
**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 Act of 1934**

Date of Report (Date of earliest event reported): June 17, 2005

Commission File Number 0-50626

XCYTE THERAPIES, INC.

(Exact name of registrant as specified in its charter)

Delaware
*(State or other jurisdiction of
incorporation or organization)*

91-1707622
*(I.R.S. Employer
Identification Number)*

**1124 Columbia Street, Suite 130
Seattle, Washington 98104**
(Address of principal executive offices and zip code)

(206) 262-6200
(Registrant's telephone number, including area code)

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))
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Item 1.01. Entry into a Material Definitive Agreement.

On June 17, 2005, at the 2005 Annual Meeting of Stockholders (the "2005 Meeting") Xcyte Therapies, Inc. ("Xcyte"), the stockholders approved the amendment of Xcyte's 2003 Stock Plan (the "2003 Plan") and 2003 Directors' Stock Option Plan (the "Directors' Plan").

2003 Plan

Stockholders approved the amendment of the 2003 Plan: (a) to increase the number of shares of common stock issuable under the 2003 Plan by an additional 600,000 shares, to an aggregate of 1,345,453 shares (subject to adjustment in the case of a stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification or similar change to the capital structure of Xcyte without receipt of consideration by Xcyte); (b) for purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended; and (c) to expand the types of awards that Xcyte may grant to eligible service providers under the 2003 Plan to include restricted stock grants, restricted stock units, stock appreciation rights and other similar types of awards under which recipients are not required to pay any purchase or exercise price.

Earlier in 2005, the Board approved amendments of the 2003 Plan, subject to stockholder approval, to increase the number of shares of common stock authorized for issuance under the 2003 Plan by a total of 600,000 shares, to a total of 1,345,453 shares, and to allow for the issuance of restricted stock and stock awards under the 2003 Plan.

Prior to the 2005 Meeting, options to purchase 291,353 shares of common stock had been granted under the 2003 Plan subject to stockholder approval and were not exercisable until such approval was obtained. Of these options granted subject to stockholder approval, options were granted to our named executive officers as follows: (a) 31,848 to Ronald Berenson, M.D., our President and Chief Executive Officer, and a member of our Board of Directors, (b) 12,740 to Robert Kirkman, M.D., our Chief Business Officer, (c) 6,370 to Kathi Cordova, our Senior Vice President of Finance and Treasurer, (d) 6,370 to Mark Frohlich, M.D., our Medical Director and (e) 12,740 to Stewart Craig, Ph.D., our former Chief Operating Officer. All of these options have an exercise price of \$2.29, which is equal to the fair market value on the date of grant, and vest based on the earlier of the achievement of certain specific corporate strategic and regulatory milestones and four years from the date of grant. In addition, options to purchase 200,000 shares were granted subject to stockholder approval to our Chairman of the Board, Christopher Henney, which have an exercise price of \$1.50, equal to the fair market value on the date of grant, and vest in equal monthly installments over three years. The remaining options to purchase 21,285 shares granted subject to stockholder approval were granted to persons who are not named executive officers or members of the Board.

If Xcyte sells all or substantially all of its assets or if Xcyte is acquired by another corporation, each outstanding award under the 2003 Plan may be assumed or an equivalent award may be substituted by the successor corporation. If the successor does assume or substitute the outstanding award under the 2003 Plan, the lesser of 25% of the shares initially subject to the award under the 2003 Plan or the remaining unvested shares subject to an award under the 2003 Plan will vest and become exercisable immediately prior to the closing of the transaction, and any repurchase right of Xcyte with respect to shares issued upon exercise of an award under the 2003 Plan shall lapse as to the lesser of 25% of the shares initially subject to Xcyte's repurchase right or the remaining shares subject to Xcyte's repurchase right. In addition, if a holder is "involuntarily terminated" within one year after the closing and holds an award under the 2003 Plan that is assumed or substituted by a successor corporation in a change of control, the lesser of another 25% of the shares initially subject to the award under the 2003 Plan or the remaining unvested shares will vest and become exercisable on termination, and any repurchase right of Xcyte with respect to shares issued upon exercise of an award under the 2003 Plan shall lapse as to the lesser of 25% of the shares initially subject to the repurchase right or the remaining shares subject to the repurchase right. "Involuntary termination" includes termination by Xcyte without "cause," or voluntary resignation within 30 days following a reduction in the participant's base salary of more than 20% (except where there is a similar reduction in the base salaries of similarly situated employees) or relocation of the participant's principal work site by more than 50 miles. If the successor corporation does not assume an award under the 2003 Plan or substitute equivalent awards, then vesting and exercisability of all shares subject to awards under the 2003 Plan will accelerate fully, and all repurchase rights with respect to awards under the 2003 Plan will lapse immediately prior to the closing of the transaction, and all awards under the 2003 Plan will terminate as of the closing of the transaction. In the event of a proposed dissolution or liquidation of Xcyte, each award under the 2003 Plan will terminate immediately prior to the consummation of the dissolution or liquidation, unless otherwise determined by the 2003 Plan's administrator.

A more detailed summary of the material features of the 2003 Plan is set forth in Xcyte's proxy statement for the 2005 Meeting filed with the Securities and Exchange Commission on April 29, 2005. The summary in the proxy statement and the description of the 2003 Plan contained herein are qualified in their entirety by reference to the full text of the 2003 Plan, which is included as part of the proxy statement and filed as Exhibit 10.1 to this Form 8-K.

Directors' Plan

Stockholders approved the amendment of the Directors' Plan: to increase the number of shares of common stock issuable under the Directors' Plan by an additional 350,000 shares, to an aggregate of 440,909 shares (subject to adjustment in the case of a stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification or similar change to the capital structure of Xcyte without receipt of consideration by Xcyte); and to increase the number of option shares issued to non-employee directors for services rendered.

In June 2004, the Board approved an amendment of the Directors' Plan, subject to stockholder approval, to increase the number of option shares issued to each non-employee director who first becomes a director after June 2, 2004 to 10,000 shares of common stock, to increase the number of option shares issued on the date of each annual meeting of stockholders to each of Xcyte's non-employee directors to 10,000 shares of common stock provided, such director has served on the Board for at least six months, and to grant directors serving as the chairperson of a committee of the Board, or as members of the audit committee of the Board, an option to purchase 2,500 shares of common stock on the date of each annual meeting of stockholders. In January 2005, the Board approved an amendment of the Directors' Plan, subject to stockholder approval, to increase the number of shares of common stock authorized for issuance under the Directors' Plan by 350,000 shares, to a total of 440,909 shares.

Prior to the 2005 Meeting, options to purchase 10,910 shares of common stock had been granted under the Directors' Plan subject to stockholder approval of the amendment of the terms of the Directors' Plan and were not exercisable until such approval was obtained. 5,455 of these options were granted to our director Daniel Spiegelman, have an exercise price of \$4.53, which is equal to the fair market value on the date of grant, and vest in equal monthly installments over two years. 5,455 of these options were granted to our Chairman of the Board Christopher Henney, have an exercise price of \$1.50, which is equal to the fair market value on the date of grant, and vest in equal monthly installments over two years.

Pursuant to the terms of the Directors' Plan, at the 2005 Meeting on June 17, 2005, options covering an aggregate of 75,000 shares of common stock were automatically granted to Xcyte's non-employee directors. These options were issued as follows: (a) 15,000 to Peter Langecker, (b) 15,000 to Daniel K. Spiegelman, (c) 12,500 to Jean Deleage, (d) 12,500 to Stephen N. Wertheimer, (e) 10,000 to Robert T. Nelsen and (f) 10,000 to Robert M. Williams. These options have an exercise price of \$0.63 per share, the closing sale price per share of Xcyte's common stock on the Nasdaq National Market on June 16, 2005, and vest in equal monthly installments over two years. In the event of a sale of all or substantially all of Xcyte's assets or a merger of Xcyte with or into another company, all outstanding options shall accelerate, vest in full and be fully exercisable immediately prior to the consummation of the transaction.

A more detailed summary of the material features of the Directors' Plan is set forth in Xcyte's proxy statement for the 2005 Meeting filed with the Securities and Exchange Commission on April 29, 2005. The summary in the proxy statement and the description of the Directors' Plan contained herein are qualified in their entirety by reference to the full text of the Directors' Plan, which is included as part of the proxy statement and filed as Exhibit 10.2 to this Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits.

10.1 Xcyte Therapies, Inc. 2003 Stock Plan, as amended

10.2 Xcyte Therapies, Inc. Amended and Restated 2003 Directors' Stock Option Plan, as amended

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.

XCYTE THERAPIES, INC.

By: /s/ Kathi L. Cordova

Kathi L. Cordova
*Duly Authorized Officer of Registrant
Senior Vice President of Finance and
Treasurer*

Date: June 21, 2005

XCYTE THERAPIES, INC.

2003 STOCK PLAN

1. **Purposes of the Plan.** The purposes of this 2003 Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Consultants and Directors and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant of an Option and subject to the applicable provisions of Section 422 of the Code and the regulations and interpretations promulgated thereunder. Stock Grants, Stock Units, Stock Appreciation Rights and Stock Purchase Rights may also be granted under the Plan.

2. **Definitions.** As used herein, the following definitions shall apply:

(a) "**Administrator**" means the Board or its Committee appointed pursuant to Section 4 of the Plan.

(b) "**Affiliate**" means an entity other than a Subsidiary (as defined below) which, together with the Company, is under common control of a third person or entity.

(c) "**Applicable Laws**" means the legal requirements relating to the administration of stock option and restricted stock plans, including under applicable U.S. state corporate laws, U.S. federal and applicable state securities laws, other U.S. federal and state laws, the Code, any Stock Exchange rules or regulations and the applicable laws, rules and regulations of any other country or jurisdiction where Options or Stock Awards are granted under the Plan, as such laws, rules, regulations and requirements shall be in place from time to time.

(d) "**Award**" means a Stock Award or an Option granted in accordance with the terms of the Plan.

(e) "**Award Agreement**" means a Stock Award Agreement and/or Option Agreement, which may be in written or electronic format, in such form and with such terms and conditions as may be specified by the Administrator, evidencing the terms and conditions of an individual Award. Each Award Agreement is subject to the terms and conditions of the Plan.

(f) "**Award Exchange Program**" means a program approved by the Administrator whereby outstanding Awards are exchanged for Awards with a lower exercise price or purchase price or are amended to decrease the exercise price or purchase price as a result of a decline in the Fair Market Value of the Common Stock.

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

(h) "**Cause**" means (i) Participant's material breach of any of the terms of any written agreement between the Participant and the Company; (ii) Participant's conviction of a felony harmful to the reputation of the Company or of a crime involving moral turpitude;

(iii) Participant's willful misconduct in the performance of his or her duties and responsibilities to the Company; (iv) Participant's violation of his or her duty of loyalty or his or her obligations with respect to proprietary information or trade secrets of the Company or to any party to whom the Participant owes an obligation of nondisclosure as a result of his or her relationship with the Company; (v) Participant's violation of the Company's nondiscrimination policies or policies prohibiting harassment; or (vi) Participant's commission of any other intentional wrongful act that could cause the Company to be liable to a third party. The determination as to whether a Participant's Continuous Service is terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Participant. The foregoing definition does not in any way limit the Company's ability to terminate a Participant's employment or consulting relationship at any time as provided in Section 5(d) below. For purposes of this definition of Cause, the term "Company" will be interpreted to include any Subsidiary, Parent, Affiliate or successor thereto, as appropriate.

(i) "**Change of Control**" means (i) a sale of all or substantially all of the Company's assets, or (ii) any merger, consolidation or other business combination transaction of the Company with or into another corporation, entity or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the surviving entity) outstanding immediately after such transaction, or (iii) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of the Company.

(j) "**Code**" means the Internal Revenue Code of 1986, as amended.

(k) "**Committee**" means one or more committees or subcommittees of the Board appointed by the Board to administer the Plan in accordance with Section 4 below.

(l) "**Common Stock**" means the Common Stock of the Company.

(m) "**Company**" means Xcyte Therapies, Inc., a Delaware corporation.

(n) "**Consultant**" means any person, including an advisor, who is engaged by the Company or any Parent, Subsidiary or Affiliate to render services and is compensated for such services.

(o) "**Continuous Service Status**" means the absence of any interruption or termination of service as an Employee, Director or Consultant. Continuous Service Status as an Employee, Director or Consultant shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided that such leave is for a period of not more than ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise

pursuant to Company policy adopted from time to time; or (iv) in the case of transfers between locations of the Company or between the Company, its Parents, Subsidiaries, Affiliates or their respective successors. A change in the capacity in which the Participant renders service to the Company or a Parent, Subsidiary or Affiliate of the Company, such as a change in status from an Employee to a Consultant or from a Consultant to an Employee will not constitute an interruption of Continuous Service Status.

(p) “**Corporate Transaction**” means a sale of all or substantially all of the Company’s assets, or a merger, consolidation or other capital reorganization or transaction of the Company with or into another corporation, entity or person, and includes a Change of Control.

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

(r) “**Employee**” means any person employed by the Company or any Parent, Subsidiary or Affiliate, with the status of employment determined based upon such factors as are deemed appropriate by the Administrator in its discretion, subject to any requirements of the Code or the Applicable Laws. The payment by the Company of a director’s fee to a Director shall not be sufficient to constitute “employment” of such Director by the Company.

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

(t) “**Fair Market Value**” means, as of any date, the fair market value of the Common Stock, as determined by the Administrator in good faith on such basis as it deems appropriate and applied consistently with respect to Participants. Whenever possible, the determination of Fair Market Value shall be based upon the closing price for the Shares as reported in the Wall Street Journal for the applicable date.

(u) “**Incentive Stock Option**” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable Option Agreement.

(v) “**Involuntary Termination**” means termination of a Participant’s Continuous Service Status under the following circumstances: (i) termination without Cause by the Company or a Subsidiary, Parent, Affiliate or successor thereto, as appropriate, other than on account of the Participant’s death or disability; or (ii) voluntary resignation by the Participant within 30 days following (A) a reduction in the Participant’s then-current base salary of more than 20%, other than in connection with a similar reduction in the base salaries of similarly situated employees or consultants as part of a general salary level reduction; or (B) relocation by the Company or a Subsidiary, Parent, Affiliate or successor thereto, as appropriate, of the Participant’s principal work site to a facility or location by more than 50 miles from the Participant’s principal work site immediately prior to such relocation.

(w) “**Listed Security**” means any security of the Company that is listed or approved for listing on a national securities exchange or designated or approved for designation as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.

(x) **“Named Executive”** means any individual who, on the last day of the Company’s fiscal year, is the chief executive officer of the Company (or is acting in such capacity) or is among the four most highly compensated officers of the Company (other than the chief executive officer). Such officer status shall be determined pursuant to the executive compensation disclosure rules under the Exchange Act.

(y) **“Nonstatutory Stock Option”** means an Option not intended to qualify as an Incentive Stock Option, as designated in the applicable Option Agreement.

(z) **“Option”** means a stock option granted pursuant to the Plan.

(aa) **“Option Agreement”** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of an Option granted under the Plan and includes any documents attached to or incorporated into such Option Agreement, including, but not limited to, a notice of stock option grant and a form of exercise notice.

(bb) **“Optioned Stock”** means the Common Stock subject to an Option.

(cc) **“Optionee”** means an Employee, Director or Consultant who receives an Option.

(dd) **“Parent”** means a “parent corporation,” whether now or hereafter existing, as defined in Section 424(e) of the Code, or any successor provision.

(ee) **“Participant”** means any holder of one or more Options or Stock Awards or the Shares issuable or issued upon exercise of such Awards, under the Plan.

(ff) **“Plan”** means this 2003 Stock Plan.

(gg) **“Qualifying Performance Criteria”** means any one or more of the following performance criteria, either individually, alternatively or in any combination, applied to either the Company as a whole or to a business unit, Affiliate or business segment, either individually, alternatively or in any combination, and measured either annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years’ results or to a designated comparison group, in each case as specified by the Committee in the Award: (i) cash flow; (ii) earnings (including gross margin, earnings before interest and taxes, earnings before taxes, and net earnings); (iii) earnings per share; (iv) growth in earnings or earnings per share; (v) stock price; (vi) return on equity or average stockholders’ equity; (vii) total stockholder return; (viii) return on capital; (ix) return on assets or net assets; (x) return on investment; (xi) revenue; (xii) income or net income; (xiii) operating income or net operating income; (xiv) operating profit or net operating profit; (xv) operating margin; (xvi) return on operating revenue; (xvii) market share; (xviii) contract awards or backlog; (xix) overhead or other expense reduction; (xx) growth in stockholder value relative to the moving average of the S&P 500 Index or a peer group index; (xxi) credit rating; (xxii) strategic plan development and implementation (including individual performance objectives that relate to achievement of the

Company's or any business unit's strategic plan); (xxiii) improvement in workforce diversity, and (xxiv) any other similar criteria. The Committee may appropriately adjust any evaluation of performance under a Qualifying Performance Criteria to exclude any of the following events that occurs during a performance period: (A) asset write-downs; (B) litigation or claim judgments or settlements; (C) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reported results; (D) accruals for reorganization and restructuring programs; and (E) any extraordinary non-recurring items as described in Accounting Principles Board Opinion No. 30 and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year.

(hh) "**Restricted Stock**" means Shares of Common Stock acquired pursuant to a grant of a Stock Award under Sections 11, 12 or 13.

(ii) "**Rule 16b-3**" means Rule 16b-3 promulgated under the Exchange Act, as amended from time to time, or any successor provision.

(jj) "**Share**" means a share of the Common Stock, as adjusted in accordance with Section 17 of the Plan.

(kk) "**Stock Appreciation Right**" means a right to receive cash and/or shares of Common Stock based on a change in the Fair Market Value of a specific number of shares of Common Stock granted under Section 13.

(ll) "**Stock Award**" means a Stock Grant, a Stock Unit, a Stock Appreciation Right or a Stock Purchase Right.

(mm) "**Stock Award Agreement**" means a written agreement, the form(s) of which shall be approved from time to time by the Administrator, between the Company and a holder of a Stock Award evidencing the terms and conditions of an individual Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(nn) "**Stock Exchange**" means any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time.

(oo) "**Stock Grant**" means the award of a certain number of shares of Common Stock granted under Section 11 below.

(pp) "**Stock Purchase Right**" means the right to purchase Common Stock pursuant to Section 12 below.

(qq) "**Stock Unit**" means a bookkeeping entry representing an amount equivalent to the Fair Market Value of one Share, payable in cash, property or Shares. Stock Units represent an unfunded and unsecured obligation of the Company, except as otherwise provided for by the Administrator.

(rr) "**Subsidiary**" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code, or any successor provision.

(ss) **“Ten Percent Holder”** means a person who owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary.

3. **Stock Subject to the Plan.** Subject to the provisions of Section 17 of the Plan, the maximum aggregate number of Shares that may be sold under the Plan is 1,345,453 Shares of Common Stock, plus an annual increase on the first day of each of the Company’s fiscal years beginning in 2005 and ending in 2010 equal to the lesser of (a) 109,090 Shares, (b) 4% of the Shares outstanding on the last day of the immediately preceding fiscal year, or (c) such lesser number of Shares as the Board shall determine. The Shares may be authorized, but unissued, or reacquired Common Stock. If an Award should expire or become unexercisable for any reason without having been exercised in full, or is surrendered pursuant to an Award Exchange Program, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an Award in order to satisfy the exercise or purchase price for such Award or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right which the Company may have exercised shall not be available for future grant under the Plan.

4. **Administration of the Plan.**

(a) **General.** The Plan shall be administered by the Board or a Committee, or a combination thereof, as determined by the Board. The Plan may be administered by different administrative bodies with respect to different classes of Participants and, if permitted by the Applicable Laws, the Board may authorize one or more officers to make Awards under the Plan.

(b) **Committee Composition.** If a Committee has been appointed pursuant to this Section 4, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of any Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of a Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws and, in the case of a Committee administering the Plan in accordance with the requirements of Rule 16b-3 or Section 162(m) of the Code, to the extent permitted or required by such provisions. The Committee shall in all events conform to any requirements of the Applicable Laws.

(c) **Powers of the Administrator.** Subject to the provisions of the Plan and in the case of a Committee, the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(t) of the Plan, provided that such determination shall be applied consistently with respect to Participants under the Plan;

- (ii) to select the Employees, Consultants and Directors to whom Awards may from time to time be granted;
- (iii) to determine whether and to what extent Awards are granted;
- (iv) to determine the number of Shares of Common Stock to be covered by each Award granted;
- (v) to approve the form(s) of agreement(s) used under the Plan;
- (vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder, which terms and conditions include but are not limited to the exercise or purchase price, the time or times when Awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, any pro rata adjustment to vesting as a result of a Participant's transitioning from full- to part-time service (or vice versa), and any restriction or limitation regarding any Option, Optioned Stock, Stock Award or Restricted Stock, based in each case on such factors as the Administrator, in its sole discretion, shall determine;
- (vii) to determine whether and under what circumstances an Option may be settled in cash under Section 10(c) instead of Common Stock;
- (viii) to implement an Award Exchange Program on such terms and conditions as the Administrator in its discretion deems appropriate, provided that no amendment or adjustment to an Award that would materially and adversely affect the rights of any Participant shall be made without the prior written consent of the Participant;
- (ix) to adjust the vesting of an Option or Stock Award held by an Employee, Consultant or Director as a result of a change in the terms or conditions under which such person is providing services to the Company;
- (x) to construe and interpret the terms of the Plan and Awards granted under the Plan, which constructions, interpretations and decisions shall be final and binding on all Participants; and
- (xi) in order to fulfill the purposes of the Plan and without amending the Plan, to modify grants of Options or Stock Awards to Participants who are foreign nationals or employed outside of the United States in order to recognize differences in local law, tax policies or customs.

5. **Eligibility.**

(a) **Recipients of Grants.** Nonstatutory Stock Options and Stock Awards may be granted to Employees, Directors and Consultants. Incentive Stock Options may be granted only to Employees, provided that Employees of Affiliates shall not be eligible to receive Incentive Stock Options.

(b) **Type of Option.** Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option.

(c) **ISO \$100,000 Limitation.** Notwithstanding any designation under Section 5(b), to the extent that the aggregate Fair Market Value of Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds \$100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 5(c), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares subject to an Incentive Stock Option shall be determined as of the date of the grant of such Option.

(d) **No Employment Rights.** The Plan shall not confer upon any Participant any right with respect to continuation of an employment or consulting relationship with the Company, nor shall it interfere in any way with such Participant's right or the Company's right to terminate the employment or consulting relationship at any time for any reason.

6. **Term of Plan.** The Plan shall become effective upon its adoption by the Board of Directors. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 19 of the Plan.

7. **Term of Option.** The term of each Option shall be the term stated in the Option Agreement; provided that the term shall be no more than ten years from the date of grant thereof or such shorter term as may be provided in the Option Agreement and provided further that, in the case of an Incentive Stock Option granted to a person who at the time of such grant is a Ten Percent Holder, the term of the Option shall be five years from the date of grant thereof or such shorter term as may be provided in the Option Agreement.

8. **Limitation on Grants to Employees.** Subject to adjustment as provided in Section 17 below, the maximum number of Shares that may be subject to Options and Stock Awards granted to any one Employee under this Plan for any fiscal year of the Company shall be 1,000,000, provided that this Section 8 shall apply only after such time, if any, as the Common Stock becomes a Listed Security.

9. Option Exercise Price and Consideration.

(a) **Exercise Price.** The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be such price as is determined by the Administrator and set forth in the Option Agreement, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option, the per share Exercise Price shall be such price as determined by the Administrator provided that if such eligible person is, at the time of the grant of such Option, a Named Executive of the Company or an individual whom the Administrator reasonably believes may become a Named Executive of the Company, the per share Exercise Price shall be no less than 100% of the Fair Market Value on the date of grant if such Option is intended to qualify as performance-based compensation under Section 162(m) of the Code.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a Corporate Transaction.

(b) **Permissible Consideration.** The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant) and may consist entirely of (i) cash; (ii) check; (iii) subject to any requirements of the Applicable Laws (including without limitation Section 153 of the Delaware General Corporation Law), delivery of Optionee's promissory note having such recourse, interest, security and redemption provisions as the Administrator determines to be appropriate after taking into account the potential accounting consequences of permitting an Optionee to deliver a promissory note; (iv) cancellation of indebtedness; (v) other Shares that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which the Option is exercised, provided that in the case of Shares acquired, directly or indirectly, from the Company, such Shares must have been owned by the Optionee for more than six months on the date of surrender (or such other period as may be required to avoid the Company's incurring an adverse accounting charge); (vi) if, as of the date of exercise of an Option the Company then is permitting employees to engage in a "same-day sale" cashless brokered exercise program involving one or more brokers, through such a program that complies with the Applicable Laws (including without limitation the requirements of Regulation T and other applicable regulations promulgated by the Federal Reserve Board) and that ensures prompt delivery to the Company of the amount required to pay the exercise price and any applicable withholding taxes; or (vii) any combination of the foregoing methods of payment. In making its determination as to the type of

consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company and the Administrator may, in its sole discretion, refuse to accept a particular form of consideration at the time of any Option exercise.

10. **Exercise of Option.**

(a) **General.**

(i) **Exercisability.** Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the term of the Plan and reflected in the Option Agreement, including vesting requirements and/or performance criteria with respect to the Company and/or the Optionee.

(ii) **Leave of Absence.** In the absence of determination by the Administrator at the time of grant of the Option, vesting of an Option shall be tolled during any unpaid leave of absence, except to the extent otherwise provided by Applicable Laws. In the event of a military leave, to the extent required by Applicable Laws, vesting shall toll during any unpaid portion of such leave, provided that upon a Participant's return from military leave he or she shall be given vesting credit with respect to Options to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(iii) **Minimum Exercise Requirements.** An Option may not be exercised for a fraction of a Share. The Administrator may require that an Option be exercised as to a minimum number of Shares, provided that such requirement shall not prevent an Optionee from exercising the full number of Shares as to which the Option is then exercisable.

(iv) **Procedures for and Results of Exercise.** An Option shall be deemed exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and the Company has received full payment for the Shares with respect to which the Option is exercised. Full payment may, as authorized by the Administrator, consist of any consideration and method of payment allowable under Section 9(b) of the Plan, provided that the Administrator may, in its sole discretion, refuse to accept any form of consideration at the time of any Option exercise.

Exercise of an Option in any manner shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(v) **Rights as Stockholder.** Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 17 of the Plan.

(b) **Termination of Employment or Consulting Relationship.** Except as otherwise set forth in this Section 10(b), the Administrator shall establish and set forth in the applicable Option Agreement the terms and conditions upon which an Option shall remain exercisable, if at all, following termination of an Optionee's Continuous Service Status, which provisions may be waived or modified by the Administrator at any time. Unless the Administrator otherwise provides in the Option Agreement, to the extent that the Optionee is not vested in Optioned Stock at the date of termination of his or her Continuous Service Status, or if the Optionee (or other person entitled to exercise the Option) does not exercise the Option to the extent so entitled within the time specified in the Option Agreement or below (as applicable), the Option shall terminate and the Optioned Stock underlying the unexercised portion of the Option shall revert to the Plan. In no event may any Option be exercised after the expiration of the Option term as set forth in the Option Agreement (and subject to Section 7).

The following provisions (1) shall apply to the extent an Option Agreement does not specify the terms and conditions upon which an Option shall terminate upon termination of an Optionee's Continuous Service Status, and (2) establish the minimum post-termination exercise periods that may be set forth in an Option Agreement:

(i) **Termination other than Upon Disability or Death or for Cause.** In the event of termination of Optionee's Continuous Service Status other than under the circumstances set forth in subsections (ii) through (iv) below, such Optionee may exercise an Option for three months following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination. No termination shall be deemed to occur and this Section 10(b)(i) shall not apply if (A) the Optionee is a Consultant who becomes an Employee or Director, (B) the Optionee is an Employee who becomes a Consultant or Director or (C) the Optionee is a Director who becomes an Employee or a Consultant.

(ii) **Disability of Optionee.** In the event of termination of an Optionee's Continuous Service Status as a result of his or her disability (including a disability within the meaning of Section 22(e)(3) of the Code), such Optionee may exercise an Option at any time within 12 months following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination.

(iii) **Death of Optionee.** In the event of the death of an Optionee during the period of Continuous Service Status since the date of grant of the Option, or within 30 days following termination of Optionee's Continuous Service Status, the Option may be exercised by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance at any time within 12 months following the date of death, but only to the extent the Optionee was vested in the Optioned Stock as of the date of death or, if earlier, the date the Optionee's Continuous Service Status terminated.

(iv) **Termination for Cause.** In the event of termination of an Optionee's Continuous Service Status for Cause, any Option (including any exercisable portion thereof) held by such Optionee shall immediately terminate in its entirety upon first notification to the Optionee of termination of the Optionee's Continuous Service Status. If an Optionee's employment or consulting relationship with the Company is suspended pending an investigation

of whether the Optionee shall be terminated for Cause, all the Optionee's rights under any Option likewise shall be suspended during the investigation period and the Optionee shall have no right to exercise any Option. Unless prohibited by Applicable Laws, this Section 10(b)(iv) shall apply with equal effect to vested Shares acquired upon exercise of an Option, in that the Company shall have the right to repurchase such Shares from the Participant at the lesser of Participant's original cost for the Shares or the Fair Market Value of the Share at the time of repurchase. Such repurchase shall be effected pursuant to such terms and conditions, and at such time, as the Administrator shall determine. Nothing in this Section 10(b)(iv) shall in any way limit the Company's right to purchase unvested Shares issued upon exercise of an Option as set forth in the applicable Option Agreement.

(c) **Buyout Provisions.** The Administrator may at any time offer to buy out for a payment in cash or Shares an Option previously granted under the Plan based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

11. **Stock Grants and Stock Unit Awards.** Each Stock Award Agreement reflecting the issuance of a Stock Grant or Stock Unit shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of such agreements may change from time to time, and the terms and conditions of separate agreements need not be identical, but each such agreement shall include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(a) **Consideration.** A Stock Grant or Stock Unit may be awarded in consideration for such property or services as is permitted under Applicable Law, including for past services actually rendered to the Company or an Affiliate for its benefit.

(b) **Vesting.** Shares of Common Stock awarded under an agreement reflecting a Stock Grant and a Stock Unit award may, but need not, be subject to a share repurchase option, forfeiture restriction or other conditions in favor of the Company in accordance with a vesting or lapse schedule to be determined by the Board.

(c) **Termination of Participant's Continuous Service.** In the event a Participant's Continuous Service terminates, the Company may reacquire any or all of the Shares held by the Participant which have not vested or which are otherwise subject to forfeiture or other conditions as of the date of termination under the terms of the agreement.

(d) **Transferability.** Rights to acquire Shares under a Stock Grant or a Stock Unit agreement shall be transferable by the Participant only by will or by the laws of descent and distribution.

12. **Stock Purchase Rights.**

(a) **Rights to Purchase.** When the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing of the terms,

conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer. The offer to purchase Shares subject to Stock Purchase Rights shall be accepted by execution of a Stock Award Agreement in the form determined by the Administrator.

(b) **Repurchase Option.**

(i) **General.** Unless the Administrator determines otherwise, the Stock Award Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's employment with the Company for any reason (including death or disability). The purchase price for Shares repurchased pursuant to the Stock Award Agreement shall be the lesser of the original purchase price paid by the purchaser or the Fair Market Value of the Shares on the date of repurchase, and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine. In the absence of determination by the Administrator at the time of grant of the Stock Purchase Right, lapse of the repurchase option shall be tolled during any unpaid leave of absence, except to the extent otherwise provided by Applicable Laws. In the event of a military leave, to the extent required by Applicable Laws, lapse of the repurchase option shall toll during any unpaid portion of such leave, provided that upon a Participant's return from military leave the repurchase option shall be deemed to have lapsed to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(ii) **Termination of Continuous Service Status for Cause.** Unless prohibited by Applicable Laws, in the event of termination of a Participant's Continuous Service Status for Cause, the Company shall have the right to repurchase from the Participant vested Shares issued upon exercise of a Stock Purchase Right at the lesser of Participant's original cost for the Shares or the Fair Market Value of the Share at the time of repurchase or such other terms as determined by the Administrator. Such repurchase shall be effected pursuant to such terms and conditions, and at such time, as the Administrator shall determine. Nothing in this Section 12(b)(ii) shall in any way limit the Company's right to purchase unvested Shares as set forth in the applicable Stock Award Agreement.

(c) **Other Provisions.** The Stock Award Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Stock Award Agreements need not be the same with respect to each purchaser.

(d) **Rights as a Stockholder.** Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a stockholder, and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 17 of the Plan.

13. **Stock Appreciation Rights.**

(a) **General.** Stock Appreciation Rights may be granted either alone, in addition to, or in tandem with other Awards granted under the Plan. The Board may grant Stock Appreciation Rights to eligible Participants subject to terms and conditions not inconsistent with this Plan and determined by the Board. The specific terms and conditions applicable to the Participant shall be provided for in the Stock Award Agreement. Stock Appreciation Rights shall be exercisable, in whole or in part, at such times as the Board shall specify in the Stock Award Agreement.

(b) **Exercise of Stock Appreciation Right.** Upon the exercise of a Stock Appreciation Right, in whole or in part, the Participant shall be entitled to a payment in an amount equal to the excess of the Fair Market Value on the date of exercise of a fixed number of Shares covered by the exercised portion of the Stock Appreciation Right, over the Fair Market Value on the grant date of the Shares covered by the exercised portion of the Stock Appreciation Right (or such other amount calculated with respect to Shares subject to the award as the Board may determine). The amount due to the Participant upon the exercise of a Stock Appreciation Right shall be paid in such form of consideration as determined by the Board and may be in cash, Shares or a combination thereof, over the period or periods specified in the Stock Award Agreement. A Stock Award Agreement may place limits on the amount that may be paid over any specified period or periods upon the exercise of a Stock Appreciation Right, on an aggregate basis or as to any Participant. A Stock Appreciation Right shall be considered exercised when the Company receives written notice of exercise in accordance with the terms of the Stock Award Agreement from the person entitled to exercise the Stock Appreciation Right.

(c) **Nonassignability of Stock Appreciation Rights.** Except as determined by the Board, no Stock Appreciation Right shall be assignable or otherwise transferable by the Participant except by will or by the laws of descent and distribution.

14. **Section 162(m) Compliance.** Any Stock Award (other than an Option or any other Stock Award having a purchase price equal to 100% of the Fair Market Value on the date such award is made) that is intended as “qualified performance-based compensation” within the meaning of Section 162(m) of the Code must vest or become exercisable contingent on the achievement of one or more Qualifying Performance Criteria. Notwithstanding anything to the contrary herein, the Committee shall have the discretion to determine the time and manner of compliance with Section 162(m) of the Code as required under applicable regulations and to conform the procedures related to the Award to the requirements of Section 162(m).

15. **Taxes.**

(a) As a condition of the grant, vesting or exercise of an Option or Stock Award granted under the Plan, the Participant (or in the case of the Participant’s death, the person exercising the Option or Stock Award) shall make such arrangements as the Administrator may require for the satisfaction of any applicable federal, state, local or foreign withholding tax obligations that may arise in connection with such grant, vesting or exercise of the Option or Stock Award or the issuance of Shares. The Company shall not be required to

issue any Shares under the Plan until such obligations are satisfied. If the Administrator allows the withholding or surrender of Shares to satisfy a Participant's tax withholding obligations under this Section 15 (whether pursuant to Section 15(c), (d) or (e), or otherwise), the Administrator shall not allow Shares to be withheld in an amount that exceeds the minimum statutory withholding rates for federal and state tax purposes, including payroll taxes.

(b) In the case of an Employee and in the absence of any other arrangement, the Employee shall be deemed to have directed the Company to withhold or collect from his or her compensation an amount sufficient to satisfy such tax obligations from the next payroll payment otherwise payable after the date of an exercise of the Option or Stock Award.

(c) This Section 15(c) shall apply only after the date, if any, upon which the Common Stock becomes a Listed Security. In the case of Participant other than an Employee (or in the case of an Employee where the next payroll payment is not sufficient to satisfy such tax obligations, with respect to any remaining tax obligations), in the absence of any other arrangement and to the extent permitted under the Applicable Laws, the Participant shall be deemed to have elected to have the Company withhold from the Shares to be issued upon exercise of the Option or Stock Award that number of Shares having a Fair Market Value determined as of the applicable Tax Date (as defined below) equal to the amount required to be withheld. For purposes of this Section 15, the Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined under the Applicable Laws (the "Tax Date").

(d) If permitted by the Administrator, in its discretion, a Participant may satisfy his or her tax withholding obligations upon exercise of an Option or Stock Award by surrendering to the Company Shares that have a Fair Market Value determined as of the applicable Tax Date equal to the amount required to be withheld. In the case of Shares previously acquired from the Company that are surrendered under this Section 15(d), such Shares must have been owned by the Participant for more than six (6) months on the date of surrender (or such other period of time as is required for the Company to avoid adverse accounting charges).

(e) Any election or deemed election by a Participant to have Shares withheld to satisfy tax withholding obligations under Section 15(c) or (d) above shall be irrevocable as to the particular Shares as to which the election is made and shall be subject to the consent or disapproval of the Administrator. Any election by a Participant under Section 5(d) above must be made on or prior to the applicable Tax Date.

(f) In the event an election to have Shares withheld is made by a Participant and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, the Participant shall receive the full number of Shares with respect to which the Option or Stock Award is exercised but such Participant shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

16. Non-Transferability of Options and Stock Awards.

(a) **General.** Except as set forth in this Section 16, Options and Stock Awards may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution. The designation of a beneficiary by an Optionee will not constitute a transfer. An Option or Stock Award may be exercised, during the lifetime of the holder of an Option or Stock Award, only by such holder or a transferee permitted by this Section 16.

(b) **Limited Transferability Rights.** Notwithstanding anything else in this Section 16, prior to the date, if any, on which the Common Stock becomes a Listed Security, the Administrator may in its discretion grant Nonstatutory Stock Options that may be transferred by instrument to an inter vivos or testamentary trust in which the Options are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift to "Immediate Family" (as defined below), on such terms and conditions as the Administrator deems appropriate. Following the date, if any, on which the Common Stock becomes a Listed Security, the Administrator may in its discretion grant transferable Nonstatutory Stock Options pursuant to Option Agreements specifying the manner in which such Nonstatutory Stock Options are transferable. "Immediate Family" means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships.

17. Adjustments Upon Changes in Capitalization, Merger or Certain Other Transactions.

(a) **Changes in Capitalization.** Subject to any action required under Applicable Laws by the stockholders of the Company, the number of Shares of Common Stock covered by each outstanding Award, the numbers of Shares set forth in Sections 3 and 8 above, and the number of Shares of Common Stock that have been authorized for issuance under the Plan but as to which no Awards have yet been granted or that have been returned to the Plan upon cancellation or expiration of an Award, as well as the price per Share of Common Stock covered by each such outstanding Award, shall be proportionately adjusted for any increase or decrease in the number of issued Shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification of the Common Stock, or any other increase or decrease in the number of issued Shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares of Common Stock subject to an Award.

(b) **Dissolution or Liquidation.** In the event of the dissolution or liquidation of the Company, each Option and Stock Award will terminate immediately prior to the consummation of such action, unless otherwise determined by the Administrator.

(c) Corporate Transaction.

(i) In the event of a Corporate Transaction, each outstanding Option and Stock Award shall be assumed or an equivalent option or right shall be substituted by the successor corporation or a Parent or Subsidiary of such successor corporation, unless such successor corporation does not agree to assume the outstanding Options or Stock Awards or to substitute equivalent options or rights, in which case such Options or Stock Awards shall terminate upon the consummation of the transaction.

(ii) In the event of a Change of Control, if the successor corporation or a Parent or Subsidiary of such successor corporation agrees to assume outstanding Options or Stock Awards or to substitute them with equivalent options or stock awards, the vesting and exercisability of each outstanding Option and Stock Award shall accelerate such that the Options and Stock Awards shall become vested and exercisable as to the lesser of 25% of the Shares subject to the Option or Stock Award or the remaining unvested Shares, and any repurchase right of the Company with respect to Shares issued upon exercise of an Option or Stock Award shall lapse as to the lesser of 25% of the Shares initially subject to the Company repurchase right or the remaining Shares subject to the Company repurchase right. The acceleration of vesting and lapse of repurchase rights provided for in this Section 17(c)(ii) shall occur immediately prior to consummation of the Change of Control and shall apply to Shares that would have vested last under the vesting schedule applicable to the Option or Stock Award or the Shares subject to Company repurchase right.

(iii) In addition to the acceleration of vesting and lapse of repurchase rights provided for in Section 17(c)(ii), in the event of the Involuntary Termination within 12 months of the Change of Control of a Participant holding an Option or Stock Award that is assumed or substituted by the successor corporation in the Change of Control, or holding Common Stock issued upon exercise of an Option or Stock Award with respect to which the successor corporation has succeeded to a repurchase right as a result of the Change of Control, then any assumed or substituted Option or Stock Award held by such Participant at the time of the Involuntary Termination shall accelerate and become exercisable as to the lesser of 25% of the Shares subject to the Option or Stock Award or the remaining unvested Shares, and any repurchase right of the Company with respect to Shares issued upon exercise of an Option or Stock Award shall lapse as to the lesser of 25% of the Shares initially subject to the Company repurchase right or the remaining Shares subject to the Company repurchase right. The acceleration of vesting and lapse of repurchase rights provided for in this Section 17(c)(iii) shall occur as of the Participant's last day of Continuous Service Status and shall apply to Shares that would have vested first under the vesting schedule applicable to the Options or Stock Awards or the Shares subject to Company repurchase right had the Participant's employment continued.

(iv) In the event the successor corporation does not agree to assume outstanding Options or Stock Awards, or to substitute them with equivalent options or stock awards, the vesting and exercisability of each outstanding Option and Stock Award shall accelerate such that the Options and Stock Awards shall become vested and exercisable as to 100% of the remaining unvested Shares, and any repurchase right of the Company with respect to Shares issued upon exercise of an Option or Stock Award shall lapse as to 100% of the remaining Shares subject to the Company repurchase right. The acceleration of vesting and lapse

of repurchase rights provided for in this Section 17(c)(iv) shall occur immediately prior to consummation of the Change of Control.

(v) For purposes of this Section 17(c), an Option or a Stock Award shall be considered assumed, without limitation, if, at the time of issuance of the stock or other consideration upon a Corporate Transaction or a Change of Control, as the case may be, each holder of an Option or Stock Award would be entitled to receive upon exercise of the Option or Stock Award the same number and kind of shares of stock or the same amount of property, cash or securities as such holder would have been entitled to receive upon the occurrence of the transaction if the holder had been, immediately prior to such transaction, the holder of the number of Shares of Common Stock covered by the Option or the Stock Award at such time (after giving effect to any adjustments in the number of Shares covered by the Option or Stock Award as provided for in this Section 17); provided however that if such consideration received in the transaction is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon exercise of the Option or Stock Award to be solely common stock of the successor corporation or its Parent equal to the Fair Market Value of the per Share consideration received by holders of Common Stock in the transaction.

(d) **Certain Distributions.** In the event of any distribution to the Company's stockholders of securities of any other entity or other assets (other than dividends payable in cash or stock of the Company) without receipt of consideration by the Company, the Administrator may, in its discretion, appropriately adjust the price per Share of Common Stock covered by each outstanding Option or Stock Award to reflect the effect of such distribution.

18. **Time of Granting Options and Stock Awards.** The date of grant of an Option or Stock Award shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Award, or such other date as is determined by the Administrator, provided that in the case of any Incentive Stock Option, the grant date shall be the later of the date on which the Administrator makes the determination granting such Incentive Stock Option or the date of commencement of the Optionee's employment relationship with the Company. Notice of the determination shall be given to each Employee, Consultant or Director to whom an Option or Stock Award is so granted within a reasonable time after the date of such grant.

19. **Amendment and Termination of the Plan.**

(a) **Authority to Amend or Terminate.** The Board may at any time amend, alter, suspend or discontinue the Plan, but no amendment, alteration, suspension or discontinuation (other than an adjustment pursuant to Section 17 above) shall be made that would materially and adversely affect the rights of any Optionee or holder of Stock Awards under any outstanding grant, without his or her consent. In addition, to the extent necessary and desirable to comply with the Applicable Laws, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required.

(b) **Effect of Amendment or Termination.** Except as to amendments which the Administrator has the authority under the Plan to make unilaterally, no amendment or termination of the Plan shall materially and adversely affect Options or Stock Awards already granted, unless mutually agreed otherwise between the Optionee or holder of the Stock Awards and the Administrator, which agreement must be in writing and signed by the Optionee or holder of Stock Awards and the Company.

20. **Conditions Upon Issuance of Shares.** Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. As a condition to the exercise of an Option or Stock Award, the Company may require the person exercising the Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by law. Shares issued upon exercise of Awards granted prior to the date on which the Common Stock becomes a Listed Security shall be subject to a right of first refusal in favor of the Company pursuant to which the Participant will be required to offer Shares to the Company before selling or transferring them to any third party on such terms and subject to such conditions as is reflected in the applicable Option Agreement or Stock Award Agreement.

21. **Reservation of Shares.** The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

22. **Agreements.** Options and Stock Awards shall be evidenced by Option Agreements and Stock Award Agreements, respectively, in such form(s) as the Administrator shall from time to time approve.

23. **Stockholder Approval.** If required by the Applicable Laws, continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under the Applicable Laws.

24. **Information and Documents to Optionees and Purchasers.** Prior to the date, if any, upon which the Common Stock becomes a Listed Security and if required by the Applicable Laws, the Company shall provide financial statements at least annually to each Optionee and to each individual who acquired Shares pursuant to the Plan, during the period such Optionee or purchaser has one or more Options or Stock Awards outstanding, and in the case of an individual who acquired Shares pursuant to the Plan, during the period such individual owns such Shares. The Company shall not be required to provide such information if the issuance of Options or Stock Awards under the Plan is limited to key employees whose duties in connection with the Company assure their access to equivalent information.

XCYTE THERAPIES, INC.

AMENDED AND RESTATED 2003 DIRECTORS' STOCK OPTION PLAN

1. **Purposes of the Plan.** The purposes of this Directors' Stock Option Plan are to attract and retain the best available personnel for service as Directors of the Company, to provide additional incentive to the Outside Directors of the Company to serve as Directors, and to encourage their continued service on the Board.

All options granted hereunder shall be nonstatutory stock options.

2. **Definitions.** As used herein, the following definitions shall apply:

(a) "**Board**" shall mean the Board of Directors of the Company.

(b) "**Change of Control**" means (i) a sale of all or substantially all of the Company's assets, or (ii) any merger, consolidation or other business combination transaction of the Company with or into another corporation, entity or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the surviving entity) outstanding immediately after such transaction, or (iii) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of the Company.

(c) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(d) "**Common Stock**" shall mean the Common Stock of the Company.

(e) "**Company**" shall mean Xcyte Therapies, Inc., a Delaware corporation.

(f) "**Continuous Status as a Director**" shall mean the absence of any interruption or termination of service as a Director.

(g) "**Corporate Transaction**" means a sale of all or substantially all of the Company's assets, or a merger, consolidation or other capital reorganization or transaction of the Company with or into another corporation, entity or person, and includes a Change of Control.

(h) "**Director**" shall mean a member of the Board.

(i) "**Employee**" shall mean any person, including any officer or director, employed by the Company or any Parent or Subsidiary of the Company. The payment of a director's fee by the Company shall not be sufficient in and of itself to constitute "employment" by the Company.

(j) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

(k) “Fair Market Value” means, as of any date, the fair market value of the Common Stock, as determined by the Administrator in good faith on such basis as it deems appropriate and applied consistently with respect to optionees hereunder. Whenever possible, the determination of Fair Market Value shall be based upon the closing price for the Shares as reported in the Wall Street Journal for the applicable date.

(l) “Option” shall mean a stock option granted pursuant to the Plan. All options shall be nonstatutory stock options (i.e., options that are not intended to qualify as incentive stock options under Section 422 of the Code).

(m) “Optioned Stock” shall mean the Common Stock subject to an Option.

(n) “Optionee” shall mean an Outside Director who receives an Option.

(o) “Outside Director” shall mean a Director who is not an Employee.

(p) “Parent” shall mean a “parent corporation,” whether now or hereafter existing, as defined in Section 424(e) of the Code.

(q) “Plan” shall mean this Amended and Restated 2003 Directors’ Stock Option Plan.

(r) “Share” shall mean a share of the Common Stock, as adjusted in accordance with Section 11 of the Plan.

(s) “Subsidiary” shall mean a “subsidiary corporation,” whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. **Stock Subject to the Plan.** Subject to the provisions of Section 11 of the Plan, the maximum aggregate number of Shares which may be sold under the Plan is 440,909 Shares (the “Pool”) of Common Stock. The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option should expire or become unexercisable for any reason without having been exercised in full, the unpurchased Shares which were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares that are retained by the Company upon exercise of an Option in order to satisfy the exercise price of such Option, or any withholding taxes due with respect to such exercise, shall be treated as not issued and shall continue to be available for issuance under the Plan. If Shares which were acquired upon exercise of an Option are subsequently repurchased by the Company, such Shares shall not in any event be returned to the Plan and shall not become available for future grant under the Plan.

4. **Administration of and Grants of Options under the Plan.**

(a) **Administrator.** Except as otherwise required herein, the Plan shall be administered by the Board.

(b) **Procedure for Grants.** All grants of Options hereunder shall be automatic and nondiscretionary and shall be made strictly in accordance with the following provisions:

(i) No person shall have any discretion to select which Outside Directors shall be granted Options or to determine the number of Shares to be covered by Options granted to Outside Directors.

(ii) Each person who becomes an Outside Director (after June 2, 2004 and subject to approval of the Plan by the stockholders of the Company) shall be automatically granted an Option (the "First Option") to purchase 10,000 (as adjusted for stock splits, stock dividends, reclassifications and like transactions) Shares on the date on which such person first becomes an Outside Director, whether through election by the stockholders of the Company or appointment by the Board of Directors to fill a vacancy; provided that any options granted pursuant to this Section 4(b)(ii) after June 2, 2004 and prior to obtaining stockholder approval of this Section 4(b)(ii) shall be granted subject to stockholder approval.

(iii) Commencing with the annual meeting of stockholders of the Company for 2005, each Outside Director (including an Outside Director who did not receive a First Option) shall be automatically granted an Option (the "Annual Option") to purchase 10,000 Shares (as adjusted for stock splits, stock dividends, reclassifications and like transactions) on the date of each annual meeting of the stockholders of the Company, provided that he or she shall have served on the Board for at least six (6) months prior to the date of such annual meeting of stockholders.

(iv) Each Outside Director who is serving as a chairperson of a committee of the Board as of the date of each annual meeting of the stockholders of the Company (commencing with the annual meeting of stockholders of the Company for 2005) shall be automatically granted an Option (the "Annual Committee Chairperson Option") to purchase 2,500 Shares (as adjusted for stock splits, stock dividends, reclassifications and like transactions) on the date of such annual meeting of the stockholders of the Company.

(v) Each Outside Director who is serving as a member of the audit committee of the Board (including the chairperson) as of the date of each annual meeting of the stockholders of the Company (commencing with the annual meeting of stockholders of the Company for 2005) shall be automatically granted an Option (the "Annual Audit Committee Option") to purchase 2,500 Shares (as adjusted for stock splits, stock dividends, reclassifications and like transactions) on the date of such annual meeting of the stockholders of the Company.

(vi) Notwithstanding the provisions of subsections (ii), (iii), (iv), and (v) hereof, in the event that a grant would cause the number of Shares subject to outstanding Options plus the number of Shares previously purchased upon exercise of Options to exceed the

Pool, then each such automatic grant shall be for that number of Shares determined by dividing the total number of Shares remaining available for grant by the number of Outside Directors receiving an Option on such date on the automatic grant date. Any further grants shall then be deferred until such time, if any, as additional Shares become available for grant under the Plan through action of the stockholders to increase the number of Shares which may be issued under the Plan or through cancellation or expiration of Options previously granted hereunder.

(vii) Notwithstanding the provisions of subsections (ii) and (iii) hereof, any grant of an Option made before the Company has obtained stockholder approval of the Plan in accordance with Section 17 hereof shall be conditioned upon obtaining such stockholder approval of the Plan in accordance with Section 17 hereof.

(viii) The terms of each Option granted hereunder shall be as follows:

(1) each Option shall be exercisable only while the Outside Director remains a Director of the Company, except as set forth in Section 9 hereof;

(2) the exercise price per Share of the Option shall be 100% of the Fair Market Value per Share on the date of grant of the Option, determined in accordance with Section 8 hereof; and

(3) the First Option, each Annual Option, each Annual Committee Chairperson Option and each Annual Audit Committee Option shall become vested and exercisable as to 1/24th of the Shares underlying the Option on the one month anniversary of its date of grant and as to 1/24thth of the Shares underlying the Option each month thereafter so that, subject to Section 11 below, the Option shall be fully vested and exercisable on the second anniversary of its date of grant.

(c) **Powers of the Board.** Subject to the provisions and restrictions of the Plan, the Board shall have the authority, in its discretion: (i) to determine, upon review of relevant information and in accordance with Section 8(b) of the Plan, the Fair Market Value of the Common Stock; (ii) to determine the exercise price per Share of Options to be granted, which exercise price shall be determined in accordance with Section 8 of the Plan; (iii) to interpret the Plan; (iv) to prescribe, amend and rescind rules and regulations relating to the Plan; (v) to authorize any person to execute on behalf of the Company any instrument required to effectuate the grant of an Option previously granted hereunder; and (vi) to make all other determinations deemed necessary or advisable for the administration of the Plan.

(d) **Effect of Board's Decision.** All decisions, determinations and interpretations of the Board shall be final and binding on all Optionees and any other holders of any Options granted under the Plan.

(e) **Suspension or Termination of Option.** If the Chief Executive Officer or his or her designee reasonably believes that an Optionee has committed an act of misconduct, such officer may suspend the Optionee's right to exercise any option pending a determination by the Board (excluding the Outside Director accused of such misconduct). If the Board (excluding the Outside Director accused of such misconduct) determines an Optionee has committed an act

of embezzlement, fraud, dishonesty, nonpayment of an obligation owed to the Company, breach of fiduciary duty or deliberate disregard of the Company rules resulting in loss, damage or injury to the Company, or if an Optionee makes an unauthorized disclosure of any Company trade secret or confidential information, engages in any conduct constituting unfair competition, induces any Company customer to breach a contract with the Company or induces any principal for whom the Company acts as agent to terminate such agency relationship, neither the Optionee nor his or her estate shall be entitled to exercise any Option whatsoever. In making such determination, the Board of Directors (excluding the Outside Director accused of such misconduct) shall act fairly and shall give the Optionee an opportunity to appear and present evidence on Optionee's behalf at a hearing before the Board or a committee of the Board.

5. **Eligibility.** Options may be granted only to Outside Directors. All Options shall be automatically granted in accordance with the terms set forth in Section 4(b) above. An Outside Director who has been granted an Option may, if he or she is otherwise eligible, be granted an additional Option or Options in accordance with such provisions.

The Plan shall not confer upon any Optionee any right with respect to continuation of service as a Director or nomination to serve as a Director, nor shall it interfere in any way with any rights which the Director or the Company may have to terminate his or her directorship at any time.

6. **Term of Plan; Effective Date.** The Plan shall become effective on the effectiveness of the registration statement under the Securities Act of 1933, as amended, relating to the Company's initial public offering of securities. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 13 of the Plan.

7. **Term of Options.** The term of each Option shall be ten (10) years from the date of grant thereof, unless an Option terminates sooner pursuant to Section 9 below.

8. **Exercise Price and Consideration.**

(a) **Exercise Price.** The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be 100% of the Fair Market Value per Share on the date of grant of the Option.

(b) **Form of Consideration.** The consideration to be paid for the Shares to be issued upon exercise of an Option shall consist entirely of cash, check, other Shares of Common Stock having a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which the Option shall be exercised (which, if acquired from the Company, shall have been held more than six months), delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect exercise of the Option and prompt delivery to the Company of the sale or loan proceeds required to pay the exercise price, or any combination of such methods of payment and/or any other consideration or method of payment as shall be permitted under applicable corporate law.

9. Exercise of Option.

(a) **Procedure for Exercise; Rights as a Stockholder.** Any Option granted hereunder shall be exercisable at such times as are set forth in Section 4(b) above; provided, however, that no Options shall be exercisable prior to stockholder approval of the Plan in accordance with Section 17 below has been obtained.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and full payment for the Shares with respect to which the Option is exercised has been received by the Company. Full payment may consist of any consideration and method of payment allowable under Section 8(b) of the Plan. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. A share certificate for the number of Shares so acquired shall be issued to the Optionee as soon as practicable after exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 11 of the Plan.

Exercise of an Option in any manner shall result in a decrease in the number of Shares which thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) **Termination of Status as a Director.** If an Outside Director ceases to serve as a Director, he or she may, but only within ninety (90) days after the date he or she ceases to be a Director of the Company, exercise his or her Option to the extent that he or she was entitled to exercise it at the date of such termination. Notwithstanding the foregoing, in no event may the Option be exercised after its term set forth in Section 7 has expired. To the extent that such Outside Director was not entitled to exercise an Option at the date of such termination, or does not exercise such Option (to the extent he or she was entitled to exercise) within the time specified herein, the Option shall terminate and the Shares underlying the unexercised portion of the Option shall revert to the Pool.

(c) **Disability of Optionee.** Notwithstanding Section 9(b) above, in the event a Director is unable to continue his or her service as a Director with the Company as a result of his or her total and permanent disability (as defined in Section 22(e)(3) of the Code), he or she may, but only within twelve (12) months from the date of such termination, exercise his or her Option to the extent he or she was entitled to exercise it at the date of such termination. Notwithstanding the foregoing, in no event may the Option be exercised after its term set forth in Section 7 has expired. To the extent that he or she was not entitled to exercise the Option at the date of termination, or if he or she does not exercise such Option (to the extent he or she was entitled to exercise) within the time specified above, the Option shall terminate and the Shares underlying the unexercised portion of the Option shall revert to the Pool.

(d) **Death of Optionee.** In the event of the death of an Optionee (i) during the term of the Option who is, at the time of his or her death, a Director of the Company and who shall have been in Continuous Status as a Director since the date of grant of the Option, or (ii) three (3) months after the termination of Continuous Status as a Director, the Option may be exercised, at any time within twelve (12) months following the date of death, by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent of the right to exercise that had accrued at the date of death or the date of termination, as applicable. Notwithstanding the foregoing, in no event may the Option be exercised after its term set forth in Section 7 has expired. To the extent that an Optionee was not entitled to exercise the Option at the date of death or termination or if he or she does not exercise such Option (to the extent he or she was entitled to exercise) within the time specified above, the Option shall terminate and the Shares underlying the unexercised portion of the Option shall revert to the Plan.

10. **Nontransferability of Options.** The Option may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than (a) by will or by the laws of descent or distribution; (b) pursuant to a qualified domestic relations order (as defined by the Code or the rules thereunder); (c) by gift to the Optionee's Family; or (d) by gift or in exchange for an interest in such entity to (i) a trust in which Optionee and/or Optionee's Family have more than fifty percent of the beneficial interest, (ii) a foundation in which Optionee and/or Optionee's Family control the management of assets, or (iii) any other entity in which Optionee and/or Optionee's Family own more than fifty percent of the voting interests. For purposes of this Section 10, Optionee's "Family," shall include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, and any person sharing the employee's household (other than a tenant or employee). The designation of a beneficiary by an Optionee does not constitute a transfer. An Option may be exercised during the lifetime of an Optionee only by the Optionee or a transferee permitted by this Section.

11. **Adjustments Upon Changes in Capitalization; Corporate Transactions.**

(a) **Adjustment.** Subject to any required action by the stockholders of the Company, the number of Shares of Common Stock covered by each outstanding Option, each of the numbers of Shares of Common Stock set forth in Section 4(b) above, and the number of shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the price per share of Common Stock covered by each such outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class,

or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an Option.

(b) **Corporate Transactions.** In the event of a Corporate Transaction, each outstanding Option shall be assumed or an equivalent option shall be substituted by the successor corporation or a Parent or Subsidiary of such successor corporation, unless the successor corporation does not agree to assume the outstanding Options or to substitute equivalent options, in which case the Options shall terminate upon the consummation of the transaction; provided, however, that in the event of any transaction that qualifies as a Change of Control and notwithstanding whether or not outstanding Options are assumed, substituted for or terminated in connection with the transaction, the vesting of each outstanding Option shall accelerate in full such that each Optionee shall have the right to exercise his or her Option as to all of the Optioned Stock, including Shares as to which the Option would not otherwise be exercisable, immediately prior to consummation of the transaction.

For purposes of this Section 11(b), an Option shall be considered assumed, without limitation, if, at the time of issuance of the stock or other consideration upon such Corporate Transaction, each Optionee would be entitled to receive upon exercise of an Option the same number and kind of shares of stock or the same amount of property, cash or securities as the Optionee would have been entitled to receive upon the occurrence of such transaction if the Optionee had been, immediately prior to such transaction, the holder of the number of Shares of Common Stock covered by the Option at such time (after giving effect to any adjustments in the number of Shares covered by the Option as provided for in this Section 11); provided however that if such consideration received in the transaction was not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon exercise of the Option to be solely common stock of the successor corporation or its Parent equal to the Fair Market Value of the per Share consideration received by holders of Common Stock in the transaction.

(c) **Certain Distributions.** In the event of any distribution to the Company's stockholders of securities of any other entity or other assets (other than dividends payable in cash or stock of the Company) without receipt of consideration by the Company, the Administrator may, in its discretion, appropriately adjust the price per Share of Common Stock covered by each outstanding Option to reflect the effect of such distribution.

12. **Time of Granting Options.** The date of grant of an Option shall, for all purposes, be the date determined in accordance with Section 4(b) hereof. Notice of the determination shall be given to each Outside Director to whom an Option is so granted within a reasonable time after the date of such grant.

13. **Amendment and Termination of the Plan.**

(a) **Amendment and Termination.** The Board may amend or terminate the Plan from time to time in such respects as the Board may deem advisable; provided that, to the extent necessary and desirable to comply with Rule 16b-3 under the Exchange Act (or any other applicable law or regulation), the Company shall obtain approval of the stockholders of the

Company to Plan amendments to the extent and in the manner required by such law or regulation. Notwithstanding the foregoing, the provisions set forth in Section 4 of this Plan (and any other Sections of this Plan that affect the formula award terms required to be specified in this Plan by Rule 16b-3) shall not be amended more than once every six (6) months, other than to comport with changes in the Code, the Employee Retirement Income Security Act of 1974, as amended, or the rules thereunder.

(b) **Effect of Amendment or Termination.** Any such amendment or termination of the Plan that would impair the rights of any Optionee shall not affect Options already granted to such Optionee and such Options shall remain in full force and effect as if this Plan had not been amended or terminated, unless mutually agreed otherwise between the Optionee and the Board, which agreement must be in writing and signed by the Optionee and the Company.

14. **Conditions Upon Issuance of Shares.** Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with the legal requirements relating to the administration of stock option plans under applicable U.S. state corporate laws, U.S. federal and applicable state securities laws, the Code, any stock exchange or Nasdaq rules or regulations to which the Company may be subject and the applicable laws of any other country or jurisdiction where Options are granted under the Plan, as such laws, rules, regulations and requirements shall be in place from time to time (the "Applicable Laws"). Such compliance shall be determined by the Company in consultation with its legal counsel.

As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by law.

15. **Reservation of Shares.** The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

16. **Option Agreement.** Options shall be evidenced by written option agreements in such form as the Board shall approve.

17. **Stockholder Approval.** If required by the Applicable Laws, continuance of the Plan shall be subject to approval by the stockholders of the Company. Such stockholder approval shall be obtained in the manner and to the degree required under the Applicable Laws.