.

29. **Option Price**

The price per share of Common Stock at which an Option is exercisable.

30. **Other Stock-Based Award**

As defined in Section 13.2 of this Plan.

31. **Participant**

An eligible Employee, Director, or a Consultant to whom an Award or Awards are granted under the Plan as set forth in Section 4 of this Plan.

32. **Performance Goals**

The Plan Administrator may grant Awards subject to one or more performance goals to any Participant, including, without limitation, to any Covered Employee; provided, however, that Awards that are intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m) shall be subject to at least one or more of the Performance Goals set below (collectively the “*Performance Goals*”), and such Awards may, but need not, also be subject other performance goals in addition to one or more of the Performance Goals below; provided, further, that the Plan Administrator may grant Awards subject to Performance Goals that are not intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m), and such Awards may, but need not, be subject to any of the Performance Goals set forth in the table below or to any other performance goals. Achievement of Performance Goals in respect of Awards may be measured based on performance over a Performance Period, as specified by the Plan Administrator, or may be determined based on whether or not the Performance Goals are satisfied at any time prior to the expiration of a Performance Period. As to any such Awards, the Plan Administrator shall establish one or more of the Performance Goals for each Performance Period in writing.

Each Performance Goal selected for a particular Performance Period shall include any one or more of the following, either individually, alternatively, or in any combination, applied to either the Company as a whole or to a Subsidiary or a business unit of the Company or any Subsidiary, either individually, alternatively, or in any combination, and measured either annually or cumulatively over a period of time, on an absolute basis or relative to the pre-established target, to previous years’ results, or to a designated comparison group, in each case as specified by the Plan Administrator: (A) earnings; (B) earnings per share; (C) revenue (including increased revenues); (D) profit measures (including gross profit, operating profit, economic profit, net profit before taxes and adjusted pre-tax profit); (E) cash flow measures (including cash flow return on capital, cash flow return on tangible capital, net cash flow and net cash flow before financing activities); (F) return measures (including return on equity, return on assets, return on capital, risk-adjusted return on capital, return on investors’ capital and return on average equity); (G) equity ratios; (H) gross margin; (I) net income measures (including income after capital costs and income before or after taxes); (J) earnings; (K) pretax earnings; (L) earnings before interest, taxes, depreciation and amortization (“*EBITDA*”); (M) earnings before taxes and depreciation (“*EBTD*”); (N) earnings before interest and taxes (“*EBIT*”); (O) earnings before interest, taxes, depreciation, amortization,

and exploration expenses (“*EBITDAX*”); (P) pretax operating earnings after interest expense and before incentives, service fees, and extraordinary or special items; (Q) operating measures (including operating income, funds from operations, cash from operations, after-tax operating income; sales volumes, production volumes and production efficiency); (R) stock price measures (including growth measures and total stockholder return); (S) debt reduction; (T) price per share of Common Stock; (U) market share; (V) earnings per share or adjusted earnings per share (actual or growth in); (W) economic value added (or an equivalent metric); (X) market value added; (Y) debt to equity ratio; (Z) expense measures (including overhead cost and general and administrative expense); (AA) changes in working capital; (BB) margins; (CC) stockholder value; (DD) proceeds from dispositions; (EE) total market value; (FF) customer satisfaction or growth; (GG) contracted LNG quantity; (HH) construction milestones; (II) engineering milestones; (JJ) execution of engineering, procurement and construction agreements; (KK) implementation, completion or attainment of measurable objectives with respect to financing or construction of entire projects or stages of projects; (LL) regulatory milestones; (MM) completion of regulatory filings; (NN) receipt of and compliance with regulatory approvals; (OO) receipt of a commitment of financing or refinancing; (PP) closing of financing or refinancing; (QQ) execution of commercial agreements; (RR) achievement of safety standards; (SS) fuel usage; (TT) asset quality levels; (UU) asset sale targets; (VV) investments; (WW) satisfactory internal or external audits; (XX) achievement of balance sheet or income objectives; (YY) employee retention/ attrition rates; (ZZ) improvements of financial ratings; (AAA) charge-offs; (BBB) MMBTU growth per net debt-adjusted share; (CCC) reaching final investment decision; (DDD); fuel usage; (EEE) cost of production; (FFF) management of risk; (GGG) investments; (HHH) assets; (III) value of assets; and (JJJ) non-performing assets.

Except as otherwise determined by the Compensation Committee, in its sole discretion, at grant, the measures used in Performance Goals set under the Plan with respect to Awards intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m) shall be determined in accordance with generally accepted accounting principles (“*GAAP*”) and in a manner consistent with the methods used in the Company’s regular reports on Forms 10-K and 10-Q, without regard to any of the following unless otherwise determined by the Compensation Committee, in its sole discretion, consistent with the requirements of Code Section 162(m)(4)(C) and the regulations thereunder:

(a) all items of gain, loss or expense for the fiscal year or other applicable Performance Period that are related to special, unusual or non-recurring items, events or circumstances affecting the Company (or a Subsidiary, division, other operational unit or administrative department of the Company) or the financial statements of the Company (or a Subsidiary, division, other operational unit or administrative department of the Company);

(b) all items of gain, loss or expense for the fiscal year or other applicable Performance Period that are related to (i) the disposal of a business or discontinued operations or (ii) the operations of any business acquired by the Company (or a Subsidiary, division, other operational unit or administrative department of the Company) during the fiscal year or other applicable Performance Period; and

(c) all items of gain, loss or expense for the fiscal year or other applicable Performance Period that are related to changes in accounting principles or to changes in applicable law or regulations.

To the extent any Performance Goals are expressed using any measures that require deviations from GAAP, such deviations shall be at the discretion of the Compensation Committee as exercised at the time the Performance Goals are set, to the extent permitted under Section 162(m) of the Code.

In establishing Performance Goals in respect of Awards intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m) with respect to Covered Employees, the Plan Administrator shall ensure such Performance Goals (i) are established no later than the end of the first 90 days of the Performance Period (or such other time as may be required or permitted for “performance-based compensation” under Section 162(m), if applicable), and (ii) satisfy all other applicable requirements imposed by

Section 162(m), including the requirement that such Performance Goals be stated in terms of an objective formula or standard, and the Plan Administrator may not in any event increase the amount of compensation payable to a Covered Employee upon the satisfaction of any Performance Goal. Prior to the payment of any “performance-based compensation” intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m), the Plan Administrator shall certify in writing (which shall be satisfied upon the Plan Administrator’s approval of preambles and resolutions regarding such performance results and payout and without condition with respect to any subsequent approval of the minutes of the meeting relating to such certification) the extent to which the applicable Performance Goals were, in fact, achieved and the amounts to be paid, vested, or delivered as a result thereof; provided, that the Plan Administrator may, in its sole discretion, reduce, but not increase, such amount; provided, further, that the Plan Administrator may not exercise discretion to increase any such amount payable in respect of an Award intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m).

33. Performance Period

That period of time during which Performance Goals are evaluated to determine the vesting, granting, or payout of Awards under the Plan, as the Plan Administrator may determine, provided that the period is no longer than ten (10) years. Achievement of Performance Goals in respect of Awards may be measured based on performance over a Performance Period, or may be determined based on whether or not the performance goals are satisfied at any time prior to the expiration of a Performance Period, as specified by the Plan Administrator.

34. Performance Shares

An Award granted under the Plan representing the right to receive a number of shares of Common Stock for each Performance Share granted, as the Plan Administrator may determine.

35. Performance Units

An Award granted under the Plan representing the right to receive a payment (either in cash or Common Stock) equal to the value of a Performance Unit, as the Plan Administrator may determine.

36. Permitted Transferee

As defined in Section 7.3(f) of this Plan.

37. Plan

As defined in Section 1 of this Plan.

38. Plan Administrator

The Compensation Committee or other committee of the Board appointed and authorized pursuant to Section 3.1 of this Plan to administer the Plan. Any authority granted to the Compensation Committee may also be exercised by the full Board; provided, however, the full Board shall not be permitted to exercise authority granted to the Compensation Committee to the extent that the grant or exercise of such authority would cause an Award intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m) of the Code not to qualify for, or to cease to qualify for, such exemption. To the extent that any permitted action taken by the Board conflicts with action taken by the Compensation Committee, the Board action shall control.

39. Prior Plans

The Company’s 1998 Stock Incentive Plan, and the Company’s 2012 Omnibus Incentive Compensation Plan, in each case as amended.

40. Restatement Effective Date

The effective date of this Amended and Restated Plan is September 20, 2017, the date on which this amendment and restatement of the Plan was approved by the stockholders of the Company.

41. Restricted Stock

Common Stock granted under the Plan that is subject to the requirements of Section 10 of this Plan and such other restrictions as the Plan Administrator deems appropriate. References to Restricted Stock in this Plan shall include Restricted Stock awarded in conjunction with Incentive Awards pursuant to Section 12 of this Plan, unless the context otherwise requires.

42. Restricted Stock Units

An Award granted under the Plan representing a right to receive a payment (either in cash or Common Stock) equal to the value of a share of Common Stock.

43. Restriction Period

As defined in Sections 10.2 and 11.2 of this Plan, as applicable.

44. Rule 16b-3

Rule 16b-3 of the General Rules and Regulations under the Exchange Act.

45. Section 16 Insider

Any person who is selected by the Plan Administrator to receive an Award pursuant to the Plan and who is or is reasonably expected to become subject to the requirements of Section 16 of the Exchange Act, and the rules and regulations promulgated thereunder.

46. Section 162(m)

Section 162(m) of the Code.

47. Section 409A

Section 409A of the Code.

48. Section 409A Covered Award

An Award granted under the Plan that constitutes “non-qualified deferred compensation” pursuant to Section 409A.

49. Securities Act

The U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

50. Stock Appreciation Right

Any right granted under Section 8 of this Plan.

51. Subsidiary

An entity that is designated by the Plan Administrator as a subsidiary for purposes of the Plan and that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or other entity in which the Company owns directly or indirectly, fifty percent (50%) or more of the voting power or profit interests, or as to which the Company or one of its Affiliates serves as general or managing partner or in a similar capacity. Notwithstanding the foregoing, for purposes of Options intended to qualify as Incentive Stock Options, the term "Subsidiary" shall mean a corporation (or other entity treated as a corporation for tax purposes) in which the Company directly or indirectly holds fifty percent (50%) or more of the voting power, or a limited liability company owned by the Company that is treated as a disregarded entity for federal income tax purposes.

52. Termination of Service

Subject to Section 15 and 18.5 of the Plan, "Termination of Services" means:

(a) As to an Employee, the time when the employee-employer relationship between an Employee and the Company or any Employer is terminated for any reason, including, without limitation, a termination by resignation, discharge, death, Disability, or retirement, but excluding terminations where the Employee simultaneously commences or remains in employment or service with the Company or any Employer (a "*Termination of Employment*").

(b) As to a Consultant, the time when the engagement of a Participant as a Consultant to the Company or any Employer is terminated for any reason, with or without Cause, including, without limitation, by resignation, discharge, death, or retirement, but excluding terminations where the Consultant simultaneously commences or remains in employment or service with the Company or any Employer (a "*Termination of Consultancy*").

(c) As to a Director, the time when the engagement of a Director is terminated for any reason, with or without Cause, including, without limitation, by resignation, discharge, death, or retirement, but excluding terminations where the Director simultaneously is re-appointed to the Board, or otherwise commences or remains in employment or service with the Company or any Employer (a "*Termination of Directorship*").

Notwithstanding the foregoing, to the extent necessary to comply with Section 409A as determined by the Compensation Committee, a termination of service means a "separation from service" (within the meaning of Section 409A).

SECTION 3 ADMINISTRATION

1. Plan Administrator

(a) The Plan Administrator shall be the Compensation Committee, or any other duly authorized committee of the Board (comprised of two or more members of the Board) that is appointed by the Board to administer the Plan. The Plan Administrator (including each individual who is a member thereof) shall be constituted at all times so as to (i) be "independent" as such term is defined pursuant to the rules of any stock exchange on which the Common Stock may then be listed, and (ii) meet the non-employee director standards of Rule 16b-3 and the outside director requirements of Section 162(m), so long as any of the Company's equity securities are registered pursuant to Section 12(b) or 12(g) of the Exchange Act.

(b) The Plan Administrator may designate appropriate Employees or other agents of the Company to handle the day-to-day administrative matters of the Plan, except as otherwise necessary to satisfy the requirements of Sections 162(m) of the Code with respect to Awards intended to qualify as performance-based compensation under Section 162(m) and the requirements of Rule 16b-3 with respect to Awards granted under the Plan to Section 16 Insiders.

(c) The Plan Administrator also may delegate, by resolution adopted by the Board or the Committee, to a committee of one or more members of the Board and/or to one or more executive officers of the Company the authority to grant Awards under the Plan, including the authority to select Participants to whom Awards shall be granted under the Plan and the number of shares or amount of cash subject to such Awards, subject to the terms of the Plan and any additional limitations as may be contained in resolutions adopted by the Board or the Committee from time to time, except as otherwise necessary to satisfy the requirements of Sections 162(m) of the Code with respect to Awards intended to qualify as performance-based compensation under Section 162(m) and the requirements of Rule 16b-3 with respect to Awards granted under the Plan to Section 16 Insiders.

2. Authority of Plan Administrator

Subject to the express terms and conditions set forth herein, the Plan Administrator shall have the authority and power from time to time to:

(a) select the Participants to whom Awards shall be granted under the Plan and the number of shares or amount of cash subject to such Awards, and prescribe the terms and conditions (which need not be identical) of each such Award, including, in the case of Options and Stock Appreciation Rights, the Option Price, vesting schedule, and duration;

(b) set the terms and conditions of any Award consistent with the terms of the Plan (which may be based on Performance Goals or other performance measures as the Plan Administrator shall determine), and make any amendments, modifications, or adjustments to such Awards as are permitted by the Plan;

(c) construe and interpret the Plan and the Awards granted hereunder, and establish, amend, and revoke rules and regulations for the administration of the Plan, including, without limitation, correcting any defect or supplying any omission, or reconciling any inconsistency in the Plan or in any Award Agreement, in the manner and to the extent it shall deem necessary or advisable, including so that the Plan and the operation of the Plan comply with Rule 16b-3 and the Code, to the extent applicable, and other applicable laws, and otherwise to make the Plan fully effective;

(d) exercise its discretion with respect to the powers and rights granted to it as set forth in the Plan; and

(e) generally exercise such powers and perform such acts as are deemed necessary or advisable to promote the best interests of the Company with respect to the Plan.

All decisions and determinations by the Plan Administrator in the exercise of the above authority and powers shall be final, binding, and conclusive upon the Company, a Subsidiary, the Participants, and all other persons having or claiming any interest therein. The Plan Administrator shall cause the Company, at the Company's expense, to take any action related to the Plan which may be necessary to comply with the provisions of any U.S. federal, state, or foreign law, or any regulations issued thereunder, which the Plan Administrator determines are intended to be complied with. All Awards and any administrative action taken by the Plan Administrator shall be in conformity with all applicable U.S. federal, state, and local laws and shall not discriminate on the basis of gender, race, color, religion, national origin, citizenship, age, disability, marital or veteran's status, or any other legally protected categories.

Notwithstanding the foregoing, the Plan Administrator shall not be entitled to exercise any discretion otherwise authorized hereunder with respect to any Awards intended to qualify as performance-based compensation under Section 162(m) if the ability to exercise such discretion or the exercise of such discretion itself would cause the compensation attributable to such Awards to fail to qualify as performance-based compensation under Section 162(m), in each case, without the approval of the Board.

3. Indemnification of Plan Administrator

Each member of any committee acting as Plan Administrator, while serving as such, shall be entitled, in good faith, to rely or act upon any advice of the Company's independent auditors, counsel, or consultants hired by the committee, or other agents assisting in the administration of the Plan. The Plan Administrator and any Employee of the Company acting at the direction or on behalf of the Company shall not be personally liable for any action or determination taken or made, or not taken or made, in good faith with respect to the Plan, and shall, to the extent permitted by law, be fully indemnified and protected under the Company's charter or by-laws with respect to any such action or determination.

SECTION 4 ELIGIBILITY

To be eligible to be a Participant, an individual must be an Employee, a Consultant or a Director, as of the date on which the Plan Administrator grants to such individual an Award under the Plan. Each grant of an Award under the Plan shall be evidenced by an Award Agreement.

SECTION 5 SHARES AVAILABLE FOR THE PLAN

1. Aggregate Shares

(a) Share Authorization

Subject to adjustment as provided in Section 5.3 of this Plan, the maximum number of shares of Common Stock available for grant to Participants under this Plan on or after the Effective Date shall be 40,000,000 shares of Common Stock, plus any remaining authorized shares of Common Stock available under the Prior Plans (and not subject to outstanding awards under the Prior Plans) immediately before the Effective Date, upon which this Plan shall replace the Prior Plans and no further awards shall be made under the Prior Plans. The authorized number of shares of Common Stock from the Prior Plans is subject to adjustment after the Effective Date as set forth in subsection (b) below. The maximum number of shares of Common Stock that may be granted pursuant to Options intended to be Incentive Stock Options shall be 5,000,000 shares, subject to adjustment as set forth in subsection (b) below.

(b) Share Usage

Shares of Common Stock covered by an Award shall only be counted as used to the extent they are actually issued; provided, however, that any shares of Common Stock that are subject to Awards of Options or Stock Appreciation Rights granted on or after the Restatement Effective Date shall be counted against the maximum share limit in Section 5.1(a) as 0.4 shares for every share granted, and any shares of Common Stock that are subject to Awards other than Options or Stock Appreciation Rights granted on or after the Restatement Effective Date shall be counted against this limit as one share for every share granted. Any shares of Common Stock related to Awards which terminate by expiration, forfeiture, cancellation, or otherwise without the issuance of such shares of Common Stock, or are withheld to satisfy the exercise price (in the case of an Option) and/or the tax withholding obligations relating to such Award, or are settled in cash in lieu of shares of Common Stock, shall be available again for grant under this Plan; provided, however, that any shares of Common Stock related to grants or awards made under the Prior Plans that after the Effective Date may lapse, expire, terminate, or are cancelled or surrendered to the Company, without having been exercised in full, shall not become available for grant under this Plan. Such shares of Common Stock related to an Award under this Plan shall increase the share authorization by one (1) share of Common Stock. However, the full number of Stock Appreciation Rights granted that are to be settled by the issuance of shares of Common Stock shall be counted against the number of shares of Common Stock available for Awards under the Plan, regardless of the number of shares of Common Stock actually issued upon settlement of such Stock Appreciation Rights. In addition, the full number of Incentive Stock Options granted under the Plan shall be counted against the maximum number of Incentive Stock

Options that may be awarded under the Plan pursuant to the last sentence of subsection (a) above, regardless of the number of shares of Common Stock actually issued upon exercise of such Incentive Stock Options. The shares of Common Stock available for issuance under this Plan may be authorized and unissued shares of Common Stock or treasury shares of Common Stock.

2. Annual Limitations

(a) Subject to adjustment as provided in Section 5.3 of this Plan, the following limitations shall apply to grants of Awards under the Plan: (i) the maximum aggregate grant with respect to shares of Common Stock that a Participant may be granted in any one calendar year under the Plan pursuant to Awards other than Options or Stock Appreciation Rights shall be 10,000,000 shares of Common Stock; (ii) the maximum aggregate grant with respect to shares of Common Stock that a Participant may be granted in any one calendar year under the Plan pursuant to Awards of Options or Stock Appreciation Rights shall be 10,000,000 shares of Common Stock; and (iii) with respect to a grant of cash, the maximum aggregate award that a Participant may earn in any one calendar year shall be equal to the value of 10,000,000 shares of Common Stock (calculated based on the Fair Market Value of a share of Common Stock as of the time of payment or settlement), and each of the foregoing calendar-year limits shall be proportionately adjusted upward or downward for any period of performance longer or shorter than twelve (12) months.

(b) Notwithstanding anything in this Plan to the contrary, and subject to adjustment as provided in Section 5.3 of this Plan, no Director may be granted, in any one calendar year, Awards specifically granted under this Plan with an aggregate maximum value (calculated based on the Fair Market Value of a share of Common Stock as of the grant date), of more than \$2,000,000. The maximum number of shares of Common Stock subject to Awards granted under the Plan or otherwise during any one fiscal year to any Director, taken together with any cash fees paid by the Company to such Director during such fiscal year for service as a Director shall not exceed \$2,000,000 in total value (calculated based on the Fair Market Value of a share of Common Stock as of the grant date), including for this purpose, the value of any stock-based Awards that are received in lieu of all or a portion of any annual committee cash retainers or other similar cash-based payments and excluding, for this purpose, the value of any dividend equivalent payments paid pursuant to any stock-based Award granted in a previous fiscal year.

3. Adjustments in Authorized Shares

(a) In the event of a Change in Capitalization, the Plan Administrator shall make such proportionate adjustments, if any, as it determines are appropriate and equitable, and to the extent such an action does not conflict with the General Corporation Law of the State of Delaware or other applicable laws or securities exchange rules, to (i) the maximum number and class of shares of Common Stock or other stock or securities with respect to which Awards may be granted under the Plan, (ii) the maximum number and class of shares of Common Stock or other stock or securities that may be issued upon exercise of Nonqualified Options, Incentive Stock Options, and Stock Appreciation Rights, (iii) the Maximum Grants (other than those based on cash limitations), (iv) the number and class of shares of Common Stock or other stock or securities or other property (including cash) which are subject to outstanding Awards granted under the Plan and the Option Price or exercise price therefore, if applicable, and (v) the Performance Goals. Any such adjustment shall be final, binding, and conclusive on all persons claiming any right or interest under the Plan.

(b) Any such adjustment in the shares of Common Stock or other stock or securities (i) subject to outstanding Incentive Stock Options (including any adjustments in the exercise price) shall be made in such manner as not to constitute a modification as defined by Section 424(h)(3) of the Code, and only to the extent otherwise permitted by Sections 422 and 424 of the Code, or (ii) subject to outstanding Awards that are intended to qualify as performance-based compensation under Section 162(m) shall be made in such a manner as not to adversely affect the treatment of the Awards as performance-based compensation.

(c) If, by reason of a Change in Capitalization, a Participant shall be entitled to, or shall be entitled to exercise an Option or Stock Appreciation Right with respect to, new, additional, or different shares of stock or securities of the Company or any other entity, such new, additional, or different shares shall thereupon be subject to all of the conditions, restrictions, and performance criteria which were applicable to the shares of Common Stock that such shares replaced or to the Option or Stock Appreciation Right, as the case may be, prior to such Change in Capitalization.

(d) Notwithstanding the foregoing, (i) any adjustments made pursuant to this Section 5.3 of this Plan to an Award that constitutes a Section 409A Covered Award shall be made in a manner intended to comply with the requirements of Section 409A; and (ii) any adjustments made pursuant to this Section 5.3 of this Plan to an Award that does not constitute a Section 409A Covered Award shall be made in a manner intended to ensure that after such adjustment, the Awards either (A) continue not to be subject to Section 409A or (B) comply with the requirements of Section 409A .

(e) Any adjustment under this Section 5.3 of this Plan need not be the same for all Participants.

4. Effect of Certain Transactions

Following (a) the liquidation or dissolution of the Company or (b) a merger or consolidation of the Company (a "*Transaction*"), (i) each outstanding Award shall be treated as provided for in the agreement entered into in connection with the Transaction (which treatment may be different as among different types of Awards and different holders thereof) or (ii) if not so provided in such agreement, each Participant shall be entitled to receive in respect of each share of Common Stock subject to any outstanding Awards, upon exercise of any Option or Stock Appreciation Right or payment or transfer in respect of any other Award, the same number and kind of stock, securities, cash, property, or other consideration that each holder of a share of Common Stock was entitled to receive in the Transaction in respect of a share of Common Stock; provided, however, that such stock, securities, cash, property, or other consideration shall remain subject to all of the conditions, restrictions, and performance criteria which were applicable to Awards prior to such Transaction, but giving effect to any applicable provision of this Plan or any Award Agreement if the Transaction is a Change of Control. The foregoing is in addition to any rights provided under Section 16 of this Plan in the event of a Change of Control. The treatment of any Award as provided in this Section 5.4 shall be conclusively presumed to be appropriate for purposes of Section 5.3 of this Plan.

SECTION 6 AWARD AGREEMENTS

Upon a determination by the Plan Administrator that an Award is to be granted to a Participant pursuant to Section 7, 8, 9, 10, 11, 12, or 13 of this Plan, an Award Agreement shall be provided to such Participant as soon as practicable specifying, without limitation, the terms, conditions, rights, and duties related thereto, including terms requiring forfeiture of Awards in the event of a Termination of Service by the Participant, and terms relating to Clawback/Forfeiture Events under Section 18.1 of this Plan. Each Award Agreement shall be subject to the terms and conditions of the Plan.

SECTION 7 STOCK OPTIONS

1. Grant of Options

Options may be granted to eligible Participants in such number, and at such times during the term of the Plan, as the Plan Administrator shall determine. The Plan Administrator may grant an Option or provide for the grant of an Option, either from time to time in the discretion of the Plan Administrator or automatically upon the occurrence of specified events, including, without limitation, the achievement of Performance Goals or other performance measures, or the satisfaction of an event or condition within the control of the recipient of the Option or within the control of others. The granting of an Option shall take place when the Plan Administrator by resolution, written consent, or other appropriate action determines to grant such an Option to a particular

Participant at the Option Price. Each Option granted under the Plan shall be identified in the Award Agreement as either an Incentive Stock Option or a Nonqualified Option (or if no such identification is made, then it shall be a Nonqualified Option). No Incentive Stock Option shall be granted to any Participant who is not an Employee of the Company or any “subsidiary corporation” of the Company (as defined in Section 424 (f) of the Code).

2. Special Provisions Applicable to Incentive Stock Options

If an Award is intended by the Plan Administrator to be an Incentive Stock Option, each provision of the Plan and each Incentive Stock Option granted thereunder shall be construed so that each such Option shall qualify as an Incentive Stock Option, and any provision thereof that cannot be so construed shall be disregarded, unless the Employee agrees otherwise. Awards intended to be Incentive Stock Options, in addition to complying with the other provisions of the Plan relating to Options generally, shall be subject to the following conditions:

(a) Ten Percent (10%) Stockholders

An Employee must not, immediately before an Incentive Stock Option is granted to him or her, own stock representing more than ten percent (10%) of the voting power or value of all classes of stock of the Company or of a Subsidiary. This requirement is waived if (i) the Option Price of the Incentive Stock Option to be granted is at least one hundred ten percent (110%) of the Fair Market Value of the stock subject to the Option, determined at the time the Option is granted, and (ii) the Option is not exercisable more than five (5) years from the date the Option is granted.

(b) Annual Limitation

To the extent that the aggregate Fair Market Value (determined at the time of the grant of the Option) of the stock with respect to which Incentive Stock Options are exercisable for the first time by the Employee during any calendar year exceeds One Hundred Thousand Dollars (\$100,000), such Options shall be treated as Nonqualified Options. In applying the limitation in the preceding sentence in the case of multiple Option grants, unless otherwise required by applicable law, Options which were intended to be Incentive Stock Options shall be treated as Nonqualified Options according to the order in which they were granted such that the most recently granted Options are first treated as Nonqualified Options.

(c) Additional Terms

Any other terms and conditions which the Plan Administrator determines, upon advice of counsel, must be imposed for the Option to be an Incentive Stock Option.

(d) Notice of Disqualifying Disposition

If an Employee makes any disposition of shares of Common Stock issued pursuant to an Incentive Stock Option under the circumstances described in Section 421(b) of the Code (relating to disqualifying dispositions), the Employee shall notify the Company of such disqualifying disposition within twenty (20) days thereof, and from and after such disqualifying disposition, the Options which were intended to be Incentive Stock Options shall be treated as Nonqualified Options.

3. Terms of Options

Except as otherwise provided in the Award Agreement and Section 7.2 of this Plan, all Incentive Stock Options and Nonqualified Options under the Plan shall be granted subject to the following terms and conditions:

(a) Option Price

The Option Price shall be determined by the Plan Administrator in any reasonable manner, but shall not be less than the Fair Market Value of the Common Stock on the date of grant of the Option.

(b) Duration of Options

Options shall be exercisable at such time and under such conditions as set forth in the Award Agreement, but in no event shall any Option (whether a Nonqualified Option or an Incentive Stock Option) be exercisable later than the tenth (10th) anniversary of the date of its grant.

(c) Exercise of Options

Common Stock covered by an Option may be purchased at one time or in such installments over the option period as may be provided in the Award Agreement. Any Common Stock not purchased on an applicable installment date may be purchased thereafter at any time prior to the expiration of the Option in accordance with its terms. To the extent that the right to purchase Common Stock has accrued thereunder, an Option may be exercised, in whole or in part, from time to time by notice to the Company setting forth the amount of Common Stock with respect to which the Option is being exercised; provided however, that except as otherwise provided in the Award Agreement, any partial exercise shall be for whole shares of Common Stock only.

(d) Payment

The purchase price of Common Stock purchased under Options shall be paid in full to the Company upon the exercise of the Option, by delivery of consideration equal to the product of the Option Price and the Common Stock purchased (the "*Purchase Price*"). The Purchase Price of Common Stock acquired pursuant to the exercise of an Option shall be paid, to the extent permitted by applicable laws and regulations (including, without limitation, U.S. federal tax and securities laws and regulations, and applicable state corporate law), and as determined by the Plan Administrator in its sole discretion, by any combination of the methods of payment set forth below. The Plan Administrator shall have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods), and to grant Options that require the consent of the Company to utilize 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 broker-assisted cashless exercise program developed under Regulation T as promulgated by the U.S. Federal Reserve Board that, prior to the issuance of the Common Stock subject to the Option, results in delivery of a properly executed exercise notice together with irrevocable instructions to a broker approved by the Company to promptly deliver to the Company sufficient proceeds from the sale of Common Stock to pay the aggregate Purchase Price;

(iii) by delivery to the Company (either by actual delivery or attestation presenting satisfactory proof of beneficial ownership of such Common Stock) of shares of Common Stock already owned by the Participant, with the Fair Market Value of such Common Stock as delivered to be determined as of the day of exercise;

(iv) by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise by the largest whole number of shares with a Fair Market Value (determined as of the same day as the exercise of the Option) that does not exceed the aggregate Purchase Price; provided, however, that shares of Common Stock will no longer be outstanding under an Option and will not be exercisable thereafter to the extent that (A) shares are used to pay the Purchase Price pursuant to the "net exercise," (B) 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 Plan Administrator in its sole discretion and permissible under applicable laws and regulations.

(e) No Rights as a Stockholder

A Participant shall have none of the rights of a stockholder with respect to shares of Common Stock subject to an Option until the shares of Common Stock are issued to the Participant upon exercise of the Option.

(f) Restrictions

The Plan Administrator shall determine and reflect in the Award Agreement, with respect to each Option, the nature and extent of the restrictions, if any, to be imposed on the Common Stock which may be purchased thereunder, including, without limitation, restrictions on the transferability of such Common Stock acquired through the exercise of such Options for such periods as the Plan Administrator may determine. In addition, to the extent permitted by applicable laws and regulations, the Plan Administrator may require that a Participant who wants to effectuate a cashless exercise of Options be required to sell the Common Stock acquired in the associated exercise to the Company, or in the open market through the use of a broker selected by the Company, at such price and on such terms as the Plan Administrator may determine at the time of grant, or otherwise. Without limiting the foregoing, the Plan Administrator may impose such restrictions, conditions, or limitations as it determines appropriate as to the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any Common Stock issued as a result of the exercise of an Option, including, without limitation, (i) restrictions under an insider trading policy, (ii) restrictions designed to delay and/or coordinate the timing and manner of sales by one or more Participants, and (iii) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

(g) Transferability of Options

Notwithstanding Section 18.2 of this Plan and only if allowed by the Plan Administrator in its discretion, Nonqualified Options may be transferred to a Participant's immediate family members, directly or indirectly or by means of a trust, corporate entity, partnership or other legal entity (with a person who thus acquires such Nonqualified Options by such transfer, a "*Permitted Transferee*"). A transfer of a Nonqualified Option may only be effected by the Company at the request of the Participant and shall become effective upon the Permitted Transferee agreeing to such terms as the Plan Administrator may require and only when recorded in the Company's record of outstanding Options. In the event an Option is transferred as contemplated hereby, the Option may not be subsequently transferred by the Permitted Transferee, except for a transfer back to the Participant or by will or the laws of descent and distribution. A transferred Option may be exercised by a Permitted Transferee to the same extent as, and subject to the same terms and conditions as, the Participant (except as otherwise provided herein), as if no transfer had taken place. As used herein, "immediate family member" shall mean, with respect to any person, such person's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law, and shall include adoptive relationships. In the event of exercise of a transferred Option by a Permitted Transferee, any amounts due to (or to be withheld by) the Company upon exercise of the Option shall be delivered by (or withheld from amounts due to) the Participant, the Participant's estate, or the Permitted Transferee, in the reasonable discretion of the Company.

In addition, to the extent permitted by applicable law and Rule 16b-3, the Plan Administrator may permit a recipient of a Nonqualified Option to designate in writing during the Participant's lifetime a Beneficiary to receive and exercise the Participant's Nonqualified Options in the event of such Participant's death.

(h) Purchase for Investment

The Plan Administrator shall have the right to require that each Participant or other person who shall exercise an Option under the Plan, and each person into whose name the Common Stock shall be issued pursuant

to the exercise of an Option, represent and agree that any and all Common Stock purchased pursuant to such Option is being purchased for investment only and not with a view to the distribution or resale thereof, and that such Common Stock will not be sold except in accordance with such restrictions or limitations as may be set forth in the Option or by the Plan Administrator. This Section 7.3(g) shall be inoperative during any period of time when the Company has obtained all necessary or advisable approvals from governmental agencies and has completed all necessary or advisable registrations or other qualifications of the Common Stock as to which Options may from time to time be granted, as contemplated in Section 17 of this Plan.

(i) **Death of Optionholder**

Unless otherwise provided in an Award Agreement, in the event a Participant's Termination of Service as a result of the Participant's death, then the Option may be exercised (to the extent the Participant was entitled to exercise such Option as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Participant's death, but only within the period ending on the earlier of (a) the date 12 months following the date of death or (b) the expiration of the term of such Option as set forth in the Award Agreement. If, after the Participant's death, the Option is not exercised within the time specified herein or in the Award Agreement, the Option shall immediately cease to be exercisable and terminate for no consideration.

SECTION 8 STOCK APPRECIATION RIGHTS

1. Grant of Stock Appreciation Rights

Stock Appreciation Rights may be granted to Participants in such number, and at such times during the term of the Plan, as the Plan Administrator shall determine. The Plan Administrator may grant a Stock Appreciation Right or provide for the grant of a Stock Appreciation Right, either from time to time in the discretion of the Plan Administrator or automatically upon the occurrence of specified events, including, without limitation, the achievement of Performance Goals or other performance measures, or the satisfaction of an event or condition within the control of the recipient of the Stock Appreciation Right or within the control of others. The granting of a Stock Appreciation Right shall take place when the Plan Administrator by resolution, written consent, or other appropriate action determines to grant such a Stock Appreciation Right to a particular Participant at a particular price. A Stock Appreciation Right may be granted independent of or in tandem or in combination with an Option or other Award under the Plan, as set forth in the applicable Award Agreement.

2. Exercise of Stock Appreciation Rights

A Stock Appreciation Right may be exercised upon such terms and conditions and for such term as the Plan Administrator shall determine; provided, however, no Stock Appreciation Right shall be exercisable later than the tenth (10th) anniversary of the date of its grant. Upon exercise of a Stock Appreciation Right, a Participant shall be entitled to receive Common Stock or the cash equivalent thereof (as determined by the Plan Administrator in its sole discretion except as otherwise provided in an Award Agreement), with an aggregate Fair Market Value determined by multiplying (i) the difference between the Fair Market Value of a share of Common Stock on the date of exercise of the Stock Appreciation Right over the price determined by the Plan Administrator on the date of grant (which price shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant) times (ii) the number of shares of Common Stock with respect to which the Stock Appreciation Right is exercised. The value of any fractional shares shall be paid in cash.

3. Special Provisions Applicable to Stock Appreciation Rights

Stock Appreciation Rights are subject to the following restrictions:

(a) A Stock Appreciation Right granted in tandem with any other Award under the Plan shall be exercisable at such time or times as the Award to which it relates shall be exercisable, or at such other times as the Plan Administrator may determine.

(b) The right of a Participant to exercise a Stock Appreciation Right granted in tandem with any other Award under the Plan shall be canceled if and to the extent the related Award is exercised or canceled. To the extent that a Stock Appreciation Right is exercised, the related Award shall be deemed to have been surrendered unexercised and canceled.

(c) A holder of Stock Appreciation Rights shall have none of the rights of a stockholder with respect to the Common Stock subject thereto until the Common Stock, if any, is issued to such holder pursuant to such holder's exercise of such rights.

(d) The acquisition of Common Stock pursuant to the exercise of a Stock Appreciation Right shall be subject to the same restrictions as would apply to the acquisition of Common Stock acquired upon exercise of an Option, as set forth in Section 7.3 of this Plan.

SECTION 9 PERFORMANCE SHARES AND PERFORMANCE UNITS

1. Grant of Performance Shares and Performance Units

Subject to the limitations in Section 5.2 of this Plan, Performance Shares or Performance Units may be granted to Participants at any time and from time to time as the Plan Administrator shall determine. The Plan Administrator shall have complete discretion in determining the number of Performance Shares or Performance Units granted to each Participant and the terms and conditions thereof. Performance Shares and Performance Units may be granted alone or in combination with any other Award under the Plan. Awards of Performance Shares and Performance Units may be granted to Covered Employees with or without the intention to qualify for the exemption from the limitation on deductibility imposed by Section 162(m) as the Plan Administrator shall determine.

2. Value of Performance Shares and Performance Units

The Plan Administrator shall establish Performance Goals for any specified Performance Periods. Except as otherwise determined by the Plan Administrator and set forth in the Award Agreement, the Performance Period in respect of Performance Shares and Performance Units granted under the Plan shall be at least one (1) year with respect to grants of Performance Shares or Performance Units. Prior to each grant of Performance Shares or Performance Units, the Plan Administrator shall establish an initial amount of Common Stock for each Performance Share and an initial value for each Performance Unit granted to each Participant for that Performance Period. Prior to each grant of Performance Shares or Performance Units, the Plan Administrator also shall set the Performance Goals that will be used to determine the extent to which the Participant receives Common Stock for the Performance Shares or payment of the value of the Performance Units awarded for such Performance Period. With respect to each such Performance Goal utilized during a Performance Period, the Plan Administrator may assign percentages or other relative values to various levels of performance which shall be applied to determine the extent to which the Participant shall receive a payout of the number of Performance Shares or value of Performance Units awarded.

3. Payment of Performance Shares and Performance Units

In the case of a Performance Goal measured over a Performance Period, at or after the end of the Performance Period, the Plan Administrator shall determine the amount, if any, of Awards payable to each Participant based upon achievement of the business criteria over a Performance Period. In the case of a Performance Goal satisfied based upon whether or not certain specified business criteria are achieved at any time during a Performance Period, at or following the satisfaction of the applicable business criteria (even if prior to the expiration of the applicable Performance Period), the Plan Administrator shall determine the amount, if any, of Awards payable to each Participant upon the achievement of the applicable business criteria. After a Performance Period has ended (or at or following the satisfaction of the applicable business criteria, even if prior

to the expiration of the applicable Performance Period), the holder of a Performance Share or Performance Unit shall be entitled to receive the value thereof as determined by the Plan Administrator. The Plan Administrator shall make this determination by first determining the extent to which the Performance Goals set pursuant to Section 9.2 of this Plan have been met. The Plan Administrator shall then determine the applicable percentage or other relative value to be applied to, and will apply such percentage or other relative value to, the number of Performance Shares or value of Performance Units to determine the payout to be received by the Participant. In addition, with respect to Performance Shares and Performance Units intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m), no payout shall be made hereunder except upon written certification by the Plan Administrator that the applicable Performance Goals have been satisfied to a particular extent. The Compensation Committee shall have the authority to determine whether the Performance Goals and other terms and conditions of the Award satisfied all determinations by the Compensation Committee as to the establishment of Performance Goals, the amount of any Award, and the achievement of Performance Goals relating to Awards shall be made in writing in the case of any Award granted to a Participant. The Compensation Committee may not delegate any responsibility relating to such Awards. The Compensation Committee shall have no discretion to modify or waive the Performance Goals or conditions to the grant or vesting of an Award unless such Award is not intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m) and the relevant Award Agreement provides for such discretion, without the approval of the Board.

4. Form and Timing of Payment

The payment described in Section 9.3 of this Plan shall be made in Common Stock, or in cash, or partly in Common Stock and partly in cash, at the discretion of the Plan Administrator and set forth in the Award Agreement. The value of any fractional shares shall be paid in cash. Payment shall be made in a lump sum or installments as prescribed by the Award Agreement, as applicable, and consistent with Section 409A. If Common Stock is to be converted into an amount of cash on any date, or if an amount of cash is to be converted into Common Stock on any date, such conversion shall be done at the then-current Fair Market Value of the Common Stock on such date.

5. Dividend Equivalents

The Award Agreement for Performance Shares or Performance Units shall specify whether, to what extent and on what terms and conditions the applicable Participant shall be entitled to receive current or delayed payments of cash, shares of Common Stock or other property corresponding to the dividends payable on the share of Common Stock. The Plan Administrator may provide that Performance Shares or Performance Units awarded under the Plan shall be entitled to an amount per Performance Share or Performance Unit equal in value to the cash dividend, if any, paid per share of Common Stock on issued and outstanding shares, on the dividend payment dates (“*Dividend Payment Date*”) occurring during the period between the date on which the Performance Shares or Performance Units are granted to the Participant and the date on which such Performance Shares or Performance Units are settled, cancelled, forfeited, waived, surrendered, or terminated under the Plan. Such paid amounts, called “dividend equivalents,” shall be accrued and paid in cash and/or Common Stock (including reinvestment in additional shares of Common Stock) and paid at such time as the Performance Share or Performance Unit to which it relates vests and settles as the Plan Administrator shall determine. The number of shares of Common Stock to be issued and/or reinvested shall be determined based on the Fair Market Value on the Dividend Payment Date. In the event the dividend equivalents are deferred, they shall be payable in accordance with the requirements of Section 409A.

SECTION 10 RESTRICTED STOCK

1. Grant of Restricted Stock

Subject to the limitations in Section 5.2 of this Plan, Restricted Stock may be granted to Participants in such number and at such times during the term of the Plan as the Plan Administrator shall determine. The Plan

Administrator may grant Restricted Stock or provide for the grant of Restricted Stock, either from time to time in the discretion of the Plan Administrator or automatically upon the occurrence of specified events.

2. Restriction Period

Except as permitted by the Plan Administrator and specified in the Award Agreement, the Restricted Stock shall be subject to the satisfaction of vesting and forfeiture conditions for a period of at least one (1) year with respect to Restricted Stock subject to restrictions based upon employment or other service and at least one (1) year with respect to Restricted Stock subject to restrictions based upon the achievement of specific Performance Goals or other performance measures (the “*Restriction Period*”). During the Restriction Period, the Plan Administrator shall evidence the restrictions on the shares of Restricted Stock in such a manner as it determines is appropriate (including, without limitation, (i) by means of appropriate legends on certificates for shares of Restricted Stock that have been certificated, and (ii) by means of appropriate stop-transfer orders for shares of Restricted Stock credited to book-entry accounts).

3. Other Restrictions

The Plan Administrator shall impose such other restrictions on Restricted Stock granted pursuant to the Plan as it may deem advisable, including Performance Goals or other performance measures. The Plan Administrator may require, under such terms and conditions as it deems appropriate or desirable, that the certificates for Restricted Stock delivered under the Plan may be held in custody by a bank or other institution, or that the Company may itself hold such shares in custody, until the Restriction Period expires or until restrictions thereon otherwise lapse, and may require, as a condition of any issuance of Restricted Stock, that the Participant shall have delivered a stock power endorsed in blank relating to the shares of Restricted Stock.

4. Voting Rights; Dividends and Other Distributions

A Participant receiving a grant of Restricted Stock shall be recorded as a stockholder of the Company with respect to such Restricted Stock. Except as otherwise provided under an Award Agreement, a Participant who receives a grant of Restricted Stock shall have the rights of a stockholder with respect to such shares (except as provided in the restrictions on transferability), including the right to vote the shares and receive dividends and other distributions paid with respect to the underlying shares of Common Stock. The Award Agreement may provide that any cash dividend paid on a share of Common Stock subject to the Restricted Stock be (i) paid in cash on or about the Dividend Payment Date; (ii) accrued and paid at such time as the Restricted Stock to which it relates vests and settles; (iii) paid in Common Stock on or about the Dividend Payment Date; (iv) accrued and/or reinvested in additional shares of Common Stock and paid at such time as the Restricted Stock to which it relates vests and settles; or (v) in any combination thereof. The number of shares of Common Stock to be issued and/or reinvested shall be determined based on the Fair Market Value on the Dividend Payment Date. In the event the dividends are deferred, they shall be payable in accordance with the requirements of Section 409A.

5. Issuance of Shares; Settlement of Awards; Forfeiture

When the restrictions imposed by Section 10.2 of this Plan expire or otherwise lapse with respect to one or more shares of Restricted Stock, the Participant shall be obligated to return to the Company any certificate representing shares of Restricted Stock (if applicable), and the Company shall deliver to the Participant one (1) share of Common Stock (which may be delivered in book-entry or certificated form) in satisfaction of each share of Restricted Stock, which shares so delivered shall not contain any legend. The delivery of shares pursuant to this Section 10.5 of this Plan shall be subject to any required share withholding to satisfy tax withholding obligations pursuant to Section 18.10 of this Plan. Any fractional shares subject to such Restricted Stock shall be paid to the Participant in cash. To the extent that the restrictions imposed by Section 10.2 of this Plan do not expire or otherwise lapse during or upon the end of the Restriction Period with respect to one or more shares of Restricted Stock pursuant to the terms and conditions thereof, such shares of Restricted Stock shall be forfeited to

the Company, and the Participant shall be obligated to return to the Company for cancellation any certificate(s) representing shares of such Restricted Stock (if applicable).

SECTION 11 RESTRICTED STOCK UNITS

1. Grant of Restricted Stock Units

Subject to the limitations in Section 5.2 of this Plan, Restricted Stock Units may be granted to Participants in such number and at such times during the term of the Plan as the Plan Administrator shall determine. The Plan Administrator may grant Restricted Stock Units or provide for the grant of Restricted Stock Units, either from time to time in the discretion of the Plan Administrator or automatically upon the occurrence of specified events.

2. Restriction Period

Except as permitted by the Plan Administrator and specified in the Award Agreement, the Restricted Stock Units shall be subject to the satisfaction of vesting conditions, as determined by the Plan Administrator, for a period of no less than one (1) year with respect to Restricted Stock Units subject to restrictions based upon employment or other service and one (1) year with respect to Restricted Stock Units subject to restrictions based upon the achievement of specific Performance Goals or other performance measures (the “*Restriction Period*”).

3. Other Restrictions

The Plan Administrator shall impose such other restrictions on Restricted Stock Units granted pursuant to the Plan as it may deem advisable, including the requirement that certain pre-established Performance Goals be met. A Participant receiving a grant of Restricted Stock Units shall not be recorded as a stockholder of the Company with respect to shares of Common Stock that may be issued in settlement of such Restricted Stock Units, and shall not acquire any rights of a stockholder with respect thereto, unless or until the Participant is issued shares of Common Stock in settlement of such Restricted Stock Units.

4. Dividend Equivalents

The Award Agreement for Restricted Stock Units shall specify whether, to what extent and on what terms and conditions the applicable Participant shall be entitled to receive current or delayed payments of cash, shares of Common Stock or other property corresponding to the dividends payable on the shares of Common Stock. The Award Agreement may provide that Restricted Stock Units awarded under the Plan shall be entitled to an amount per Restricted Stock Unit equal in value to the cash dividend, if any, paid per share of Common Stock on issued and outstanding shares, on the Dividend Payment Dates occurring during the period between the date on which the Restricted Stock Units are granted to the Participant and the date on which such Restricted Stock Units are settled, cancelled, forfeited, waived, surrendered, or terminated under the Plan. Such paid amounts, called “dividend equivalents,” shall be (i) paid in cash on or about the Dividend Payment Date or accrued and paid at such time as the Restricted Stock Unit to which it relates vests and settles, (ii) paid in Common Stock on or about the Dividend Payment Date or accrued and/or reinvested in additional shares of Common Stock and paid at such time as the Restricted Stock Units to which it relates vests and settles, or (iii) paid in any combination thereof of cash or Common Stock. The number of shares of Common Stock to be issued and/or reinvested shall be determined based on the Fair Market Value on the Dividend Payment Date. In the event the dividend equivalents are deferred, they shall be payable in accordance with the requirements of Section 409A.

5. Issuance of Shares; Settlement of Awards; Forfeiture

Except as permitted by the Plan Administrator and specified in the Award Agreement, when the restrictions imposed by Section 11.2 of this Plan expire or otherwise lapse with respect to one or more Restricted Stock Units, Restricted Stock Units shall be settled (i) in cash, or (ii) by the delivery to the Participant of the number of

shares of Common Stock equal to the number of the Participant's Restricted Stock Units that are vested, or any combination thereof, as the Plan Administrator shall determine and is in accordance with Section 409A. The delivery of shares pursuant to this Section 11.5 shall be subject to any required share withholding to satisfy tax withholding obligations pursuant to Section 18.10 of this Plan. Any fractional shares subject to such Restricted Stock Units shall be paid to the Participant in cash. To the extent that the restrictions imposed by Section 11.2 of this Plan do not expire or otherwise lapse during or upon the end of the Restriction Period with respect to one or more Restricted Stock Units pursuant to the terms and conditions thereof, such Restricted Stock Units shall be forfeited and cancelled.

SECTION 12 INCENTIVE AWARDS

1. Incentive Awards

Prior to the beginning of each Performance Period, or not later than ninety (90) days following the commencement of the relevant fiscal year (or such other time as may be required or permitted for "performance-based compensation" under Section 162(m), if applicable), the Plan Administrator shall establish Performance Goals or other performance measures which must be achieved for any Participant to receive an Incentive Award for that Performance Period intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m). The Performance Goals or other performance measures may be based on any combination of corporate and business unit Performance Goals or other performance measures. The Plan Administrator may also establish one or more Company-wide Performance Goals or other performance measures which must be achieved for any Participant to receive an Incentive Award for that Performance Period. Such Performance Goals or other performance measures may include a threshold level of performance below which no Incentive Award shall be earned, target levels of performance at which specific Incentive Awards will be earned, and a maximum level of performance at which the maximum level of Incentive Awards will be earned. Each Incentive Award shall specify the amount of cash and the amount of any shares of Common Stock or other Awards subject to such Incentive Award, provided, that the Award Agreement may permit the Plan Administrator, in its sole discretion, to reduce (but not increase) the amount of any Incentive Award to be paid under the Plan.

2. Performance Goal Certification

An Incentive Award shall become payable to the extent provided herein and in the related Award Agreement, provided that in the case of Awards intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m), the Plan Administrator certifies in writing prior to payment of the Incentive Award that the Performance Goals or other performance measures selected for a particular Performance Period have been attained. In no event will an Incentive Award be payable under this Plan if the threshold level of performance set for each Performance Goal or other performance measure for the applicable Performance Period is not attained.

3. Required Payment of Incentive Awards

The Plan Administrator shall make a determination, as soon as administratively possible after the information that is necessary to make such a determination is available for a particular Performance Period, whether the Performance Goals or other performance measures for the Performance Period have been achieved, the amount of the Incentive Award for each Participant, and whether the Incentive Award shall be paid in cash, shares of Common Stock and/or other Awards under the Plan. The Plan Administrator shall certify the foregoing determinations in writing as provided in Section 2.32 of this Plan; provided, that the Plan Administrator may, in its sole discretion, reduce, but not increase, the amount of the Incentive Award to be paid under the Plan. In the absence of a valid and timely deferral election by the Participant or the Company pursuant to Section 14 of this Plan, and except as otherwise provided in an Award Agreement or explicitly provided herein, the Incentive Award shall be paid as soon as practicable, but in no event later than March 15 following the end of the calendar year in which the foregoing determinations have been made.

SECTION 13 CASH AWARDS AND OTHER STOCK-BASED AWARDS

1. Grant of Cash Awards

Subject to the terms and provisions of this Plan, the Plan Administrator, at any time and from time to time, may grant cash awards to Participants in such amounts and upon such terms, including the achievement of Performance Goals or other specific performance measures, as the Plan Administrator may determine (each, a “*Cash Award*”).

2. Other Stock-Based Awards

The Plan Administrator may grant other types of equity-based or equity-related Awards not otherwise described by the terms of this Plan (including the grant or offer for sale of unrestricted shares of Common Stock, Awards in lieu of obligations to pay cash or deliver other property, or Common Stock) in such amounts and subject to such terms and conditions, as the Plan Administrator shall determine (each an “*Other Stock-Based Award*”). Such Other Stock-Based Awards may involve the transfer of Common Stock to Participants, or payment in cash or otherwise of amounts based on or valued in whole or in part by reference to the value of Common Stock.

3. Value of Cash Awards and Other Stock-Based Awards

Each Cash Award granted pursuant to this Section 13 shall specify a payment amount or payment range as determined by the Plan Administrator. Each Other Stock-Based Award shall be expressed in terms of Common Stock or units based on Common Stock, as determined by the Plan Administrator. The Plan Administrator may establish performance measures applicable to such Awards in its discretion. If the Plan Administrator exercises its discretion to establish performance measures, the number and/or value of such cash awards or Other Stock-Based Awards that will be paid out to the Participant will depend on the extent to which the performance measures are met.

4. Payment of Cash Awards and Other Stock-Based Awards

Payment, if any, with respect to a Cash Award or an Other Stock-Based Award shall be made in accordance with the terms of the Award, in cash or Common Stock as the Plan Administrator determines, and in a manner that complies with or is exempt from Section 409A. The value of any fractional shares shall be paid in cash.

SECTION 14 DEFERRAL ELECTIONS

The Plan Administrator may, in its sole discretion, and to the extent permitted by applicable law (including, without limitation, Section 409A), permit or require Employees to defer all or any portion of Awards under the Plan. Any such deferrals shall be subject to such terms, conditions, and procedures that the Company may establish from time to time in its sole discretion and consistent with the requirements of Section 409A.

SECTION 15 TERMINATION OF SERVICE

1. General

(a) The Award Agreement applicable to each Award shall set forth the effect of a Termination of Service upon such Award; provided, however, that, except as set forth otherwise in an Award Agreement or as determined by the Plan Administrator, (i) all of a Participant’s unvested and/or unexercisable Awards shall automatically be forfeited upon a Termination of Service for any reason, and the Participant shall be permitted to exercise the vested portion of the Option or Stock Appreciation Right for ninety (90) days following Termination of Service, or in the case of a Termination of Service by reason of death or Disability of the Participant, for one

(1) year following Termination of Service, but in each case, in no event may the Participant be permitted to exercise any portion of the Option or Stock Appreciation Right following the expiration date of the Option or Stock Appreciation Right; and (ii) all of a Participant's unvested Awards shall automatically be forfeited upon Termination of Service for Cause, and the Participant shall cease to be permitted to exercise any portion of an Option or Stock Appreciation Right (whether vested or unvested) following Termination of Service for Cause.

(b) Provisions relating to the effect of a Termination of Service upon an Award shall be determined in the sole discretion of the Plan Administrator, and need not be uniform among all Awards or among all Participants. Unless the Plan Administrator determines otherwise in accordance with Section 409A, the transfer of the employment or other service of a Participant between the Company and a Subsidiary shall not constitute a Termination of Service. Except as otherwise determined by the Plan Administrator in accordance with Section 409A, upon an Employer or a Subsidiary ceasing to meet the requirements in the Plan for an Employer or a Subsidiary, as the case may be, the Employees, Consultants, and Directors of such Employer or Subsidiary shall be deemed to have experienced a Termination of Service.

SECTION 16 EFFECT OF A CHANGE OF CONTROL

1. General

The Award Agreement applicable to each Award shall set forth the effect of a Change of Control upon such Award; provided, however, that, except as set forth otherwise in an Award Agreement upon a Change of Control, a Participant's Award shall be treated in accordance with one or more of the following methods as determined by the Plan Administrator in its sole discretion:

(a) The Plan Administrator, in its sole discretion, may accelerate, vest or cause the restrictions to lapse with respect to all or any portion of an Award.

(b) The Plan Administrator, in its sole discretion, may provide for any such Awards, whether or not then vested, to be continued, assumed, have new rights substituted therefor or be treated in accordance with Section 5.3 or Section 5.4 hereof, as determined by the Plan Administrator in its sole discretion. Notwithstanding anything to the contrary herein, for purposes of Incentive Stock Options, any assumed or substituted Option shall comply with the requirements of Treasury Regulation Section 1.424-1 (and any amendments thereto).

(c) The Plan Administrator, in its sole discretion, may provide for the purchase of any Awards by the Company or an Affiliate for an amount of cash equal to the excess of the Change of Control Price (as defined below) of the shares of Common Stock covered by such Awards, over, in the case of Options and Stock Appreciation Rights, the aggregate exercise price of such Awards. For purposes of this Plan, the "Change of Control Price" shall mean the highest price per share of Common Stock paid in any transaction related to a Change of Control of the Company; provided, however, that such price shall not exceed the Fair Market Value of the Common Stock at the time of purchase as determined in accordance Section 409A of the Code.

(d) The Plan Administrator may, in its sole discretion, provide for the cancellation of any Options and Stock Appreciation Rights without payment, if the Change of Control Price is less than the exercise price of such Appreciation Award.

Notwithstanding anything else herein, the Plan Administrator may, in its sole discretion, provide for accelerated vesting or lapse of restrictions, of all or a portion of an Award at any time. Provisions relating to the effect of a Change of Control upon an Award shall be determined in the sole discretion of the Plan Administrator, and need not be uniform among all Awards or among all Participants. The Plan Administrator may, in its discretion, include such further provisions and limitations in any Award Agreement as it may deem equitable and in the best interests of the Company.

SECTION 17 REGULATORY APPROVALS AND LISTING

The Company shall not be required to issue any certificate or create a book-entry account for shares of Common Stock under the Plan prior to:

(a) obtaining any approval or ruling from the U.S. Securities and Exchange Commission, the Internal Revenue Service, or any other governmental agency which the Company, in its sole discretion, shall determine to be necessary or advisable;

(b) listing of such shares on any stock exchange on which the Common Stock may then be listed; and

(c) completing any registration or other qualification of such shares under any federal or state laws, rulings, or regulations of any governmental body which the Company, in its sole discretion, shall determine to be necessary or advisable.

All certificates, or book-entry accounts, for shares of Common Stock delivered under the Plan shall also be subject to such stop-transfer orders and other restrictions as the Plan Administrator may deem advisable under the rules, regulations, and other requirements of the U.S. Securities and Exchange Commission, any stock exchange upon which the Common Stock is then listed, and any applicable federal or state securities laws, and the Plan Administrator may cause a legend or legends to be placed on any such certificates, or notations on such book-entry accounts, to make appropriate reference to such restrictions. The foregoing provisions of this paragraph shall not be effective if and to the extent that the shares of Common Stock delivered under the Plan are covered by an effective and current registration statement under the Securities Act of 1933, as amended, and if and so long as the Plan Administrator determines that application of such provisions are no longer required or desirable. In making such determination, the Plan Administrator may rely upon an opinion of counsel for the Company. Without limiting the foregoing, the Plan Administrator may impose such restrictions, conditions, or limitations as it determines to be appropriate as to the timing and manner of any resales by a Participant or other subsequent transfers by a Participant of any shares of Common Stock issued under this Plan, including, without limitation, (i) restrictions under an insider trading policy, (ii) restrictions designed to delay and/or coordinate the timing and manner of sales by one or more Participants, and (iii) restrictions as to the use of a specified brokerage firm for such resales or other transfers.

SECTION 18 GENERAL PROVISIONS

1. Clawback/Forfeiture Events

(a) If required by Company policy, by the Sarbanes-Oxley Act of 2002, and/or by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or other applicable laws, each Participant's Awards shall be subject to repayment or forfeiture in accordance with such applicable laws and Company policy (regardless of whether specified in the applicable Award Agreement, and without limitation on any relevant provisions in the applicable Award Agreement).

(b) The Plan Administrator may specify in an Award Agreement, by resolution or otherwise, that a Participant's rights, payments, and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award and/or any Company recoupment, repayment or forfeiture policy. Such events may include, without limitation, termination of employment for Cause, violation of material policies that may apply to the Participant, breach of noncompetition, confidentiality, or other restrictive covenants that may apply to the Participant, or other conduct by the Participant that is detrimental to the business or reputation of the Company or a Subsidiary.

2. Nontransferability

Unless otherwise provided in the Plan and permitted by law, including but not limited to the Code, the right of a Participant or Beneficiary to the payment of any Award granted under the Plan, and the rights and privileges conferred thereby, shall not be subject to execution, attachment, or similar process, and may not be transferred, assigned, pledged, or hypothecated in any manner (whether by operation of law or otherwise), other than by will or by the applicable laws of descent and distribution, unless the Participant has received the Plan Administrator's prior written consent. Except as otherwise provided for under the Plan, if any Participant attempts to transfer, assign, pledge, hypothecate, or otherwise dispose of any Award under the Plan, or of any right or privilege conferred thereby, contrary to the provisions of the Plan or such Award, or suffers the sale or levy or any attachment or similar process upon the rights or privileges conferred thereby, all affected Awards held by such Participant shall be immediately forfeited.

3. No Individual Rights

Nothing contained in the Plan, or in any Award granted pursuant to the Plan, shall confer upon any Participant any right to continue in the employ of, or as a Consultant for, the Company or a Subsidiary, nor interfere in any way with the right of the Company or a Subsidiary to terminate the employment or service of such Participant at any time with or without assigning any reason there for, except to the extent expressly provided otherwise in a written agreement between the Participant and the Company or any Employer.

4. Other Compensation

Unless determined otherwise by the Plan Administrator or required by contractual obligations, the grant, vesting, or payment of Awards under the Plan shall not be considered as part of a Participant's salary or used for the calculation of any other pay, allowance, pension, or other benefit, unless otherwise permitted by other benefit plans provided by the Company or a Subsidiary, or required by law or by contractual obligations of the Company or a Subsidiary.

5. Leaves of Absence and Change in Status

Leaves of absence for such periods and purposes conforming to the personnel policy of the Company, or of a Subsidiary, as applicable, shall not be deemed a Termination of Service, unless a Participant commences a leave of absence from which he or she is not expected to return to active employment or service with the Company or a Subsidiary; provided, however, that except as otherwise set forth in the Award Agreement, the Plan Administrator may suspend vesting of Awards during a leave of absence. The foregoing notwithstanding, with respect to Incentive Stock Options, employment shall not be deemed to continue beyond the first ninety (90) days of such leave unless the Participant's reemployment rights are guaranteed by statute or contract. With respect to any Participant who, after the date an Award is granted under this Plan, ceases to be employed by or provide services to the Company or a Subsidiary on a full-time basis but continues to be employed or provide services on a part-time basis, the Plan Administrator may make appropriate adjustments, as determined in its sole discretion, as to the number of shares issuable under, the vesting schedule of, or the amount payable under any unvested Awards held by such Participant.

6. Transfers

In the event a Participant is transferred from the Company to a Subsidiary, or vice versa, or is promoted or given different responsibilities, Awards granted to the Participant prior to such date shall not be affected by such event, except as otherwise provided in an Award Agreement or Individual Agreement.

7. Unfunded Obligations

Any amounts (deferred or otherwise) to be paid to Participants pursuant to the Plan are unfunded obligations. Neither the Company nor any Subsidiary is required to segregate any monies from its general funds,

to create any trusts, or to make any special deposits with respect to this obligation. The Plan Administrator, in its sole discretion, may direct the Company to share with a Subsidiary the costs of a portion of the Incentive Awards paid to Participants who are executives of those companies. Beneficial ownership of any investments, including trust investments which the Company may make to fulfill this obligation, shall at all times remain in the Company. Any investments and the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or a fiduciary relationship between the Plan Administrator, the Company, or any Subsidiary, and a Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's Beneficiary or the Participant's creditors in any assets of the Company or a Subsidiary whatsoever. The Participants shall have no claim against the Company for any changes in the value of any assets which may be invested or reinvested by the Company with respect to the Plan.

8. Beneficiaries

The designation of a Beneficiary shall be on a form provided by the Company, executed by the Participant (with the consent of the Participant's spouse, if required by the Company for reasons of community property or otherwise), and delivered to a designated representative of the Company. The Company may, in its discretion, utilize an electronic process for Beneficiary designations. A Participant may change his or her Beneficiary designation at any time. A designation by a Participant under any predecessor plans shall remain in effect under the Plan, unless such designation is revoked or changed under the Plan. In the event that a Participant becomes divorced, a Beneficiary designation under this Plan or a predecessor plan in favor of his or her divorced spouse shall become void as of the effective date of the divorce, unless the Participant re-designates the former spouse as his or her Beneficiary following the effective date of the divorce. If no Beneficiary is designated, if the designation is ineffective, or if the Beneficiary dies before the balance of a Participant's benefit is paid, the balance shall be paid to the Participant's estate. Notwithstanding the foregoing, however, a Participant's Beneficiary shall be determined under applicable state law if such state law does not recognize Beneficiary designations under plans of this sort and is not preempted by laws which recognize the provisions of this Section 18.8. In the event that the Plan Administrator determines that two or more claims are made by claimed Beneficiaries against the Plan for an Award, the Plan Administrator may initiate an interpleader action in a court of competent jurisdiction to resolve the controversy.

In the event that an Award has vested, its restrictions have lapsed, or it has been exercised and the underlying shares of Common Stock relating to such award have been transferred to a brokerage account, it is the responsibility of the Participant to establish and maintain beneficiary designations with that broker.

9. Governing Law

The Plan, all Award Agreements and all corporate law matters with respect to the Company shall be governed by the General Corporation Law of the State of Delaware.

10. Satisfaction of Tax Obligations

Appropriate provision shall be made for all taxes required to be withheld in connection with the grant, vesting, exercise, or other taxable event with respect to Awards under the applicable laws and regulations of any governmental authority, whether federal, state, or local and whether domestic or foreign, including, without limitation, the required withholding of a sufficient amount of Common Stock otherwise issuable to a Participant to satisfy such required tax withholding obligations. To the extent provided by the Plan Administrator, a Participant is permitted to deliver Common Stock (including shares acquired pursuant to the exercise of an Option or Stock Appreciation Right other than the Option or Stock Appreciation Right currently being exercised, to the extent permitted by applicable regulations) for payment of withholding taxes in connection with the grant, vesting, exercise and/or settlement of Awards, as the case may be, or as of any other date required by applicable law. Common Stock may be required to be withheld from the shares issuable to the Participant upon the exercise of an Option or Stock Appreciation Right, upon the vesting and/or settlement of Restricted Stock or Restricted

Stock Units, or upon the payout of Performance Shares or Performance Units, to satisfy such required tax withholding obligations. The Fair Market Value of Common Stock as delivered pursuant to this Section 18.10 shall be determined as of the day of such exercise, vesting and/or settlement, as the case may be, or as of any other date required by applicable law, and shall be calculated in accordance with Section 2.22 of this Plan.

Any Participant who makes an election under Section 83(b) of the Code shall, within ten (10) days of making such election, notify the Company in writing of such election and shall provide the Company or such Participant's Employer with a copy of such election form filed with the U.S. Internal Revenue Service.

A Participant is solely responsible for obtaining, or failing to obtain, tax advice with respect to participation in the Plan, including prior to the Participant's (i) entering into any transaction under or with respect to the Plan, (ii) designating or choosing the times of distributions under the Plan, (iii) the making of any elections applicable to the Participant in connection with any Award under the Plan, including, without limitation, an election under Section 83(b) of the Code, or (iv) disposing of any Common Stock issued under the Plan.

11. Participants in Foreign Jurisdictions

The Plan Administrator shall have the authority to adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of any countries in which the Company or any Subsidiary may operate, to ensure the viability of the benefits from Awards granted to Participants employed in such countries, to meet the requirements of applicable foreign laws that permit the Plan to operate in a qualified or tax-efficient manner, to comply with applicable foreign laws, and to meet the objectives of the Plan; provided, however, that no such action taken pursuant to this Section shall result in a "material revision" of the Plan under applicable securities exchange corporate governance rules.

SECTION 19 REGULATORY COMPLIANCE

1. Rule 16b-3

The Company's intention is that, so long as any of the Company's equity securities are registered pursuant to Section 12(b) or 12(g) of the Exchange Act, the Plan shall comply in all respects with the rules of any exchange on which the Common Stock is traded and with Rule 16b-3. If any Plan provision is determined not to be in compliance with the foregoing intentions, that provision shall be deemed modified as necessary to meet the requirements of any such exchange and Rule 16b-3.

2. Section 162(m)

It is the intent of the Company that Awards granted to persons who are designated by the Plan Administrator as Covered Employees shall, if and to the extent so designated by the Plan Administrator, qualify as performance-based compensation under Section 162(m). If any provision of the Plan as in effect on the date of adoption of any agreements relating to Performance Awards that are designated as intended to qualify as performance-based compensation under Section 162(m) does not qualify or is inconsistent with the requirements of Section 162(m) of the Code, such provision shall be construed or, to the extent permitted under the Code, deemed amended to the extent necessary to conform to such requirements. The Plan Administrator shall have no discretion to modify or waive the Performance Goals or conditions to the grant or vesting of an Award, unless such Award is not intended to qualify as performance-based compensation under Section 162(m) and the relevant Award Agreement provides for such discretion. Notwithstanding the foregoing, to the extent permitted in the relevant Award Agreement and/or subplan, the Plan Administrator may, in its sole discretion, reduce (but not increase) the amount payable in respect of an Award intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m); provided, however, that the Plan Administrator may not exercise discretion to increase the amount payable in respect of an Award intended to qualify for the exemption from the limitation on deductibility imposed by Section 162(m).

3. Section 409A

The Plan is intended to be administered, operated, and construed in compliance with Section 409A and any regulations or other guidance issued thereunder. Notwithstanding this or any other provision of the Plan to the contrary, the Board or the Plan Administrator may (but shall have no obligation to) amend the Plan or any Award in any manner, or take any other action, that either of them determines, in its sole discretion, is necessary, appropriate, or advisable to cause the Plan to either be exempt from, or comply with, Section 409A and any regulations or other guidance issued thereunder. Any such action, once taken, shall be deemed to be effective from the earliest date necessary and applicable to avoid a violation of Section 409A, and shall be final, binding, and conclusive on all Participants and other individuals having or claiming any right or interest under the Plan. None of the Company, any Affiliate, the Plan Administrator nor any of their respective agents shall have any liability to any Participant or beneficiary thereof as a result of any tax, interest, penalty or other payment required to be paid or due pursuant to Section 409A of the United States Internal Revenue Code or any obligations or damages arising from a violation of or failure to comply with Section 409A.

Notwithstanding the provisions of the Plan or any Award Agreement, if a Participant is a “specified employee” upon his or her “separation from service” (within the meaning of such terms in Section 409A under such definitions and procedures as established by the Company in accordance with Section 409A), any portion of a payment, settlement, or other distribution made upon such a “separation from service” that would cause the acceleration of, or an addition to, any taxes pursuant to Section 409A will not commence or be paid until a date that is six (6) months and one (1) day following the applicable “separation from service.” Any payments, settlements, or other distributions that are delayed pursuant to this Section 19.3 following the applicable “separation from service” shall be accumulated and paid to the Participant in a lump sum without interest on the first business day immediately following the required delay period.

SECTION 20 ESTABLISHMENT AND TERM OF PLAN

The Plan was adopted by the Board on September 26, 2016, and was approved by the Company’s stockholders on February 9, 2017. This Plan became effective on the Effective Date, and upon such effectiveness, this Plan replaced the Prior Plans, and no further Awards are to be made under the Prior Plans from and after the Effective Date. This Amended and Restated Plan was adopted by the Board on [], 2017, subject to approval by the Company’s stockholders. The Amended and Restated Plan shall become effective on the Restatement Effective Date, and shall remain in effect for a period of ten (10) years after the Restatement Effective Date. If the Amended and Restated Plan is not so approved by the stockholders, all provisions of the Initial Plan shall remain effective. After this Plan is terminated, no future Awards may be granted pursuant to the Plan, but Awards previously granted shall remain outstanding in accordance with their applicable terms and conditions and this Plan’s terms and conditions.

SECTION 21 AMENDMENT, TERMINATION, OR DISCONTINUANCE OF THE PLAN

1. Amendment of Plan

Subject to approval of the Board with respect to amendments that are required by law or regulation or stock exchange rules to be submitted to the stockholders of the Company for approval, the Board or the Compensation Committee may from time to time make such amendments to the Plan as it may deem proper and in the best interests of the Company, including, without limitation, any amendment necessary to ensure that the Company may obtain any regulatory approval referred to in Section 17 of this Plan; provided, however, that (i) to the extent required by applicable law, regulation, or stock exchange rule, stockholder approval shall be required, and (ii) except as otherwise provided in the Plan, no change in any Award previously granted under the Plan may be made without the consent of the Participant if such change would impair the rights of the Participant under the Award.

2. Termination or Suspension of Plan

The Board or Compensation Committee may at any time suspend the operation of or terminate the Plan with respect to any Common Stock or rights which are not at that time subject to any Award outstanding under the Plan.

3. Section 162(m) Approval

If so determined by the Plan Administrator, the provisions of the Plan relating to Performance Goals and Awards that are intended to constitute “performance-based compensation” under Section 162(m) shall be disclosed to, and reapproved by, the Company’s stockholders no later than the first stockholder meeting that occurs in the fifth year following the year in which the Restatement Effective Date occurs (or at any such other time as may be required or allowed by Section 162(m)) in order for Awards that are intended to constitute “performance-based compensation” under Section 162(m) granted after such time to be exempt from the deduction limitations of Section 162(m).