

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

**FORM 8-K**

**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported): February 02, 2023**

**SYNDAX PHARMACEUTICALS, INC.**

(Exact name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-37708**  
(Commission File Number)

**32-0162505**  
(IRS Employer  
Identification No.)

**Building D**  
**Floor 3**  
**35 Gatehouse Drive**  
**Waltham, Massachusetts**  
(Address of Principal Executive Offices)

**02451**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (781) 419-1400**

(Former Name or Former Address, if Changed Since Last Report)

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

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

**Securities registered pursuant to Section 12(b) of the Act:**

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	SNDX	The Nasdaq Stock Market LLC

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

Emerging growth company

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

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

On February 2, 2023, the Board of Directors (the “**Board**”) of Syndax Pharmaceuticals, Inc. (the “**Company**”) approved the Syndax Pharmaceuticals, Inc. 2023 Inducement Plan (the “**2023 Inducement Plan**”). The terms of the 2023 Inducement Plan are substantially similar to the terms of the Company’s 2015 Omnibus Incentive Plan with the exception that incentive stock options may not be issued under the 2023 Inducement Plan and awards under the 2023 Inducement Plan may only be issued to eligible recipients under the applicable Nasdaq Listing Rules. The 2023 Inducement Plan was adopted by the Board without stockholder approval pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules.

The Board has initially reserved 1,900,000 shares of the Company’s common stock for issuance pursuant to awards granted under the 2023 Inducement Plan. In accordance with Rule 5635(c)(4) of the Nasdaq Listing Rules, awards under the 2023 Inducement Plan may only be made to an employee who is commencing employment with the Company or any subsidiary or who is being rehired following a bona fide interruption of employment by the Company or any subsidiary, in either case if he or she is granted such award in connection with his or her commencement of employment with the Company or a subsidiary and such grant is an inducement material to his or her entering into employment with the Company or such subsidiary.

A complete copy of the 2023 Inducement Plan and the form of stock option agreement to be used thereunder are filed herewith as Exhibit 10.1 and 10.2 and incorporated herein by reference. The above summary of the 2023 Inducement Plan does not purport to be complete and is qualified in its entirety by reference to such exhibit.

## **Item 9.01 Financial Statements and Exhibits.**

<b>Exhibit No.</b>	<b>Description</b>
10.1	<a href="#">Syndax Pharmaceuticals, Inc. 2023 Inducement Plan.</a>
10.2	<a href="#">Form of Option Agreement pursuant to the Syndax Pharmaceuticals, Inc. 2023 Inducement Plan.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURES**

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

**SYNDAX PHARMACEUTICALS, INC.**

Date: February 8, 2023

By: /s/ Michael A. Metzger

Michael A. Metzger  
Chief Executive Officer

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**SYNDAX PHARMACEUTICALS, INC.**  
**2023 INDUCEMENT PLAN**

Syndax Pharmaceuticals, Inc., a Delaware corporation (the “**Company**”), sets forth herein the terms of its 2023 Inducement Plan (the “**Plan**”), as follows:

**1. GENERAL**

**1.1 Purpose.**

This Plan is intended to provide (a) an inducement material for certain individuals to enter into employment with the Company within the meaning of Rule 5635(c)(4) of the NASDAQ Marketplace Rules, and (b) incentives to Eligible Employees to stimulate their efforts towards the success of the Company and to operate and manage its business in a manner that will provide for the long-term growth and profitability of the Company. To that end, the Plan provides for the grant of Awards of Options, Stock Appreciation Rights, Restricted Stock, Unrestricted Stock, Stock Units, Dividend Equivalent Rights, Performance Awards, and Other Equity-Based Awards.

**1.2 Eligible Award Recipients.**

The only persons eligible to receive grants of Awards under this Plan are individuals who satisfy the standards for inducement grants under NASDAQ Marketplace Rule 5635(c)(4) or 5635(c)(3), if applicable, and the related guidance under NASDAQ IM 5635-1. A person who previously served as an Employee or Director will not be eligible to receive Awards under the Plan, other than following a *bona fide* period of non-employment. Persons eligible to receive grants of Awards under this Plan are referred to in this Plan as “**Eligible Employees**.” These Awards must be approved by either a majority of the Company’s “Independent Directors” (as such term is defined in NASDAQ Marketplace Rule 5605(a)(2)) (“**Independent Directors**”) or the Company’s compensation committee, provided such committee is comprised solely of Independent Directors of the Company (the “**Independent Compensation Committee**”) in order to comply with the exemption from the stockholder approval requirement for “inducement grants” provided under Rule 5635(c)(4) of the NASDAQ Marketplace Rules. NASDAQ Marketplace Rule 5635(c)(4) and the related guidance under NASDAQ IM 5635-1 (together with any analogous rules or guidance effective after the date hereof, the “**Inducement Award Rules**”).

**2. DEFINITIONS**

For purposes of interpreting the Plan and related documents (including Award Agreements), the following definitions shall apply:

2.1 “**Affiliate**” means, with respect to the Company, any company or other trade or business that controls, is controlled by, or is under common control with, the Company within the meaning of Rule 405 of Regulation C under the Securities Act, including, without limitation, any Subsidiary. For purposes of grants of Options or Stock Appreciation Rights, an entity may not be considered an Affiliate of the Company unless the Company holds a “controlling interest” in such entity, where the term “controlling interest” has the same meaning as provided in Treasury Regulation Section 1.414(c)-2(b)(2)(i), provided that the language “at least 50 percent” is used instead of “at least 80 percent” and, provided further, that where granting of Options or Stock Appreciation Rights is based upon a legitimate business criteria, the language “at least 20 percent” is used instead of “at least 80 percent” each place it appears in Treasury Regulation Section 1.414(c)-2(b)(2)(i).

2.2 “**Applicable Laws**” means the legal requirements relating to the Plan and the Awards under (a) applicable provisions of the Code, the Securities Act, the Exchange Act, any rules or regulations thereunder, and any other laws, rules, regulations, and government orders of any jurisdiction applicable to the Company or its Affiliates, (b) applicable provisions of the corporate, securities, tax and other laws, rules, regulations and government orders of any jurisdiction applicable to Awards granted to residents thereof, and (c) the rules of any Stock Exchange or Securities Market on which the Stock is listed or publicly traded.

2.3 “**Award**” means a grant of an Option, Stock Appreciation Right, Restricted Stock, Unrestricted Stock, Stock Units, Dividend Equivalent Right, Performance Award, or Other Equity-Based Award under the Plan.

2.4 “**Award Agreement**” means the written agreement, in such written, electronic, or other form as determined by the Committee, between the Company and a Grantee that evidences and sets forth the terms and

conditions of an Award.

2.5 “**Benefit Arrangement**” shall have the meaning set forth in **Section 15**.

2.6 “**Board**” means the Board of Directors of the Company.

2.7 “**Capital Stock**” shall mean, with respect to any Person, any and all shares, interests, participations, or other equivalents (however designated, whether voting or non-voting) in equity of such Person, whether outstanding on the Effective Date or issued thereafter, including, without limitation, all shares of Stock.

2.8 “**Cause**” shall have the meaning set forth in an applicable agreement between a Grantee and the Company or an Affiliate, and in the absence of such agreement, shall mean, with respect to any Grantee and as determined by the Board, (i) gross negligence or willful misconduct in connection with the performance of duties; (ii) conviction of, or pleading guilty or *nolo contendere* to, a criminal offense (other than minor traffic offenses); (iii) a material violation of a Company policy; or (iv) a material breach of any term of any employment, consulting, or other services, confidentiality, intellectual property, or non-competition agreements, if any, between such Grantee and the Company or an Affiliate. Any determination by the Committee regarding whether an event constituting Cause shall have occurred shall be final, binding, and conclusive.

2.9 “**Change in Control**” shall mean, subject to **Section 18.9**, the occurrence of any of the following:

(a) A transaction or a series of related transactions whereby any person (as defined in Sections 13(d) and 14(d)(2) of the Exchange Act) or Group (other than the Company or any Affiliate) becomes the Beneficial Owner of more than fifty percent (50%) of the total voting power of the Voting Stock of the Company, on a Fully Diluted Basis;

(b) Individuals who, as of the Effective Date, constitute the Board (the “**Incumbent Board**”) (together with any new directors whose election by such Incumbent Board or whose nomination by such Incumbent Board for election by the stockholders of the Company was approved by a vote of at least a majority of the members of such Incumbent Board then in office who either were members of such Incumbent Board or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the members of such Board then in office;

(c) The Company consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Company (regardless of whether the Company is the surviving Person), other than any such transaction in which the Prior Stockholders own directly or indirectly at least a majority of the voting power of the Voting Stock of the surviving Person in such reorganization, merger, or consolidation transaction immediately after such transaction;

(d) The consummation of any direct or indirect sale, lease, transfer, conveyance, or other disposition (other than by way of reorganization, merger, or consolidation), in one transaction or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any person (as defined in Sections 13(d) and 14(d)(2) of the Exchange Act) or Group (other than the Company or any Affiliate); or

(e) The stockholders of the Company adopt a plan or proposal for the liquidation, winding up, or dissolution of the Company.

The Board shall have full and final authority, in its sole discretion, to determine conclusively whether a Change in Control has occurred pursuant to the above definition, the date of the occurrence of such Change in Control, and any incidental matters relating thereto.

2.10 “**Code**” means the Internal Revenue Code of 1986, as amended, as now in effect or as hereafter amended, and any successor thereto. References in the Plan to any Code Section shall be deemed to include, as applicable, regulations and guidance promulgated under such Code Section.

2.11 “**Committee**” means a committee of, and designated from time to time by resolution of, the Board, which shall be constituted as provided in **Section 3.3** (or, if no Committee has been designated, the Board itself).

2.12 “**Company**” means Syndax Pharmaceuticals, Inc., a Delaware corporation, and any successor thereto.

2.13 “**Determination Date**” means the Grant Date or such other date as of which the Fair Market

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Value of a share of Stock is required to be established for purposes of the Plan.

2.14“**Director**” means a member of the Board. Directors are not eligible to receive Awards under the Plan with respect to their service in such capacity.

2.15“**Disability**” means the inability of the Grantee to perform each of the essential duties of such Grantee’s position by reason of a medically determinable physical or mental impairment which is potentially permanent in character or which can be expected to last for a continuous period of not less than 12 months.

2.16“**Dividend Equivalent Right**” means a right, granted to a Grantee under **Section 13**, to receive, or to receive credits for the future payment of, cash, Stock, other Awards or other property equal in value to dividend payments or distributions or other periodic payments, declared or paid with respect to a specified number of shares of Stock, as if such shares of Stock had been issued to and held by the Grantee of such Dividend Equivalent Right as of the record date.

2.17“**Effective Date**” means February 2, 2023.

2.18“**Eligible Employee**” shall have the meaning set forth in **Section 1.2**.

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

2.20“**Exchange Act**” means the Securities Exchange Act of 1934, as now in effect or as hereafter amended.

2.21“**Fair Market Value**” means the fair market value of a share of Stock for purposes of the Plan, which shall be determined as of any Determination Date as follows:

(a) If on such Determination Date the shares of Stock are listed on a Stock Exchange, or are publicly traded on another Securities Market, the Fair Market Value of a share of Stock shall be the closing price of the Stock as reported on such Stock Exchange or such Securities Market (provided that, if there is more than one such Stock Exchange or Securities Market, the Committee shall designate the appropriate Stock Exchange or Securities Market for purposes of the Fair Market Value determination). If there is no such reported closing price on such Determination Date, the Fair Market Value of a share of Stock shall be the closing price of the Stock on the next preceding day on which any sale of Stock shall have been reported on such Stock Exchange or such Securities Market.

(b) If on such Determination Date the shares of Stock are not listed on a Stock Exchange or publicly traded on a Securities Market, the Fair Market Value of a share of Stock shall be the value of the Stock as determined by the Committee by the reasonable application of a reasonable valuation method, in a manner consistent with Code Section 409A.

Notwithstanding this **Section 2.21** or **Section 18.3**, for purposes of determining taxable income and the amount of the related tax withholding obligation pursuant to **Section 18.3**, the Fair Market Value will be determined by the Committee in good faith using any reasonable method as it deems appropriate, to be applied consistently with respect to Grantees; provided, further, that the Committee shall determine the Fair Market Value of shares of Stock for tax withholding obligations due in connection with sales, by or on behalf of a Grantee, of such shares of Stock subject to an Award to pay the Option Price, SAR Exercise Price, and/or any tax withholding obligation on the same date on which such shares may first be sold pursuant to the terms of the applicable Award Agreement (including broker-assisted cashless exercises of Options and Stock Appreciation Rights, as described in **Section 12.3**, and sell-to-cover transactions) in any manner consistent with applicable provisions of the Code, including but not limited to using the sale price of such shares on such date (or if sales of such shares are effectuated at more than one sale price, the weighted average sale price of such shares on such date) as the Fair Market Value of such shares, so long as such Grantee has provided to the Company, or its designee or agent, with advance written notice of such sale.

2.22“**Family Member**” shall mean, with respect to any Grantee as of any date of determination, (a) a person who is a spouse, former spouse, child, stepchild, grandchild, parent, stepparent, grandparent, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law, or sister-in-law, including adoptive relationships, of the Grantee, (b) any person sharing the Grantee’s household (other

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than a tenant or employee), (c) a trust in which any one or more of the persons specified in clauses (a) and (b) above (and such Grantee) own more than fifty percent (50%) of the beneficial interest, (d) a foundation in which any one or more of the persons specified in clauses (a) and (b) above and (and such Grantee) control the management of assets, and (e) any other entity in which one or more of the persons specified in clauses (a) and (b) above and (and such Grantee) own more than fifty percent (50%) of the voting interests.

2.23“**Fully Diluted Basis**” shall mean, as of any date of determination, the sum of (x) the number of shares of Voting Stock outstanding as of such date of determination plus (y) the number of shares of Voting Stock issuable upon the exercise, conversion, or exchange of all then- outstanding warrants, options, convertible Capital Stock or indebtedness, exchangeable Capital Stock or indebtedness, or other rights exercisable for or convertible or exchangeable into, directly or indirectly, shares of Voting Stock, whether at the time of issue or upon the passage of time or upon the occurrence of some future event, and whether or not in-the-money as of such date of determination.

2.24“**Grant Date**” means, as determined by the Board, the latest to occur of (i) the date as of which the Board approves the Award, (ii) the date on which the recipient of an Award first becomes eligible to receive an Award under **Section 6**, or (iii) such subsequent date as may be specified by the Board in a corporate action approving the Award.

2.25“**Grantee**” means a person who receives or holds an Award under the Plan.

2.26“**Group**” shall have the meaning set forth in Sections 13(d) and 14(d)(2) of the Exchange Act.

2.27“**Independent Compensation Committee**” shall have the meaning set forth in **Section 1.2**.

2.28“**Independent Director**” shall have the meaning set forth in **Section 1.2**.

2.29“**Inducement Award Rules**” shall have the meaning set forth in **Section 1.2**.

2.30“**Non-Employee Director**” shall have the meaning set forth in Rule 16b-3 under the Exchange Act.

2.31“**Option**” means an option to purchase one or more shares of Stock at a specified Option Price awarded to a Grantee pursuant to **Section 8** that does not qualify as an “incentive stock option” within the meaning of Section 422 of the Code.

2.32“**Option Price**” means the per share exercise price for shares of Stock subject to an Option.

2.33“**Other Agreement**” shall have the meaning set forth in **Section 15**.

2.34“**Outside Director**” means a member of the Board who is not an officer or Employee of the Company.

2.35“**Other Equity-Based Award**” means an Award representing a right or other interest that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Stock, other than an Option, Stock Appreciation Right, Restricted Stock, a Stock Unit, Unrestricted Stock, a Dividend Equivalent Right, or a Performance Award.

2.36“**Parachute Payment**” shall have the meaning set forth in **Section 15**.

2.37“**Performance Award**” means an Award made subject to the attainment of performance goals (as determined by the Board) over a Performance Period of up to ten (10) years.

2.38“**Performance Measures**” means measures as specified in **Section 14**.

2.39“**Performance Period**” means the period of time, up to ten (10) years, during which the performance goals must be met in order to determine the degree of payout and/or vesting with respect to a Performance Award.

2.40“**Plan**” means this Syndax Pharmaceuticals, Inc. 2023 Inducement Plan, as amended from time to

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time.

2.41“**Purchase Price**” means the purchase price for each share of Stock pursuant to a grant of Restricted Stock, Stock Units or Unrestricted Stock.

2.42“**Restricted Stock**” means shares of Stock awarded to a Grantee pursuant to **Section 10**.

2.43“**SAR Exercise Price**” means the per share exercise price of a SAR.

2.44“**Securities Act**” means the Securities Act of 1933, as now in effect or as hereafter amended.

2.45“**Securities Market**” shall mean an established securities market.

2.46“**Separation from Service**” shall have the meaning set forth in Code Section 409A.

2.47“**Service**” means service qualifying a Grantee as a Service Provider to the Company or any Affiliate. Unless otherwise provided in the applicable Award Agreement, a Grantee’s change in position or duties shall not result in interrupted or terminated Service, so long as such Grantee continues to be a Service Provider to the Company or any Affiliate. Subject to the preceding sentence, any determination by the Board whether a termination of Service shall have occurred for purposes of the Plan shall be final, binding, and conclusive. If a Service Provider’s employment or other Service relationship is with an Affiliate of the Company and the applicable entity ceases to be an Affiliate of the Company, a termination of Service shall be deemed to have occurred when such entity ceases to be an Affiliate unless the Service Provider transfers his or her employment or other Service relationship to the Company or any of its other Affiliates.

2.48“**Service Provider**” shall mean (a) an Employee or Director of the Company or an Affiliate, or (b) a consultant or adviser to the Company or an Affiliate (i) who is a natural person, (ii) who is currently providing bona fide services to the Company or an Affiliate, and (iii) whose services are not in connection with the Company’s sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company’s Capital Stock; provided, that consultants and advisers are not eligible to receive Awards under the Plan with respect to their service in such capacity.

2.49“**Service Recipient Stock**” shall have the meaning set forth in Code Section 409A.

2.50“**Share Reserve**” shall have the meaning set forth in **Section 4.1**.

2.51“**Stock**” means the common stock, par value \$0.0001 per share, of the Company, or any security into which shares of Stock may be changed or for which shares of Stock may be exchanged as provided in **Section 17.1**.

2.52“**Stock Appreciation Right**” or “**SAR**” means a right awarded to a Grantee under **Section 9**.

2.53“**Stock Exchange**” means the NASDAQ Stock Market LLC, any successor thereto, or another established national or regional stock exchange.

2.54“**Stock Unit**” means a bookkeeping entry representing the equivalent of one share of Stock awarded to a Grantee pursuant to **Section 10** that may be settled, subject to the terms and conditions of the applicable Award Agreement, in shares of Stock, cash, or a combination thereof.

2.55“**Subsidiary**” shall mean any corporation (other than the Company) or non-corporate entity with respect to which the Company owns, directly or indirectly, fifty percent (50%) or more of the total combined voting power of all classes of Voting Stock. In addition, any other entity may be designated by the Committee as a Subsidiary, provided that (a) such entity could be considered as a subsidiary according to generally accepted accounting principles in the United States of America and (b) in the case of an Award of Options or Stock Appreciation Rights, such Award would be considered to be granted in respect of Service Recipient Stock under Code Section 409A.

2.56“**Substitute Award**” means an Award granted upon assumption of, or in substitution for, outstanding awards previously granted by a company or other entity acquired by the Company or an Affiliate

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or with which the Company or an Affiliate combines.

2.57“**Unrestricted Stock**” shall mean Stock that is free of any restrictions.

2.58“**Voting Stock**” shall mean, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers, or other voting members of the governing body of such Person.

### 3. ADMINISTRATION

#### 3.1. Board.

The Board shall have such powers and authorities related to the administration of the Plan as are consistent with the Company’s certificate of incorporation and by-laws, Applicable Laws, and the Inducement Award Rules. The Board shall have full power and authority to take all actions and to make all determinations required or provided for under the Plan, any Award, or any Award Agreement and shall have full power and authority to take all such other actions and to make all such other determinations not inconsistent with the specific terms and provisions of the Plan that the Board deems to be necessary or appropriate to the administration of the Plan, any Award, or any Award Agreement; provided, however, that Awards may only be granted by either (a) a majority of the Company’s Independent Directors or (b) the Independent Compensation Committee. Subject to those constraints and the other constraints of the Inducement Award Rules, the Board may delegate some of its powers of administration of the Plan to a Committee or Committees, as provided in **Section 3.2**. All such actions and determinations shall be made by the affirmative vote of a majority of the members of the Board present at a meeting at which a quorum is present or by unanimous consent of the members of the Board executed in writing or evidenced by electronic transmission in accordance with the Company’s certificate of incorporation and by-laws and Applicable Laws. The Board shall have the authority to interpret and construe all provisions of the Plan, any Award, and any Award Agreement, and any such interpretation and construction, and any other determination contemplated to be made under the Plan, any Award, or any Award Agreement, by the Board shall be final, binding, and conclusive on all persons, whether or not expressly provided for in any provision of the Plan, such Award, or such Award Agreement.

#### 3.2. Committee.

The Board from time to time may delegate to the Committee such powers and authorities related to the administration and implementation of the Plan, as set forth in **Section 3.1** above and other applicable provisions, as the Board shall determine, consistent with the Company’s certificate of incorporation and by-laws, Applicable Laws, and the Inducement Award Rules.

(i) Except as provided in Subsection (ii) and except as the Board may otherwise determine, the Committee, if any, appointed by the Board to administer the Plan shall consist of two or more Outside Directors of the Company who: (a) meet such requirements as may be established from time to time by the Securities and Exchange Commission for plans intended to qualify for exemption under Rule 16b-3 (or its successor) under the Exchange Act, and (b) comply with the independence requirements of the Stock Exchange or Securities Market on which the shares of Stock are listed or publicly traded.

(ii) The Board may also appoint one or more separate committees of the Board, each composed of one or more directors of the Company who need not be Outside Directors, who may administer the Plan with respect to Employees or other Service Providers who are not executive officers (as defined under Rule 3b-7 or the Exchange Act) or Directors of the Company, may grant Awards under the Plan to Eligible Employees (provided that Awards may only be granted by either (x) a majority of the Company’s Independent Directors or (y) the Independent Compensation Committee), and may determine all terms of such Awards, subject to the requirements of the Inducement Award Rules, Rule 16b-3 and the rules of the Stock Exchange or Securities Market on which the shares of Stock are listed or publicly traded.

In the event that the Plan, any Award, or any Award Agreement entered into hereunder provides for any action to be taken by or determination to be made by the Board, such action may be taken or such determination may be made by a Committee if the power and authority to do so has been delegated (and such delegated authority has not been revoked) to such Committee by the Board as provided for in this Section. Unless otherwise expressly determined by the Board, any such action or determination by the Committee shall be final, binding, and conclusive. To the extent permitted by Applicable Laws, the Committee may delegate its authority under the Plan to a member of the Board, provided, that such member of the Board to whom the Committee delegates authority under the Plan must be an Outside Director who satisfies the requirements of Subsection (i) (a)-(b) of this Section

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3.2.

### **3.3. Terms of Awards.**

Subject to the other terms and conditions of the Plan and the Inducement Award Rules, the Board shall have full and final authority to:

(i) designate Grantees (provided that Awards may only be granted by either (x) a majority of the Company's Independent Directors or (y) the Independent Compensation Committee);

(ii) determine the type or types of Awards to be made to a Grantee;

(iii) determine the number of shares of Stock to be subject to an Award or to which an Award relates;

(iv) establish the terms and conditions of each Award (including, but not limited to, the Option Price, SAR Exercise Price, the Purchase Price, the nature and duration of any restriction or condition (or provision for lapse thereof) relating to the vesting, exercise, transfer, or forfeiture of an Award or the shares of Stock subject thereto, the treatment of an Award in the event of a Change in Control (subject to applicable agreements);

(v) prescribe the form of each Award Agreement evidencing an Award;

(vi) subject to the limitations on repricing in **Section 3.6**, amend, modify or supplement the terms of any outstanding Award. Such authority specifically includes the authority, in order to effectuate the purposes of the Plan but without amending the Plan, to make or modify outstanding Awards made to Eligible Employees who are foreign nationals or are individuals who are employed outside the United States to recognize differences in local law, tax policy, or custom. Notwithstanding the foregoing, no amendment, modification, or supplement of the terms of any outstanding Award shall, without the consent of the Grantee thereof, impair the Grantee's rights under such Award; and

(vii) make Substitute Awards.

### **3.4. Effect of Board's Decision.**

All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

### **3.5. Forfeiture; Recoupment.**

The Board may reserve the right in an Award Agreement to cause a forfeiture of the gain realized by a Grantee with respect to an Award thereunder on account of actions taken by, or failed to be taken by, such Grantee in violation or breach of, or in conflict with, any (a) employment agreement, (b) non-competition agreement, (c) agreement prohibiting solicitation of employees or clients of the Company or any Affiliate, (d) confidentiality obligation with respect to the Company or any Affiliate, or (e) Company or Affiliate policy or procedure, (f) other agreement, or (g) other obligation of such Grantee to the Company or an Affiliate, as and to the extent specified in such Award Agreement. If the Grantee of an outstanding Award is an employee of the Company or any Affiliate and such Grantee's Service is terminated for Cause, the Committee may annul such Grantee's outstanding Award as of the date of the Grantee's termination of Service for Cause.

Any Award granted pursuant to the Plan shall be subject to mandatory repayment by the Grantee to the Company (x) to the extent set forth in this Plan or an Award Agreement or (y) to the extent the Grantee is, or in the future becomes, subject to (i) any Company "clawback" or recoupment policy that is adopted to comply with the requirements of any Applicable Laws or (ii) any Applicable Laws which impose mandatory recoupment, under circumstances set forth in such Applicable Laws.

Furthermore, if the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the federal securities laws, and any Award Agreement so provides, any Grantee of an Award under such Award Agreement who knowingly engaged in such misconduct, was grossly negligent in engaging in such misconduct, knowingly failed to prevent such misconduct, or was grossly negligent in failing to prevent such misconduct, shall reimburse the Company the amount of any payment in settlement of an Award earned or accrued during the 12-month period following the first public issuance or filing with the United States Securities and Exchange Commission (whichever first occurred) of the financial document that contained information affected by such material noncompliance.

Notwithstanding any other provision of the Plan or any provision of any Award Agreement, if the Company

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is required to prepare an accounting restatement, then a Grantee shall forfeit any cash or shares of Stock received in connection with an Award (or an amount equal to the Fair Market Value of such shares of Stock on the date of delivery if the Grantee no longer holds the shares of Stock) if pursuant to the terms of the Award Agreement for such Award, the amount of the Award earned or the vesting in the Award was explicitly based on the achievement of pre-established performance goals set forth in the Award Agreement (including earnings, gains, or other performance goals) that are later determined, as a result of the accounting restatement, not to have been achieved.

### **3.6. No Repricing Without Stockholder Approval.**

Except in connection with a corporate transaction involving the Company (including, without limitation, any stock dividend, distribution (whether in the form of cash, shares of Stock, other securities, or other property), stock split, extraordinary dividend, recapitalization, Change in Control, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of shares of Stock, or other securities or similar transaction), the Company may not: (a) amend the terms of outstanding Options or SARs to reduce the Option Price or SAR Exercise Price, as applicable, of such outstanding Options or SARs; (b) cancel outstanding Options or SARs in exchange for or substitution of Options or SARs with an Option Price or SAR Exercise Price, as applicable, that is less than the Option Price or SAR Exercise Price of the original Options or SARs; or (c) cancel outstanding Options or SARs with an Option Price or SAR Exercise Price, as applicable, above the current per share Fair Market Value in exchange for cash or other securities, in each case unless such action (i) is subject to and approved by the Company's stockholders or (ii) would not be deemed to be a repricing under the rules of any Stock Exchange or Securities Market on which the Stock is listed or publicly traded.

### **3.7. Deferral Arrangement.**

The Board may permit or require the deferral of any payment pursuant to an Award into a deferred compensation arrangement, subject to such rules and procedures as it may establish, which may include provisions for the payment or crediting of interest or Dividend Equivalent Rights and, in connection therewith, provisions for converting such credits into deferred Stock Units and for restricting deferrals to comply with hardship distribution rules affecting tax-qualified retirement plans subject to Code Section 401(k)(2)(B)(IV); provided that no Dividend Equivalent Rights may be granted in connection with, or related to, an Award of Options or SARs. Any such deferrals shall be made in a manner that complies with Code Section 409A, including, if applicable, with respect to when a Separation from Service occurs.

### **3.8. Limitation on Liability.**

No member of the Board or the Committee shall be liable for any action or determination made in good faith with respect to the Plan, any Award, or any Award Agreement. Notwithstanding any provision of the Plan to the contrary, neither the Company, any of its Affiliates, the Board, the Committee, nor any person acting on behalf of the Company, any of its Affiliates, the Board, or the Committee will be liable to any Grantee or to the estate or beneficiary of any Grantee or to any other holder of an Award under the Plan by reason of any acceleration of income, or any additional tax (including any interest and penalties), asserted by reason of the failure of an Award to satisfy the requirements of Code Section 409A or by reason of Code Section 4999, or otherwise asserted with respect to the Award; provided, that this **Section 3.8** shall not affect any of the rights or obligations set forth in an applicable agreement between the Grantee and the Company or any of its Affiliates.

### **3.9. Stock Issuance/Book-Entry.**

Notwithstanding any provision of this Plan to the contrary, the issuance of the shares of Stock under the Plan may be evidenced in such a manner as the Board, in its discretion, deems appropriate, including by book-entry or direct registration (including transaction advices) or the issuance of one or more share certificates.

## **4. STOCK SUBJECT TO THE PLAN**

### **4.1. Number of Shares of Stock Available for Awards.**

Subject to the other provisions of this **Section 4** and subject to adjustment as provided under **Section 17.1**, 1,900,000 shares of Stock shall be authorized for issuance pursuant to Awards under the Plan (the "**Share Reserve**").

### **4.2. Adjustments in Authorized Shares of Stock.**

The Board shall have the right to substitute or assume awards in connection with mergers, reorganizations, separations, or other transactions. The Share Reserve shall be increased by the corresponding number of awards

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assumed and, in the case of a substitution, by the net increase in the number of shares of Stock subject to awards before and after the substitution. Shares available for issuance under a stockholder-approved plan of a business entity that is party to such transaction (as appropriately adjusted, if necessary, to reflect the transaction) may be used for Awards under the Plan and shall not reduce the number of shares of Stock otherwise available for issuance under the Plan, subject to applicable rules of any Stock Exchange or Securities Market on which the Stock is listed or publicly traded.

#### **4.3. Share Usage.**

Shares of Stock covered by an Award shall be counted as used as of the Grant Date for purposes of calculating the number of shares of Stock available for issuance under **Section 4.1**. Any shares of Stock that are subject to Awards, including shares of Stock acquired through dividend reinvestment pursuant to **Section 10**, will be counted against the limit set forth in **Section 4.1** as one (1) share of Stock for every one (1) share of Stock subject to an Award. With respect to SARs, the number of shares of Stock subject to an award of SARs will be counted against the aggregate number of shares of Stock available for issuance under the Plan regardless of the number of shares of Stock actually issued to settle the SAR upon exercise. The target number of shares issuable under a Performance Award grant shall be counted against the limit set forth in **Section 4.1** as of the Grant Date, but such number shall be adjusted to equal the actual number of shares issued upon settlement of the Performance Award to the extent different from such target number of shares. If any shares of Stock covered by an Award granted under the Plan are not purchased or are forfeited or expire, or if an Award otherwise terminates without delivery of any shares of Stock subject thereto or is settled in cash in lieu of shares of Stock, then the number of shares of Stock counted against the aggregate number of shares of Stock available under the Plan with respect to such Award shall, to the extent of any such forfeiture, termination, expiration, or settlement, again be available for making Awards under the Plan in the same amount as such shares of Stock were counted against the limit set forth in **Section 4.1**.

The number of shares of Stock available for issuance under the Plan will not be increased by the number of shares of Stock (i) tendered, withheld, or subject to an Award granted under the Plan surrendered in connection with the purchase of shares of Stock upon exercise of an Option, (ii) that were not issued upon the net settlement or net exercise of a Stock-settled SAR granted under the Plan, (iii) deducted or delivered from payment of an Award granted under the Plan in connection with the Company's tax withholding obligations as provided in **Section 18.3**, or (iv) purchased by the Company with proceeds from Option exercises.

### **5. EFFECTIVE DATE, DURATION AND AMENDMENTS**

#### **5.1. Effective Date.**

The Plan shall be effective as of the Effective Date.

#### **5.2. Term.**

The Plan shall terminate on the first to occur of (a) the tenth (10th) anniversary of the Effective Date, (b) the date determined in accordance with **Section 5.3**, and (c) the date determined in accordance with **Section 17.3**. Upon such termination of the Plan, all outstanding Awards shall continue to have full force and effect in accordance with the provisions of the terminated Plan and the applicable Award Agreement (or other documents evidencing such Awards).

#### **5.3. Amendment, Suspension and Termination of the Plan.**

The Board may, at any time and from time to time, amend, suspend, or terminate the Plan; provided that, with respect to Awards theretofore granted under the Plan, no amendment, suspension, or termination of the Plan shall, without the consent of the Grantee, impair rights or obligations under any such Award theretofore awarded under the Plan. The effectiveness of any amendment to the Plan shall be contingent on approval of such amendment by the Company's stockholders to the extent stated by the Board, required by Applicable Laws, or required by the Stock Exchange or Securities Market on which the shares of Stock are listed or publicly traded.

### **6. AWARD ELIGIBILITY AND LIMITATIONS**

#### **6.1. Eligibility for Awards.**

Subject to this **Section 6**, Awards may only be granted to persons who are Eligible Employees described

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in **Section 1.2** of the Plan, where the Award is an inducement material to the individual's entering into employment with the Company or an Affiliate within the meaning of Rule 5635(c)(4) of the NASDAQ Marketplace Rules, provided however, that Awards may not be granted to Employees who are providing Service only to any "parent" of the Company, as such term is defined in Rule 405 of the Securities Act, unless (i) the stock underlying such Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Awards are granted pursuant to a corporate transaction such as a spin off transaction), or (ii) the Company, in consultation with its legal counsel, has determined that such Awards are otherwise exempt from or comply with the distribution requirements of Section 409A of the Code.

#### **6.2. Stand-Alone, Additional, Tandem, and Substitute Awards.**

Subject to **Section 3.6**, Awards granted under the Plan may, in the discretion of the Board, be granted either alone or in addition to, in tandem with, or in substitution or exchange for, any other Award or any award granted under another plan of the Company, any Affiliate, or any business entity to be acquired by the Company or an Affiliate, or any other right of a Grantee to receive payment from the Company or any Affiliate. Such additional, tandem, exchange, or Substitute Awards may be granted at any time. If an Award is granted in substitution or exchange for another Award, or for an award granted under another plan of the Company, an Affiliate, or any business entity that has been a party to a transaction with the Company or an Affiliate, the Board shall require the surrender of such other Award or award under such other plan in consideration for such exchange or grant of the Substitute Award. In addition, Awards may be granted in lieu of cash compensation, including in lieu of cash amounts payable under other plans of the Company or any Affiliate. Notwithstanding **Section 8.1** and **Section 9.1**, but subject to **Section 3.6**, the Option Price of an Option or the SAR Exercise Price of an SAR that is a Substitute Award may be less than one hundred percent (100%) of the Fair Market Value of a share of Stock on the original Grant Date; provided, that, the Option Price or SAR Exercise Price is consistent with Code Section 409A for any Option or SAR.

### **7. AWARD AGREEMENT**

Each Award granted pursuant to the Plan shall be evidenced by an Award Agreement, in such form or forms as the Board shall from time to time determine. Award Agreements utilized under the Plan from time to time or at the same time need not contain similar provisions but shall be consistent with the terms of the Plan. Each Award Agreement evidencing an Award of Options shall specify that such Options are intended to be nonqualified, and, in the absence of such specification, such Options shall be deemed to be nonqualified. In the event of any inconsistency between the Plan and an Award Agreement, the provisions of the Plan shall control.

### **8. TERMS AND CONDITIONS OF OPTIONS**

#### **8.1. Option Price.**

The Option Price of each Option shall be fixed by the Board and stated in the Award Agreement evidencing such Option. Except in the case of Substitute Awards, the Option Price of each Option shall be at least the Fair Market Value of one (1) share of Stock on the Grant Date. In no case shall the Option Price of any Option be less than the par value of one (1) share of Stock.

#### **8.2. Vesting and Exercisability.**

Subject to **Sections 8.3** and **17.3**, each Option granted under the Plan shall become vested and/or exercisable at such times and under such conditions as shall be determined by the Board and stated in the Award Agreement, in another agreement with the Grantee, or otherwise in writing; provided that no Option shall be granted to Grantees who are entitled to overtime under Applicable Laws that will vest or be exercisable within a six (6)-month period starting on the Grant Date.

#### **8.3. Term.**

Each Option granted under the Plan shall terminate, and all rights to purchase shares of Stock thereunder shall cease, upon the expiration of ten (10) years from the Grant Date of such Option, or under such circumstances and on such date prior thereto as is set forth in the Plan or as may be fixed by the Board and stated in the Award Agreement relating to such Option; provided, that to the extent deemed necessary or appropriate by the Board to reflect differences in local law, tax policy, or custom with respect to any Option granted to a Grantee who is a foreign national or is a natural Person who is employed outside the United States, such Option may terminate, and all rights to purchase shares of Stock thereunder may cease, upon the expiration of a period longer than ten (10) years from the Grant Date of such Option as the Board shall determine.

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#### **8.4. Termination of Service.**

Each Award Agreement with respect to the grant of an Option shall set forth the extent to which the Grantee thereof, if at all, shall have the right to exercise such Option following termination of such Grantee's Service. Such provisions shall be determined in the sole discretion of the Board, need not be uniform among all Options issued pursuant to the Plan, and may reflect distinctions based on the reasons for termination of Service.

#### **8.5. Limitations on Exercise of Option.**

Notwithstanding any other provision of the Plan, in no event may any Option be exercised, in whole or in part, after the occurrence of an event referred to in **Section 17** which results in the termination of the Option.

#### **8.6. Method of Exercise.**

Subject to the terms of **Section 12** and **Section 18.3**, an Option that is exercisable may be exercised by the Grantee's delivery to the Company or its designee or agent of notice of exercise on any business day, at the Company's principal office, or the office of such designee or agent, on the form specified by the Company and in accordance with any additional procedures specified by the Board. Such notice shall specify the number of shares of Stock with respect to which the Option is being exercised and shall be accompanied by payment in full of the Option Price of the shares of Stock for which the Option is being exercised plus the amount (if any) of federal and/or other taxes which the Company may, in its judgment, be required to withhold with respect to the exercise of such Option.

#### **8.7. Rights of Holders of Options.**

Unless otherwise stated in the applicable Award Agreement, a Grantee or other person holding or exercising an Option shall have none of the rights of a stockholder of the Company (for example, the right to receive cash or dividend payments or distributions attributable to the subject shares of Stock or to direct the voting of the subject shares of Stock subject to such Option, or to receive notice of any meeting of the Company's stockholders) until the shares of Stock subject thereto are fully paid and issued to such Grantee or other person. Except as provided in **Section 17**, no adjustment shall be made for dividends, distributions or other rights with respect to any shares of Stock subject to an Option for which the record date is prior to the date of issuance of such shares of Stock.

#### **8.8. Delivery of Stock Certificates.**

Promptly after the exercise of an Option by a Grantee and the payment in full of the Option Price, such Grantee shall be entitled to the issuance of a stock certificate or certificates evidencing his or her ownership of the shares of Stock subject to the Option, as shall be consistent with **Section 3.9**.

#### **8.9. Transferability of Options.**

Except as provided in **Section 8.10**, during the lifetime of a Grantee of an Option, only the Grantee (or, in the event of such Grantee's legal incapacity or incompetency, the Grantee's guardian or legal representative) may exercise such Option. Except as provided in **Section 8.10**, no Option shall be assignable or transferable by the Grantee to whom it is granted, other than by will or the laws of descent and distribution.

#### **8.10. Family Transfers.**

If authorized in the applicable Award Agreement and by the Board, in its sole discretion, a Grantee may transfer, not for value, all or part of an Option to any Family Member. For the purpose of this **Section 8.10**, a "not for value" transfer is a transfer which is (i) a gift, (ii) a transfer under a domestic relations order in settlement of marital property rights; or (iii) unless Applicable Laws do not permit such transfer, a transfer to an entity in which more than fifty percent (50%) of the voting interests are owned by Family Members (or the Grantee) in exchange for an interest in that entity. Following a transfer under this **Section 8.10**, any such Option shall continue to be subject to the same terms and conditions as were applicable immediately prior to such transfer. Subsequent transfers of transferred Options are prohibited except to Family Members of the original Grantee in accordance with this **Section 8.10** or by will or the laws of descent and distribution. The events of termination of Service of **Section 8.4** shall continue to be applied with respect to the original Grantee, following which such Option shall be exercisable by the transferee only to the extent, and for the periods specified, in **Section 8.4**.

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## **9. TERMS AND CONDITIONS OF STOCK APPRECIATION RIGHTS**

### **9.1. Right to Payment and SAR Exercise Price.**

A SAR shall confer on the Grantee to whom it is granted a right to receive, upon exercise thereof, the excess of (A) the Fair Market Value of one (1) share of Stock on the date of exercise over (B) the SAR Exercise Price as determined by the Board. The Award Agreement for a SAR shall specify the SAR Exercise Price, which shall be no less than the Fair Market Value of one (1) share of Stock on the Grant Date. SARs may be granted in conjunction with all or part of an Option granted under the Plan or at any subsequent time during the term of such Option, in conjunction with all or any part of any other Award or without regard to any Option or other Award; provided that a SAR that is granted in tandem with all or part of an Option will have the same term, and expire at the same time, as the related Option; provided, further, that a SAR that is granted subsequent to the Grant Date of a related Option must have a SAR Exercise Price that is no less than the Fair Market Value of one share of Stock on the SAR Grant Date.

### **9.2. Other Terms.**

The Board shall determine on the Grant Date or thereafter, the time or times at which and the circumstances under which a SAR may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which SARs shall cease to be or become exercisable following termination of Service or upon other conditions, the method of exercise, method of settlement, form of consideration payable in settlement, method by or forms in which shares of Stock will be delivered or deemed to be delivered to Grantees, whether or not a SAR shall be granted in tandem or in combination with any other Award; and any and all other terms and conditions of any SAR; provided that no SARs shall be granted to Grantees who are entitled to overtime under Applicable Laws that will vest or be exercisable within a six (6)-month period starting on the Grant Date.

### **9.3. Term.**

Each SAR granted under the Plan shall terminate, and all rights thereunder shall cease, upon the expiration of ten (10) years from the Grant Date of such SAR, or under such circumstances and on such date prior thereto as is set forth in the Plan or as may be fixed by the Board and stated in the Award Agreement relating to such SAR.

### **9.4. Rights of Holders of SARs.**

Unless otherwise stated in the applicable Award Agreement, a Grantee or other Person holding or exercising a SAR shall have none of the rights of a stockholder of the Company (for example, the right to receive cash or dividend payments or distributions attributable to the shares of Stock underlying such SAR, to direct the voting of the shares of Stock underlying such SAR, or to receive notice of any meeting of the Company's stockholders) until the shares of Stock underlying such SAR, if any, are issued to such Grantee or other Person. Except as provided in **Section 17**, no adjustment shall be made for dividends, distributions, or other rights with respect to any shares of Stock underlying a SAR for which the record date is prior to the date of issuance of such shares of Stock, if any.

### **9.5. Transferability of SARs.**

Except as provided in **Section 9.6**, during the lifetime of a Grantee of a SAR, only the Grantee (or, in the event of such Grantee's legal incapacity or incompetency, such Grantee's guardian or legal representative) may exercise such SAR. Except as provided in **Section 9.6**, no SAR shall be assignable or transferable by the Grantee to whom it is granted, other than by will or the laws of descent and distribution.

### **9.6. Family Transfers.**

If authorized in the applicable Award Agreement and by the Board, in its sole discretion, a Grantee may transfer, not for value, all or part of a SAR to any Family Member. For the purpose of this **Section 9.6**, a "not for value" transfer is a transfer which is (i) a gift, (ii) a transfer under a domestic relations order in settlement of marital property rights; or (iii) unless Applicable Laws do not permit such transfers, a transfer to an entity in which more than fifty percent (50%) of the voting interests are owned by Family Members (and/or the Grantee) in exchange for an interest in that entity. Following a transfer under this **Section 9.6**, any such SAR shall continue to be subject to the same terms and conditions as were applicable immediately prior to such transfer. Subsequent transfers of transferred SARs are prohibited except to Family Members of the original Grantee in

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accordance with this **Section 9.6** or by will or the laws of descent and distribution.

## **10. TERMS AND CONDITIONS OF RESTRICTED STOCK AND STOCK UNITS**

### **10.1. Grant of Restricted Stock or Stock Units.**

Awards of Restricted Stock or Stock Units may be made in consideration for the promise to perform future Service to the Company or an Affiliate.

### **10.2. Restrictions.**

At the time a grant of Restricted Stock or Stock Units is made, the Board may, in its sole discretion, establish a period of time (a “restricted period”) applicable to such Restricted Stock or Stock Units. Each Award of Restricted Stock or Stock Units may be subject to a different restricted period. The Board may in its sole discretion, at the time a grant of Restricted Stock or Stock Units is made, prescribe restrictions in addition to or other than the expiration of the restricted period, including the achievement of corporate or individual performance objectives, which may be applicable to all or any portion of the Restricted Stock or Stock Units as described in **Section 14**. Neither Restricted Stock nor Stock Units may be sold, transferred, assigned, pledged or otherwise encumbered or disposed of during the restricted period or prior to the satisfaction of any other restrictions prescribed by the Board with respect to such Restricted Stock or Stock Units.

### **10.3. Restricted Stock Certificates.**

Pursuant to **Section 3.9**, to the extent that ownership of Restricted Stock is evidenced by a book-entry registration or direct registration (including transaction advices), such registration shall be notated to evidence the restrictions imposed on such Award of Restricted Stock under the Plan and the applicable Award Agreement. Subject to **Section 3.9**, and the immediately following sentence, the Company may issue, in the name of each Grantee to whom Restricted Stock has been granted, certificates representing the total number of shares of Restricted Stock granted to the Grantee, as soon as reasonably practicable after the Grant Date of such Restricted Stock. The Board may provide in an Award Agreement with respect to an Award of Restricted Stock that either (i) the Secretary of the Company shall hold such certificates for the Grantee’s benefit until such time as the shares of Restricted Stock are forfeited to the Company or the restrictions applicable thereto lapse and such Grantee shall deliver a stock power to the Company with respect to each certificate, or (ii) such certificates shall be delivered to such Grantee, provided, that such certificates shall bear a legend or legends that comply with the applicable securities laws and regulations and makes appropriate reference to the restrictions imposed on such Award of Restricted Stock under the Plan and such Award Agreement.

### **10.4. Rights of Holders of Restricted Stock.**

Unless the Board otherwise provides in an Award Agreement, holders of Restricted Stock shall have the right to vote such shares of Stock and the right to receive any dividend payments or distributions declared or paid with respect to such shares of Restricted Stock. The Board may provide in an Award Agreement evidencing a grant of Restricted Stock that that (a) any cash dividend payments or distributions paid on Restricted Stock must be reinvested in shares of Stock, which may or may not be subject to the same vesting conditions and restrictions as applicable to such underlying shares of Restricted Stock or (b) any dividend payments or distributions declared or paid on shares of Restricted Stock shall only be made or paid upon satisfaction of the vesting conditions and restrictions applicable to such shares of Restricted Stock. Dividend payments or distributions declared or paid on shares of Restricted Stock which vest or are earned based upon the achievement of performance goals shall not vest unless such performance goals for such shares of Restricted Stock are achieved, and if such performance goals are not achieved, the Grantee of such shares of Restricted Stock shall promptly forfeit and, to the extent already paid or distributed, repay to the Company such dividend payments or distributions. All stock dividend payments or distributions, if any received by a Grantee with respect to shares of Restricted Stock as a result of any stock split, stock dividend, combination of stock, or other similar transaction shall be subject to the same vesting conditions and restrictions as applicable to such underlying shares of Restricted Stock.

### **10.5. Rights of Holders of Stock Units.**

#### **10.5.1. Voting and Dividend Rights.**

Holders of Stock Units shall have no rights as stockholders of the Company. The Board may provide in an Award Agreement evidencing a grant of Stock Units that the holder of such Stock Units shall be entitled to

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receive, upon the Company's payment of a cash dividend on its outstanding shares of Stock, a cash payment for each Stock Unit held equal to the per-stock dividend paid on the shares of Stock. Such Award Agreement may also provide that such cash payment will be deemed reinvested in additional Stock Units at a price per unit equal to the Fair Market Value of a share of Stock on the date on which such dividend is paid.

#### **10.5.2. Creditor's Rights.**

A holder of Stock Units shall have no rights other than those of a general unsecured creditor of the Company. Stock Units represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the applicable Award Agreement.

#### **10.6. Termination of Service.**

Unless the Board otherwise provides in an Award Agreement, in another agreement with the Grantee, or otherwise in writing after such Award Agreement is issued, but prior to the termination of a Grantee's Service, upon the termination of such Grantee's Service, any Restricted Stock or Stock Units held by such Grantee that have not vested, or with respect to which all applicable restrictions and conditions have not lapsed, shall immediately be deemed forfeited. Upon forfeiture of Restricted Stock or Stock Units, the Grantee shall have no further rights with respect to such Award, including but not limited to any right to vote Restricted Stock or any right to receive dividends or Dividend Equivalent Rights, as applicable, with respect to Restricted Stock or Stock Units.

#### **10.7. Purchase of Restricted Stock and Shares of Stock Subject to Stock Units.**

The Grantee of an Award of Restricted Stock or vested Stock Units shall be required, to the extent required by Applicable Laws, to purchase such Restricted Stock or shares of Stock subject to such vested Stock Units from the Company at a Purchase Price equal to the greater of (i) the aggregate par value of the shares of Stock represented by such Restricted Stock or such vested Stock Units or (ii) the Purchase Price, if any, specified in the Award Agreement relating to such Restricted Stock or such vested Stock Units. The Purchase Price shall be payable in a form described in **Section 12** or in consideration for future Service to be rendered by the Grantee to the Company or an Affiliate.

#### **10.8. Delivery of Shares of Stock.**

Upon the expiration or termination of any restricted period and the satisfaction of any other conditions prescribed by the Board, the restrictions applicable to Restricted Stock or Stock Units settled in shares of Stock shall lapse, and, unless otherwise provided in the Award Agreement, a book-entry or direct registration (including transaction advices) or a certificate evidencing ownership of such shares of Stock shall, consistent with **Section 3.9**, be issued, free of all such restrictions, to the Grantee thereof or the Grantee's beneficiary or estate, as the case may be. Neither the Grantee, nor the Grantee's beneficiary or estate, shall have any further rights with regard to a Stock Unit once the shares of Stock represented by such Stock Unit have been delivered in accordance with this **Section 10.8**.

### **11. TERMS AND CONDITIONS OF UNRESTRICTED STOCK AWARDS AND OTHER EQUITY-BASED AWARDS**

#### **11.1. Unrestricted Stock Awards.**

The Board may, in its sole discretion, grant (or sell at par value or at such other higher purchase price determined by the Board) an Unrestricted Stock Award to any Grantee pursuant to which such Grantee may receive shares of Unrestricted Stock under the Plan. Unrestricted Stock Awards may be granted or sold as described in the preceding sentence in respect of Service rendered or, if so provided in the related Award Agreement or a separate agreement, to be rendered by the Grantee to the Company or an Affiliate or other valid consideration, in lieu of, or in addition to, any cash compensation due to such Grantee.

#### **11.2. Other Equity-Based Awards.**

The Board may, in its sole discretion, grant Awards to Participants in the form of Other Equity-Based Awards, as deemed by the Board to be consistent with the purposes of the Plan. Awards granted pursuant to this **Section 11.2** may be granted with vesting, value and/or payment contingent upon the attainment of one or more performance goals. The Board shall determine the terms and conditions of such Other Equity-Based Awards on the Grant Date or thereafter. Unless the Board otherwise provides in an Award Agreement, in

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another agreement with the Grantee, or otherwise or in writing after the Award Agreement is issued, upon the termination of a Grantee's Service, any Other Equity-Based Awards held by such Grantee that have not vested, or with respect to which all applicable restrictions and conditions have not lapsed, shall immediately be deemed forfeited. Upon forfeiture of Other Equity-Based Awards, the Grantee shall have no further rights with respect to such Award.

## **12. FORM OF PAYMENT FOR OPTIONS AND RESTRICTED STOCK**

### **12.1. General Rule.**

Payment of the Option Price for the shares of Stock purchased pursuant to the exercise of an Option or the Purchase Price, if any, for Restricted Stock shall be made in cash or in cash equivalents acceptable to the Company.

### **12.2. Surrender of Shares of Stock.**

To the extent the Award Agreement so provides, payment of the Option Price for shares of Stock purchased pursuant to the exercise of an Option or the Purchase Price for Restricted Stock may be made all or in part through the tender or attestation to the Company of shares of Stock, which shall be valued, for purposes of determining the extent to which the Option Price or Purchase Price has been paid thereby, at their Fair Market Value on the date of such tender or attestation.

### **12.3. Cashless Exercise.**

With respect to an Option only (and not with respect to Restricted Stock), to the extent permitted by law and to the extent the Award Agreement so provides, payment of the Option Price for shares of Stock purchased pursuant to the exercise of an Option may be made all or in part by delivery (on a form acceptable to the Board) of an irrevocable direction to a licensed securities broker acceptable to the Company to sell shares of Stock and to deliver all or part of the sales proceeds to the Company in payment of the Option Price and any withholding taxes described in **Section 18.3**, or, with the consent of the Company, by issuing the number of shares of Stock equal in value to the difference between the Option Price and the Fair Market Value of the shares of Stock subject to the portion of the Option being exercised.

### **12.4. Other Forms of Payment.**

To the extent the Award Agreement so provides and/or unless otherwise specified in an Award Agreement, payment of the Option Price for shares of Stock purchased pursuant to exercise of an Option or the Purchase Price, if any, for Restricted Stock may be made in any other form that is consistent with Applicable Laws, regulations and rules, including, without limitation, Service by the Grantee thereof to the Company or an Affiliate.

## **13. TERMS AND CONDITIONS OF DIVIDEND EQUIVALENT RIGHTS**

### **13.1. Dividend Equivalent Rights.**

A Dividend Equivalent Right is an Award entitling the recipient to receive credits based on cash distributions that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares of Stock had been issued to and held by the recipient. A Dividend Equivalent Right may be granted hereunder to any Grantee, *provided* that no Dividend Equivalent Rights may be granted in connection with, or related to, an Award of Options or SARs. The terms and conditions of Dividend Equivalent Rights shall be specified in the Award Agreement therefor. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently (with or without being subject to forfeiture or a repayment obligation) or may be deemed to be reinvested in additional shares of Stock or Awards, which may thereafter accrue additional Dividend Equivalent Rights (with or without being subject to forfeiture or a repayment obligation). Any such reinvestment shall be at the Fair Market Value on the date of reinvestment. Dividend Equivalent Rights may be settled in cash or shares of Stock or a combination thereof, in a single installment or multiple installments, all determined in the sole discretion of the Board. A Dividend Equivalent Right granted as a component of another Award may provide that such Dividend Equivalent Right shall be settled upon exercise, settlement, or payment of, or lapse of restrictions on, such other award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other award. A Dividend Equivalent Right granted as a component of another Award may also contain terms and conditions different from such other Award; provided, however, that Dividend Equivalent Rights credited

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pursuant to a Dividend Equivalent Right granted as a component of another Award which vests or is earned based upon the achievement of performance goals shall not vest unless the performance goals for such underlying Award are achieved, and if such performance goals are not achieved, the Grantee of such Dividend Equivalent Rights shall promptly forfeit and, to the extent already paid or distributed, repay to the Company payments or distributions made in connection with such Dividend Equivalent Rights.

### **13.2. Termination of Service.**

Unless the Board otherwise provides in an Award Agreement, in another agreement with the Grantee, or otherwise or in writing after the Award Agreement is issued, a Grantee's rights in all Dividend Equivalent Rights shall automatically terminate upon such Grantee's termination of Service for any reason.

## **14. TERMS AND CONDITIONS OF PERFORMANCE AWARDS**

### **14.1. Grant of Performance Awards.**

Subject to the terms and provisions of the Plan, the Board, at any time and from time to time, may grant Performance Awards to a Plan participant in such amounts and upon such terms as the Committee shall determine.

### **14.2. Value of Performance Awards.**

Each Performance Award shall have an initial cash value or an actual or target number of shares of Stock that is established by the Board as of the Grant Date. The Board shall set performance goals in its discretion which, depending on the extent to which they are achieved, shall determine the value and/or number of shares of Stock subject to Performance Awards that will be paid out to the Grantee thereof.

### **14.3. Earning of Performance Awards.**

Subject to the terms of the Plan, after the applicable Performance Period has ended, the Grantee of Performance Awards shall be entitled to receive a payout of the value earned under such Performance Awards earned by such Grantee over such Performance Period.

### **14.4. Form and Timing of Payment of Performance Awards.**

Payment of the value earned under Performance Awards shall be made, as determined by the Committee, in the form, at the time, and in the manner described in the applicable Award Agreement. Subject to the terms of the Plan, the Committee, in its sole discretion, (i) may pay the value earned under Performance Awards in the form of cash, shares of Stock, or other Awards, or in a combination thereof, including shares of Stock and/or Awards, including shares of Stock and/or Awards that are subject to any restrictions deemed appropriate by the Committee, and (ii) shall pay the value earned under Performance Awards at the close of the applicable Performance Period, or as soon as reasonably practicable after the Committee has determined that the performance goal or goals relating thereto have been achieved; provided that, unless specifically provided in the Award Agreement, such payment shall occur no later than the fifteenth (15th) day of the third (3rd) month following the end of the calendar year in which such Performance Period ends.

### **14.5. Performance Conditions.**

The right of a Grantee to exercise or to receive a grant or settlement of any Performance Award, and the timing thereof, may be subject to such performance conditions as may be specified by the Board. The Board may use such business criteria and other measures of performance as it may deem appropriate in establishing any performance conditions.

#### **14.5.1. Performance Goals Generally.**

The performance goals for Performance Awards shall consist of one or more business criteria and a targeted level or levels of performance with respect to each of such criteria, as specified by the Committee. The Committee may determine that such Awards shall be granted, exercised and/or settled upon achievement of any single performance goal or of two (2) or more performance goals. Performance goals may differ for Awards granted to any one Grantee or to different Grantees.

#### **14.5.2. Payment of Awards; Other Terms.**

Payment of such Awards shall be in cash, shares of Stock, other Awards, or a combination thereof,

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including shares of Stock and/or Awards that are subject to any restrictions deemed appropriate by the Committee, in each case as determined in the sole discretion of the Committee. The Committee may, in its sole discretion, reduce the amount of a payment otherwise to be made in connection with such Awards. The Committee shall specify the circumstances in which such Performance Awards shall be paid or forfeited in the event of termination of Service by the Grantee prior to the end of a Performance Period or settlement of such Performance Awards. In the event payment of the Performance-Based Award is made in the form of another Award subject to Service-based vesting, the Committee shall specify the circumstances in which the Award will be paid out or forfeited in the event of a termination of Service.

#### **14.5.3. Performance Measures.**

The performance goals upon which the payment or vesting of a Performance Award may be conditioned may be based on any one of, or combination of, the following Performance Measures, as selected by the Committee, with or without adjustment (including pro forma adjustments): (a) net earnings or net income; (b) operating earnings; (c) pretax earnings; (d) earnings per share of stock; (e) stock price, including growth measures and total stockholder return; (f) earnings before interest and taxes; (g) earnings before interest, taxes, depreciation and/or amortization; (h) earnings before interest, taxes, depreciation and/or amortization as adjusted to exclude any one or more of the following: stock-based compensation expense; income from discontinued operations; gain on cancellation of debt; debt extinguishment and related costs; restructuring, separation, and/or integration charges and costs; reorganization and/or recapitalization charges and costs; impairment charges; merger-related events; gain or loss related to investments; sales and use tax settlements; and gain on non-monetary transactions; (i) sales or revenue growth, whether in general, by type of product or service, or by type of customer; (j) gross or operating margins; (k) return measures, including return on assets, capital, investment, equity, sales or revenue; (l) cash flow, including operating cash flow, free cash flow, cash flow return on equity and cash flow return on investment; (m) productivity ratios; (n) expense targets; (o) market share; (p) financial ratios as provided in credit agreements of the Company and its subsidiaries; (q) working capital targets; (r) completion of acquisitions of business or companies; (s) completion of divestitures and asset sales; (t) revenues under management; (u) funds from operations; (v) successful implementation of clinical trials, including components thereof; (w) submitting regulatory filings; (x) obtaining regulatory or marketing approvals; (y) entering into contractual agreements; (z) meeting contractual requirements; (aa) achieving contractual milestones; (bb) entering into collaborations; (cc) receipt of grant funding; (dd) developing or expanding manufacturing or production capacity; (ee) any combination of any of the foregoing business criteria; and (ff) other measures of performance selected by the Committee.

Performance under any of the foregoing Performance Measure(s) may be used to measure the performance of the Company, Subsidiary, and/or Affiliate as a whole or any business unit or operating segment of the Company, Subsidiary, and/or Affiliate or any combination thereof, as the Committee may deem appropriate, and any of the above Performance Measures may be compared to the performance of a group of comparator companies, or published or special index that the Committee, in its sole discretion, deems appropriate. In addition, the Company, in its sole discretion may select performance under the Performance Measure specified in clause (e) above for comparison to performance under one or more stock market indices. The Committee also has the authority to provide for accelerated vesting of any Performance Award based on the achievement of performance goals pursuant to the Performance Measures specified in this **Section 14**.

#### **14.5.4. Evaluation of Performance.**

The Committee may provide in any such Award that any evaluation of performance may include or exclude any of the following events that occur during a Performance Period and may make any other appropriate adjustments selected thereby: (a) asset write-downs; (b) litigation or claims, judgments or settlements; (c) the effect of changes in tax laws, accounting principles, or other laws or provisions affecting reported results; (d) any reorganization or restructuring events or programs; (e) extraordinary non-core, non-operating, or non-recurring items; (f) acquisitions or divestitures; (g) foreign exchange gains and losses; (h) impact of shares of Stock purchased through share repurchase programs; (i) tax valuation allowance reversals; (j) impairment expense; and (k) environmental expense.

#### **14.5.5. Committee Discretion.**

The Committee shall have the discretion to adjust any Performance Award or the amount payable thereunder and may, in its sole discretion, alter the Performance Measures governing a Performance Award.

### **15. PARACHUTE LIMITATIONS**

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If a Grantee is a “disqualified individual,” as defined in Code Section 280G(c), then, notwithstanding any other provision of this Plan or of any other agreement, contract, or understanding heretofore or hereafter entered into by a Grantee with the Company or an Affiliate, except an agreement, contract, or understanding that expressly addresses Code Section 280G or Code Section 4999 (an “**Other Agreement**”), and notwithstanding any formal or informal plan or other arrangement for the direct or indirect provision of compensation to the Grantee (including groups or classes of Grantees or beneficiaries of which the Grantee is a member), whether or not such compensation is deferred, is in cash, or is in the form of a benefit to or for the Grantee (a “**Benefit Arrangement**”), any right to exercise, vesting, payment, or benefit to the Grantee under this Plan shall be reduced or eliminated:

(i) to the extent that such right to exercise, vesting, payment, or benefit, taking into account all other rights, payments, or benefits to or for the Grantee under the Plan, all Other Agreements, and all Benefit Arrangements, would cause any exercise, vesting, payment, or benefit to the Grantee under this Plan to be considered a “parachute payment” within the meaning of Code Section 280G(b)(2) as then in effect (a “**Parachute Payment**”); and

(ii) if, as a result of receiving such Parachute Payment, the aggregate after-tax amounts received by the Grantee from the Company under this Plan, all Other Agreements, and all Benefit Arrangements would be less than the maximum after-tax amount that could be received by the Grantee without causing any such exercise, vesting, payment or benefit to be considered a Parachute Payment.

Except as required by Code Section 409A or to the extent that Code Section 409A permits discretion, the Committee shall have the right, in the Committee’s sole discretion, to designate those rights, payments, or benefits under this Plan, all Other Agreements, and all Benefit Arrangements that should be reduced or eliminated so as to avoid having such rights, payments, or benefits be considered a Parachute Payment; provided, however, to the extent any payment or benefit constitutes deferred compensation under Code Section 409A, in order to comply with Code Section 409A, the Company shall instead accomplish such reduction by first reducing or eliminating any cash payments (with the payments to be made furthest in the future being reduced first), then by reducing or eliminating any accelerated vesting of Performance Awards, then by reducing or eliminating any accelerated vesting of Options or SARs, then by reducing or eliminating any accelerated vesting of Restricted Stock or Stock Units, then by reducing or eliminating any other remaining Parachute Payments.

## **16. REQUIREMENTS OF LAW**

### **16.1. General.**

The Company shall not be required to offer, sell or issue any shares of Stock under any Award, whether pursuant to the exercise of an Option, a SAR, or otherwise, if the offer, sale or issuance of such shares of Stock would constitute a violation by the Grantee, any other individual or entity, or the Company or an Affiliate of any provision of the Company’s certificate of incorporation or bylaws or of Applicable Laws, including without limitation any federal or state securities laws or regulations. If at any time the Company shall determine, in its discretion, that the listing, registration, or qualification of any shares of Stock subject to an Award upon any Stock Exchange or Securities Market or under any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the offering, sale issuance or purchase of shares of Stock in connection with any Award, no shares of Stock may be offered, issued or sold to the Grantee or any other individual or entity pursuant to the exercise of such Award unless such listing, registration or qualification shall have been effected or obtained free of any conditions not acceptable to the Company, and any delay caused thereby shall in no way affect the date of termination of the Award. Without limiting the generality of the foregoing, upon the exercise of any Option or any SAR that may be settled in shares of Stock or the delivery of any shares of Stock underlying an Award, unless a registration statement under the Securities Act is in effect with respect to the shares of Stock subject to such Award, the Company shall not be required to offer, sell or issue such shares of Stock unless the Board has received evidence satisfactory to it that the Grantee or any other individual or entity exercising Option or SAR or accepting delivery of such shares may acquire such shares of Stock pursuant to an exemption from registration under the Securities Act. Any determination by the Board in connection with the foregoing shall be final, binding, and conclusive. The Company may register, but shall in no event be obligated to register, any shares of Stock or other securities issuable pursuant to the Plan pursuant to the Securities Act. The Company shall not be obligated to take any affirmative action in order to cause the exercise of an Option or a SAR or the issuance of shares of Stock or other securities pursuant to the Plan to comply with any Applicable Laws. As to any jurisdiction that expressly imposes the requirement that an Option (or SAR that may be settled in shares of Stock) shall not be exercisable until the shares of Stock covered by such Option (or SAR) are registered under the securities laws thereof or are exempt from registration, the exercise of such Option (or SAR) under

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circumstances in which the laws of such jurisdiction apply shall be deemed conditioned upon the effectiveness of such registration or the availability of such an exemption.

#### **16.2. Rule 16b-3.**

During any time when the Company has a class of equity securities registered under Section 12 of the Exchange Act, it is the intent of the Company that Awards pursuant to the Plan and the exercise of Options and SARs granted hereunder that would otherwise be subject to Section 16(b) of the Exchange Act will qualify for the exemption provided by Rule 16b-3 under the Exchange Act. To the extent that any provision of the Plan or action by the Board does not comply with the requirements of Rule 16b-3, such provision or action shall be deemed inoperative with respect to such Awards to the extent permitted by Applicable Laws and deemed advisable by the Board, and shall not affect the validity of the Plan. In the event that Rule 16b-3 is revised or replaced, the Board may exercise its discretion to modify this Plan in any respect necessary or advisable in its judgment to satisfy the requirements of, or to permit the Company to avail itself of the benefits of, the revised exemption or its replacement.

### **17.EFFECT OF CHANGES IN CAPITALIZATION**

#### **17.1. Changes in Stock.**

If the number of outstanding shares of Stock is increased or decreased or the shares of Stock are changed into or exchanged for a different number of shares or kind of Capital Stock or other securities of the Company on account of any recapitalization, reclassification, stock split, reverse stock split, spin-off, combination of stock, exchange of stock, stock dividend or other distribution payable in capital stock, or other increase or decrease in shares of stock effected without receipt of consideration by the Company occurring after the Effective Date, the number and kinds of shares of Capital Stock for which grants of Options and other Awards may be made under the Plan, including, without limitation, the Share Reserve, shall be adjusted proportionately and accordingly by the Board. In addition, the number and kind of shares of Capital Stock for which Awards are outstanding shall be adjusted proportionately and accordingly by the Committee so that the proportionate interest of the Grantee therein immediately following such event shall, to the extent practicable, be the same as immediately before such event. Any such adjustment in outstanding Options or SARs shall not change the aggregate Option Price or SAR Exercise Price payable with respect to shares that are subject to the unexercised portion of such outstanding Options or SARs, as applicable, but shall include a corresponding proportionate adjustment in the per share Option Price or SAR Exercise Price, as the case may be. The conversion or exercise of any convertible securities of the Company shall not be treated as an increase in shares effected without receipt of consideration. Notwithstanding the foregoing, in the event of any distribution to the Company's stockholders of securities of any other entity or other assets (including an extraordinary dividend but excluding a non-extraordinary dividend of the Company) without receipt of consideration by the Company, the Board shall, in such manner as it deems appropriate, adjust (i) the number and kind of shares of Capital Stock subject to outstanding Awards and/or (ii) the aggregate and per share Option Price of outstanding Options and the aggregate and per share SAR Exercise Price of outstanding SARs as required to reflect such distribution.

#### **17.2. Reorganization in Which the Company Is the Surviving Entity Which Does not Constitute a Change in Control.**

Subject to **Section 17.3**, if the Company shall be the surviving entity in any reorganization, merger, or consolidation of the Company with one or more other entities which does not constitute a Change in Control, any Award theretofore granted pursuant to the Plan shall pertain to and apply to the Capital Stock to which a holder of the number of shares of Stock subject to such Award would have been entitled immediately following such reorganization, merger, or consolidation, with a corresponding proportionate adjustment of the per share Option Price or per share SAR Exercise Price of any outstanding Option or SAR so that the aggregate Option Price or SAR Exercise Price thereafter shall be the same as the aggregate Option Price or SAR Exercise Price of the shares of Stock remaining subject to the Option or SAR as in effect immediately prior to such reorganization, merger, or consolidation. Subject to any contrary language in an Award Agreement, in another agreement with the Grantee, or otherwise set forth in writing, any restrictions applicable to such Award shall apply as well to any replacement shares of Capital Stock subject to such Award, or received by the Grantee as a result of such reorganization, merger, or consolidation. In the event of any reorganization, merger, or consolidation of the Company described in this **Section 17.2**, Awards subject to performance criteria may be adjusted (including any adjustments to the Performance Measures or other performance criteria applicable to such Awards deemed appropriate by the Board) to take into account such reorganization, merger, or consolidation.

#### **17.3. Change in Control in which Awards are not Assumed.**

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Except as otherwise provided in the applicable Award Agreement, in another agreement with the Grantee, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Awards are not being assumed or continued, the following provisions shall apply to such Award, to the extent not assumed or continued:

(i) Immediately prior to the occurrence of such Change in Control, in each case with the exception of any Performance Award, all outstanding shares of Restricted Stock and all Stock Units and Dividend Equivalent Rights shall be deemed to have vested, and the shares of Stock and/or cash subject to such Awards shall be delivered; and

(ii) Either of the following two actions shall be taken:

(A) at least fifteen (15) days prior to the scheduled consummation of the Change in Control, all Options and SARs outstanding hereunder shall become immediately exercisable and shall remain exercisable for a period of fifteen (15) days. With respect to the Company's establishment of an exercise window, any exercise of an Option or SAR during such fifteen (15)-day period shall be conditioned upon the consummation of the Change in Control and shall be effective only immediately before the consummation of the Change in Control, and upon consummation of the Change in Control, the Plan and all outstanding but unexercised Options and SARs shall terminate, with or without consideration (including, without limitation, consideration in accordance with clause (ii) below) as determined by the Board in its sole discretion. The Board shall send notice of an event that will result in such a termination to all Grantees who hold Options and SARs not later than the time at which the Company gives notice thereof to its stockholders; and/or

(B) the Board may elect, in its sole discretion, to cancel any outstanding Awards of Options, SARs, Restricted Stock, Stock Units, and/or Dividend Equivalent Rights and pay or deliver, or cause to be paid or delivered, to the holder thereof an amount in cash or securities having a value (as determined by the Board acting in good faith), in the case of Restricted Stock, Stock Units, and Dividend Equivalent Rights (for shares of Stock subject thereto) equal to the formula or fixed price per share paid to holders of shares of Stock pursuant to such Change in Control and, in the case of Options or SARs, equal to the product of the number of shares of Stock subject to the Options or SARs multiplied by the amount, if any, by which (I) the formula or fixed price per share paid to holders of shares of Stock pursuant to such transaction exceeds (II) the Option Price or SAR Exercise Price applicable to such Options or SARs.

(iii) For Performance Awards denominated in Stock or Stock Units, if less than half of the Performance Period has lapsed, the Awards shall be converted into Restricted Stock or Stock Units assuming target performance has been achieved (or Unrestricted Stock if no further restrictions apply). If more than half the Performance Period has lapsed, the Performance Awards shall be converted into Restricted Stock or Stock Units based on actual performance to date (or Unrestricted Stock if no further restrictions apply). If actual performance is not determinable, then Performance Awards shall be converted into Restricted Stock or Stock Units assuming target performance has been achieved, based on the discretion of the Committee (or Unrestricted Stock if no further restrictions apply).

(iv) Other Equity-Based Awards shall be governed by the terms of the applicable Award Agreement.

#### **17.4. Change in Control in which Awards are Assumed.**

Except as otherwise provided in the applicable Award Agreement, in another agreement with the Grantee, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Awards are being assumed or continued, the following provisions shall apply to such Award, to the extent assumed or continued:

The Plan and the Options, SARs, Restricted Stock, Stock Units, Dividend Equivalent Rights, and Other Equity-Based Awards theretofore granted under the Plan shall continue in the manner and under the terms so provided in the event of any Change in Control to the extent that provision is made in writing in connection with such Change in Control for the assumption or continuation of the Options, SARs, Restricted Stock, Stock Units, Dividend Equivalent Rights, and Other Equity-Based Awards theretofore granted, or for the substitution for such Options, SARs, Restricted Stock, Stock Units, Dividend Equivalent Rights, and Other Equity-Based Awards theretofore granted for new stock options, stock appreciation rights, restricted stock, stock units, dividend equivalent rights, and other equity-based awards relating to the capital stock or other securities of a successor entity, or a parent or subsidiary thereof, with appropriate adjustments as to the number of shares (disregarding any consideration that is not common stock) and exercise prices of options and stock appreciation rights.

#### **17.5. Adjustments**

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Adjustments under this **Section 17** related to shares of Stock or Capital Stock of the Company shall be made by the Board, whose determination in that respect shall be final, binding, and conclusive. No fractional shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole share. The Board may provide in an applicable Award Agreement as of the Grant Date, in another agreement with the Grantee, or otherwise in writing at any time thereafter with the consent of the Grantee, for different provisions to apply to an Award in place of those described in **Sections 17.1, 17.2, 17.3 and 17.4**. This **Section 17** does not limit the Company's ability to provide for alternative treatment of Awards outstanding under the Plan in the event of a change in control event involving the Company that is not a Change in Control.

#### **17.6. No Limitations on Company.**

The making of Awards pursuant to the Plan shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure or to merge, consolidate, dissolve, or liquidate, or to sell or transfer all or any part of its business or assets (including all or any part of the business or assets of any Subsidiary or other Affiliate) or to engage in any other transaction or activity.

### **18. GENERAL PROVISIONS**

#### **18.1. Disclaimer of Rights.**

No provision in the Plan or in any Award or Award Agreement shall be construed to confer upon any individual or entity the right to remain in the Service of the Company or an Affiliate, or to interfere in any way with any contractual or other right or authority of the Company or an Affiliate either to increase or decrease the compensation or other payments to any individual or entity at any time, or to terminate any Service or other relationship between any individual or entity and the Company or an Affiliate. In addition, notwithstanding anything contained in the Plan to the contrary, unless otherwise stated in the applicable Award Agreement, in another agreement with the Grantee, or otherwise in writing, no Award granted under the Plan shall be affected by any change of duties or position of the Grantee thereof, so long as such Grantee continues to provide Service. The obligation of the Company to pay any benefits pursuant to this Plan shall be interpreted as a contractual obligation to pay only those amounts described herein, in the manner and under the conditions prescribed herein. The Plan and Awards shall in no way be interpreted to require the Company to transfer any amounts to a third party trustee or otherwise hold any amounts in trust or escrow for payment to any Grantee or beneficiary under the terms of the Plan.

#### **18.2. Nonexclusivity of the Plan.**

The adoption of the Plan shall not be construed as creating any limitations upon the right and authority of the Board to adopt such other incentive compensation arrangements (which arrangements may be applicable either generally to a class or classes of individuals or specifically to a particular individual or particular individuals) as the Board in its discretion determines desirable.

#### **18.3. Withholding Taxes.**

The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to a Grantee any federal, state, or local taxes of any kind required by Applicable Laws to be withheld with respect to the vesting of or other lapse of restrictions applicable to an Award or upon the issuance of any shares of Stock upon the exercise of an Option or pursuant to any other Award. At the time of such vesting, lapse, or exercise, the Grantee shall pay in cash to the Company or an Affiliate, as the case may be, any amount that the Company or an Affiliate may reasonably determine to be necessary to satisfy such withholding obligation; provided, that if there is a same-day sale of shares of Stock subject to an Award, the Grantee shall pay such withholding obligation on the day on which the same-day sale is completed. Subject to the prior approval of the Company or an Affiliate, which may be withheld by the Company or an Affiliate, as the case may be, in its sole discretion, the Grantee may elect to satisfy such withholding obligations, in whole or in part, (i) by causing the Company or an Affiliate to withhold shares of Stock otherwise issuable to the Grantee or (ii) by delivering to the Company or an Affiliate shares of Stock already owned by the Grantee. The shares of Stock so withheld or delivered shall have an aggregate Fair Market Value equal to such withholding obligations. The Fair Market Value of the shares of Stock used to satisfy such withholding obligation shall be determined by the Company or an Affiliate as of the date that the amount of tax to be withheld is to be determined. A Grantee who has made an election pursuant to this **Section 18.3** may satisfy such Grantee's withholding obligation only with shares of Stock

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that are not subject to any repurchase, forfeiture, unfulfilled vesting, or other similar requirements. The maximum number of shares of Stock that may be withheld from any Award to satisfy any federal, state, or local tax withholding requirements upon the exercise, vesting, or lapse of restrictions applicable to such Award or payment of shares of Stock pursuant to such Award, as applicable, may not exceed such number of shares of Stock having a Fair Market Value equal to the minimum statutory amount required by the Company or an Affiliate to be withheld and paid to any such federal, state, or local taxing authority with respect to such exercise, vesting, lapse of restrictions, or payment of shares of Stock.

#### **18.4. Captions.**

The use of captions in the Plan or any Award Agreement is for convenience of reference only and shall not affect the meaning of any provision of the Plan or such Award Agreement.

#### **18.5. Other Provisions.**

Each Award granted under the Plan may contain such other terms and conditions not inconsistent with the Plan as may be determined by the Board, in its sole discretion.

#### **18.6. Number and Gender.**

With respect to words used in the Plan, the singular form shall include the plural form, the masculine gender shall include the feminine gender, etc., as the context requires.

#### **18.7. Severability.**

If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

#### **18.8. Governing Law**

The validity and construction of this Plan and the instruments evidencing the Awards hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware, other than any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Plan and the instruments evidencing the Awards granted hereunder to the substantive laws of any other jurisdiction.

#### **18.9. Section 409A of the Code.**

The Plan is intended to comply with Code Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan will be interpreted and administered to be in compliance with Code Section 409A. Any payments described in the Plan that are due within the "short-term deferral period" (as defined for purposes of Code Section 409A) will not be treated as deferred compensation unless Applicable Laws require otherwise. Notwithstanding any provision of the Plan to the contrary, to the extent required to avoid accelerated taxation and tax penalties under Code Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six (6)-month period immediately following the Grantee's Separation from Service will instead be paid on the first payroll date after the six (6)-month anniversary of the Grantee's Separation from Service (or the Grantee's death, if earlier).

Furthermore, notwithstanding anything to the contrary in the Plan, in the case of an Award that is characterized as deferred compensation under Code Section 409A, and pursuant to which settlement and delivery of the cash or shares of Stock subject to the Award is triggered based on a Change in Control, in no event will a Change in Control be deemed to have occurred for purposes of such settlement and delivery of cash or shares of Stock if the transaction is not also a "change in the ownership or effective control of" the Company or "a change in the ownership of a substantial portion of the assets of" the Company as determined under Treasury Regulation Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder). If an Award characterized as deferred compensation under Code Section 409A is not settled and delivered on account of the provision of the preceding sentence, the settlement and delivery will occur on the next succeeding settlement and delivery triggering event that is a permissible triggering event under Code Section 409A. No provision of this paragraph will in any way affect the determination of a Change in Control for purposes of vesting in an Award that is characterized as deferred compensation under Code Section 409A.

Notwithstanding the foregoing, neither the Company nor the Committee will have any obligation to take any action to prevent the assessment of any excise tax or penalty on any Grantee under Code Section 409A and neither

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the Company, nor an Affiliate, nor the Board will have any liability to any Grantee for such tax or penalty.

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To record adoption of the Plan by the Board on February 2, 2023 and effectiveness of the Plan on February 2, 2023, the Company has caused its authorized officer to execute the Plan.

SYNDAX PHARMACEUTICALS, INC.

By: /s/ Luke J. Albrecht

Name: Luke J. Albrecht

Title: General Counsel & Secretary

**SYNDAX PHARMACEUTICALS, INC.  
2023 INDUCEMENT PLAN**

**NONQUALIFIED OPTION AGREEMENT**

Syndax Pharmaceuticals, Inc., a Delaware corporation (the “**Company**”) hereby grants an option to purchase shares of its common stock, par value \$0.0001 per share (the “**Option**”), to the optionee named below, subject to the vesting and other conditions set forth below. Additional terms and conditions of the grant are set forth in this cover sheet and in the attachment (collectively, the “**Agreement**”). This Option is granted in compliance with NASDAQ Listing Rule 5635(c)(4) as a material inducement to the optionee entering into employment with the Company.

Optionee Name: \_\_\_\_

Grant Date: \_\_

Number of Shares of Stock Covered by Option: \_

Option Price per Share of Stock: \$\_\_\_\_.\_\_\_\_ (Must be at least 100% of Fair Market Value on the Grant Date)

Vesting Start Date: \_

Vesting Schedule: \_\_\_\_\_

Expiration Date: \_\_ (Ten years from the Grant Date)

***By your signature below, you agree to all of the terms and conditions described in the Agreement and in the Plan, a copy of which is also attached. You acknowledge that you have carefully reviewed the Plan, and agree that the Plan will control in the event any provision of this or Agreement should appear to be inconsistent with the Plan.***

Optionee: \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

Company: \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

Title: \_\_\_\_\_

*Attachment*

*This is not a share certificate or a negotiable instrument.*

**SYNDAX PHARMACEUTICALS, INC.**  
**2023 INDUCEMENT PLAN**

**NONQUALIFIED STOCK OPTION AGREEMENT**

<b>Non-qualified Option</b>	This Agreement evidences an award of an Option exercisable for that number of shares of Stock set forth on the cover sheet and subject to the vesting and other conditions set forth in the Agreement and in the Plan. This Option is granted subject to the terms and conditions of the Plan as a material inducement to you entering into employment with the Company in compliance with NASDAQ Listing Rule 5634(c)(4). This Option is not intended to be an incentive stock option under Section 422 of the Code and will be interpreted accordingly.
<b>Transfer of Option</b>	<p>During your lifetime, only you (or, in the event of your legal incapacity or incompetency, your guardian or legal representative) may exercise the Option. The Option may not be sold, assigned, transferred, pledged, hypothecated or otherwise encumbered, whether by operation of law or otherwise, nor may the Option be made subject to execution, attachment or similar process.</p> <p>If you attempt to do any of these things, this Option will immediately be forfeited.</p>
<b>Vesting</b>	<p>The Option will vest in accordance with the vesting schedule shown on the cover sheet so long as you continue in Service on the vesting dates set forth on the cover sheet and is exercisable only as to its vested portion.</p> <p>No additional shares of Stock will vest after your Service has terminated for any reason.</p>
<b>Change in Control</b>	<p>Notwithstanding the vesting schedule set forth above, upon the consummation of a Change in Control, the Option will become 100% vested [(i) if it is not assumed, or equivalent options are not substituted for the Option, by the Company or its successor[, or (ii) if assumed or substituted for, upon your Involuntary Termination within the 12-month period following the consummation of the Change in Control. If assumed or substituted for, the option will expire one year after the date of your termination of Service, for any reason, within such 12-month period].</p> <p>[“Involuntary Termination” means termination of your Service by reason of (i) your involuntary dismissal by the Company or its successor for reasons other than Cause; or (ii) your voluntary resignation for Good Reason as defined in any applicable employment or severance agreement, plan, or arrangement between you and the Company, or if none, then following (a) a substantial adverse alteration in your title or responsibilities from those in effect immediately prior to the Change in Control; (b) a reduction in your annual base salary as of immediately prior to the Change in Control (or as the same may be increased from time to time) or a material reduction in your annual target bonus opportunity as of immediately prior to the Change in Control; or (c) the relocation of your principal place of employment to a location more than 35 miles from your principal place of employment as of the Change in Control or the Company’s requiring you to be based anywhere other than such principal place of employment (or permitted relocation thereof) except for required travel on the Company’s business to an extent substantially consistent with your business travel obligations as of immediately prior to the Change in Control. To qualify as an “Involuntary Termination” you must provide notice to the Company of any of the foregoing occurrences within 90 days of the initial occurrence and the Company will have 30 days to remedy such occurrence. To the extent not remedied, you must terminate employment within 60 days following the expiration of the 30 day cure period for such occurrence to constitute an Involuntary Termination.]</p>
<b>Forfeiture of Unvested Option/ Term</b>	Unless the termination of your Service triggers accelerated vesting or other treatment of your Option pursuant to the terms of this Agreement, the Plan, or any other written agreement between the Company or Affiliate and you, you will

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automatically forfeit to the Company those portions of the Option that have not yet vested in the event your Service terminates for any reason.

Notwithstanding anything in this Agreement to the contrary, your option will expire in any event at the close of business at Company headquarters on the day before the 10th anniversary of the Grant Date, as shown on the cover sheet. Your option will expire earlier if your Service terminates, as described below.

**Expiration of Vested Option After Service Terminates**

If your Service terminates for any reason, other than death, Disability or Cause, then the vested portion of your Option will expire at the close of business at Company headquarters on the date that is three months after your termination date.

If your Service terminates because of your death or Disability, or if you die during the three-month period after your termination for any reason (other than Cause), then the vested portion of your Option will expire at the close of business at Company headquarters on the date 12 months after the date of your death or termination for Disability. During that 12-month period, your estate or heirs may exercise the vested portion of your Option.

If your Service is terminated for Cause, then you will immediately forfeit all rights to your entire Option, and the Option will immediately expire.

**Forfeiture of Rights**

If you should take actions in violation or breach of or in conflict with any agreement prohibiting solicitation of employees or clients of the Company or any Affiliate or any confidentiality obligation with respect to the Company or any Affiliate, the Company has the right to cause an immediate forfeiture of your rights to this Option, and the Option will immediately expire.

**Leaves of Absence**

For purposes of this Agreement, your Service does not terminate when you go on a *bona fide* leave of absence that was approved by the Company in writing if the terms of the leave provide for continued Service crediting, or when continued Service crediting is required by applicable law. Your Service terminates in any event when the approved leave ends unless you immediately return to active employee work.

The Company may determine, in its discretion, which leaves count for this purpose, and when your Service terminates for all purposes under the Plan in accordance with the provisions of the Plan.

**Notice of Exercise**

The Option may be exercised, in whole or in part, to purchase a whole number of vested shares of Stock of not less than 100 shares, unless the number of vested shares of Stock purchased is the total number available for purchase under the Option, by following the procedures set forth in the Plan and in this Agreement.

When you wish to exercise this Option, you must exercise in a manner required or permitted by the Company.

If someone else wants to exercise this Option after your death, that person must prove to the Company's satisfaction that he or she is entitled to do so.

**Form of Payment**

When you exercise your Option, you must include payment of the option price indicated on the cover sheet for the shares of Stock you are purchasing. Payment may be made in one (or a combination) of the following forms:

- Cash, your personal check, a cashier's check, a money order or another cash equivalent acceptable to the Company.
  - Shares of Stock that are owned by you and that are surrendered to the Company. The Fair Market Value of the shares of Stock as of the effective date of the option exercise will be applied to the option price.
  - By delivery (on a form prescribed by the Company) of an irrevocable direction to a licensed securities broker acceptable to the Company to sell shares of Stock and to deliver all or part of the sale proceeds to the
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Company in payment of the aggregate option price and any withholding taxes (if approved in advance by the Committee of the Board if you are either an executive officer or a director of the Company).

<b>Evidence of Issuance</b>	The issuance of the shares of Stock upon exercise of this Option will be evidenced in such a manner as the Company, in its discretion, will deem appropriate, including, without limitation, book-entry, direct registration or issuance of one or more Stock certificates.
<b>Withholding Taxes</b>	You agree as a condition of this grant that you will make acceptable arrangements to pay any withholding or other taxes that may be due as a result of the Option exercise or sale of shares of Stock acquired under this Option. In the event that the Company or any Affiliate determines that any federal, state, local or foreign tax or withholding payment is required relating to the exercise of this Option or sale of shares of Stock arising from this Option, the Company or any Affiliate will have the right to require such payments from you, or withhold such amounts from other payments due to you from the Company or any Affiliate (including withholding the delivery of vested shares of Stock otherwise deliverable upon exercise of this Option).
<b>Retention Rights</b>	This Agreement and the grant evidenced by this Agreement do not give you the right to be retained by the Company or any Affiliate in any capacity. Unless otherwise specified in an employment or other written agreement between the Company or any Affiliate and you, the Company or any Affiliate reserves the right to terminate your Service at any time and for any reason.
<b>Stockholder Rights</b>	<p>You, or your estate or heirs, have no rights as a stockholder of the Company until the shares of Stock have been issued upon exercise of your Option and either a certificate evidencing your shares of Stock have been issued or an appropriate entry has been made on the Company's books. No adjustments are made for dividends, distributions or other rights if the applicable record date occurs before your certificate is issued (or an appropriate book entry is made), except as described in the Plan.</p> <p>Your Option will be subject to the terms of any applicable agreement of merger, liquidation or reorganization in the event the Company is subject to such corporate activity.</p>
<b>Clawback</b>	<p>This Option is subject to mandatory repayment by you to the Company to the extent you are or in the future become subject to any Company "clawback" or recoupment policy that requires the repayment by you to the Company of compensation paid by the Company to you in the event that you fail to comply with, or violate, the terms or requirements of such policy.</p> <p>If the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws and you knowingly engaged in the misconduct, were grossly negligent in engaging in the misconduct, knowingly failed to prevent the misconduct or were grossly negligent in failing to prevent the misconduct, you will reimburse the Company the amount of any payment in settlement of this Option earned or accrued during the 12-month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurred) of the financial document that contained such material noncompliance.</p>
<b>Applicable Law</b>	This Agreement will be interpreted and enforced under the laws of the State of Delaware, other than any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.
<b>The Plan</b>	The text of the Plan is incorporated into the Agreement by reference.

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***Certain capitalized terms used in the Agreement are defined in the Plan, and have the meaning set forth in the Plan.***

This Agreement and the Plan constitute the entire understanding between you and the Company regarding this Option. Any prior agreements, commitments or negotiations concerning this grant are superseded; except that any written employment, consulting, confidentiality, non-solicitation and/or severance agreement between you and the Company or any Affiliate will supersede this Agreement with respect to its subject matter.

**Data Privacy**

To administer the Plan, the Company may process personal data about you. Such data includes, but is not limited to, information provided in this Agreement and any changes thereto, other appropriate personal and financial data about you such as your contact information, payroll information and any other information that might be deemed appropriate by the Company to facilitate the administration of the Plan.

By accepting this grant, you give explicit consent to the Company to process any such personal data.

**Tax Consequences**

The Option is intended to be exempt from, or to comply with, Code Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, this Agreement will be interpreted and administered to be in compliance with Code Section 409A. Notwithstanding anything to the contrary in the Plan or this Agreement, neither the Company, its Affiliates, the Board nor the Committee will have any obligation to take any action to prevent the assessment of any excise tax or penalty on you under Code Section 409A and neither the Company, its Affiliates, the Board nor the Committee will have any liability to you for such tax or penalty.

***By signing the Agreement, you agree to all of the terms and conditions described above and in the Plan.***

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