

**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): October 22, 2021

Context Therapeutics Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State of other jurisdiction
of incorporation)

001-40654
(Commission
File Number)

47-2566423
(I.R.S. Employer
Identification No.)

**3675 Market Street, Suite 200
Philadelphia, Pennsylvania 19104**
(Address of principal executive offices including zip code)

(267) 225-7416
(Registrant's telephone number, including area code)

Not Applicable
(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))

Title of each class	Trading Symbol	Name of exchange on which registered
Common Stock \$0.001 par value per share	CNTX	The Nasdaq Capital Market

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 October 22, 2021, Context Therapeutics Inc. (the “Company”) entered into an amended and restated employment agreement (the “Employment Agreement”) with Martin Lehr, its Chief Executive Officer. The Employment Agreement details the terms of employment that will continue until either the Company or Mr. Lehr terminate his employment with the Company. The Employment Agreement provides that Mr. Lehr will:

- receive a base salary of \$465,000 per year and is eligible to receive a discretionary annual performance-based cash bonus, with a target bonus amount equal to 50% of his base salary (the “Target Bonus”). Mr. Lehr’s salary and target bonus will be reviewed periodically by the Company’s Compensation Committee or Board of Directors.
- be eligible to participate in the Company’s incentive plans and be eligible to participate in all of the Company’s employee benefit plans available to the Company’s executive employees, subject to the terms and conditions applicable to such plans.
- be entitled to receive the following severance benefits if Mr. Lehr’s employment is terminated by the Company without “cause” or by Mr. Lehr for “good reason” (each as defined in the Employment Agreement), subject to his execution and non-revocation of a release of claims and compliance with the restrictive covenants set forth in the Employment Agreement: (i) twelve months of base salary continuation, (ii) up to twelve months of continued participation by Mr. Lehr and his eligible dependents in the Company’s standard group medical, vision and dental plans on substantially the same terms as such benefits are provided to active employees, and (iii) all unvested options and any other unvested incentive equity awards granted to him by the Company that are scheduled to vest within eighteen months after such termination shall immediately vest; and; provided that if such termination of employment occurs within twelve months after a “change in control,” (as defined in the Employment Agreement), then Mr. Lehr shall be entitled to receive: (i) an amount equal to 150% of his annual base salary at the rate in effect on his date of termination, payable ratably over an eighteen month period, (ii) an amount equal to 100% of his Target Bonus for the fiscal year in which the Termination Date (as defined in the Employment Agreement) occurs, payable ratably over a twelve month period, (ii) up to twelve months of continued participation by Mr. Lehr and his eligible dependents in the Company’s standard group medical, vision and dental plans on substantially the same terms as such benefits are provided to active employees, and (iii) all of Mr. Lehr’s then-outstanding equity awards granted to him by the Company will become immediately vested.
- be subject to restrictive covenants relating to non-disclosure of confidential information, assignment of inventions, non-competition that runs during the term of the Employment Agreement and for twelve months following Mr. Lehr’s termination of employment for any reason, and non-solicitation of employees, customers and suppliers that runs during the term of the Employment Agreement and for the same period following Mr. Lehr’s termination of employment for any reason.

As well, the Employment Agreement acknowledges the non-qualified stock options granted to Mr. Lehr intended to represent four percent (4%) of the Company’s common stock on a fully diluted basis as of the date the Options were granted, on April 30, 2021. The non-qualified stock options were granted pursuant to the Context Therapeutics Inc. 2021 Long-Term Performance Incentive Plan (the “Plan”) and will vest over three years, vesting in thirty-six equal monthly installments. The vesting of shares underlying the non-qualified stock option is subject to Mr. Lehr’s continuous service with the Company through each such vesting date and is subject to potential vesting acceleration under certain circumstances pursuant to the terms of his Employment Agreement with the Company. For additional information regarding the Form of Stock Option Agreement (the “Stock Option Agreement”), please see the Form of Stock Option Agreement under the Context Therapeutics Inc. 2021 Incentive Award Plan filed as Exhibit 10.7 with the Form S-1 filed by the Company with the SEC on May 27, 2021 (the “S-1 Filing Date”).

Director and Officer Indemnification Arrangements

Mr. Lehr and the Company also entered into an indemnification agreement (the “Indemnification Agreement”), which is addition to the indemnification, expense advancement and limitations of liability provided for in the Company’s Certificate of Incorporation and Company Bylaws. The Indemnification Agreement provides Mr. Lehr with contractual rights to indemnification and, in some cases, expense advancement in any action or proceeding arising out of his services as one of the Company’s executive officers, director, or as a director or executive officer of any other company or enterprise to which he may provide services at the Company’s request. For additional information regarding the Indemnification Agreement, please see the Form of Indemnification Agreement filed as Exhibit 10.10 with Amendment No. 1 to the Form S-1 filed by the Company with the SEC on June 16, 2021 (the “S-1/A Filing Date”).

The foregoing is a summary description of certain terms of the Employment Agreement, Stock Option Agreement, and Indemnification Agreement and, by its nature, is not complete. It is qualified in its entirety by reference to the Employment Agreement, a copy of which is attached hereto as Exhibit 10.1, and is incorporated herein by reference, as well as by reference to each of the Stock Option Agreement as filed on the S-1 Filing Date noted above and the Indemnification Agreement as filed on the S-1/A Filing Date noted above, both incorporated herein by reference.

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

In connection with the closing of the Company’s initial public offering, the Company amended and restated its Amended and Restated Certificate of Incorporation (the “Amended and Restated Certificate of Incorporation”) and amended and restated its Bylaws (the “Amended and Restated Bylaws”). The Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 21, 2021 and became effective on October 22, 2021, and the Amended and Restated Bylaws became effective immediately upon the effectiveness of the Amended and Restated Certificate of Incorporation. A description of the material terms of each can be found in the section of the Company’s Registration Statement on Form S-1, as amended (File no. 333-256572), entitled “Description of Capital Stock,” and is incorporated herein by reference. The descriptions of the foregoing are qualified in their entirety by reference to the complete terms and conditions of the Company’s Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, which are attached hereto as Exhibits 3.1 and 3.2, respectively, and incorporated herein by reference.

Item 8.01. Other Events

On October 22, 2021, the Company completed its IPO of 5,750,000 shares of its common stock at a public offering price of \$5.00 per share, which includes 750,000 shares of common stock issued upon the exercise in full by the underwriters of their option to purchase additional shares, for total gross proceeds from the IPO, before deducting the underwriting discount and other offering expenses payable by the Company, of approximately \$28.75 million.

On October 22, 2021, the Company also entered into an employment agreement with Alex Levit, its Chief Legal Officer.

Item 9.01. Financial Statements and Exhibits.

- (d) Exhibits.
- 3.1 [Amended & Restated Certificate of Incorporation of Context Therapeutics Inc.](#)
- 3.2 [Amended and Restated Bylaws of Context Therapeutics Inc.](#)
- 10.1 [Amended and Restated Employment Agreement, dated October 22, 2021, between Context Therapeutics Inc. and Martin Lehr](#)

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.

Dated: October 22, 2021

Context Therapeutics Inc.

By: /s/ Martin A. Lehr

Name: Martin A. Lehr

Title: Chief Executive Officer

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
CONTEXT THERAPEUTICS INC.**

Context Therapeutics Inc., a company organized and existing under the laws of the State of Delaware (the “**Company**”), certifies that:

1. The name of the Company is Context Therapeutics Inc. The Company’s original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 20, 2021, and was subsequently amended on June 24, 2021 (together, the “**Certificate of Incorporation**”).
2. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by the written consent of the stockholders of the Company in accordance with Section 228 of the General Corporation Law of the State of Delaware.
3. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto, effective as of 9:00 AM Eastern Time on October 22, 2021.

IN WITNESS WHEREOF, Context Therapeutics Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer of the Company, on October 21, 2021.

/s/ Martin Lehr

Martin Lehr

Chief Executive Officer

EXHIBIT A

ARTICLE I.

The name of the Company is Context Therapeutics Inc.

ARTICLE II.

The purpose of this company is to engage in any lawful act or activity for which companies may be organized under the General Corporation Law of Delaware.

ARTICLE III.

The address of the Company's registered office in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, DE 19801. The name of the registered agent at such address is The Corporation Trust Company.

ARTICLE IV.

Section 1. This Company is authorized to issue two classes of stock, to be designated, respectively, Common Stock and Undesignated Preferred Stock. The total number of shares of stock that the Company shall have authority to issue is 110,000,000 shares, of which 100,000,000 shares are Common Stock, \$0.001 par value per share, and 10,000,000 shares are Undesignated Preferred Stock, \$0.001 par value per share.

Section 2. Each share of Common Stock outstanding as of the applicable record date shall entitle the holder thereof to one (1) vote on any matter submitted to a vote at a meeting of stockholders.

Section 3. The Undesignated Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board of Directors). The Board of Directors is further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences and rights, and the qualifications, limitations or restrictions thereof, of any series of Undesignated Preferred Stock, including, without limitation, authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any such series, and the number of shares constituting any such series and the designation thereof, or any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series, subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof stated in this Amended and Restated Certificate of Incorporation or the resolution of the Board of Directors originally fixing the number of shares of such series. Except as may be otherwise specified by the terms of any series of Undesignated Preferred Stock, if the number of shares of any series of Undesignated Preferred Stock is so decreased, then the Company shall take all such steps as are necessary to cause the shares constituting such decrease to resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

Section 4. Except as otherwise required by law or provided in this Amended and Restated Certificate of Incorporation, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Undesignated Preferred Stock) that relates solely to the terms of one or more outstanding series of Undesignated Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Undesignated Preferred Stock).

Section 5. The number of authorized shares of Undesignated Preferred Stock or Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all the then-outstanding shares of capital stock of the Company entitled to vote thereon, without a separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote of any holders of one or more series of Undesignated Preferred Stock is required pursuant to the terms of any certificate of designation relating to any series of Undesignated Preferred Stock, irrespective of the provisions of Section 242(b)(2) of the DGCL.

ARTICLE V.

Section 1. Subject to the rights of holders of Undesignated Preferred Stock, if any, the number of directors that constitutes the entire Board of Directors of the Company shall be fixed only by resolution of the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board. For the purposes of this Amended and Restated Certificate of Incorporation, the term "Whole Board" shall mean the total number of authorized directorships whether or not there exist any vacancies or other unfilled seats in previously authorized directorships. At each annual meeting of stockholders, directors of the Company shall be elected to hold office until the expiration of the term for which they are elected and until their successors have been duly elected and qualified or until their earlier resignation or removal; except that if any such meeting shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the DGCL.

Section 2. From and after the effectiveness of this Amended and Restated Certificate of Incorporation, the directors of the Company (other than any who may be elected by holders of Undesignated Preferred Stock under specified circumstances) shall serve until their term expires at the third annual meeting of stockholders following the date hereof, and the succeeding directors shall be elected for a full term of three years at such annual meeting. At each third annual meeting of stockholders after such meeting, directors shall be elected for a full term of three years to succeed the directors whose terms expire.

Elections of directors need not be by written ballot unless the Bylaws of the Company shall so provide.

ARTICLE VI.

Section 1. From and after the effectiveness of this Amended and Restated Certificate of Incorporation, and subject to the rights of holders of Undesignated Preferred Stock, any director or the entire Board of Directors may be removed from office at any time, but only for cause, and only by the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding capital stock of the Company entitled to vote in the election of directors.

Section 2. Except as otherwise provided for or fixed by or pursuant to the provisions of ARTICLE IV hereof in relation to the rights of the holders of Undesignated Preferred Stock to elect directors under specified circumstances or except as otherwise provided by resolution of a majority of the Whole Board, newly created directorships resulting from any increase in the number of directors, created in accordance with the Bylaws of the Company, and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders. A person so elected by the Board of Directors to fill a vacancy or newly created directorship shall hold office until his or her successor shall have been duly elected and qualified at the next election, or until such director's earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

ARTICLE VII.

Section 1. The Company is to have perpetual existence.

Section 2. The business and affairs of the Company shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Amended and Restated Certificate of Incorporation or the Bylaws of the Company, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Company.

Section 3. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Company. The affirmative vote of at least a majority of the Whole Board shall be required in order for the Board of Directors to adopt, amend, alter or repeal the Company's Bylaws. The Company's Bylaws may also be adopted, amended, altered or repealed by the stockholders of the Company. Notwithstanding the above or any other provision of this Amended and Restated Certificate of Incorporation, the Bylaws of the Company may not be amended, altered or repealed except in accordance with the provisions of the Bylaws relating to amendments to the Bylaws. No Bylaw hereafter legally adopted, amended, altered or repealed shall invalidate any prior act of the directors or officers of the Company that would have been valid if such Bylaw had not been adopted, amended, altered or repealed.

Section 4. The election of directors need not be by written ballot unless the Bylaws of the Company shall so provide.

Section 5. No stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE VIII.

Section 1. From and after the closing of a firm commitment underwritten initial public offering of securities of the Company pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"), and subject to the rights of holders of Undesignated Preferred Stock, any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing by such stockholders.

Section 2. Subject to the terms of any series of Undesignated Preferred Stock, special meetings of stockholders of the Company may be called only by the Chairperson of the Board of Directors, the Chief Executive Officer, the President or the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board, but a special meeting may not be called by any other person or persons and any power of stockholders to call a special meeting of stockholders is specifically denied. Only such business shall be considered at a special meeting of stockholders as shall have been stated in the notice for such meeting.

Section 3. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Company shall be given in the manner and to the extent provided in the Bylaws of the Company.

ARTICLE IX.

Section 1. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended from time to time, a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Section 2. Subject to any provisions in the Bylaws of the Company related to indemnification of directors of the Company, the Company shall indemnify, to the fullest extent permitted by applicable law, any director of the Company who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she is or was a director of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another company, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding. The Company shall be required to indemnify a person in connection with a Proceeding (or part thereof) initiated by such person only if the Proceeding (or part thereof) was authorized by the Board of Directors.

Section 3. The Company shall have the power to indemnify, to the extent permitted by applicable law, any officer, employee or agent of the Company who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he or she is or was a director, officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another company, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

Section 4. Neither any amendment nor repeal of any Section of this ARTICLE IX, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Company inconsistent with this ARTICLE IX, shall eliminate or reduce the effect of this ARTICLE IX in respect of any matter occurring, or any Proceeding accruing or arising or that, but for this ARTICLE IX, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE X.

Meetings of stockholders may be held within or outside of the State of Delaware, as the Bylaws may provide. The books of the Company may be kept (subject to any provision of applicable law) outside of the State of Delaware at such place or places or in such manner or manners as may be designated from time to time by the Board of Directors or in the Bylaws of the Company.

ARTICLE XI.

The Company reserves the right to amend or repeal any provision contained in this Amended and Restated Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; provided, however, that notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote, the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board and the affirmative vote of 66 2/3% of the voting power of the then outstanding voting securities of the Company, voting together as a single class, shall be required for the amendment, repeal or modification of the provisions of Section 3 of ARTICLE IV, Section 2 of ARTICLE V, Section 1 of ARTICLE VI, Section 2 of ARTICLE VI, Section 5 of ARTICLE VII, Section 1 of ARTICLE VIII, Section 2 of ARTICLE VIII, Section 3 of ARTICLE VIII, or this ARTICLE XI of this Amended and Restated Certificate of Incorporation.

ARTICLE XII.

Unless the Company consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the United States District Court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on the Company's behalf; (2) any action asserting a claim of breach of a fiduciary duty or other wrongdoing by any of the Company's directors, officers, employees or agents to the Company or the Company's shareholders; (3) any action asserting a claim against the Company arising pursuant to any provision of the General Corporation Law of the State of Delaware or pursuant to this

Amended and Restated Certificate of Incorporation or the Company's Bylaws; (4) any action to interpret, apply, enforce or determine the validity of the Company's Amended and Restated Certificate of Incorporation or Bylaws; or (5) any action asserting a claim governed by the internal affairs doctrine. Unless the Company consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Notwithstanding the foregoing, this Article XII shall not apply to claims seeking to enforce any liability or duty created by the Securities Exchange Act of 1934.

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**AMENDED AND RESTATED BYLAWS OF
CONTEXT THERAPEUTICS INC.**

(as amended and restated on October 21, 2021 and effective as of the
closing of the Company's initial public offering)

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BYLAWS OF CONTEXT THERAPEUTICS INC.

**ARTICLE I.
CORPORATE OFFICES**

1.1 Registered Office

The registered office of Context Therapeutics Inc. (the “**Company**”) shall be fixed in the Company’s certificate of incorporation, as the same may be amended from time to time.

1.2 Other Offices

The Company may at any time establish other offices.

**ARTICLE II.
MEETINGS OF STOCKHOLDERS**

2.1 Place Of Meetings

Meetings of stockholders shall be held at a place, if any, within or outside the State of Delaware, determined by the board of directors of the Company (the “**Board of Directors**”). The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the “**DGCL**”). In the absence of any such designation or determination, stockholders’ meetings shall be held at the Company’s principal executive office.

2.2 Annual Meeting

The annual meeting of stockholders shall be held each year. The Board of Directors shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and any other proper business, brought in accordance with Section 2.4 of these bylaws, may be transacted. The Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders. For the purposes of these bylaws, the term “**Whole Board**” shall mean the total number of authorized directorships whether or not there exist any vacancies or other unfilled seats in previously authorized directorships.

2.3 Special Meeting

(a) A special meeting of the stockholders, other than as required by statute, may be called at any time by (i) the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board, (ii) the chairperson of the Board of Directors or (iii) the chief executive officer, but a special meeting may not be called by any other person or persons and any power of stockholders to call a special meeting of stockholders is specifically denied. The Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

(b) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of a majority of the Whole Board, the chairperson of the Board of Directors or the chief executive officer. Nothing contained in this Section 2.3(b) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

2.4 Advance Notice Procedures

(a) Annual Meetings of Stockholders.

(i) Nominations of persons for election to the Board of Directors or the proposal of other business to be transacted by the stockholders at an annual meeting of stockholders may be made only (1) pursuant to the Company's notice of meeting (or any supplement thereto); (2) by or at the direction of the Board of Directors; (3) as may be provided in the certificate of designations for any class or series of undesignated preferred stock; or (4) by any stockholder of the Company who (A) is a stockholder of record at the time of giving of the notice contemplated by Section 2.4(a)(ii); (B) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the annual meeting; (C) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the annual meeting; (D) is a stockholder of record at the time of the annual meeting; and (E) complies with the procedures set forth in this Section 2.4(a).

(ii) For nominations or other business to be properly brought before an annual meeting of stockholders by a stockholder pursuant to clause (4) of Section 2.4(a)(i), the stockholder must have given timely notice in writing to the secretary and any such nomination or proposed business must constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be received by the secretary at the principal executive offices of the Company no earlier than 8:00 a.m., local time, on the 120th day and no later than 5:00 p.m., local time, on the 90th day prior to the day of the first anniversary of the preceding year's annual meeting of stockholders. However, if no annual meeting of stockholders was held in the preceding year, or if the date of the applicable annual meeting has been changed by more than 25 days from the first anniversary of the preceding year's annual meeting, then to be timely such notice must be received by the secretary at the principal executive offices of the Company no earlier than 8:00 a.m., local time, on the 120th day prior to the day of the annual meeting and no later than 5:00 p.m., local time, on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Company. In no event will the adjournment, rescheduling or postponement of any annual meeting, or any announcement thereof, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. If the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors at least 10 days before the last day that a stockholder may deliver a notice of nomination pursuant to the foregoing provisions, then a stockholder's notice required by this Section 2.4(a)(ii) will also be considered timely, but only with respect to nominees for any new

positions created by such increase, if it is received by the secretary at the principal executive offices of the Company no later than 5:00 p.m., local time, on the 10th day following the day on which such public announcement is first made. “**Public announcement**” means disclosure in a press release reported by a national news service or in a document publicly filed by the Company with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Securities Exchange Act of 1934 (as amended and inclusive of rules and regulations thereunder, the “**1934 Act**”).

(iii) A stockholder’s notice to the secretary must set forth:

(1) as to each person whom the stockholder proposes to nominate for election as a director:

- (A) all information relating to such person that is required to be disclosed in solicitations of proxies for the contested election of directors, or is otherwise required, in each case pursuant to Section 14 of the 1934 Act;
- (B) such person’s written consent to being named in such stockholder’s proxy statement as a nominee of such stockholder and to serving as a director of the Company if elected;
- (C) a reasonably detailed description of any direct or indirect compensatory, payment, indemnification or other financial agreement, arrangement or understanding that such person has, or has had within the past three years, with any person or entity other than the Company (including the amount of any payment or payments received or receivable thereunder), in each case in connection with candidacy or service as a director of the Company (a “Third-Party Compensation Arrangement”); and
- (D) a description of any other material relationships between such person and such person’s respective affiliates and associates, or others acting in concert with them, on the one hand, and such stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made, and their respective affiliates and associates, or others acting in concert with them, on the other hand;

(2) as to any other business that the stockholder proposes to bring before the annual meeting:

- (A) a brief description of the business desired to be brought before the annual meeting;

- (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and, if applicable, the text of any proposed amendment to these bylaws or the Company's certificate of incorporation);
 - (C) the reasons for conducting such business at the annual meeting;
 - (D) any material interest in such business of such stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates and associates, or others acting in concert with them; and
 - (E) a description of all agreements, arrangements and understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates or associates or others acting in concert with them, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; and
- (3) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made:
- (A) the name and address of such stockholder (as they appear on the Company's books), of such beneficial owner and of their respective affiliates or associates or others acting in concert with them;
 - (B) for each class or series, the number of shares of stock of the Company that are, directly or indirectly, held of record or are beneficially owned by such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them;
 - (C) a description of any agreement, arrangement or understanding between such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, and any other person or persons (including, in each case, their names) in connection with the proposal of such nomination or other business;
 - (D) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has

been entered into by or on behalf of such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, with respect to the Company's securities (any of the foregoing, a "**Derivative Instrument**"), or any other agreement, arrangement or understanding that has been made the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for or increase or decrease the voting power of such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, with respect to the Company's securities;

- (E) any rights to dividends on the Company's securities owned beneficially by such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, that are separated or separable from the underlying security;
- (F) any proportionate interest in the Company's securities or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership;
- (G) any performance-related fees (other than an asset-based fee) that such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, is entitled to based on any increase or decrease in the value of the Company's securities or Derivative Instruments, including, without limitation, any such interests held by members of the immediate family of such persons sharing the same household;
- (H) any significant equity interests or any Derivative Instruments in any principal competitor of the Company that are held by such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them;
- (I) any direct or indirect interest of such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, in any contract with the Company, any affiliate of the Company or any principal competitor of the Company (in each case, including any employment agreement, collective bargaining agreement or consulting agreement);

- (J) a representation and undertaking that the stockholder is a holder of record of stock of the Company as of the date of submission of the stockholder's notice and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting;
- (K) a representation and undertaking that such stockholder or any such beneficial owner intends, or is part of a group that intends, to (x) deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of the Company's then-outstanding stock required to approve or adopt the proposal or to elect each such nominee; or (y) otherwise solicit proxies from stockholders in support of such proposal or nomination;
- (L) any other information relating to such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them, or director nominee or proposed business that, in each case, would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies in support of such nominee (in a contested election of directors) or proposal pursuant to Section 14 of the 1934 Act; and
- (M) such other information relating to any proposed item of business as the Company may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

(iv) In addition to the requirements of this Section 2.4, to be timely, a stockholder's notice must further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice is true and correct as of the record date(s) for determining the stockholders entitled to notice of, and to vote at, the meeting and as of the date that is 10 business days prior to the meeting or any adjournment, rescheduling or postponement thereof. Such update and supplement, if applicable, must be received by the secretary at the principal executive offices of the Company not later than five business days after the record date(s) for the meeting (in the case of any update and supplement required to be made as of the record date(s)), and not later than eight business days prior to the date for the meeting or any adjournment, rescheduling or postponement thereof (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment, rescheduling or postponement thereof).

(b) *Special Meetings of Stockholders.* Except to the extent required by the DGCL, and subject to Section 2.3(a), special meetings of stockholders may be called only in accordance with the Company's certificate of incorporation and these bylaws. Only such business will be conducted at a special meeting of stockholders as has been brought before the special meeting pursuant to the Company's notice of meeting. If the election of directors is included as business to be brought before a special meeting in the Company's notice of meeting, then nominations of persons for election to the Board of Directors at such special meeting may be made by any stockholder who (i) is a stockholder of record at the time of giving of the notice contemplated by this Section 2.4(b); (ii) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the special meeting; (iii) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the special meeting; (iv) is a stockholder of record at the time of the special meeting; and (v) complies with the procedures set forth in this Section 2.4(b). For nominations to be properly brought by a stockholder before a special meeting pursuant to this Section 2.4(b), the stockholder's notice must be received by the secretary at the principal executive offices of the Company no earlier than 8:00 a.m., local time, on the 120th day prior to the day of the special meeting and no later than 5:00 p.m., local time, on the 10th day following the day on which public announcement of the date of the special meeting was first made. In no event will any adjournment, rescheduling or postponement of a special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice. A stockholder's notice to the Secretary must comply with the applicable notice requirements of Section 2.4(a) (iii).

(c) Other Requirements.

(i) To be eligible to be a nominee by any stockholder for election as a director of the Company, the proposed nominee must provide to the secretary, in accordance with the applicable time periods prescribed for delivery of notice under Section 2.4(a)(ii) or Section 2.4(b):

(1) a signed and completed written questionnaire (in the form provided by the secretary at the written request of the nominating stockholder, which form will be provided by the secretary within 10 days of receiving such request) containing information regarding such nominee's background and qualifications and such other information as may reasonably be required by the Company to determine the eligibility of such nominee to serve as a director of the Company or to serve as an independent director of the Company;

(2) a written representation and undertaking that, unless previously disclosed to the Company, such nominee is not, and will not become, a party to any voting agreement, arrangement, commitment, assurance or understanding with any person or entity as to how such nominee, if elected as a director, will vote on any issue;

(3) a written representation and undertaking that, unless previously disclosed to the Company, such nominee is not, and will not become, a party to any Third-Party Compensation Arrangement;

(4) a written representation and undertaking that, if elected as a director, such nominee would be in compliance, and will continue to comply, with the Company's corporate governance guidelines as disclosed on the Company's website, as amended from time to time; and

(5) a written representation and undertaking that such nominee, if elected, intends to serve a full term on the Board of Directors.

(ii) At the request of the Board of Directors, any person nominated by the Board of Directors for election as a director must furnish to the secretary the information that is required to be set forth in a stockholder's notice of nomination that pertains to such nominee.

(iii) No person will be eligible to be nominated by a stockholder for election as a director of the Company unless nominated in accordance with the procedures set forth in this Section 2.4. No business proposed by a stockholder will be conducted at a stockholder meeting except in accordance with this Section 2.4.

(iv) The chairperson of the applicable meeting of stockholders will, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these bylaws or that business was not properly brought before the meeting. If the chairperson of the meeting should so determine, then the chairperson of the meeting will so declare to the meeting and the defective nomination will be disregarded or such business will not be transacted, as the case may be.

(v) Notwithstanding anything to the contrary in this Section 2.4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear in person at the meeting to present a nomination or other proposed business, such nomination will be disregarded or such proposed business will not be transacted, as the case may be, notwithstanding that proxies in respect of such nomination or business may have been received by the Company and counted for purposes of determining a quorum. For purposes of this Section 2.4, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting.

(vi) Without limiting this Section 2.4, a stockholder must also comply with all applicable requirements of the 1934 Act with respect to the matters set forth in this Section 2.4, it being understood that (1) any references in these bylaws to the 1934 Act are not intended to, and will not, limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.4; and (2) compliance with clause (4) of Section 2.4(a)(i) and with Section 2.4(b) are the exclusive means for a stockholder to make nominations or submit other business (other than as provided in Section 2.4(c)(vii)).

(vii) Notwithstanding anything to the contrary in this Section 2.4, the notice requirements set forth in these bylaws with respect to the proposal of any business pursuant to this Section 2.4 will be deemed to be satisfied by a stockholder if (1) such stockholder has submitted a proposal to the Company in compliance with Rule 14a-8 under the 1934 Act; and (2) such stockholder's proposal has been included in a proxy statement that has been prepared by the Company to solicit proxies for the meeting of stockholders. Subject to Rule 14a-8 and other applicable rules and regulations under the 1934 Act, nothing in these bylaws will be construed to permit any stockholder, or give any stockholder the right, to include or have disseminated or described in the Company's proxy statement any nomination of a director or any other business proposal.

2.5 Notice Of Stockholders' Meetings

Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

2.6 Quorum

The holders of a majority of the voting power of the capital stock of the Company issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Where a separate vote by a class or series or classes or series is required, a majority of the voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws.

If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairperson of the meeting, or (b) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the original meeting.

2.7 Adjourned Meeting; Notice

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and Section 2.11 of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

2.8 Conduct Of Business

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business and discussion as seem to the chairperson in order. The chairperson of any meeting of stockholders shall be designated by the Board of Directors; in the absence of such designation, the chairperson of the Board of Directors, if any, or the chief executive officer (in the absence of the chairperson of the Board of Directors), or in their absence any other executive officer of the Company, shall serve as chairperson of the stockholder meeting. The chairperson of any meeting of stockholders shall have the power to adjourn the meeting to another place, if any, date or time, whether or not a quorum is present.

2.9 Voting

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of the stock exchange on which the Company's securities are listed, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of the shares of such class or series or classes or series present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of the stock exchange on which the securities of the Company are listed.

2.10 Stockholder Action By Written Consent Without A Meeting

Subject to the rights of holders of undesignated preferred stock of the Company, any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing by such stockholders.

2.11 Record Dates

In order that the Company may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.11 at the adjourned meeting.

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

2.12 Proxies

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by a document or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

2.13 List Of Stockholders Entitled To Vote

The Company shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *provided, however*, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of

shares registered in the name of each stockholder. The Company shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the Company's principal place of business. In the event that the Company determines to make the list available on an electronic network, the Company may take reasonable steps to ensure that such information is available only to stockholders of the Company. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.14 INSPECTORS OF ELECTION

Before any meeting of stockholders, the Company shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The Company may designate one or more persons as alternate inspectors to replace any inspector who fails to act.

Such inspectors shall:

- (a) ascertain the number of shares outstanding and the voting power of each;
- (b) determine the shares represented at the meeting and the validity of proxies and ballots;
- (c) count all votes and ballots;
- (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and
- (e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are multiple inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein.

ARTICLE III.

DIRECTORS

3.1 Powers

The business and affairs of the Company shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided in the DGCL or the certificate of incorporation.

3.2 Number Of Directors

The Board of Directors shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of a majority of the Whole Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Election, Qualification And Term Of Office Of Directors

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

3.4 Resignation And Vacancies

Any director may resign at any time upon notice given in writing or by electronic transmission to the Company. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws or permitted in the specific case by resolution of the Board of Directors, and subject to the rights of holders of undesignated preferred stock, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and not by stockholders. If the directors are divided into classes, a person so chosen to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

If at any time, by reason of death or resignation or other cause, the Company should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the Whole Board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

3.5 Place Of Meetings; Meetings By Telephone

The Board of Directors may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board of Directors may participate in a meeting of the Board of Directors by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 Regular Meetings

Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

3.7 Special Meetings; Notice

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairperson of the Board of Directors, the chief executive officer, the secretary or a majority of the Whole Board.

Notice of the time and place of special meetings shall be:

- (a) delivered personally by hand, by courier or by telephone;
- (b) sent by United States first-class mail, postage prepaid;
- (c) sent by facsimile;
- (d) sent by electronic mail; or

otherwise given by electronic transmission (as defined in Section 232 of the DGCL), directed to each director at that director's address, telephone number, facsimile number, electronic mail address or other contact for notice by electronic transmission, as the case may be, as shown on the Company's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile, (iii) sent by electronic mail or (iv) otherwise given by electronic transmission, it shall be delivered, sent or otherwise directed to each director, as applicable, at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Company's principal executive office) nor the purpose of the meeting, unless required by statute.

3.8 Quorum; Voting

At all meetings of the Board of Directors, a majority of the Whole Board shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

3.9 Board Action By Written Consent Without A Meeting

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this Section 3.9 at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

3.10 Fees And Compensation Of Directors

Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board of Directors shall have the authority to fix the compensation of directors.

3.11 Removal Of Directors

Any director or the entire Board of Directors may be removed from office by stockholders of the Company in the manner specified in the certificate of incorporation and applicable law. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

**ARTICLE IV.
COMMITTEES**

4.1 Committees Of Directors

The Board of Directors may, by resolution passed by a majority of the Whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Company. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in these bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it; but no such committee shall have the power or authority to (a) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (b) adopt, amend or repeal any bylaw of the Company.

4.2 Committee Minutes

Each committee shall keep regular minutes of its meetings.

4.3 Meetings And Action Of Committees

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (a) Section 3.5 (place of meetings and meetings by telephone);
- (b) Section 3.6 (regular meetings);
- (c) Section 3.7 (special meetings and notice);
- (d) Section 3.8 (quorum; voting);
- (e) Section 3.9 (action without a meeting); and
- (f) Section 7.4 (waiver of notice)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members. *However*, (i) the time and place of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee; (ii) special meetings of committees may also be called by resolution of the Board of Directors or the committee; and (iii) notice of special meetings of committees shall also be given to all alternate members who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

4.4 Subcommittees

Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE V. OFFICERS

5.1 OFFICERS

The officers of the Company shall be elected by the Board of Directors and may consist of a chief executive officer, a secretary, a chief financial officer, a chairperson of the Board of Directors, a vice chairperson of the Board of Directors, a treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 Appointment Of Officers

The Board of Directors shall appoint the officers of the Company, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

5.3 Subordinate Officers

The Board of Directors may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the secretary, to appoint, such other officers as the business of the Company may require. Each of such officers shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board of Directors may from time to time determine.

5.4 Removal And Resignation Of Officers

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board of Directors or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof or by any officer who has been conferred such power of removal.

Any officer may resign at any time by giving written notice to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

5.5 Vacancies In Offices

Any vacancy occurring in any office of the Company shall be filled by the Board of Directors or as provided in Section 5.3.

5.6 Representation Of Securities Of Other Entities

The chairperson of the Board of Directors, the chief executive officer or secretary of this Company or any other person authorized by the Board of Directors or the chief executive officer, is authorized to vote, represent and exercise on behalf of this Company all rights incident to any and all shares or other securities of any other entity or entities, and all rights incident to any management authority conferred on the Company in accordance with the governing documents of any entity or entities, standing in the name of this Company, including the right to act by written consent. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 Authority And Duties Of Officers

All officers of the Company shall respectively have such authority and perform such duties in the management of the business of the Company as may be designated from time to time by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors.

ARTICLE VI. STOCK

6.1 Stock Certificates; Partly Paid Shares

Each stockholder shall be entitled to a certificate of the capital stock of the Corporation in such form as may from time to time be prescribed by the Board of Directors. The Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Unless otherwise provided by resolution of the Board of Directors, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Company by any two authorized officers of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Company shall not have power to issue a certificate in bearer form.

The Company may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly-paid shares, or upon the books and records of the Company in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully-paid shares, the Company shall declare a dividend upon partly-paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 Special Designation On Certificates

If the Company is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Company shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Company shall issue to represent such class or series of stock, a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this Section 6.2 or Sections 156, 202(a), 218(a) or 364 of the DGCL or with respect to this Section 6.2 a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 Lost Certificates

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Company and cancelled at the same time. The Company may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 Dividends

The Board of Directors, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the Company's capital stock. Dividends may be paid in cash, in property, or in shares of the Company's capital stock, subject to the provisions of the certificate of incorporation. The Board of Directors may set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

6.5 Transfer Of Stock

Transfers of record of shares of stock of the Company shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer.

6.6 Stock Transfer Agreements

The Company shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Company to restrict the transfer of shares of stock of the Company of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.7 Registered Stockholders

The Company:

(a) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and notices and to vote as such owner; and

(b) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII. MANNER OF GIVING NOTICE AND WAIVER

7.1 Notice Of Stockholders' Meetings

Notice of any meeting of stockholders shall be given in the manner set forth in the DGCL.

7.2 Notice To Stockholders Sharing An Address

Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice. This Section 7.2 shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

7.3 Notice To Person With Whom Communication Is Unlawful

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.4 Waiver Of Notice

Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII. INDEMNIFICATION

8.1 Indemnification Of Directors And Officers In Third Party Proceedings

Subject to the other provisions of this Article VIII, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") (other than an action by or in the right of the Company) by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or

upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

8.2 Indemnification Of Directors And Officers In Actions By Or In The Right Of The Company

Subject to the other provisions of this Article VIII, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any such person that is or was a director or officer of the Company, who was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding by or in the right of the Company to procure a judgment in its favor against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

8.3 Successful Defense

To the extent that a present or former director or officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

8.4 Indemnification Of Others

Subject to the other provisions of this Article VIII, the Company shall have power to indemnify its employees and agents to the extent not prohibited by the DGCL or other applicable law. The Board of Directors shall have the power to delegate to any person or persons identified in subsections (1) through (4) of Section 145(d) of the DGCL the determination of whether employees or agents shall be indemnified.

8.5 Advanced Payment Of Expenses

Expenses (including attorneys' fees) actually and reasonably incurred by an officer or director of the Company in defending any Proceeding shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VIII or the DGCL. Such expenses (including attorneys' fees) actually and reasonably incurred by former directors and officers or other employees and agents of the Company or by persons serving at the request of the Company as directors, officers,

employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Company deems appropriate. The right to advancement of expenses shall not apply to any Proceeding (or any part of any Proceeding) for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding (or any part of any Proceeding) referenced in Section 8.6(b) or 8.6(c) prior to a determination that the person is not entitled to be indemnified by the Company.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 8.8, no advance shall be made by the Company to an officer of the Company (except by reason of the fact that such officer is or was a director of the Company, in which event this paragraph shall not apply) in any Proceeding if a determination is reasonably and promptly made (a) by a vote of the directors who are not parties to such Proceeding, even though less than a quorum, or (b) by a committee of such directors designated by the vote of the majority of such directors, even though less than a quorum, or (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Company.

8.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 8.3 and the DGCL, the Company shall not be obligated to indemnify any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding):

- (a) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;
- (b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);
- (c) for any reimbursement of the Company by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Company, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”), or the payment to the Company of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);
- (d) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Board of Directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise required to be made under Section 8.7 or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

8.7 Determination; Claim

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within 90 days after receipt by the Company of the written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. The Company shall indemnify such person against any and all expenses that are actually and reasonably incurred by such person in connection with any action for indemnification or advancement of expenses from the Company under this Article VIII, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the Company shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

8.8 Non-Exclusivity Of Rights

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The Company is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

8.9 Insurance

The Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of the DGCL.

8.10 Survival

The rights to indemnification and advancement of expenses conferred by this Article VIII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

8.11 Effect Of Repeal Or Modification

A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to the certificate of incorporation or these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

8.12 Certain Definitions

For purposes of this Article VIII, references to the “**Company**” shall include, in addition to the resulting company, any constituent company (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent company, or is or was serving at the request of such constituent company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving company as such person would have with respect to such constituent company if its separate existence had continued. For purposes of this Article VIII, references to “**other enterprises**” shall include employee benefit plans; references to “**fin**es” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “**serv**ing at the request of the **Company**” shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the Company**” as referred to in this Article VIII.

ARTICLE IX. GENERAL MATTERS

9.1 Execution Of Corporate Contracts And Instruments

Except as otherwise provided by law, the certificate of incorporation or these bylaws, the Board of Directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the Company; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

9.2 Fiscal Year

Except as from time-to-time otherwise designated by the Board of Directors, the fiscal year of the corporation shall begin on the first day of January of each year and end on the last day of December in each year.

9.3 Seal

The Company may adopt a corporate seal, which shall be adopted and which may be altered by the Board of Directors. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

9.4 Construction; Definitions

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “**person**” includes a company (including, but not limited to, a limited liability company), corporation, partnership, joint venture, trust or other enterprise, and a natural person. Any reference in these bylaws to a section of the DGCL shall be deemed to refer to such section as amended from time to time and any successor provisions thereto.

9.5 Forum Selection

Unless the Company consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Company, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, stockholder, officer or other employee of the Company to the Company or the Company’s stockholders, (c) any action arising pursuant to any provision of the DGCL or the certificate of incorporation or these bylaws (as either may be amended from time to time) or (d) any action asserting a claim governed by the internal affairs doctrine, except for, as to each of (a) through (d) above, any claim as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within 10 days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than such court or for which such court does not have subject matter jurisdiction. Further, unless the Company consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Any person or entity purchasing or otherwise acquiring any interest in any security of the Company shall be deemed to have notice of and consented to the provisions of this Section 9.5.

ARTICLE X. AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the affirmative vote of the holders of at least 66 2/3% of the total voting power of outstanding voting securities, voting together as a single class, shall be required for the stockholders of the Company to alter, amend or repeal, or adopt any bylaw inconsistent with, the following provisions of these bylaws: Article II, Sections 3.1, 3.2, 3.4 and 3.11 of Article III, Article VIII and this Article X (including, without limitation, any such Article or Section as

renumbered as a result of any amendment, alteration, change, repeal, or adoption of any other Bylaw). The Board of Directors shall also have the power to adopt, amend or repeal bylaws; provided, however, that a bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the Board of Directors.

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT (“**Agreement**”) is made and entered into effective as of this 22nd day of October, 2021 (“**Effective Date**”) by and between Context Therapeutics, Inc. (the “**Company**”) and Martin Lehr (“**Executive**”). The Company and Executive are each referred to herein as a “**Party**” or together as the “**Parties**.” Capitalized words not immediately defined shall have the meaning in the “Definitions” Section below.

WHEREAS, the Company’s predecessor and Executive are parties to a November 1, 2017 Employment Agreement (the “**Prior Agreement**”); and

WHEREAS, the Parties wish to replace and supersede in full the Prior Agreement with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained and incorporated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby expressly covenant and agree as follows:

1. Employment Period. Upon the Effective Date, this Agreement shall supersede and replace the Prior Agreement. The Company shall employ Executive pursuant to this Agreement beginning on the Effective Date and continuing until such employment is terminated pursuant to Section 4 below (the “**Employment Period**”). During the Employment Period, Executive shall remain in the employ of the Company and provide services to the Company in accordance with the terms of this Agreement.

2. Position and Duties.

(a) The Company shall employ Executive during the Employment Period as its Chief Executive Officer (“**Executive Officer**”). During the Employment Period, Executive shall devote his full business time, energy, and talent to serving as Executive Officer of the Company, subject to the direction of the Company’s board of directors (the “**Board**”) or the compensation committee of the Board (the “**Compensation Committee**”).

(b) Executive shall have the duties and responsibilities that are commensurate with his position as Executive Officer and any other or different duties that may be assigned to Executive by the Board or the Compensation Committee, and Executive shall perform all such duties faithfully and efficiently in compliance with applicable law and the policies of the Company, as such policies may be in effect from time to time. Executive shall have such authority and powers as are inherent to the undertakings applicable to Executive’s position and necessary to carry out the duties required of Executive hereunder.

(c) Executive’s principal place of business shall be at the Company’s corporate headquarters; however, it is understood that Executive may be required to travel both domestically and internationally in fulfillment of his duties as set forth herein.

(d) Executive, upon being duly elected, shall also serve as a member of the Board for no additional compensation.

(e) Notwithstanding the foregoing provisions of this **Section 2**, during the Employment Period, Executive may devote reasonable time to activities other than those required under this Agreement, including activities of a charitable, educational, religious, or similar nature to the extent such activities do not, in the judgment of the Board, inhibit, prohibit, interfere with, or conflict with Executive's duties under this Agreement or conflict in any material way with the business of the Company or any Affiliate; *provided, however*, that Executive shall not serve on the board of directors of any business (other than the Company or an Affiliate, or Praesidia Biologics, Inc.) or hold any other position with any business without receiving the prior written consent of the Board.

3. Compensation and Benefits. During the Employment Period, the Company shall compensate Executive for Executive's services as follows:

(a) Executive shall be paid a base salary at an annual rate of \$465,000 (the "**Annual Base Salary**"), which shall be payable in accordance with the normal payroll practices of the Company then in effect. The Executive's Annual Base Salary may be increased annually by the Compensation Committee beginning in the first calendar quarter of 2022; *provided* that the decision whether to increase the Executive's Annual Base Salary and by what amount, if any, shall be made in the good faith discretion of the Compensation Committee.

(b) Executive shall be eligible to receive performance-based annual incentive bonuses (each, an "**Incentive Bonus**") from the Company for each fiscal year ending during the Employment Period. Incentive Bonuses shall be as determined in the discretion of the Compensation Committee, or as may be pursuant to a new annual incentive plan as may be adopted and in effect from time to time, with any applicable performance metrics and goals to be established by the Compensation Committee, after consultation with Executive. Executive's initial target Incentive Bonus shall be 50% of Annual Base Salary ("**Target Bonus**"), which Target Bonus may be increased annually by the Compensation Committee beginning in the first calendar quarter of 2022; *provided* that the decision whether to increase the percentage of the Target Bonus and by what amount, if any, shall be made in the good faith discretion of the Compensation Committee. The actual amount of the Executive's Incentive Bonus, if any, shall be determined in the good faith discretion of the Compensation Committee, subject to the terms of any applicable incentive compensation plan that may be in effect from time to time. Notwithstanding the Effective Date of this Agreement being during the 2021 calendar year, the Executive's Incentive Bonus for 2021, if any, shall be based on the full 2021 calendar year. Except as otherwise provided herein, as may be provided by the Compensation Committee or as may otherwise be set forth in any applicable incentive compensation plan, the Executive must be employed by the Company on the day such Incentive Bonus is paid in order to earn or receive such Incentive Bonus. The Incentive Bonus, if any, will be paid to Executive during the period from January 1 through March 15 of the calendar year following the calendar year to which it relates.

(c) Executive and Company acknowledge that Executive received stock options (the “**Options**”) intended to represent 4.00% (the “**Target Equity Percentage**”) of the Company’s common stock on a fully diluted basis as of the date the Options were granted. The Options will vest in substantially equal installments of 1/36 on the last day of each of the 36 months immediately following the respective grant date, subject to Executive’s continuous service to the Company through each such date. Upon a Qualifying Financing, the Compensation Committee shall in good faith consider making an additional award of stock options in such amount necessary to maintain Executive’s Target Equity Percentage. The Options will be subject to the terms and conditions of the Company’s equity incentive plan under which such Options have been granted (attached hereto as Exhibit B), and the Option Agreement (as attached hereto as Exhibit C).

(d) Executive shall be eligible to participate, subject to the terms thereof, in all incentive plans of the Company as may be in effect from time to time with respect to senior executives employed by the Company in the United States, on as favorable a basis as other similarly situated and performing executives.

(e) Executive shall be eligible to participate, subject to the terms thereof, in all employee benefit plans (including pension, 401(k) and welfare benefit plans) available to the Company’s executive employees, subject to the terms and conditions of such benefit plans as in effect from time to time. If the Company does not have in place a medical, vision, and dental insurance program, Company shall pay to Executive a monthly amount for Executive to purchase coverage in such amounts and on such terms as Executive and Company may agree.

(f) Executive shall be entitled to accrue paid time off and holidays in accordance with and subject to the Company’s paid time off programs and policies relating to its employees in the United States as may be in effect from time to time, *provided* that Executive shall be entitled to a minimum of 20 days of paid time off per calendar year.

(g) Executive shall be reimbursed by the Company for all reasonable out-of-pocket expenses for entertainment, travel, meals, lodging, and similar items that are consistent with the Company’s expense reimbursement policy and that are actually incurred by Executive in the promotion of the Company’s business.

4. Termination. Executive’s employment relationship with the Company shall be at-will. Either Party may terminate Executive’s employment at any time, with or without Cause or Good Reason, for any or no reason (such date of termination, for any reason, the “**Termination Date**”).

(a) **Minimum Benefits upon Termination.** Upon termination of Executive’s employment by the Company for any reason, Executive shall be entitled, in addition to any other benefits to which Executive may be entitled under the following provisions of this **Section 4** or the express terms of any employee benefit plan or as required by law, to the following (together, the “**Accrued Benefits**”):

(i) Executive’s earned but unpaid Annual Base Salary for the period ending on the Termination Date;

(ii) Executive’s earned but unpaid Incentive Bonus, if any, for any completed fiscal year preceding the Termination Date; *provided, however,* that Executive shall not be entitled to any Incentive Bonus in the event of a Termination for Cause if the events giving rise to the Termination for Cause occurred in such prior fiscal year;

(iii) Executive's accrued but unpaid paid time off;

(iv) Executive's unreimbursed business expenses through and including the Termination Date, *provided* that all required submissions for expense reimbursement are made in accordance with the Company's expense reimbursement policy and within 45 days following the Termination Date; and

(v) The benefits, incentives, and awards described in **Section 4(h)(i)**.

Any benefits to be provided to Executive pursuant to this **Section 4(a)** shall be provided within 30 days after the Termination Date (except that payments under Section 4(a)(iv) shall be made within 30 days following submission for reimbursement); *provided, however*, that any benefits, incentives, or awards payable as described in **Section 4(h)(i)** shall be provided in accordance with the terms of the applicable plan, program, or arrangement. Except as may expressly be provided to the contrary in this Agreement, nothing in this Agreement shall be construed as requiring Executive to be treated as employed by the Company or any Affiliate following the Termination Date for purposes of any plan, program, or arrangement.

(b) Termination for Death or Disability. Executive's employment shall terminate automatically upon his death. The Company shall be entitled to terminate the employment of Executive upon Executive's Disability by giving written notice to Executive, in which event the date that the Company gives such notice shall be deemed the Termination Date. Upon a Termination due to Executive's death or Disability, Executive (or Executive's estate, if applicable) shall be entitled to the following:

(i) The Accrued Benefits;

(ii) A payment, payable on the 45th day following the Termination Date, equal to the Target Bonus for the fiscal year in which the Termination Date occurs, prorated on a per diem basis for the number of days employed during such fiscal year prior to the Termination Date, divided by 365 (a "**Pro-Rated Bonus**");

(iii) All unvested Options and any other unvested incentive equity awards then held by Executive that are scheduled to vest within twelve (12) months after the Termination Date shall immediately vest; and

(iv) The continuation of benefits as provided in **Section 4(g)**, provided such benefit shall only be for a maximum period of twelve (12) months.

(c) Termination by Executive for Good Reason or by Company Without Cause. Executive shall be entitled to terminate his employment for Good Reason by giving at least 10 days', but not more than 30 days', prior written notice of termination to the Company, in which event the date specified in the notice of termination shall be deemed the Termination Date; *provided, however*, that (A) prior to giving such notice of Termination for Good Reason, Executive must give the Company written notice of the existence of any condition giving rise to Good Reason within 30 days of its initial existence and the Company shall have 30 days from the date of such notice in which to cure the condition giving rise to Good Reason, if curable, and if, during such 30-day period, the Company cures the condition giving rise to Good Reason, such condition shall

not constitute Good Reason and (B) any Termination for Good Reason must occur within six months of the initial existence of the condition constituting Good Reason. The Company shall be entitled to terminate Executive's employment for any reason that does not constitute Cause, or no reason, by giving at least 10 days' prior written notice to Executive, in which event the date specified in the notice of termination shall be deemed the Termination Date. Upon a Termination by Executive for Good Reason or a Termination by the Company without Cause, Executive shall be entitled to the following:

(i) The Accrued Benefits;

(ii) Payment in an amount equal to 100% of Executive's Annual Base Salary in effect on the Termination Date, paid ratably over a period of twelve (12) months in accordance with the Company's regular payroll cycle;

(iii) All unvested Options and any other unvested incentive equity awards then held by Executive that are scheduled to vest within eighteen (18) months after the Termination Date shall immediately vest; and

(iv) The continuation of benefits as provided in **Section 4(g)**.

(d) Termination Upon a Change in Control. Notwithstanding Section 4(c) above, and in lieu of any payment owed under Section 4(c), if any, in the event that the Company (or its successor) terminates the Executive without Cause or the Executive resigns from employment with the Company for Good Reason, in each case upon a Change of Control (as such terms are defined below) or within the twelve (12) month period following the Change in Control, then Executive shall be entitled to the following:

(i) The Accrued Benefits;

(ii) Payment in an amount of (x) 150% of Executive's Annual Base Salary in effect on the Termination Date, paid ratably over a period of eighteen (18) months in accordance with the Company's regular payroll cycle, and (y) 100% of the Target Bonus for the fiscal year in which the Termination Date occurs, paid ratably over a period of twelve (12) months in accordance with the Company's regular payroll cycle;

(iii) All unvested Options and any other unvested incentive equity awards then held by Executive that are scheduled to vest after the Termination Date shall immediately vest and become immediately exercisable on the Termination Date; and

(iv) The continuation of benefits as provided in **Section 4(g)**.

(e) Termination for Cause. The Company shall be entitled to terminate Executive's employment for Cause by giving written notice of termination to Executive, in which event the date that the Company gives such notice shall be deemed the Termination Date; *provided, however*, that with respect to clauses (iii) or (iv) of the definition of Cause set forth below, to the extent curable, Executive shall be entitled to at least 30 days' prior written notice of the Company's intention to terminate Executive's employment for Cause, which notice shall specify the grounds for Cause; and Executive shall be provided a reasonable opportunity to cure any conduct or act, if

curable, alleged as grounds for Cause, and a reasonable opportunity to present to the Board Executive's position regarding any dispute relating to the existence of any grounds for Cause. Further, all rights Executive has or may have under this Agreement shall be suspended automatically during (i) the pendency of any investigation by the Board or the Compensation Committee, or (ii) any negotiations between the Board and Executive regarding any actual or alleged act or omission by Executive of the type that would warrant a Termination for Cause and any such suspension shall not give rise to a claim of Good Reason by Executive. Upon a Termination for Cause, Executive shall only be entitled to the Accrued Benefits, and all vested and unvested Options and any other incentive equity awards then held by Executive shall immediately be forfeited and expire on the Termination Date.

(f) Termination due to Voluntary Resignation. Executive shall be entitled to terminate his employment without Good Reason by giving at least 30 days' prior written notice to the Company, in which event the date that is 30 days after the date that Executive gives such notice shall be deemed to be the Termination Date. Upon a Termination by Executive without Good Reason, Executive shall only be entitled to the Accrued Benefits, and all unvested Options and other unvested incentive equity awards then held by Executive shall immediately expire on the Termination Date.

(g) Medical, Vision and Dental Benefits. If Executive's employment is terminated pursuant to **Section 4(b), 4(c) or 4(d)** above, then, to the extent that Executive or any of Executive's dependents may be covered under the terms of any medical, vision or dental plans of the Company (or an Affiliate) for active employees immediately prior to the Termination Date and provided Executive is eligible for and elects to continue coverage (under the health care continuation rules of COBRA, *provided that* if, on the Termination Date, the Company is not subject to COBRA, the Company shall provide for continuation coverage as if it were subject to COBRA for the entire period to which COBRA would have applied if the Company had been subject to COBRA (collectively for purposes of this Agreement, "**COBRA**")), the Company shall provide Executive and those dependents with coverage equivalent to the coverage in effect immediately prior to the applicable Termination Date for a period of up to 12-months following the Termination Date, such that Executive shall be required to pay, on a monthly after-tax basis, the same amount as Executive would pay if Executive continued in employment with the Company during such period ("**Subsidized Coverage**") and the Company's portion of the cost of the Subsidized Coverage will be treated as taxable income to Executive, and thereafter Executive shall be responsible for the full cost of such continued coverage; *provided, however,* that Subsidized Coverage shall be provided as described above unless the Company determines, based on a written legal opinion of counsel, that the Company's provision of Subsidized Coverage results in the violation of non-discrimination provisions of applicable law, as may be applicable to the Company, the imposition of a material additional tax or other material penalty being imposed on the Company (or an Affiliate) or any employee participating in such plans. If the Company makes such a determination, then the Company shall pay Executive an additional severance benefit equal to the cost to the Company of the Subsidized Coverage (had such Subsidized coverage been provided) to assist Executive with the cost of COBRA or, if not available, to assist Executive with the cost of comparable coverage for Executive and his eligible dependents. In the event Executive or any of Executive's dependents is or becomes eligible for coverage under the terms of any other medical and/or dental plan of a subsequent employer with plan benefits that are comparable to Company (or Affiliate) plan benefits, the Company's and its Affiliates' obligations under this **Section 4(g)** shall cease with respect to the eligible Executive and/or dependent. Executive and Executive's dependents must notify the Company of any subsequent employment and provide information regarding medical and/or dental coverage available.

(h) Other Benefits.

(i) Executive's rights following a Termination with respect to any benefits, incentives, or awards provided to Executive pursuant to the terms of any plan, program, or arrangement sponsored or maintained by the Company or its Affiliates, whether tax-qualified or not, which are not specifically addressed herein, shall be subject to the terms of such plan, program, or arrangement and this Agreement shall have no effect upon such terms except as specifically provided herein.

(ii) Except as specifically provided in this Agreement, the Company and its Affiliates shall have no further obligations to Executive under this Agreement following a Termination.

(i) Removal from any Boards, Committees and Positions. Unless otherwise agreed to in writing by the Parties at the time of Termination, upon a Termination, Executive shall be deemed to resign (i) if a member, from the Board and from the board of directors of any Affiliate and any other board or committee to which Executive has been appointed or nominated by or on behalf of the Company or an Affiliate, (ii) from each position with the Company and any Affiliate, including as an officer of the Company or an Affiliate and (iii) as a fiduciary of any employee benefit plan of the Company and any Affiliate.

5. Release. Notwithstanding any provision of this Agreement to the contrary, Executive shall not be entitled to any benefits under **Section 4(b), 4(c), 4(d) or 4(g)** (other than the Accrued Benefits), and shall repay to the Company any such benefits received, unless Executive (or Executive's estate, if applicable) executes (without subsequent revocation) and delivers to the Company a Release within 21 days (or such longer period to the extent required by applicable law) following the Termination Date.

6. Restrictive Covenants. Executive acknowledges that Executive has been and will continue to be provided intimate knowledge of the business practices, trade secrets, and other confidential and proprietary information of the Company (including the Confidential Information), which, if exploited by Executive, would seriously, adversely, and irreparably affect the interests of the Company and the ability of the Company to continue its business. Executive further acknowledges that, during the course of Executive's employment with the Company, Executive has produced and had access, and will continue to produce and have access, to Confidential Information.

(a) Confidential Information. During the course of Executive's employment and following a Termination:

(i) Executive shall not directly or through others use, disclose, copy, or make lists of Confidential Information for the benefit of anyone other than the Company, except to the extent that such information is, at the time of disclosure, lawfully available from public sources, or such disclosure is authorized in writing by the Company, required or permitted by law, or otherwise as reasonably necessary or appropriate in connection with the performance by Executive of Executive's duties to the Company.

(ii) Executive shall abide by the Company's policies, as in effect from time to time, respecting avoidance of interests conflicting with those of the Company and its Affiliates. In this regard, Executive shall not directly or indirectly render services to any person or Entity where Executive's service would involve the use or disclosure of Confidential Information other than as authorized on behalf of the Company.

(iii) Notwithstanding the foregoing, nothing in this Agreement prohibits Executive from initiating communications directly with, responding to any inquiries from, providing testimony before, providing confidential information to, reporting possible violations of law or regulation to, or from filing a claim or assisting with an investigation directly with a self-regulatory authority or a government agency or entity, including the U.S. Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Department of Justice, the Securities and Exchange Commission, Congress, and any agency Inspector General (collectively, the "**Regulators**"), or from making other disclosures that are protected under the whistleblower provisions of state or federal law or regulation. In connection with any such activity, Executive must identify any information that is confidential and ask the Regulator for confidential treatment of such information, except as permitted by law. Despite the foregoing, Executive is not permitted to reveal to any third party, including any governmental, law enforcement, or regulatory authority, information Executive came to learn during the course of Executive's employment with the Company that is protected from disclosure by any applicable privilege, including but not limited to the attorney-client privilege, attorney work product doctrine and/or other applicable legal privileges, except as otherwise required by law. The Company and its Affiliates do not waive any applicable privileges or the right to continue to protect its privileged attorney-client information, attorney work product, and other privileged information.

(b) Documents and Property.

(i) All records, files, documents, and other materials or copies thereof relating to the business of the Company or its Affiliates that Executive prepares, receives, or uses shall be and remain the sole property of the Company and, other than in connection with the performance by Executive of Executive's duties to the Company, shall not be removed from the premises of the Company or its Affiliates without the Company's prior written consent, and shall be immediately returned to the Company upon a Termination, together with all copies (including copies or recordings in electronic form), abstracts, notes, or reproductions of any kind made from or about the records, files, documents, or other materials.

(ii) Executive acknowledges that Executive's access to and permission to use the Company's and its Affiliates' computer systems, networks, and equipment, and all the Company and Affiliate information contained therein, is restricted to legitimate business purposes on behalf of the Company and reasonable personal use in accordance with the Company's applicable policies and procedures. Any other access to or use of such systems, networks, equipment, and information is without authorization and is prohibited. The restrictions contained in this **Section 6(b)** extend to any personal computers or other electronic devices of Executive that are used for business purposes relating to the Company or its Affiliates. Executive shall not

transfer any Company or Affiliate information to any personal computer or other electronic device that is not otherwise used for any business purpose relating to the Company or an Affiliate. Upon a Termination, Executive's authorization to access and permission to use the Company's and its Affiliates' computer systems, networks, and equipment, and any Company and Affiliate information contained therein, shall cease, and Executive shall delete any Company and Affiliate information from Executive's personal computer or other electronic device.

(c) Non-Competition and Non-Solicitation. In consideration of the enhanced compensation and benefits provided in this Agreement, and Executive's employment hereunder, Executive shall not, during Executive's employment with the Company or during the Restricted Period, directly or through others (all of which are collectively referred to in this Agreement as the "**Restrictive Covenant**"):

(i) Own, manage, operate, or control, participate in the management, operation, or control of, be employed by, serve as a director, officer, or consultant to, or render services to a Competitor conducting business in the Restricted Area. *However*, the ownership by Executive of shares of the capital stock of any Entity, which shares are listed on a securities exchange and that do not represent more than 5% of the Entity's outstanding capital stock, shall not violate any terms of this Agreement. Additionally, Executive's participation or inclusion on the board of any other entity, shall not violate any terms of this Agreement.

(ii) (A) Induce or attempt to induce any employee of the Company or an Affiliate to leave the employ of the Company or any Affiliate; (B) interfere with the relationship between the Company or an Affiliate, on the one hand, and any employee of the Company or an Affiliate, on the other hand; or (C) induce or attempt to induce any customer, supplier, licensee, advisor, consultant, or other business relation of the Company to cease doing business with the Company or interfere with the relationship between the Company and its respective customers, suppliers, licensees, advisors, consultants or other business relations.

(d) Works Made for Hire; Ownership of Company Work Product.

(i) The Parties understand and agree that all work prepared by Executive for the Company or for its Affiliates shall be a Work Made For Hire as such phrase is defined under the U.S. Copyright laws, 17 U.S.C. § 101 *et seq.*, and if such work does not qualify as a Work Made For Hire, Executive shall, and does, assign to the Company all of Executive's right, title, and interest in and to the work, including all patent, copyright, trademark, and other proprietary rights thereto. Executive waives and releases all moral rights in any of the works as Executive may possess by virtue of the Visual Artist's Moral Rights Act of 1990 and various country or state laws of attribution, authorship, and integrity commonly referred to as Moral Rights Law. Executive shall not assert any claim based upon such moral rights against the Company, the Affiliates, or any of their respective successors in interest or assigns. Executive shall have no right, title, or interest in any of the work and shall not be entitled to any royalties or other proceeds received by the Company or its Affiliates from the commercialization in any manner of the work.

(ii) Executive hereby assigns to the Company any right, title, and interest in and to all Company Work Product that Executive may have, by law or equity, without additional consideration of any kind whatsoever from the Company or its Affiliates.

(iii) Executive shall execute and deliver any instruments or documents and do all further acts (including the giving of testimony and executing any applications, oaths, and assignments) requested by the Company (both before and after a Termination) in order to vest more fully in the Company or its Affiliates all ownership rights in the Company Work Product (including obtaining patent, copyright, trademark, or other intellectual property protection therefore in the United States and foreign countries).

(iv) The Company or its Affiliates shall at all times own and have exclusive right, title, and interest in and to all Confidential Information and Company Work Product, and the Company or its Affiliates shall retain the exclusive right to use, license, sell, transfer, and otherwise exploit and dispose of the same. Executive shall, and does, assign to the Company all of Executive's right, title, and interest in and to any and all Company Work Product work, including all patent, copyright, trademark, and other proprietary rights thereto. Executive acknowledges the Company's or its Affiliates' exclusive right, title, and interest in and to the Confidential Information and Company Work Product, and shall not contest, challenge or make any claim adverse to the Company's or its Affiliates' ownership of or the validity of the Confidential Information and Company Work Product, any future application for registration or registration thereof, or any rights of the Company or its Affiliates therein, or which, directly or indirectly, may impair any part of the Company's or its Affiliates' right, title, and interest therein.

(v) This **Section 6(d)** shall not apply to an invention by Executive for which no equipment, supplies, facility, or trade secret information of the Company or its Affiliates was used and that was developed entirely on Executive's own time, unless the invention (i) relates to the business of the Company or an Affiliate or to the Company's or an Affiliate's actual or demonstrably anticipated research or development or (ii) results from any work performed by Executive for the Company or an Affiliate.

(e) Consent and Release. From time to time, the Company's business locations may be the subject of a Promotional Work. Executive acknowledges that Executive is aware that Executive's name, image, and likeness may be captured in such Promotional Work, and hereby consents and agrees that the Company may use Executive's name, image, and likeness as captured in the Promotional Work in any manner, in connection with the Company's products and services or as part of any promotion of the Company, and, at all times, including after the term of this Agreement, the Company, its Affiliates, and, without limitation, their respective customers, successors, licensees, and assigns, may continue to use the Promotional Work that includes Executive's name, image, or likeness. Executive, Executive's heirs, predecessors, successors, assigns, and all affiliated entities hereby fully and finally release, remise, and forever discharge the Company, its Affiliates, their respective predecessors, successors, assigns, and all affiliated entities, and each of their respective directors, officers, members, shareholders, partners, employees, customers, agents, and attorneys, to the extent that such apply, of and from any and all manner of actions, causes of action, losses, claims, demands, liabilities, obligations, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, and executions, in law or in equity, that arise out of or are related to the Company's or its Affiliates' use of a Promotional Work that includes Executive's name, image, or likeness.

(f) Company Proprietary and Intellectual Property.

(i) The Company or its Affiliates shall at all times own and have exclusive right, title, and interest in and to all Company Proprietary and Intellectual Property, and the Company or its Affiliates shall retain the exclusive right to use, license, sell, transfer, and otherwise exploit and dispose of the same. Executive acknowledges the Company's or its Affiliates' exclusive right, title, and interest in and to Company Proprietary and Intellectual Property, and shall not contest, challenge, or make any claim adverse to the Company's or its Affiliates' ownership of or the validity of Company Proprietary and Intellectual Property, any future application for registration or registration thereof, or any rights of the Company or its Affiliates therein, or which, directly or indirectly, may impair any part of the Company's or its Affiliates' right, title, and interest therein. Executive shall not use or otherwise exploit any of Company Proprietary and Intellectual Property in any manner not authorized by the Company.

(ii) Notwithstanding any other provisions of this Agreement, pursuant to 18 USC Section 1833(b), Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of the Company's or its Affiliate's trade secret that is made: (A) confidentially to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (B) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose a Company's or its Affiliate's trade secret to Executive's attorney and use the trade secret information in related court proceedings, provided that Executive files any document containing the trade secret information under seal and does not disclose the trade secret, except pursuant to court order.

(g) Remedies for Breach of Restrictive Covenant.

(i) Executive has reviewed the provisions of this Agreement with legal counsel, or has been given adequate opportunity to seek such counsel, and Executive acknowledges that the covenants contained in this **Section 6** are reasonable with respect to their duration, geographical area, and scope.

(ii) Executive acknowledges that (A) the restrictions contained in this **Section 6** are reasonable and necessary for the protection of the legitimate business interests of the Company, (B) such restrictions create no undue hardships, and (C) such restrictions were a material inducement to the Company to employ Executive and to enter into this Agreement and to provide the compensation, benefits and opportunities hereunder.

(iii) Executive agrees to communicate the existence and terms of this Agreement to any third party with whom Executive may seek or obtain future employment or other similar arrangement during the Restricted Period.

(iv) In the event of any violation or threatened violation of the restrictions contained in this **Section 6**, the Company, in addition to and not in limitation of, any other rights, remedies, or damages available to the Company under this Agreement or otherwise at law or in equity, may be entitled to preliminary and permanent injunctive relief to prevent or restrain any such violation by Executive and all persons directly or indirectly acting for or with Executive, as the case may be.

(v) If Executive violates the Restrictive Covenant and the Company brings legal action for injunctive or other relief, the Company shall not, as a result of the time involved in obtaining such relief, be deprived of the benefit of the full period of the Restrictive Covenant; accordingly, the Restrictive Covenant shall be deemed to have the duration specified herein computed from the date the relief is granted but reduced by the time between the period when the Restricted Period began to run and the date of the first violation of the Restrictive Covenant by Executive.

7. Section 280G. In the event it shall be determined that any payment, distribution or other action by the Company to or for the benefit of Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (each, a “**Payment**”) would be subject to an excise tax imposed by Section 4999 of the Code (such excise tax referred to as the “**Excise Tax**”), the Company shall either **(a)** make a payment to Executive of all amounts due without any adjustment, or **(b)** reduce whatever payments are deemed to be contingent on a transaction that constitutes either a “change in the ownership or effective control” of the Company, a “change in the ownership of a substantial portion of the assets” of the Company (as such phrases are used for purposes of Code Section 280G), to the extent necessary that no payments or benefits provided to Executive are subject to the Excise Tax, whichever approach results in a better economic result for Executive on a better economic result for Executive net of all taxes, including the Excise Tax. The determination of which approach shall be applied shall be made by a public accounting firm retained by the Company for purposes of making this determination (the “**Accounting Firm**”), which need not be the same firm otherwise retained by the Company for the provision of general accounting services. The reduction in payments or benefits provided to Executive under approach (b) shall be applied in a manner that the Accounting Firm determines to be the most appropriate, taking into account possible tax implications of Code Section 409A, and that avoids any unnecessary losses to Executive that may occur in the case of a reduction achieved by reducing the extent to which equity is vested on an accelerated basis.

8. No Set-Off; No Mitigation. Except as provided herein, the Company’s obligation to provide benefits under this Agreement and otherwise to perform its obligations hereunder shall not be affected by any circumstances, including any set-off, counterclaim, recoupment, defense, or other right the Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement, and such amounts shall not be reduced whether or not Executive obtains other employment.

9. Notices. Notices and all other communications under this Agreement shall be in writing and shall be deemed given when mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows: if to the Company, to the principal headquarters of the Company, attention: Chairman of the Board; and if to Executive, to Executive’s most recent address in the Company’s records; or, in each respective case, to such other address as either Party may furnish to the other in writing, except that notices of changes of address shall be effective only upon receipt.

10. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware, without regard to principles of conflict of laws (whether in Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than Delaware.

11. Choice of Venue and Consent to Jurisdiction. Each Party hereby irrevocably submits to the exclusive jurisdiction of the federal and state courts located within Philadelphia County, Pennsylvania and New Castle County, Delaware for the purpose of any suit, action, or other proceeding arising out of or based on this Agreement or any other agreement contemplated hereby or any subject matter hereof, whether in tort, contract, or otherwise.

12. Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes all prior negotiations, undertakings, agreements, and arrangements with respect thereto, whether written or oral.

13. Withholding of Taxes. The Company may withhold from any benefits payable under this Agreement all federal, state, city and other taxes as may be required pursuant to any law, governmental regulation, or ruling.

14. Assignment. Executive's right to receive benefits under this Agreement shall not be assignable or transferable whether by pledge, creation of a security interest, or otherwise, other than a transfer by will, by the laws of descent or distribution, or as otherwise provided in this Agreement. The Company may assign this Agreement, including to any Affiliate or in connection with a merger or sale of equity or assets, and upon any such assignment all references to the Company herein shall be deemed to include the assignee. The Company need not obtain Executive's authorization or permission to assign this Agreement; however, if the Company assigns this Agreement, for any reason, the Company agrees to provide advance notice thereof to Executive and ensure the party to whom this Agreement is assigned has the resources to comply with the terms set forth herein. This Agreement shall inure to the benefit of and be enforceable by Executive's personal and legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees. This Agreement shall be binding upon and inure to the benefit of the Company, its successors, and assigns.

15. Amendment. This Agreement may not be amended or modified except by written agreement signed by the Parties.

16. Executive Acknowledgement. Executive hereby represents that from and after the Effective Date the performance of Executive's duties hereunder will not breach any other agreement to which Executive is a party. Executive acknowledges that Executive has read and understands this Agreement, is fully aware of its legal effect, has not acted in reliance upon any representations or promises made by the Company other than those contained in writing herein, and has entered into this Agreement freely based on Executive's own judgment.

17. Code Section 409A. To the extent any provision of this Agreement or action by the Company would subject Executive to liability for interest or additional taxes under Code Section 409A, it shall be deemed null and void, to the extent permitted by law and deemed advisable by the Company. Payments under this agreement are intended to be exempt from Code Section 409A, and, if not exempt, to be compliant with the requirements of Code Section 409A. Notwithstanding any provision of this Agreement to the contrary, to the extent any payments are

part of a plan or agreement that is subject to Code Section 409A and such payments are payable on termination of employment (or other similar concept), such payments shall only be made if the payment triggering event also constitutes a "separation from service" within the meaning of Code Section 409A. In addition, if (A) the Company has any class of equity securities traded on a stock exchange and (B) Executive is a "specified employee" (as that phrase is used for purposes of Code Section 409A) as of the date of Executive's "separation from service," any payment that is subject to Code Section 409A and is payable by reason of Executive's "separation from service," such payment shall not be made prior to the first day of the seventh (7th) calendar month following the date of Executive's "separation from service" or the date of Executive's death, if earlier. For purposes of Code Section 409A, all installment payments of deferred compensation made hereunder, or pursuant to another plan or arrangement, shall be deemed to be separate payments. To the extent any reimbursements or in-kind benefit payments under this Agreement are subject to Code Section 409A, such reimbursements and in-kind benefit payments shall be made in accordance with Treasury Regulation Section 1.409A-3(i)(1)(iv). This Agreement may be amended to the extent necessary (including retroactively) by the Company to avoid the application of taxes or interest under Code Section 409A, while maintaining to the maximum extent practicable the original intent of this Agreement. This Section 17 shall not be construed as a guarantee of any particular tax effect for Executive's benefits under this Agreement and the Company does not guarantee that any such benefits will satisfy the provisions of Code Section 409A or any other provision of the Code.

18. Construction.

(a) In this Agreement, unless otherwise stated, the following uses apply: (i) references to a statute refer to the statute and any amendments and any successor statutes, and to all regulations promulgated under or implementing the statute, as amended, or its successors, as in effect at the relevant time; (ii) in computing periods from a specified date to a later specified date, the words "from" and "commencing on" (and the like) mean "from and including," and the words "to," "until," and "ending on" (and the like) mean "to, and including"; (iii) references to a governmental or quasi-governmental agency, authority, or instrumentality also refer to a regulatory body that succeeds to the functions of the agency, authority, or instrumentality; (iv) the words "include," "includes," and "including" (and the like) mean "include, without limitation," "includes, without limitation," and "including, without limitation," (and the like) respectively; (v) all references to sections and exhibits are to sections and exhibits in or to this Agreement; (vi) the words "hereof," "herein," "hereto," "hereby," "hereunder," (and the like) refer to this Agreement as a whole (including exhibits); (vii) any reference to a document or set of documents, and the rights and obligations of the Parties under any such documents, means such document or documents as amended from time to time, and all modifications, extensions, renewals, substitutions, or replacements thereof; (viii) all words used shall be construed to be of such gender or number as the circumstances and context require; and (ix) the captions and headings of preambles, recitals, sections, and exhibits appearing in or attached to this Agreement have been inserted solely for convenience of reference and shall not be considered a part of this Agreement, nor shall any of them affect the meaning or interpretation of this Agreement or any of its provisions.

(b) If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement and all other provisions shall remain in full force and effect.

(c) The various covenants and provisions of this Agreement are intended to be severable and to constitute independent and distinct binding obligations.

(d) Without limiting the generality of the foregoing, if the scope of any covenant contained in this Agreement is too broad to permit enforcement to its full extent, such covenant shall be enforced to the maximum extent permitted by law, and such scope may be judicially modified accordingly.

(e) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

19. Definitions. As used in this Agreement, the terms defined in this **Section 19** have the meanings set forth below.

(a) “**Affiliate**” means each Entity that, directly or indirectly, is controlled by, controls, or is under common control with, the Company, where “control” means (i) the ownership of more than 50% of the Voting Securities or other voting or equity interests of any Entity, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Entity.

(b) “**Cause**” means any of the following (in each case as determined by the Compensation Committee or the Board):

(i) Executive’s conviction of, or plea of *nolo contendere* or equivalent to, a crime of embezzlement or fraud or any felony under the laws of the United States or any state thereof;

(ii) An act of fraud, willful misconduct or dishonesty by Executive in the course of or related to his employment hereunder or that could reasonably be expected to be materially injurious to the Company or an Affiliate;

(iii) A material breach by Executive of any of the provisions of the Agreement; or

(iv) An act of moral turpitude by Executive in the course of, or related to, his employment hereunder or that could reasonably be expected to lead to a material harm (financial or reputational) to the Company or an Affiliate.

(c) “**Change in Control**” means the date on which:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group (“Person”), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; provided, however, that for purposes of this subsection (i), the acquisition of additional stock by any one Person, who is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered a Change in Control; or

(ii) A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by Directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) A sale or other disposition of all or substantially all of the Company's assets in one or more transactions, other than to any entity of which more than 50% of the total voting power is owned, directly or indirectly, by stockholders of the Company in substantially the same proportions as their ownership of the voting power of the stock of the Company immediately prior to the transaction which results in a sale or disposition as to all or substantially all of the Company's assets; or

(iv) A merger, consolidation or similar transaction directly or indirectly involving the Company in which immediately after the consummation of such transaction, the stockholders of the Company immediately prior to such transaction do not directly or indirectly own more than 50% of the total voting power of the surviving entity in such transaction (or of any applicable Parent of such surviving entity), in substantially the same proportions as their ownership of the voting power of the stock of the Company immediately prior to the transaction.

For purposes of this definition of Change in Control, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. Notwithstanding the foregoing, the occurrence of any event shall not be deemed a Change in Control: (i) with respect to any award or payment that is subject to Code Section 409A unless such event qualifies as a change in control event within the meaning of Code Section 409A, or (ii) if the sole purpose of the underlying transaction(s) is to change the jurisdiction of the Company's incorporation or to create a holding company of which the total voting power is owned, directly or indirectly, by stockholders of the Company in substantially the same proportions as their ownership of the voting power of the stock of the Company immediately prior to such transaction(s).

(d) "Code" means the Internal Revenue Code of 1986.

(e) "Company Proprietary and Intellectual Property" means all products, systems, methods, procedures, techniques, manuals, databases, plans, lists, inventions, discoveries, innovations, improvements, enhancements, concepts, ideas, and software conceived, created, compiled, or otherwise developed by the Company or its Affiliates and/or comprised, in whole or part, of Confidential Information, together with all patent rights, copyrights, trademarks, service marks, trade name rights and other source identifiers, trade secrets, and other intellectual property and property rights therein, if any.

(f) “Company Work Product” means all products, systems, methods, procedures, techniques, manuals, databases, plans, lists, inventions, discoveries, innovations, improvements, enhancements, concepts, ideas, and software conceived, created, compiled, or otherwise developed by Executive, alone or with others, in the course of Executive’s employment with the Company or its Affiliates and/or comprised, in whole or part, of Confidential Information, together with all patent rights, copyrights, trademarks, service marks, trade name rights, trade secrets, and other intellectual property and propriety rights therein, if any.

(g) “Competitor” means any entity offering, or having proposed to offer, the specific products offered by the Company during the two years prior to Executive’s separation. For purposes of clarity, “Competitor” does not include an entity simply because it offers oncology products or operates in the oncology field; rather, for an entity to be a Competitor, the entity must offer or have proposed to offer the specific products offered by the Company during the two years prior to Executive’s separation.

(h) “Confidential Information” means trade secret, confidential, proprietary or other non-public information concerning the Company or its Affiliates, including research, development, designs, formulae, processes, specifications, technologies, marketing materials, financial and other information concerning customers and prospective customers, customer lists, records, data, computer programs, source codes, object codes, database structures, trade secrets, proprietary business information, pricing and profitability information, policies, strategic planning, commitments, plans, procedures, litigation, pending litigation, and other information not generally available to the public.

(i) “Disability” means that (i) Executive is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (ii) Executive is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under long-term disability plan covering employees of the Company. In the event of a dispute regarding whether Executive has incurred a Disability, each of Executive and the Company shall choose a physician who together shall choose a third physician to make a final determination regarding whether Executive has incurred a Disability.

(j) “Entity” means any corporation, partnership, limited liability company, joint venture, association, partnership, business trust or other business entity.

(k) “Financing” means a transaction involving equity, debt, joint venture, licensing, merger or other similar arrangement resulting in cash proceeds to the Company, including the aggregate amount of capital raised without regard to any conditions placed on the Financing (such as milestone targets).

(l) “Good Reason” means the occurrence of any one of the following events, unless Executive agrees in writing that such event shall not constitute Good Reason:

(i) A material and adverse change in the nature, scope, or status of Executive’s position, authorities, responsibilities, or duties from those in effect in accordance with **Section 2**, including, without limitation, Executive ceasing to be an “executive officer” (as defined under Rule 3b-7 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) of a company with a class of securities registered under Section 12(b) of the Exchange Act, or the assignment to Executive of any duties materially inconsistent with the duties and responsibilities of Executive Officer;

(ii) A material reduction in Executive’s then-current Annual Base Salary and/or Target Bonus, or a material reduction in Executive’s aggregate benefits or other compensation plans in effect immediately following the Effective Date;

(iii) A permanent relocation of Executive’s primary place of employment that increases Executive’s commuting distance from his primary residence by more than twenty-five (25) miles, as compared with Executive’s commute to Executive’s primary place of employment as initially agreed to by Executive and the Company; or

(iv) A material breach by the Company of this Agreement.

(m) “Promotional Work” means, without limitation, photographs, films, clips, sketches, segments, and other media and promotional works, including any derivative works thereof, used for reasonable purposes in connection with the business of the Company.

(n) “Qualifying Financing” means one or more Financings within the 12 months before or following the Effective Date resulting in gross proceeds of not less than \$15,000,000.

(o) “Release” means a general release and waiver as substantially in the form attached hereto as **Exhibit A** and otherwise as agreed upon by the Company and Executive.

(p) “Restricted Area” means each state in the United States in which the Company or its Affiliates are actively engaged in or pursuing business at the time of Executive’s termination of employment.

(q) “Restricted Period” means a period of 12 months immediately following the applicable Termination Date.

(r) “Termination” means termination of Executive’s employment with the Company and all Affiliates for any reason or no reason.

(s) “Voting Securities” means any securities that ordinarily possess the power to vote in the election of directors without the happening of any precondition or contingency.

20. Survival. The provisions of Section 6 shall survive the termination of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed in its name and on its behalf, and Executive acknowledges understanding and acceptance of, and agrees to, the terms of this Agreement, all as of the Effective Date.

CONTEXT THERAPEUTICS INC.

Martin Lehr

By: /s/ Richard Berman
Name: Richard Berman
Title: Chairman of the Board of Directors

/s/ Martin Lehr

EXHIBIT A

AGREEMENT AND RELEASE AND WAIVER

This **AGREEMENT AND RELEASE** (“**Agreement**”) is made and entered into by and between **Context Therapeutics, Inc.** (the “**Company**”) and [•] (“**Executive**”).

WHEREAS, Executive and the Company desire to settle fully and amicably all issues that Executive has with the Company, including any issues arising out of Executive’s employment with the Company and the termination of that employment; and

WHEREAS, Executive and the Company are parties to that certain Employment Agreement, made and entered into as of [•], as amended (the “**Employment Agreement**”).

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and sufficient consideration, receipt of which is hereby acknowledged, Executive and the Company (collectively, the “**Parties**” and, individually, each a “**Party**”), intending to be legally bound, hereby agree as follows:

1. Termination of Employment. Executive’s employment with the Company terminated effective as of the close of business on [•] (the “**Termination Date**”).

2. Compensation and Benefits. Subject to the terms of this Agreement, the Company shall compensate Executive under this Agreement as follows (collectively, the “**Severance Payments**”):

(a) Severance Payments. [•].

(b) Accrued Salary and Vacation. Executive shall be entitled to a lump sum payment in an amount equal to Executive’s earned but unpaid annual base salary and vacation pay for the period ending on the Termination Date, with such payment to be made on the first payroll date following the Termination Date.

(c) Executive Acknowledgement. Executive acknowledges that, subject to fulfillment of all obligations provided for herein, Executive has been fully compensated by the Company, including under all applicable laws, and that nothing further is owed to Executive with respect to wages, bonuses, severance, other compensation, or benefits. Executive further acknowledges that the Severance Payments (other than (b) above) are consideration for Executive’s promises contained in this Agreement, and that the Severance Payments are above and beyond any wages, bonuses, severance, other compensation, or benefits to which Executive is entitled from the Company under the terms of Executive’s employment or under any other contract or law, absent his execution of this Agreement.

(d) Withholding. The Severance Payments shall be treated as wages and subject to all taxes and other payroll deductions required by law.

3. Termination of Benefits. Except as provided in **Section 2** above or as may be required by law, Executive’s participation in all employee benefit (pension and welfare) and compensation plans of the Company shall cease as of the Termination Date. Nothing contained herein shall limit or otherwise impair Executive’s right to receive pension or similar benefit payments that are vested as of the Termination Date under any applicable tax-qualified pension or other plans, pursuant to the terms of the applicable plan.

4. Release of Claims and Waiver of Rights. Executive, on Executive's own behalf and that of Executive's heirs, executors, attorneys, administrators, successors, and assigns, fully releases and discharges the Company; each of its predecessors, successors, parents, subsidiaries, affiliates, and assigns; all of its and their current and former directors, officers, trustees, employees, and agents, both in their individual and official capacities; and the current and former trustees and administrators of each retirement and other benefit plan applicable to the employees and former employees of the Company, both in their official and individual capacities (the "**Releasees**") from all liability, claims, demands, and actions Executive now has, may have had, or may ever have, whether currently known or unknown, as of or prior to Executive's execution of this Agreement (the "**Release**"), including liability claims, demands, and actions:

- (a) Arising from or relating to Executive's employment or other association with the Company, or the termination of such employment,
- (b) Relating to wages, bonuses, incentive pay, equity, other compensation, or benefits,
- (c) Relating to any employment or change in control contract,
- (d) Relating to any employment law, including
 - (i) The laws of the United States and Commonwealth of Pennsylvania,
 - (ii) The Civil Rights Act of 1964,
 - (iii) The Civil Rights Act of 1991,
 - (iv) The Equal Pay Act,
 - (v) The Employee Retirement Income Security Act of 1974,
 - (vi) The Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act (the "**ADEA**"),
 - (vii) The Americans with Disabilities Act,
 - (viii) Executive Order 11246, and
 - (ix) Any other federal, state, or local statute, ordinance, or regulation relating to employment,
- (e) Relating to any right of payment for disability,
- (f) Relating to any statutory or contractual right of payment, and

(g) For relief on the basis of any alleged tort or breach of contract under the common law of the Commonwealth of Pennsylvania, or any other state, including defamation, intentional or negligent infliction of emotional distress, wrongful termination, breach of the covenant of good faith and fair dealing, promissory estoppel, and negligence.

Executive acknowledges that Executive is aware that statutes exist that render null and void releases and discharges of any claims, rights, demands, liabilities, actions, and causes of action that are unknown to the releasing or discharging party at the time of execution of the release and discharge. Executive waives, surrenders, and shall forego any protection to which Executive would otherwise be entitled by virtue of the existence of any such statutes in any jurisdiction, including the Commonwealth of Pennsylvania.

5. Exclusions from General Release. Excluded from the Release are any claims or rights that cannot be waived by law, claims for indemnification by the Company as an officer or former officer of the Company, whether by law, contract or articles or bylaws of the Company, as well as Executive's right to file a charge with an administrative agency or participate in any agency investigation. Executive is, however, waiving the right to recover any money from the Company and other Releasees in connection with a charge or investigation. Executive is also waiving the right to recover any money from the Company and other Releasees in connection with a charge filed by any other individual or by the Equal Employment Opportunity Commission or any other federal or state agency.

6. Covenant Not to Sue.

(a) A "covenant not to sue" is a legal term that means Executive promises not to file a lawsuit in court. It is different from the release of claims and waiver of rights contained in **Section 4** above. Besides waiving and releasing the claims covered by **Section 4** above, Executive shall never sue the Releasees in any forum for any reason covered by the Release. Notwithstanding this covenant not to sue, Executive may bring a claim against the Company to enforce this Agreement, to challenge the validity of this Agreement under the ADEA or for any claim that arises after execution of this Agreement. Executive may also file an administrative complaint or charge with a government agency, *provided, however*, that Executive shall not be entitled to recover any monies from the Releasees as a result of filing such administrative complaint or charge. If Executive sues any of the Releasees in violation of this Agreement, Executive shall be liable to them for their reasonable attorneys' fees and costs (including the costs of experts, evidence, and counsel) and other litigation costs incurred in defending against Executive's suit. In addition, if Executive sues any of the Releasees in violation of this Agreement, the Company can require Executive to return all but a sum of \$100 of the Severance Payments, which sum is, by itself, adequate consideration for the promises and covenants in this Agreement. In that event, the Company shall have no obligation to make any further Severance Payments.

(b) If Executive has previously filed any lawsuit against any of the Releasees, Executive shall immediately take all necessary steps and execute all necessary documents to withdraw or dismiss such lawsuit to the extent Executive's agreement to withdraw, dismiss, or not file a lawsuit would not be a violation of any applicable law or regulation.

7. Representations by Executive. Executive warrants that Executive is legally competent to execute this Agreement and that Executive has not relied on any statements or explanations made by the Company or its attorneys. **Executive acknowledges that Executive has been advised to consult legal counsel regarding the terms of this Agreement, including the Release. Executive acknowledges that Executive has been offered at least 21 days to consider this Agreement. After being so advised, and without coercion of any kind, Executive freely, knowingly, and voluntarily enters into this Agreement. Executive acknowledges that Executive may revoke this Agreement within seven days after Executive has signed this Agreement and acknowledges understanding that this Agreement shall not become effective or enforceable until seven days after Executive has signed this Agreement (the “Effective Date”), as evidenced by the date set forth below Executive’s signature on the signature page hereto.** Any revocation must be in writing and directed to [•]. If sent by mail, any revocation must be postmarked within the seven-day period described above and sent by certified mail, return receipt requested.

8. Restrictive Covenants. Section 6 of the Employment Agreement (entitled “Restrictive Covenants”) shall continue in full force and effect as if fully restated herein.

9. Non-Disparagement. Executive shall not engage in any disparagement or vilification of the Releasees, and shall refrain from making any false, negative, critical, or disparaging statements, implied or expressed, concerning the Releasees, including regarding management style, methods of doing business, the quality of products and services, role in the community, or treatment of employees. The Company and its directors, officers and senior management employees, while associated with the Company, shall not engage in any disparagement or vilification of the Releasees, and shall refrain from making any false, negative, critical, or disparaging statements, implied or expressed, concerning Executive; *provided, however*, that each Party may make truthful statements as required by applicable law and the Company may make internal statements and statements to its attorneys and advisors for legitimate business reasons.

10. Company Property.

(a) Executive shall return to the Company all information, property, and supplies belonging to the Company or any of its affiliates, including any confidential or proprietary information, Company autos, keys (for equipment or facilities), laptop computers and related equipment, cellular phones, smart phones or PDAs (including SIM cards), security cards, corporate credit cards, and the originals and all copies of all files, materials, and documents (whether in tangible or electronic form) containing confidential or proprietary information or relating to the business of the Company or any of its affiliates.

(b) Executive shall not, at any time on or after the Termination Date, directly or indirectly use, access, or in any way alter or modify any of the databases, e-mail systems, software, computer systems, or hardware or other electronic, computerized, or technological systems of the Company or any of its affiliates. Executive acknowledges that any such conduct by Executive would be illegal and would subject Executive to legal action by the Company, including claims for damages and/or appropriate injunctive relief.

11. No Admissions. The Company denies that it or any of its affiliates, or any of their employees or agents, has taken any improper action against Executive, and this Agreement shall not be admissible in any proceeding as evidence of improper action by the Company or any of its affiliates or any of their employees or agents.

12. Confidentiality of Agreement. Executive shall keep the existence and the terms of this Agreement confidential, except for Executive's immediate family members and Executive's legal and tax advisors in connection with services related hereto and except as may be required by law or in connection with the preparation of tax returns.

13. Non-Waiver. The Company's waiver of a breach of this Agreement by Executive shall not be construed or operate as a waiver of any subsequent breach by Executive of the same or of any other provision of this Agreement.

14. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware, without regard to principles of conflict of laws (whether in Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than Delaware.

15. Entire Agreement. This Agreement sets forth the entire agreement of the Parties regarding the subject matter hereof, and shall be final and binding as to all claims that have been or could have been advanced on behalf of Executive pursuant to any claim arising out of or related in any way to Executive's employment with the Company and the termination of that employment; *provided, however* that nothing contained herein shall supersede or eliminate any post-separation obligations that Executive has pursuant to the Employment Agreement or otherwise.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

17. Successors. This Agreement shall be binding upon and inure to the benefit of the Company, its successors and assigns.

18. Construction. In this Agreement, unless otherwise stated, the following uses apply: (a) references to a statute refer to the statute and any amendments and any successor statutes, and to all regulations promulgated under or implementing the statute, as amended, or its successors, as in effect at the relevant time; (b) in computing periods from a specified date to a later specified date, the words "from" and "commencing on" (and the like) mean "from and including," and the words "to," "until," and "ending on" (and the like) mean "to, and including"; (c) references to a governmental or quasi-governmental agency, authority, or instrumentality also refer to a regulatory body that succeeds to the functions of the agency, authority, or instrumentality; (d) the words "include," "includes," and "including" (and the like) mean "include, without limitation," "includes, without limitation," and "including, without limitation," (and the like) respectively; (e) all references to sections are to sections to this Agreement; (f) the words "hereof," "herein," "hereto," "hereby," "hereunder," (and the like) refer to this Agreement as a whole (including exhibits); (g) any reference to a document or set of documents, and the rights and obligations of the parties under any such documents, means such document or documents as amended from time to time, and all modifications, extensions, renewals, substitutions, or replacements thereof; (h) all words used shall be construed to be of such gender or number as the circumstances and context require; (i) the captions and headings have been inserted solely for convenience of reference and shall not be considered a part of this Agreement, nor shall any of them affect the meaning or interpretation of this Agreement or any of its provisions; and (j) all accounting terms not specifically defined herein shall be construed in accordance with GAAP.

19. Future Cooperation. In connection with any and all claims, disputes, negotiations, governmental, internal or other investigations, lawsuits, or administrative proceedings (the “**Legal Matters**”) involving the Company or any affiliate, or any of their current or former officers, employees or board members (collectively, the “**Disputing Parties**” and, individually, each a “**Disputing Party**”), Executive shall make himself reasonably available, upon reasonable notice from the Company and without the necessity of subpoena, to provide information and documents, provide declarations and statements regarding a Disputing Party, meet with attorneys and other representatives of a Disputing Party, prepare for and give depositions and testimony, and otherwise cooperate in the investigation, defense, and prosecution of any and all such Legal Matters, as may, in the good faith and judgment of the Company, be reasonably requested. The Company shall consult with Executive and make reasonable efforts to schedule such assistance so as not to materially disrupt Executive’s business and personal affairs. The Company shall reimburse all reasonable expenses incurred by Executive in connection with such assistance, including travel, meals, rental car, and hotel expenses, if any.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the dates set forth below their respective signatures below.

CONTEXT THERAPEUTICS INC.

By: _____

Print Name: _____

Title: _____

Date: _____

[INSERT NAME]

Date: _____