

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

**FORM S-8**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**Abeona Therapeutics Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**83-0221517**

(I.R.S. Employer Identification No.)

**6555 Carnegie Ave, 4th Floor, Cleveland, OH 44103**

(Address of Principal Executive Offices)

(Zip Code)

**Abeona Therapeutics Inc.  
2023 Employment Inducement Equity Incentive Plan**

(Full title of the plan)

**Joseph Vazzano  
Chief Financial Officer  
Abeona Therapeutics Inc.  
6555 Carnegie Ave, 4th Floor  
Cleveland, OH 44103  
(646) 813-4701**

(Name, address, and telephone number, including area code, of agent for service)

*Copies of Correspondence to:*

**Sean M. Ewen, Esq.  
Jared N. Fertman, Esq.  
Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019-6099  
(212) 728-8000**

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

|                         |                                     |                           |                                     |
|-------------------------|-------------------------------------|---------------------------|-------------------------------------|
| Large accelerated filer | <input type="checkbox"/>            | Accelerated filer         | <input type="checkbox"/>            |
| Non-accelerated filer   | <input checked="" type="checkbox"/> | Smaller reporting company | <input checked="" type="checkbox"/> |
|                         |                                     | Emerging growth company   | <input type="checkbox"/>            |

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 7(a)(2)(B) of the Securities Act.

**Part I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.\***

**Item 2. Registrant Information and Employee Plan Annual Information.\***

\* The documents containing the information specified in Part I will be delivered in accordance with Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act"). Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the "Commission"), either as part of this Registration Statement (this "Registration Statement") or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**Part II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents previously filed by the Abeona Therapeutics Inc. (the “Company” or “Registrant”) with the Commission are hereby incorporated by reference into this Registration Statement:

- (i) The Company’s Annual Report on Form 10-K for the fiscal year ended [December 31, 2022](#) (filed with the Commission on March 29, 2023), as amended by Amendment No. 1 on Form 10-K/A (filed on [April 10, 2023](#));
- (ii) The Company’s Quarterly Report on Form 10-Q for the quarterly period ended [March 31, 2023](#) (filed with the Commission on May 11, 2023);
- (iii) The Company’s Quarterly Report on Form 10-Q for the quarterly period ended [June 30, 2023](#) (filed with the Commission on August 8, 2023);
- (iv) The Company’s Current Reports on Form 8-K filed with the Commission [April 11, 2023](#), [May 17, 2023](#), [July 3, 2023](#) and [July 7, 2023](#); and
- (v) The description of our common stock, par value \$0.01 per share contained in our Registration Statement on [Form 8-A](#), dated and filed with the SEC on November 4, 2014, as updated by [Exhibit 4.4](#) to our Form 10-K for the fiscal year ended December 31, 2019, and including any amendments or reports filed with the SEC for the purpose of updating such description.

To the extent that any information contained in any Current Report on Form 8-K, or any exhibit thereto, was furnished to, rather than filed with, the Commission, such information or exhibit is specifically not incorporated by reference.

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All reports and other documents that the Company subsequently files with the Commission pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that the Company has sold all of the securities offered under this Registration Statement or deregisters the distribution of all such securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date that the Company files such report or document.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### **Item 4. Description of Securities.**

Not applicable

#### **Item 5. Interests of Named Experts and Counsel.**

The validity of the securities registered hereby is being passed upon for us by Willkie Farr & Gallagher LLP. One or more partners or other employees of Willkie Farr & Gallagher LLP may beneficially own shares of our common stock.

#### **Item 6. Indemnification of Directors and Officers.**

*General Corporation Law of the State of Delaware*

Under Section 145 of the General Corporation Law of the State of Delaware (the “DGCL”), the Company is empowered to indemnify its directors and officers in the circumstances therein provided. Certain portions of Section 145 are summarized below:

Section 145(a) of the DGCL provides that a corporation may indemnify 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 (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation 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 action, suit, or 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 corporation and in criminal actions where such person had no reasonable cause to believe such person’s conduct was unlawful.

Section 145(b) of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit 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 corporation, except that no indemnification shall be made in respect of any claim, issue, or matter in which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware 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 Delaware Court of Chancery or such other court shall deem proper.

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Under Section 145(c) of the DGCL, indemnification against expenses (including attorneys’ fees) actually and reasonably incurred by directors, officers, employees, and agents is required in those cases where the person to be indemnified has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 145(a) and (b), or in defense of any claim, issue, or matter therein.

Section 145(d) of the DGCL provides that any indemnification under Section 145(a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee, or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 145(a) and (b). Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who were not parties to such action, suit, or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

Section 145(e) of the DGCL provides that expenses (including attorneys’ fees) incurred by an officer or director in defending any civil, criminal, administrative, or investigative action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as

authorized in Section 145. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

Section 145(f) of the DGCL provides that the indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any 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.

Under Section 145(g) of the DGCL, a corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or who, while serving in such capacity, is or was at the request of the corporation, a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against liability asserted against or incurred by such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to provide indemnity under Section 145.

#### *Amended and Restated Certificate of Incorporation*

Article X of the Company's Restated Certificate of Incorporation (the "Certificate of Incorporation") provides that a director of the Company shall not be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL.

#### *Abeona Therapeutics Inc. 2023 Employment Inducement Equity Incentive Plan (the "Inducement Plan")*

Section 3(d) of the Inducement Plan provides that no member of the Compensation Committee or the Board shall be liable for any act or omission made in good faith with respect to the Inducement Plan or any award thereunder.

#### *Indemnification and Executive Agreements*

The Company has entered into indemnification agreements (the "Indemnification Agreements") with each of its directors and executive officers. The terms of the Indemnification Agreements, subject to certain exceptions, generally provide that the Company will hold harmless and indemnify the indemnitee to the fullest extent permitted by the DGCL against any and all judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred in connection with any claims, suits, or proceedings arising in connection with his or her service as a director or executive officer of the Company. Additionally, the Indemnification Agreements provide that the indemnitee is entitled to the advancement of expenses, subject to certain exceptions and repayment conditions, incurred in connection with such claims, suits, or proceedings.

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#### *Directors' and Officers' Insurance Policies*

The Company maintains insurance policies that, subject to conditions, limitations, and exclusions, provide for indemnification of the Company's directors and officers and for reimbursement to the Company of amounts paid as indemnity to any of its directors or officers.

The above discussion of the Certificate of Incorporation, the Inducement Plan, the Indemnification Agreements, and Section 145 of the DGCL is not intended to be exhaustive and is respectively qualified in its entirety by such Certificate of Incorporation, Plan, Indemnification Agreements, and applicable statutes.

#### **Item 7. Exempt from Registration Claimed.**

Not applicable.

#### **Item 8. Exhibits.**

A list of exhibits filed herewith is contained in the Exhibit Index below, which is incorporated herein by reference.

#### **EXHIBIT INDEX**

| <b>Exhibit No.</b> | <b>Description</b>  | <b>Incorporated by Reference</b> |                 |                |                    | <b>Filed Herewith</b> |
|--------------------|---|----------------------------------|-----------------|----------------|--------------------|-----------------------|
|                    |   | <b>Form</b>                      | <b>File No.</b> | <b>Exhibit</b> | <b>Filing Date</b> |                       |
| 4.1                | <a href="#">Restated Certificate of Incorporation of Abeona Therapeutics Inc.</a>   | 10-Q                             | 001-15771       | 3.1            | May 10, 2019       |                       |
| 4.2                | <a href="#">Certificate of Amendment to Restated Certificate of Incorporation of Abeona Therapeutics Inc.</a>                             | 8-K                              | 001-15771       | 3.1            | June 30, 2022      |                       |
| 4.3                | <a href="#">Amended and Restated Bylaws of Abeona Therapeutics Inc.</a>   | 10-K                             | 001-15771       | 3.3            | March 29, 2023     |                       |
| 5.1                | <a href="#">Opinion of Willkie Farr &amp; Gallagher LLP</a>   |                                  |                 |                |                    | X                     |
| 23.1               | <a href="#">Consent of Whitley Penn LLP</a>   |                                  |                 |                |                    | X                     |
| 23.2               | <a href="#">Consent of Willkie Farr &amp; Gallagher LLP (included in Exhibit 5.1 hereto)</a>  |                                  |                 |                |                    | X                     |
| 24.1               | <a href="#">Powers of Attorney (included in the signature page of this Registration Statement)</a>  |                                  |                 |                |                    | X                     |
| 99.1               | <a href="#">Abeona Therapeutics Inc. 2023 Employment Inducement Equity Incentive Plan, effective September 28, 2023</a>                   |                                  |                 |                |                    | X                     |
| 99.2               | <a href="#">Form of Restricted Stock Award Agreement to the Abeona Therapeutics Inc. 2023 Employment Inducement Equity Incentive Plan</a> |                                  |                 |                |                    | X                     |
| 107                | <a href="#">Filing Fee Table</a>  |                                  |                 |                |                    | X                     |

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#### **Item 9. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

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

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

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information in the Registration Statement. Notwithstanding the foregoing, any

increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

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

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

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

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

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

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#### SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Morristown, in the state of New Jersey, on the 10<sup>th</sup> day of October, 2023.

#### ABEONA THERAPEUTICS INC.

By: /s/ Joseph Vazzano  
Joseph Vazzano  
Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

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#### POWER OF ATTORNEY

Each person whose signature appears below hereby appoints Vishwas Seshadri and Joseph Vazzano and each of them, severally, as his or her true and lawful attorney or attorneys-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including all pre-effective and post-effective amendments and registration statements filed pursuant to Rule 462 under the Securities Act of 1933, as amended), and to file the same with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and dates indicated:

| <u>Signature</u>                                | <u>Title</u>   | <u>Date</u>      |
|---|--|------------------|
| <u>/s/ Vishwas Seshadri</u><br>Vishwas Seshadri | President, Chief Executive Officer and Director (Principal Executive Officer)          | October 9, 2023  |
| <u>/s/ Joseph Vazzano</u><br>Joseph Vazzano     | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | October 9, 2023  |
| <u>/s/ Leila Alland</u><br>Leila Alland         | Director   | October 9, 2023  |
| <u>/s/ Mark Alvino</u><br>Mark Alvino           | Director   | October 10, 2023 |
| <u>/s/ Michael Amoroso</u><br>Michael Amoroso   | Director   | October 10, 2023 |
| <u>/s/ Faith Charles</u><br>Faith Charles       | Director   | October 9, 2023  |

/s/ Christine Silverstein  
Christine Silverstein

Director

October 10, 2023

/s/ Donald Wuchterl  
Donald Wuchterl

Director

October 9, 2023

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue  
New York, NY 10019-6099  
Tel: 212 728 8000  
Fax: 212 728 8111

October 10, 2023

Abeona Therapeutics Inc.  
6555 Carnegie Ave., 4th Floor  
Cleveland, OH 44103

Ladies and Gentlemen:

We have acted as counsel to Abeona Therapeutics Inc. (the "Company"), a corporation organized under the laws of the state of Delaware, with respect to the Company's Registration Statement on Form S-8 (the "Registration Statement") to be filed by the Company with the Securities and Exchange Commission (the "Commission") on or about the date hereof, in connection with the registration under the Securities Act of 1933, as amended (the "Act"), by the Company of 1,000,000 shares of the Company's common stock, par value \$.01 per share, of the Company (the "Shares") issuable in connection with the award of stock-based incentives (the "Awards") under the Abeona Therapeutics Inc. 2023 Employee Inducement Equity Incentive Plan (the "Plan").

We have examined, among other things, originals and/or copies (certified or otherwise identified to our satisfaction) of such documents, papers, statutes and authorities as we have deemed necessary to form a basis for the opinion hereinafter expressed. In our examination, we have assumed the genuineness of all signatures and the conformity to original documents of all copies submitted to us. As to various questions of fact material to our opinion, we have relied without independent check or verification upon statements, certificates and comparable documents of officers and representatives of the Company.

Based on the foregoing, we are of the opinion that the Shares issuable in connection with Awards under the Plan, when duly issued and delivered pursuant to the terms of the Awards and the Plan, will be validly issued, fully paid and non-assessable.

This opinion is limited to the General Corporation Law of the State of Delaware, and we express no opinion with respect to the laws of any other jurisdiction or any other laws of the State of Delaware. This opinion speaks only as of the date hereof and is limited to present statutes, regulations and administrative and judicial interpretations. We undertake no responsibility to update or supplement this letter after the date hereof.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ Willkie Farr & Gallagher LLP

Brussels Chicago Frankfurt Houston London Los Angeles Milan  
New York Palo Alto Paris Rome San Francisco Washington

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Abeona Therapeutics Inc. of our report dated March 29, 2023, relating to the consolidated financial statements appearing in the Annual Report on Form 10-K of Abeona Therapeutics Inc. for the year ended December 31, 2022, as amended by Amendment No. 1 on Form 10-K/A.

/s/ Whitley Penn LLP

Plano, Texas  
October 9, 2023

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**ABEONA THERAPEUTICS INC.**  
**2023 EMPLOYMENT INDUCEMENT EQUITY INCENTIVE PLAN**

*Section 1. Effectiveness and Purpose.*

Effective as of the Effective Date, the Abeona Therapeutics Inc. 2023 Employment Inducement Equity Incentive Plan (as may be amended from time to time, the “**Plan**”) is hereby established.

The purpose of the Plan is to provide new employees of Abeona Therapeutics Inc., a Delaware corporation (together with its successors, the “**Corporation**”), and its Subsidiaries, with the opportunity to receive grants of equity awards in the form of nonqualified stock options, stock appreciation rights, stock awards, stock units, and other stock-based awards. Capitalized terms used in the Plan and not otherwise defined herein shall have the meaning assigned to them in Section 2.

The Corporation believes that the Plan will encourage the participants to contribute materially to the growth of the Corporation, thereby benefitting the Corporation’s stockholders, and will align the economic interests of the participants with those of the stockholders.

The Corporation intends that the Plan be reserved for persons to whom the Corporation may issue securities without stockholder approval as an inducement pursuant to, Nasdaq Stock Market Rule 5635(c)(4) or any successor rule, if the Corporation’s securities are traded on the Nasdaq Stock Market, Inc., New York Stock Exchange Rule 303A.08 or any successor rule, if the Corporation’s securities are traded on the New York Stock Exchange, and/or the applicable requirements of any other established stock exchange on which the Corporation’s securities are traded, as applicable, as such rules and requirements may be amended from time to time.

*Section 2. Definitions.*

The following terms shall have the meanings set forth below for purposes of the Plan:

(a) “**Affiliate**” means, when used with reference to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, or owns greater than 50% of the voting power in, the specified Person (the term “control” for this purpose means the ability, whether by the ownership of shares or other equity interest, by contract or otherwise, to elect a majority of the directors of a corporation, independently to select the managing partner of a partnership or the managing member or the majority of the managers, as applicable, of a limited liability company, or otherwise to have the power independently to remove and then select a majority of those Persons exercising governing authority over an entity, and control shall be conclusively presumed in the case of the direct or indirect ownership of 50% or more of the voting equity interests in the specified Person).

(b) “**Award**” means an Option, SAR, Stock Award, Stock Unit or Other Stock-Based Award granted under the Plan.

(c) “**Award Agreement**” means the written agreement that sets forth the terms and conditions of an Award, including all amendments thereto.

(d) “**Board**” means the Board of Directors of the Corporation.

(e) “**Change in Control**” means a change in ownership or control of the Corporation effected through any of the following transactions:

(i) any “person” (as such term is used in sections 13(d) and 14(d) of the Exchange Act) becomes a “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing more than fifty percent (50%) of the voting power of the then-outstanding securities of the Corporation; *provided* that a Change in Control shall not be deemed to occur as a result of a transaction in which the Corporation becomes a direct or indirect subsidiary of another Person and in which the stockholders of the Corporation, immediately prior to the transaction, will beneficially own, immediately after the transaction, shares of such other Person representing more than fifty percent (50%) of the voting power of the then-outstanding securities of such other Person;

(ii) the consummation of (A) a merger or consolidation of the Corporation with another Person where, immediately after the merger or consolidation, the stockholders of the Corporation, immediately prior to the merger or consolidation, will not beneficially own, in substantially the same proportion as ownership immediately prior to the merger or consolidation, shares entitling such stockholders to more than fifty percent (50%) of all votes to which all stockholders of the surviving Person would be entitled in the election of directors, or where the members of the Board, immediately prior to the merger or consolidation, will not, immediately after the merger or consolidation, constitute a majority of the board of directors of the surviving Person or (B) a sale or other disposition of all or substantially all of the assets of the Corporation;

(iii) a change in the composition of the Board over a period of twelve (12) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections, or threatened election contests, for Board membership, to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period or (B) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (A) who were still in office at the time the Board approved such election or nomination; or

(iv) the consummation of a complete dissolution or liquidation of the Corporation.

The Committee may modify the definition of Change in Control for a particular Award as the Committee deems appropriate to comply with Section 409A of the Code. Notwithstanding the foregoing, if an Award constitutes deferred compensation subject to Section 409A of the Code and the Award provides for payment upon a Change in Control, then, for purposes of such payment provisions, no Change in Control shall be deemed to have occurred upon an event described in items (i)-(iv) above unless the event would also constitute a change in ownership or effective control of, or a change in the ownership of a substantial portion of the assets of, the Corporation under Section 409A of the Code.

(f) “**Code**” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(g) “**Committee**” means the Compensation Committee of the Board comprised of two or more Directors, each of whom is an Independent Director.

(h) “**Common Stock**” means common stock, par value \$.01 per share, of the Corporation, and such other securities as may be substituted for Common Stock pursuant to Section 5(c).

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



(j) “**Disability**” or “**Disabled**” has the meaning set forth in an applicable Award Agreement or employment or services agreement with a Participant, and in the absence of the forgoing, means (i) the Participant’s becoming disabled within the meaning of the Employer’s long-term disability plan applicable to the Participant, or (ii) if no long-term disability plan is applicable to the Participant, the Participant’s inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that is expected to result in death or has lasted or can be expected to last for a continuous period of six months or more.

(k) “**Dividend Equivalent**” means an amount determined by multiplying the number of shares of Common Stock subject to a Stock Unit or Other Stock-Based Award by the per-share cash dividend paid by the Corporation on its outstanding Common Stock, or the per-share Fair Market Value of any dividend paid on its outstanding Common Stock in consideration other than cash. If interest is credited on accumulated dividend equivalents, the term “Dividend Equivalent” shall include the accrued interest.

(l) “**Effective Date**” means the date the Plan is approved by the Board.

(m) “**Eligible Individual**” means any prospective Employee who is commencing employment with the Corporation or a Subsidiary, or is being rehired following a bona fide interruption of employment by the Corporation or a Subsidiary, if he or she is granted an Award in connection with his or her commencement of employment with the Corporation or a Subsidiary and such grant is an inducement material to his or her entering into employment with the Corporation or a Subsidiary (within the meaning of Nasdaq Stock Market Rule 5635(c)(4) or any successor rule, if the Corporation’s securities are traded on the Nasdaq Stock Market, Inc., New York Stock Exchange Rule 303A.08 or any successor rule, if the Corporation’s securities are traded on the New York Stock Exchange, and/or the applicable requirements of any other established stock exchange on which the Corporation’s securities are traded, as applicable, as such rules and requirements may be amended from time to time). Notwithstanding the foregoing, if the Corporation’s securities are traded on the Nasdaq Stock Market, an “Eligible Individual” shall not include any prospective Employee who has previously been an employee or director of the Corporation or a Subsidiary unless following a bona fide period of non-employment by the Corporation or a Subsidiary. The Committee may in its discretion adopt procedures from time to time to ensure that a prospective Employee is eligible to participate in the Plan prior to the granting of any Awards to such individual under the Plan (including without limitation a requirement that each such prospective Employee certify to the Corporation prior to the receipt of an Award under the Plan that he or she has not been previously employed by the Corporation or a Subsidiary, or if previously employed, has had a bona fide interruption of employment, and that the grant of Awards under the Plan is an inducement material to his or her agreement to enter into employment with the Corporation or a Subsidiary).

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(n) “**Employed by, or providing service to, the Employer**” means employment or service as an Employee, Key Advisor or Director (so that, for purposes of exercising Options and SARs and satisfying conditions with respect to Stock Awards, Stock Units, and Other Stock-Based Awards, a Participant shall not be considered to have terminated employment or service until the Participant ceases to be an Employee, Key Advisor and Director), unless the Committee determines otherwise. If a Participant’s relationship is with a Subsidiary and that entity ceases to be a Subsidiary, the Participant will be deemed to cease employment or service when the entity ceases to be a Subsidiary, unless the Participant transfers employment or service to an Employer. If a Participant has military, sick leave or other bona fide leave, the Participant will not be deemed to cease employment or service solely as a result of such leave; *provided* that such leave does not exceed the longer of 90 days or the period during which the absent Participant’s reemployment rights, if any, are guaranteed by statute or contract. To the extent consistent with applicable law, the Committee may provide that Awards continue to vest for all or a portion of the period of such leave, or that vesting shall be tolled during such leave and only recommence upon the Participant’s return from such leave.

(o) “**Employee**” means an employee of the Employer (including an officer or Director who is also an employee), but excluding any person who is classified by the Employer as a “contractor” or “consultant,” no matter how characterized by the Internal Revenue Service, other governmental agency or a court. Any change of characterization of an individual by the Internal Revenue Service or any court or government agency shall have no effect upon the classification of an individual as an Employee for purposes of this Plan, unless the Committee determines otherwise.

(p) “**Employer**” means the Corporation and its Subsidiaries.

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

(r) “**Exercise Price**” means the per share price at which shares of Common Stock may be purchased under an Option, as designated by the Committee.

(s) “**Fair Market Value**” means:

(i) If the Common Stock is publicly traded, the Fair Market Value per share shall be determined as follows: (A) if the principal trading market for the Common Stock is a national securities exchange, the closing sales price during regular trading hours on the relevant date or, if there were no trades on that date, the latest preceding date upon which a sale was reported, or (B) if the Common Stock is not principally traded on any such exchange, the last reported sale price of a share of Common Stock during regular trading hours on the relevant date, as reported by the OTC Bulletin Board.

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(ii) If the Common Stock is not publicly traded or, if publicly traded, is not subject to reported transactions as set forth above, the Fair Market Value per share shall be determined by the Committee through any reasonable valuation method authorized under the Code.

(t) “**Independent Director**” means a Director of the Corporation who is not an Employee and who qualifies as “independent” within the meaning of Nasdaq Stock Market Rule 5635(c)(4) or any successor rule, if the Corporation’s securities are traded on the Nasdaq Stock Market, Inc., New York Stock Exchange Rule 303A.02, or any successor rule, if the Corporation’s securities are traded on the New York Stock Exchange, and/or the applicable requirements of any other established stock exchange on which the Corporation’s securities are traded, as applicable, as such rules and requirements may be amended from time to time.

(u) “**Involuntary Termination**” has the following meaning with respect to each Award made under the Plan:

(i) Involuntary Termination shall have the meaning assigned to such term in the Award Agreement for the particular Award or in any other agreement incorporated by reference into the Award Agreement for purposes of defining such term.

(ii) In the absence of any other Involuntary Termination definition in the Award Agreement (or in any other agreement incorporated by reference into the Award Agreement), Involuntary Termination means such individual’s involuntary dismissal or discharge by the Employer for reasons other than Misconduct.

(v) “**Key Advisor**” means a consultant or advisor of the Employer.

(w) “**Misconduct**” has the following meaning with respect to each Award made under the Plan:

(i) Misconduct shall have the meaning assigned to such term in the Award Agreement for the particular Award or in any other agreement incorporated by reference into the Award Agreement for purposes of defining such term.

(ii) In the absence of any other Misconduct definition in the Award Agreement for a particular Award (or in any other agreement incorporated by reference into the Award Agreement), Misconduct means the commission of any act of fraud, embezzlement or dishonesty by the Participant, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Corporation or any Affiliate, or any other intentional misconduct by such person adversely affecting the business or affairs of the Corporation or any Affiliate in a material manner. The foregoing definition shall not in any way preclude or restrict the right of the Employer to discharge or dismiss any Participant, employee or other person in the service of the Employer for any other acts or omissions, but such other acts or omissions shall not be deemed, for purposes of the Plan, to constitute grounds for termination for Misconduct.

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(x) "**Nonqualified Stock Option**" means an Option that is not intended to be taxed as an incentive stock option under Section 422 of the Code.

(y) "**Option**" means an option to purchase shares of Common Stock, as described in Section 7.

(z) "**Other Stock-Based Award**" means any Award based on, measured by or payable in Common Stock (other than an Option, Stock Unit, Stock Award, or SAR), as described in Section 11.

(aa) "**Participant**" means the holder of an outstanding Award.

(bb) "**Performance Goals**" means the business criteria selected by the Corporation to measure the level of performance of the Corporation or an Affiliate during a performance period, which may include, but are not limited to, one or more of the following criteria: (i) cash flow; (ii) earnings (including earnings before interest and taxes, earnings before taxes, earnings before interest, taxes, depreciation, amortization and charges for stock-based compensation, earnings before interest, taxes, depreciation and amortization, and net earnings); (iii) earnings per share; (iv) growth in earnings or earnings per share; (v) stock price; (vi) return on equity or average stockholder equity; (vii) total stockholder return or growth in total stockholder return either directly or in relation to a comparative group; (viii) return on capital; (ix) return on assets or net assets; (x) invested capital, required rate of return on capital or return on invested capital; (xi) revenue, growth in revenue or return on sales; (xii) income or net income; (xiii) operating income, net operating income or net operating income after tax; (xiv) operating profit or net operating profit; (xv) operating margin or gross margin; (xvi) return on operating revenue or return on operating profit; (xvii) market share; (xviii) market capitalization; (xix) application approvals; (xx) litigation and regulatory resolution goals; (xxi) product sales or milestones; (xxii) budget comparisons; (xxiii) growth in stockholder value relative to the growth of a peer group or index; (xxiv) development and implementation of strategic plans and/or organizational restructuring goals; (xxv) development and implementation of risk and crisis management programs; (xxvi) improvement in workforce diversity; (xxvii) compliance requirements and compliance relief; (xxviii) productivity goals; (xxix) workforce management and succession planning goals; (xxx) economic value added (including typical adjustments consistently applied from generally accepted accounting principles required to determine economic value added performance measures); (xxxi) measures of customer satisfaction, employee satisfaction or staff development; (xxxii) development or marketing collaborations, formations of joint ventures or partnerships or the completion of other similar transactions intended to enhance the Corporation's revenue or profitability or enhance its customer base; (xxxiii) merger and acquisitions; (xxxiv) strategic goals or objectives (including objectives related to qualitative or quantitative environmental, social or governance metrics); and (xxxv) other applicable criteria as determined by the Committee. Performance Goals applicable to an Award shall be determined by the Committee, and may be established on an absolute or relative basis and may be established on a corporate-wide basis or with respect to one or more business units, divisions, subsidiaries or business segments. Relative performance may be measured against a group of peer companies, a financial market index or other objective and quantifiable indices.

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(cc) "**Person**" means any natural person, corporation, limited liability company, partnership, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other legal entity of any nature whatsoever.

(dd) "**SAR**" means a stock appreciation right, as described in Section 10.

(ee) "**Stock Award**" means an award of Common Stock, as described in Section 8.

(ff) "**Stock Unit**" means an award of a contractual right to receive one or more shares of Common Stock, cash or combination thereof, as described in Section 9, and denominated in a number of shares of Common Stock specified in an Award Agreement.

(gg) "**Subsidiary**" means any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

### *Section 3. Administration.*

(a) **Committee.** The Plan shall be administered and interpreted by the Committee. The Board may re-vest in itself any previously delegated authority at any time; provided, however, that any action taken by the Board in connection with the administration of the Plan (except with respect to approval of Awards, which may be approved by the Committee) shall not be deemed approved by the Board unless such actions are approved by a majority of the Corporation's Independent Directors, as determined in accordance with the independence standards established by the stock exchange on which the Common Stock is at the time primarily traded. For the avoidance of doubt, Awards under the Plan will be approved by (i) the Committee, which shall be comprised entirely of Independent Directors, or (ii) a majority of the Corporation's Independent Directors.

(b) **Committee Authority.** The Committee shall have the sole authority to (i) determine the Eligible Individuals to whom Awards shall be made under the Plan; (ii) determine the type, size, terms and conditions of the Awards to be made to each such individual; (iii) determine the time when the Awards will be made and the duration of any applicable exercise or restriction period, including the criteria for exercisability and the acceleration of exercisability, which criteria may be based on the attainment of Performance Goals; (iv) determine the amounts payable based on attainment of Performance Goals, including discretion to make such adjustments (positive or negative) to the amounts payable as the Committee deems appropriate and in the best interests of the Corporation; (v) amend the terms of any previously issued Award, subject to the provisions of Section 18 below; (vi) determine and adopt terms, guidelines, and provisions, not inconsistent with the Plan and applicable law, that apply to individuals residing outside of the United States who receive Awards under the Plan; (vii) to adopt procedures from time to time intended to ensure that an individual is an Eligible Individual prior to the granting of any Awards to such individual under the Plan (including without limitation a requirement, if any, that each such individual certify to the Corporation prior to the receipt of an Award under the Plan that he or she has not been previously employed by the Corporation or a Subsidiary, or if previously employed, has had a bona fide period of non-employment, and that the grant of Awards under the Plan is an inducement material to his or her agreement to enter into employment with the Corporation or a Subsidiary) and (viii) deal with any other matters arising under the Plan.

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(c) **Committee Determinations.** The Committee shall have full power and express discretionary authority to administer and interpret the Plan, to make factual determinations and to adopt or amend such rules, regulations, agreements and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable, in its sole discretion. The Committee's written interpretations of the Plan and all determinations made by the Committee pursuant to the powers vested in it hereunder shall be conclusive and binding on all persons having any interest in the Plan or in any Awards granted hereunder. The Committee may rely on internal or external advisors in

determining appropriate interpretations of the Plan or Awards granted hereunder. All powers of the Committee shall be executed in its sole discretion, in the best interest of the Corporation, not as a fiduciary, and in keeping with the objectives of the Plan and need not be uniform as to similarly situated individuals.

(d) Indemnification. No member of the Committee or the Board, and no employee of the Corporation or any Affiliate shall be liable for any act or failure to act with respect to the Plan, except in circumstances involving such person's bad faith or willful misconduct, or for any act or failure to act hereunder by any other member of the Committee or employee or by any agent to whom duties in connection with the administration of this Plan have been delegated. The Corporation shall indemnify members of the Committee and the Board and any agent of the Committee or the Board who is an employee of the Corporation or a Subsidiary against any and all liabilities or expenses to which they may be subjected by reason of any act or failure to act with respect to their duties on behalf of the Plan, except in circumstances involving such person's bad faith or willful misconduct.

#### *Section 4. Awards.*

(a) General. Awards under the Plan may consist of Options as described in Section 7, Stock Awards as described in Section 8, Stock Units as described in Section 9, SARs as described in Section 10, and Other Stock-Based Awards as described in Section 11. All Awards shall be subject to the terms and conditions set forth herein and to such other terms and conditions consistent with this Plan as the Committee deems appropriate and as are specified in writing by the Committee to the individual in the Award Agreement. All Awards shall be made conditional upon the Participant's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Committee shall be final and binding on the Participant, the Participant's beneficiaries and any other person having or claiming an interest under such Award. Awards under a particular Section of the Plan need not be uniform as among the Participants.

(b) Dividends and Dividend Equivalents. Notwithstanding anything to the contrary herein, any dividends or Dividend Equivalents granted in connection with Awards under the Plan shall vest and be paid only if and to the extent the underlying Awards vest and are paid.

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#### *Section 5. Shares Subject to the Plan.*

(a) Shares Authorized. Subject to adjustment as described below in Sections 5(b) and 5(c) below, the aggregate number of shares of Common Stock that may be issued or transferred under the Plan shall not exceed 1,000,000 shares of Common Stock.

(b) Source of Shares; Share Counting. Shares issued or transferred under the Plan may be authorized but unissued shares of Common Stock or reacquired shares of Common Stock, including shares purchased by the Corporation on the open market for purposes of the Plan. If and to the extent Awards granted under the Plan expire, terminate or are surrendered cancelled, forfeited, exchanged or without having been exercised, vested or paid in shares, the shares subject to such Awards shall again be available for purposes of the Plan. Shares of Common Stock surrendered in payment of the Exercise Price of an Option shall not be available for re-issuance under the Plan. Shares of Common Stock withheld or surrendered for payment of taxes with respect to Awards shall not be available for re-issuance under the Plan. If SARs are granted, the full number of shares subject to the SARs shall be considered issued under the Plan, without regard to the number of shares issued upon exercise of the SARs. To the extent any Awards are paid in cash, and not in shares of Common Stock, any shares previously subject to such Awards shall again be available for issuance or transfer under the Plan. For the avoidance of doubt, if shares are repurchased by the Corporation on the open market with the proceeds of the Exercise Price of Options, such shares may not again be made available for issuance under the Plan. Notwithstanding the provisions of this Section 5(b), no shares of Common Stock shall again be available for re-issuance under the Plan pursuant to this Section 5(b) to the extent that such return of shares would cause the Plan to constitute a "formula plan" or constitute a "material revision" of the Plan subject to stockholder approval under the then-applicable rules of the New York Stock Exchange (or any other applicable exchange or quotation system).

(c) Adjustments. If there is any change in the number or kind of shares of Common Stock outstanding by reason of (i) a stock dividend, spinoff, recapitalization, stock split, reverse stock split or combination or exchange of shares, (ii) a merger, reorganization or consolidation, (iii) a reclassification or change in par value, or (iv) any other extraordinary or unusual event affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, or if the value of outstanding shares of Common Stock is substantially reduced as a result of a spinoff or the Corporation's payment of an extraordinary dividend or distribution, the maximum number and kind of shares of Common Stock available for issuance under the Plan, the number and kind of shares covered by outstanding Awards, the number and kind of shares issued and to be issued under the Plan, and the price per share or the applicable market value of such Awards shall be equitably adjusted by the Committee to reflect any increase or decrease in the number of, or change in the kind or value of, the issued shares of Common Stock to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under the Plan and such outstanding Awards; *provided, however*, that any fractional shares resulting from such adjustment shall be eliminated. In addition, the Committee is authorized to make adjustments in the terms and conditions of, and the criteria included in, Awards in recognition of unusual or nonrecurring events (including, without limitation, events described in the preceding sentence, and acquisitions and dispositions of businesses and assets) affecting the Corporation, any Subsidiary or any business unit, or the financial statements of the Corporation or any Subsidiary, or in response to changes in applicable laws, regulations, or accounting principles. In addition, in the event of a Change in Control, the provisions of Section 13 of the Plan shall apply. Any adjustments to outstanding Awards shall be consistent with Section 409A or 424 of the Code, to the extent applicable. Subject to Section 18(b), the adjustments of Awards under this Section 5(c) shall include adjustment of shares, Exercise Price of Options, base amount of SARs, Performance Goals or other terms and conditions, as the Committee deems appropriate. The Committee shall have the sole discretion and authority to determine what appropriate adjustments shall be made and any adjustments determined by the Committee shall be final, binding and conclusive.

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#### *Section 6. Eligibility for Participation.*

(a) Eligible Persons. Only Eligible Individuals shall be eligible to receive Awards under the Plan.

(b) Selection of Participants. The Committee shall select the Eligible Individuals to receive Awards and shall determine the number of shares of Common Stock subject to a particular Award in such manner as the Committee determines.

#### *Section 7. Options.*

The Committee may grant Options to an Eligible Individual upon such terms as the Committee deems appropriate. The following provisions are applicable to Options:

(a) Number of Shares. The Committee shall determine the number of shares of Common Stock that will be subject to each Award of Options to Eligible Individuals.

(b) Type of Option and Exercise Price.

(i) The Committee may grant Nonqualified Stock Options in accordance with the terms and conditions set forth herein to Eligible Individuals.

(ii) The Exercise Price of Common Stock subject to an Option shall be determined by the Committee and shall be equal to or greater than the Fair Market Value of a share of Common Stock on the date the Option is granted.

(c) Option Term. The Committee shall determine the term of each Option. The term of any Option shall not exceed ten years from the date of grant.

Notwithstanding the foregoing, in the event that on the last business day of the term of an Option, the exercise of the Option is prohibited by applicable law, including a prohibition on purchases or sales of Common Stock under the Corporation's insider trading policy, the term of the Option shall be extended for a period of 30 days following the end of the legal prohibition, unless the Committee determines otherwise.

(d) Exercisability of Options. Options shall become exercisable in accordance with such terms and conditions, consistent with the Plan, as may be determined by the Committee and specified in the Award Agreement, including upon the attainment of specified Performance Goals. The Committee may accelerate the exercisability of any or all outstanding Options at any time for any reason.

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(e) Awards to Non-Exempt Employees. Notwithstanding the foregoing, Options granted to persons who are non-exempt employees under the Fair Labor Standards Act of 1938, as amended, may not be exercisable for at least six months after the date of grant (except that such Options may become exercisable, as determined by the Committee, upon the Participant's death, Disability or retirement, or upon a Change in Control or other circumstances permitted by applicable regulations).

(f) Termination of Employment or Service. Except as provided in the Award Agreement, an Option may only be exercised while the Participant is employed by, or providing services to, the Employer. The Committee shall determine in the Award Agreement under what circumstances and during what time periods a Participant may exercise an Option after termination of employment or service.

(g) Exercise of Options. A Participant may exercise an Option that has become exercisable, in whole or in part, by delivering a notice of exercise to the Corporation. The Participant shall pay the Exercise Price for an Option as specified by the Committee (i) in cash or by check, (ii) unless the Committee determines otherwise, by delivering shares of Common Stock owned by the Participant and having a Fair Market Value on the date of exercise at least equal to the Exercise Price or by attestation (on a form prescribed by the Committee) to ownership of shares of Common Stock having a Fair Market Value on the date of exercise at least equal to the Exercise Price, (iii) by payment through a broker in accordance with procedures permitted by Regulation T of the Federal Reserve Board, (iv) if permitted by the Committee, by withholding shares of Common Stock subject to the exercisable Option, which have a Fair Market Value on the date of exercise equal to the Exercise Price, or (v) by such other method as the Committee may approve. Shares of Common Stock used to exercise an Option shall have been held by the Participant for the requisite period of time necessary to avoid adverse accounting consequences to the Corporation with respect to the Option. Payment for the shares to be issued or transferred pursuant to the Option, and any required withholding taxes, must be received by the Corporation by the time specified by the Committee depending on the type of payment being made, but in all cases prior to the issuance or transfer of such shares.

#### *Section 8. Stock Awards.*

The Committee may issue or transfer shares of Common Stock to an Eligible Individual under a Stock Award, upon such terms as the Committee deems appropriate. The following provisions are applicable to Stock Awards:

(a) General Requirements. Shares of Common Stock issued or transferred pursuant to Stock Awards may be issued or transferred for consideration or for no consideration, and subject to restrictions or no restrictions, as determined by the Committee. The Committee may, but shall not be required to, establish conditions under which restrictions on Stock Awards shall lapse over a period of time or according to such other criteria as the Committee deems appropriate, including, without limitation, restrictions based on the achievement of specific Performance Goals. The period of time during which the Stock Awards will remain subject to restrictions will be designated in the Award Agreement as the "Restriction Period."

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(b) Number of Shares. The Committee shall determine the number of shares of Common Stock to be issued or transferred pursuant to a Stock Award and the restrictions applicable to such shares.

(c) Requirement of Employment or Service. If the Participant ceases to be employed by, or provide service to, the Employer during a period designated in the Award Agreement as the Restriction Period, or if other specified conditions are not met, the Stock Award shall terminate as to all shares covered by the Award as to which the restrictions have not lapsed, and those shares of Common Stock must be immediately returned to the Corporation. The Committee may, however, provide for complete or partial exceptions to this requirement as it deems appropriate.

(d) Restrictions on Transfer and Legend on Stock Certificate. During the Restriction Period, a Participant may not sell, assign, transfer, pledge or otherwise dispose of the shares of a Stock Award except under Section 16 below. Unless otherwise determined by the Committee, the Corporation will retain possession of certificates for shares of Stock Awards until all restrictions on such shares have lapsed. Each certificate for a Stock Award, unless held by the Corporation, shall contain a legend giving appropriate notice of the restrictions in the Award. The Participant shall be entitled to have the legend removed from the stock certificate covering the shares subject to restrictions when all restrictions on such shares have lapsed. The Committee may determine that the Corporation will not issue certificates for Stock Awards until all restrictions on such shares have lapsed.

(e) Right to Vote and to Receive Dividends. Unless the Committee determines otherwise, during the Restriction Period, the Participant shall have the right: (i) to vote shares of Stock Awards and (ii) to receive any dividends or other distributions paid on such shares, subject to any restrictions deemed appropriate by the Committee, including, without limitation, the achievement of specific Performance Goals.

(f) Lapse of Restrictions. All restrictions imposed on Stock Awards shall lapse upon the expiration of the applicable Restriction Period and the satisfaction of all conditions, if any, imposed by the Committee. The Committee may determine, as to any or all Stock Awards, that the restrictions shall lapse without regard to any Restriction Period.

#### *Section 9. Stock Units.*

The Committee may grant Stock Units, each of which shall represent one hypothetical share of Common Stock, to an Eligible Individual upon such terms and conditions as the Committee deems appropriate. The following provisions are applicable to Stock Units:

(a) Crediting of Units. Each Stock Unit shall represent the right of the Participant to receive a share of Common Stock or an amount of cash based on the value of a share of Common Stock, if and when specified conditions are met. All Stock Units shall be credited to bookkeeping accounts established on the Corporation's records for purposes of the Plan.

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(b) Terms of Stock Units. The Committee may grant Stock Units that vest and are payable if specified Performance Goals or other conditions are met, or under other circumstances. Stock Units may be paid at the end of a specified performance period or other period, or payment may be deferred to a date authorized by the Committee. The Committee may accelerate vesting or payment, as to any or all Stock Units at any time for any reason, provided such acceleration complies with Section 409A of the Code. The Committee shall determine the number of Stock Units to be granted and the requirements applicable to such Stock Units.

(c) Requirement of Employment or Service. If the Participant ceases to be employed by, or provide service to, the Employer prior to the vesting of Stock Units, or if other conditions established by the Committee are not met, the Participant's Stock Units shall be forfeited. The Committee may, however, provide for complete or partial exceptions to this requirement as it deems appropriate.

(d) Payment With Respect to Stock Units. Payments with respect to Stock Units shall be made in cash, Common Stock or any combination of the foregoing, as the Committee shall determine.

#### *Section 10. Stock Appreciation Rights.*

The Committee may grant SARs to an Eligible Individual separately or in tandem with any Option. The following provisions are applicable to SARs:

(a) General Requirements. The Committee may grant SARs to an Eligible Individual separately or in tandem with any Option (for all or a portion of the applicable Option). Tandem SARs may be granted either at the time the Option is granted or at any time thereafter while the Option remains outstanding. The Committee shall establish the base amount of the SAR at the time the SAR is granted. The base amount of each SAR shall be equal to or greater than the Fair Market Value of a share of Common Stock as of the date of grant of the SAR. The term of any SAR shall not exceed ten years from the date of grant. Notwithstanding the foregoing, in the event that on the last business day of the term of a SAR, the exercise of the SAR is prohibited by applicable law, including a prohibition on purchases or sales of Common Stock under the Corporation's insider trading policy, the term shall be extended for a period of 30 days following the end of the legal prohibition, unless the Committee determines otherwise.

(b) Tandem SARs. In the case of tandem SARs, the number of SARs granted to a Participant that shall be exercisable during a specified period shall not exceed the number of shares of Common Stock that the Participant may purchase upon the exercise of the related Option during such period. Upon the exercise of an Option, the SARs relating to the Common Stock covered by such Option shall terminate. Upon the exercise of SARs, the related Option shall terminate to the extent of an equal number of shares of Common Stock.

(c) Exercisability. A SAR shall be exercisable during the period specified by the Committee in the Award Agreement and shall be subject to such vesting and other restrictions as may be specified in the Award Agreement, including the attainment of specified Performance Goals. The Committee may accelerate the exercisability of any or all outstanding SARs at any time for any reason. SARs may only be exercised while the Participant is employed by, or providing service to, the Employer or during the applicable period after termination of employment or service as specified by the Committee. A tandem SAR shall be exercisable only during the period when the Option to which it is related is also exercisable.

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(d) Awards to Non-Exempt Employees. Notwithstanding the foregoing, SARs granted to persons who are non-exempt employees under the Fair Labor Standards Act of 1938, as amended, may not be exercisable for at least six months after the date of grant (except that such SARs may become exercisable, as determined by the Committee, upon the Participant's death, Disability or retirement, or upon a Change in Control or other circumstances permitted by applicable regulations).

(e) Value of SARs. When a Participant exercises SARs, the Participant shall receive in settlement of such SARs an amount equal to the value of the stock appreciation for the number of SARs exercised. The stock appreciation for a SAR is the amount by which the Fair Market Value of the underlying Common Stock on the date of exercise of the SAR exceeds the base amount of the SAR as described in Section 10(a).

(f) Form of Payment. The appreciation in a SAR shall be paid in shares of Common Stock, cash or any combination of the foregoing, as the Committee shall determine. For purposes of calculating the number of shares of Common Stock to be received, shares of Common Stock shall be valued at their Fair Market Value on the date of exercise of the SAR.

#### *Section 11. Other Stock-Based Awards.*

The Committee may grant Other Stock-Based Awards, which are awards (other than those described in Sections 7, 8, 9 and 10 of the Plan) that are based on or measured by Common Stock, to any Eligible Individual, on such terms and conditions as the Committee shall determine. Other Stock-Based Awards may be awarded subject to the achievement of Performance Goals or other criteria or other conditions and may be payable in cash, Common Stock or any combination of the foregoing, as the Committee shall determine.

#### *Section 12. Dividend Equivalents.*

The Committee may grant Dividend Equivalents in connection with Stock Units or Other Stock-Based Awards in an applicable Award Agreement or at any point following the grant of such Award. Subject to Section 4(b), Dividend Equivalents may be accrued as contingent cash obligations and may be payable in cash or shares of Common Stock, and upon such terms and conditions as the Committee shall determine. For the avoidance of doubt, dividends or Dividend Equivalents shall not be granted in connection with Options or SARs.

#### *Section 13. Consequences of a Change in Control.*

(a) Assumption of Outstanding Awards. Upon a Change in Control where the Corporation is not the surviving corporation (or survives only as a subsidiary of another corporation), unless the Committee determines otherwise, all outstanding Awards that are not exercised or paid at the time of the Change in Control shall be assumed by, or replaced with grants (which may be in respect to cash, securities, or a combination thereof) that have comparable terms by, the surviving corporation (or a parent or subsidiary of the surviving corporation). After a Change in Control, references to the "Corporation" as they relate to employment matters shall include the successor employer in the transaction, subject to applicable law. For purposes of the foregoing, an Award under the Plan shall not be treated as continued, assumed, or replaced on comparable terms unless it is continued, assumed, or replaced with substantially equivalent terms, including, without limitation, the same vesting terms.

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(b) Vesting Upon Certain Terminations of Employment. Unless the Committee determines otherwise or the applicable Award Agreement provides otherwise, if a Participant's employment or services terminate by reason of an Involuntary Termination upon or within 12 months following a Change in Control, the Participant's outstanding Awards shall become fully vested as of the date of such termination; *provided that* if the vesting of any such Awards is based, in whole or in part, on performance, the applicable Award Agreement shall specify how the portion of the Award that becomes vested pursuant to this Section 13(b) shall be calculated.

(c) Other Alternatives. In the event of a Change in Control, if any outstanding Awards are not assumed by, or replaced with grants that have comparable terms by, the surviving corporation (or a parent or subsidiary of the surviving corporation), the Committee may (but is not obligated to) make adjustments to the terms and conditions of outstanding Awards, including, without limitation, taking any of the following actions (or combination thereof) with respect to any or all outstanding Awards, without the consent of any Participant: (i) the Committee may determine that outstanding Options and SARs shall automatically accelerate and become fully exercisable and the restrictions and conditions on outstanding Stock Awards, Stock Units, Other Stock-Based Awards and Dividend Equivalents shall immediately lapse; (ii) the Committee may determine that Participants shall receive a payment in settlement of outstanding Stock Units, Other Stock-Based Awards or Dividend Equivalents, in such amount and form as may be determined by the Committee; (iii) the Committee may require that Participants surrender their outstanding Options and SARs in exchange for a payment by the Corporation, in

cash or Common Stock as determined by the Committee, in an amount equal to the amount, if any, by which the then Fair Market Value of the shares of Common Stock subject to the Participant's unexercised Options and SARs exceeds the Option Exercise Price or SAR base amount, and (iv) after giving Participants an opportunity to exercise all of their outstanding Options and SARs, the Committee may terminate any or all unexercised Options and SARs at such time as the Committee deems appropriate. Such surrender, termination or payment shall take place as of the date of the Change in Control or such other date as the Committee may specify. Without limiting the foregoing, if the per share Fair Market Value of the Common Stock does not exceed the per share Option Exercise Price or SAR base amount, as applicable, the Corporation shall not be required to make any payment to the Participant upon surrender of the Option or SAR.

#### *Section 14. Deferrals.*

The Committee may permit or require a Participant to defer receipt of the payment of cash or the delivery of shares that would otherwise be due to such Participant in connection with any Award. If any such deferral election is permitted or required, the Committee shall establish rules and procedures for such deferrals and may provide for interest or other earnings to be paid on such deferrals. The rules and procedures for any such deferrals shall be consistent with applicable requirements of Section 409A of the Code.

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#### *Section 15. Withholding of Taxes.*

(a) Required Withholding. All Awards under the Plan shall be subject to applicable United States federal (including FICA), state and local, foreign country or other tax withholding requirements. The Employer may require that the Participant or other person receiving Awards or exercising Awards pay to the Employer an amount sufficient to satisfy such tax withholding requirements with respect to such Awards, or the Employer may deduct from other wages and compensation paid by the Employer the amount of any withholding taxes due with respect to such Awards, or the Employer may take such other action as the Committee may deem advisable to enable the Employer to satisfy obligations for the payment of withholding taxes and other tax obligations relating to any Award.

(b) Share Withholding. The Committee may permit or require the Employer's tax withholding obligation with respect to Awards paid in Common Stock to be satisfied by having shares withheld up to an amount that does not exceed the Participant's applicable withholding tax rate for United States federal (including FICA), state and local, foreign country or other tax liabilities. The Committee may, in its discretion, and subject to such rules as the Committee may adopt, allow Participants to elect to have such share withholding applied to all or a portion of the tax withholding obligation arising in connection with any particular Award. Unless the Committee determines otherwise, share withholding for taxes shall not exceed the Participant's minimum applicable tax withholding amount.

#### *Section 16. Transferability of Awards.*

(a) Nontransferability of Awards. Except as described in subsection (b) below, only the Participant may exercise rights under an Award during the Participant's lifetime. A Participant may not transfer those rights except (i) by will or by the laws of descent and distribution or (ii) pursuant to a domestic relations order. When a Participant dies, the personal representative or other person entitled to succeed to the rights of the Participant may exercise such rights. Any such successor must furnish proof satisfactory to the Corporation of the successor's right to receive the Award under the Participant's will or under the applicable laws of descent and distribution.

(b) Transfer of Nonqualified Stock Options and Stock Awards. Notwithstanding the foregoing, the Committee may provide, in an Award Agreement or at such other time after the grant of an award, that a Participant may transfer Nonqualified Stock Options or Stock Awards to family members, or one or more trusts or other entities for the benefit of or owned by family members, consistent with the applicable securities laws, according to such terms as the Committee may determine; *provided* that the Participant receives no consideration for the transfer of an Option or Stock Award and the transferred Option or Stock Award shall continue to be subject to the same terms and conditions as were applicable to the Option or Stock Award immediately before the transfer.

#### *Section 17. Requirements for Issuance or Transfer of Shares.*

No Common Stock shall be issued or transferred in connection with any Award hereunder unless and until all legal requirements applicable to the issuance or transfer of such Common Stock have been complied with to the satisfaction of the Committee. The Committee shall have the right to condition any Award on the Participant's undertaking in writing to comply with such restrictions on the Participant's subsequent disposition of the shares of Common Stock as the Committee shall deem necessary or advisable, and certificates representing such shares may be legended to reflect any such restrictions. Certificates representing shares of Common Stock issued or transferred under the Plan may be subject to such stop-transfer orders and other restrictions as the Committee deems appropriate to comply with applicable laws, regulations and interpretations, including any requirement that a legend be placed thereon.

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#### *Section 18. Amendment and Termination of the Plan.*

(a) Amendment. The Board may amend or terminate the Plan at any time; *provided, however*, that the Board shall not amend the Plan without stockholder approval if such approval is required in order to comply with the Code or other applicable law, or to comply with applicable stock exchange requirements.

(b) No Repricing of Options or SARs. Except in connection with a corporate transaction involving the Corporation (including, without limitation, any stock dividend, distribution (whether in the form of cash, Common Stock, other securities or property), stock split, extraordinary cash dividend, recapitalization, change in control, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of shares of Common Stock or other securities, or similar transactions), the Corporation may not, without obtaining stockholder approval, (i) amend the terms of outstanding Options or SARs to reduce the Exercise Price of such outstanding Options or base price of such SARs, (ii) cancel outstanding Options or SARs in exchange for Options or SARs with an Exercise Price or base price, as applicable, that is less than the Exercise Price or base price of the original Options or SARs or (iii) cancel outstanding Options or SARs with an Exercise Price or base price, as applicable, above the current stock price in exchange for cash or other securities.

(c) Termination of Plan. The Plan shall continue in effect until terminated by the Board.

(d) Termination and Amendment of Outstanding Awards. A termination or amendment of the Plan that occurs after an Award is made shall not materially impair the rights of a Participant with respect to such Award unless the Participant consents or unless the Committee acts under Section 19(f) below. The termination of the Plan shall not impair the power and authority of the Committee with respect to an outstanding Award. Whether or not the Plan has terminated, a new Award may be terminated or amended under Section 19(f) below or may be amended by agreement of the Corporation and the Participant consistent with the Plan.

#### *Section 19. Miscellaneous.*

(a) Awards in Connection with Corporate Transactions and Otherwise. Nothing contained in the Plan shall be construed to (i) limit the right of the Committee to make Awards under the Plan in connection with the acquisition, by purchase, lease, merger, consolidation or otherwise, of the business or assets of any corporation, firm or association, including Awards to employees thereof who are Eligible Individuals, or (ii) limit the right of the Corporation to grant stock options or make other awards outside of the Plan. Notwithstanding anything in the Plan to the contrary, the Committee may establish such terms and conditions of the new Awards as it deems appropriate, including setting the Exercise Price of Options or the base price of SARs at a price necessary to retain for the Participant the same economic value as the prior options or rights.

(b) Governing Document. The Plan shall be the controlling document. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Corporation and its successors and assigns.

(c) Funding of the Plan. The Plan shall be unfunded. The Corporation shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under the Plan.

(d) Rights of Participants. Nothing in the Plan shall entitle any Eligible Individual or other person to any claim or right to receive an Award under the Plan. Neither the Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Employer or any other employment rights.

(e) No Fractional Shares. No fractional shares of Common Stock shall be issued or delivered pursuant to the Plan or any Award. Except as otherwise provided under the Plan, the Committee shall determine whether cash, other awards or other property shall be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.

(f) Compliance with Law.

(i) The Plan, the exercise of Options and SARs and the obligations of the Corporation to issue or transfer shares of Common Stock under Awards shall be subject to all applicable laws and regulations, and to approvals by any governmental or regulatory agency as may be required. With respect to persons subject to Section 16 of the Exchange Act, it is the intent of the Corporation that the Plan and all transactions under the Plan comply with all applicable provisions of Rule 16b-3 or its successors under the Exchange Act. In addition, it is the intent of the Corporation that, to the extent applicable, Awards comply with the requirements of Section 409A of the Code. To the extent that any legal requirement of Section 16 of the Exchange Act or Section 409A of the Code as set forth in the Plan ceases to be required under Section 16 of the Exchange Act or Section 409A of the Code, that Plan provision shall cease to apply. The Committee may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Committee may also adopt rules regarding the withholding of taxes on payments to Participants. The Committee may, in its sole discretion, agree to limit its authority under this Section.

(ii) The Plan is intended to comply with the requirements of Section 409A of the Code, to the extent applicable. Each Award shall be construed and administered such that the Award either (A) qualifies for an exemption from the requirements of Section 409A of the Code or (B) satisfies the requirements of Section 409A of the Code. If an Award is subject to Section 409A of the Code, (I) distributions shall only be made in a manner and upon an event permitted under Section 409A of the Code, (II) payments to be made upon a termination of employment or service shall only be made upon a "separation from service" under Section 409A of the Code, (III) unless the Award specifies otherwise, each installment payment shall be treated as a separate payment for purposes of Section 409A of the Code, and (IV) in no event shall a Participant, directly or indirectly, designate the calendar year in which a distribution is made except in accordance with Section 409A of the Code.

(iii) Any Award that is subject to Section 409A of the Code and that is to be distributed to a Key Employee (as defined below) upon separation from service shall be administered so that any distribution with respect to such Award shall be postponed for six months following the date of the Participant's separation from service, if required by Section 409A of the Code. If a distribution is delayed pursuant to Section 409A of the Code, the distribution shall be paid within 15 days after the end of the six-month period. If the Participant dies during such six-month period, any postponed amounts shall be paid within 90 days of the Participant's death. The determination and identification of "**Key Employees**", including the number and identity of persons considered Key Employees and the identification date, shall be made by the Committee or its delegate each year in accordance with Section 416(i) of the Code and the "specified employee" requirements of Section 409A of the Code.

(iv) Notwithstanding anything in the Plan or any Award agreement to the contrary, each Participant shall be solely responsible for the tax consequences of Awards under the Plan, and in no event shall the Corporation or any Subsidiary or Affiliate of the Corporation have any responsibility or liability if an Award does not meet any applicable requirements of Section 409A of the Code. Although the Corporation intends to administer the Plan to prevent taxation under Section 409A of the Code, the Corporation does not represent or warrant that the Plan or any Award complies with any provision of federal, state, local or other tax law.

(g) Awards in Foreign Countries; Establishment of Subplans. The Committee has the authority to award Awards to Participants who are foreign nationals or employed outside the United States on any different terms and conditions than those specified in the Plan that the Committee, in its discretion, believes to be necessary or desirable to accommodate differences in applicable law, tax policy, or custom, while furthering the purposes of the Plan. The Board may from time to time establish one or more sub-plans under the Plan for purposes of satisfying applicable blue sky, securities or tax laws of various jurisdictions. The Board shall establish such sub-plans by adopting supplements to the Plan setting forth (i) such limitations on the Committee's discretion under the Plan as the Board deems necessary or desirable and (ii) such additional terms and conditions not otherwise inconsistent with the Plan as the Board shall deem necessary or desirable. All supplements adopted by the Board shall be deemed to be part of the Plan, but each supplement shall apply only to Participants within the affected jurisdiction and the Employer shall not be required to provide copies of any supplement to Participants in any jurisdiction that is not affected. Notwithstanding the foregoing, the Committee may not approve any sub-plan inconsistent with the terms or share limits in the Plan or which would otherwise cause the Plan to cease to satisfy any conditions under Rule 16b-3 under the Exchange Act.

(h) Company Policies and Clawback Rights.

(i) All Awards under the Plan shall be subject to any applicable clawback or recoupment policies, share trading policies and other policies that may be approved or implemented by the Board or the Committee from time to time, whether or not approved before or after the Effective Date. The Corporation may offset any payments due under this Plan or in connection with an Award to a Participant by any required repayments that such Participant under any applicable clawback or recoupment policy; *provided* that any application of a clawback policy or offset in respect thereof will be applied consistent with Section 409A of the Code.

(ii) Subject to the requirements of applicable law, the Committee may provide in any Award Agreement that, if a Participant breaches any restrictive covenant obligation or agreement between the Participant and the Employer (which may be set forth in any Award Agreement) or otherwise engages in activities that constitute Misconduct either while employed by, or providing service to, the Employer or within a specified period of time thereafter, all Awards held by the Participant shall terminate, and the Corporation may rescind any exercise of an Option or SAR and the vesting of any other Award and delivery of shares upon such exercise or vesting (including pursuant to dividends and Dividend Equivalents), as applicable on such terms as the Committee shall determine, including the right to require that in the event of any such rescission, (A) the Participant shall return to the Corporation the shares received upon the exercise of any Option or SAR and/or the vesting and payment of any other Award (including pursuant to dividends and Dividend Equivalents) or, (B) if the Participant no

longer owns the shares, the Participant shall pay to the Corporation the amount of any gain realized or payment received as a result of any sale or other disposition of the shares (or, in the event the Participant transfers the shares by gift or otherwise without consideration, the Fair Market Value of the shares on the date of the breach of the restrictive covenant agreement (including a Participant's Award Agreement containing restrictive covenants) or activity constituting Misconduct), net of the price originally paid by the Participant for the shares. Payment by the Participant shall be made in such manner and on such terms and conditions as may be required by the Committee. The Employer shall be entitled to set off against the amount of any such payment any amounts otherwise owed to the Participant by the Employer.

(i) Governing Law: Jurisdiction. The validity, construction, interpretation and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof. Any action arising out of, or relating to, any of the provisions of the Plan and Awards made hereunder shall be brought only in the United States District Court for the District of Delaware, or if such court does not have jurisdiction or will not accept jurisdiction, in any court of general jurisdiction in the State of Delaware, and the jurisdiction of such court in any such proceeding shall be exclusive.

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(j) Actions Required Upon Grant of Award. Following the issuance of any Award under the Plan, the Corporation shall, in accordance with the listing requirements of the applicable securities exchange, (i) promptly issue a press release disclosing the material terms of the grant, including the recipient(s) of the grant and the number of shares involved (and if the disclosure relates to an award to executive officers, or if the award was individually negotiated, then the disclosure must include the identity of the recipient), and (ii) notify the applicable securities exchange of such grant no later than the earlier to occur of (A) five calendar days after entering into the agreement to issue the Award or (B) the date of the public announcement of the Award.

(k) Stockholder Approval Not Required. It is expressly intended that approval of the Corporation's stockholders not be required as a condition of the effectiveness of the Plan, and the Plan's provisions shall be interpreted in a manner consistent with such intent for all purposes. Specifically, (i) New York Stock Exchange Rule 303A.08 generally requires stockholder approval for equity-compensation plans adopted by companies whose securities are listed on the New York Stock Exchange, and (ii) Nasdaq Stock Market Rule 5635(c)(4) generally requires stockholder approval for stock option plans or other equity compensation arrangements adopted by companies whose securities are listed on the Nasdaq Stock Market pursuant to which stock awards or stock may be acquired by officers, directors, employees or consultants of such companies. New York Stock Exchange Rule 303A.08 and Nasdaq Stock Market Rule 5635(c)(4) each provides an exemption in certain circumstances for "employment inducement" awards (within the meaning of New York Stock Exchange Rule 303A.08 and Nasdaq Stock Market Rule 5635(c)(4)). Notwithstanding anything to the contrary herein, (A) if the Corporation's securities are traded on the New York Stock Exchange, then Awards under the Plan may only be made to employees who are being hired by the Corporation or a Subsidiary, or being rehired following a bona fide period of interruption of employment by the Corporation or a Subsidiary, and (B) if the Corporation's securities are traded on the Nasdaq Stock Market, then Awards under the Plan may only be made to employees who have not previously been an employee or director of the Corporation or a Subsidiary, or following a bona fide period of non-employment by the Corporation or a Subsidiary, in each case as an inducement material to the employee's entering into employment with the Corporation or a Subsidiary. Awards under the Plan will be approved by (C) the Committee, which shall be comprised solely of Independent Directors, or (D) a majority of the Corporation's Independent Directors. Accordingly, pursuant to New York Stock Exchange Rule 303A.08 and Nasdaq Stock Market Rule 5635(c)(4), the issuance of Awards and the Shares issuable upon exercise or vesting of such Awards pursuant to the Plan are not subject to the approval of the Corporation's stockholders.

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**ABEONA THERAPEUTICS INC.  
2023 EMPLOYMENT INDUCEMENT EQUITY INCENTIVE PLAN**

**RESTRICTED STOCK AWARD AGREEMENT**

**RECITALS**

A. The Board of Directors of Abeona Therapeutics Inc., a Delaware corporation, and any successor corporation to all or substantially all of the assets or voting stock of the Corporation has adopted the Plan for the purpose of providing new employees of the Corporation or any Subsidiary with the opportunity to receive grants of equity awards. All capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in Paragraph 6.

B. This Agreement is intended to constitute an “employment inducement” award under New York Stock Exchange (“**NYSE**”) Rule 303A.08, and consequently is intended to be exempt from the NYSE rules regarding stockholder approval of stock option plans or other equity compensation arrangements. This Agreement and the terms and conditions of the Award shall be interpreted in accordance with and consistent with such exception.

**NOW, THEREFORE**, it is hereby agreed as follows:

**1. STOCK GRANT.**

(a) **Grant.** Subject to the terms and conditions set forth in this Agreement and the Plan, the Corporation hereby grants to Participant, as of the Grant Date, a restricted stock award of the number of shares of Common Stock specified in the Grant Notice (the “**Issued Shares**”) pursuant to the provisions of the Plan.

(b) **Stockholder Rights.** Until such time as the Issued Shares are forfeited pursuant to the Forfeiture Restriction, Participant (or any successor in interest) shall have all the rights of a stockholder (including voting, dividend and liquidation rights) with respect to the Issued Shares, subject, however, to the transfer restrictions of Paragraph 2.

**2. TRANSFER RESTRICTIONS.**

(a) **Restriction on Transfer.** Except for any Permitted Transfer, Participant shall not transfer, assign, encumber or otherwise dispose of any of the Issued Shares which are subject to the Forfeiture Restriction.

(b) **Transferee Obligations.** Each person (other than the Corporation) to whom the Issued Shares are transferred by means of a Permitted Transfer must, as a condition precedent to the validity of such transfer, acknowledge in writing to the Corporation that such person is bound by the provisions of this Agreement and that the transferred shares are subject to the Forfeiture Restriction, to the same extent such shares would be so subject if retained by Participant.



**3. FORFEITURE RESTRICTION.**

(a) **Forfeiture Restriction.** Upon the date Participant ceases for any reason to remain in Service, all of the Issued Shares in which Participant is not, at the time of his or her cessation of Service, vested in accordance with the Vesting Schedule set forth in Paragraph 3(b) or any vesting acceleration under Paragraph 3(d) (such shares to be hereinafter referred to as the “**Unvested Shares**”) shall be immediately forfeited and returned to the Corporation without any further action by the Corporation (the “**Forfeiture Restriction**”).

(b) **Termination of the Forfeiture Restriction.**

(i) Participant shall vest in the Issued Shares, and the Forfeiture Restriction shall concurrently lapse with respect to the Issued Shares, upon Participant’s completion of Service in accordance with the Vesting Schedule set forth in the Grant Notice. For the avoidance of doubt, except to the extent provided in Paragraph 3(d)(ii) below, in the case of a Participant termination between vesting dates, no pro rata portion of the Issued Shares shall vest.

(ii) Notwithstanding subparagraph (i) above, Participant shall vest in the Issued Shares, and the Forfeiture Restriction shall concurrently lapse with respect to the Issued Shares, upon Participant’s death or Disability.

(c) **Recapitalization.** Any new, substituted or additional securities or other property (including cash paid other than as a regular cash dividend) which is by reason of any Recapitalization distributed with respect to the Issued Shares shall be immediately subject to the Forfeiture Restriction and any escrow requirements hereunder, but only to the extent the Issued Shares are at the time covered by such right or escrow requirements. Appropriate adjustments to reflect such distribution shall be made to the number and/or class of Issued Shares subject to this Agreement and to the Forfeiture Restriction in order to reflect the effect of any such Recapitalization upon the Corporation’s capital structure.

(d) **Change in Control.**

(i) In the event a Change in Control occurs during Participant’s period of Service, the Committee in its sole discretion may determine that the Forfeiture Restriction (i) is to be assigned to the successor corporation (or parent thereof) or otherwise continued in full force and effect pursuant to the terms of the Change in Control transaction, or (ii) is to be terminated and the shares of Common Stock subject to that terminated right are to immediately vest in full.



(ii) To the extent the Forfeiture Restriction remains in effect following a Change in Control, such right shall apply to any new securities or other property (including any cash payments) received in exchange for the Issued Shares in consummation of the Change in Control, but only to the extent the Issued Shares are at the time covered by such right. The new securities or other property (including any cash payments) issued or distributed with respect to the Issued Shares in consummation of the Change in Control shall be immediately deposited in escrow with the Corporation (or the successor entity) and shall not be released from escrow until Participant vests in such securities or other property in accordance with the same Vesting Schedule in effect for the Issued Shares.

(iii) Notwithstanding the foregoing, in the event that a Change in Control occurs within 180 days measured from the Grant Date and the Forfeiture Restriction remains in effect following such Change in Control, the Forfeiture Restriction shall lapse upon Participant's termination of Service following the Change in Control, other than due to Participant's Misconduct.

4. **MANNER OF ACCEPTING GRANT.** In order to accept this grant with respect to the Issued Shares, Participant must take the following actions:

(a) Notify the Corporation of the acceptance by following the procedures set forth in the AST System.

(b) Make appropriate arrangements with the Corporation (or Subsidiary employing or retaining Participant) for the satisfaction of all applicable tax withholding requirements, if any.

5. **GENERAL PROVISIONS.**

(a) **Assignment.** The Corporation may assign its right to receive shares pursuant to the Forfeiture Restriction to any person or entity selected by the Board, including (without limitation) one or more stockholders of the Corporation.

(b) **At Will Employment.** Nothing in this Agreement or in the Plan shall confer upon Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Subsidiary employing or retaining Participant) or of Participant, which rights are hereby expressly reserved by each, to terminate Participant's Service at any time for any reason, with or without cause, subject to the terms of any employment agreement between the Corporation and Participant.

(c) **Notices.** Any notice required to be given or delivered to the Corporation under the terms of this Agreement shall be in writing and addressed to the Corporation at its principal corporate offices. Any notice required to be given or delivered to Participant shall be in writing and addressed to Participant at the address indicated in the Grant Notice. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

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(d) **No Waiver.** The failure of the Corporation in any instance to enforce the Forfeiture Restriction shall not constitute a waiver of any other repurchase rights that may subsequently arise under the provisions of this Agreement or any other agreement between the Corporation and Participant. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature.

(e) **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware without resort to that state's conflict-of-laws rules.

(f) **Participant Undertaking.** Participant hereby agrees to take whatever additional action and execute whatever additional documents the Corporation may deem necessary or advisable in order to carry out or effect one or more of the obligations or restrictions imposed on either Participant or the Issued Shares pursuant to the provisions of this Agreement.

(g) **Agreement is Entire Contract.** This Agreement constitutes the entire contract between the parties hereto with regard to the subject matter hereof. This Agreement is made pursuant to the provisions of the Plan and shall in all respects be construed in conformity with the terms of the Plan. A copy of the Plan and the related prospectus are available electronically through the AST System.

(h) **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of, and be binding upon, the Corporation and its successors and assigns and upon Participant, Participant's permitted assigns and the legal representatives, heirs and legatees of Participant's estate, whether or not any such person shall have become a party to this Agreement and have agreed in writing to join herein and be bound by the terms hereof.

(i) **Electronic Delivery.** The Corporation may, in its sole discretion, decide to deliver by email or other electronic means, including through the AST System, any documents related to this Agreement, the Issued Shares, any other securities of the Corporation or any other Corporation-related documents, including notices to stockholders required by applicable law, the Corporation's Certificate of Incorporation and/or Bylaws. Participant hereby (i) consents to receive such documents by email or other electronic means, (ii) consents to the use of electronic signatures, and (iii) if applicable, agrees to participate in the Plan and/or receive any such documents related to the Plan through an on-line or electronic system established and maintained by the Corporation or a third party designated by the Corporation. The Corporation may deliver the above-described documents to Participant by sending a communication to Participant's email address set forth in the AST System or, if no email address is set forth therein, to the last email address for Participant the Corporation has on file.



6. **DEFINITIONS.**

The following definitions shall be in effect under the Agreement:

(a) **Agreement** shall mean this Restricted Stock Award Agreement.

(b) **AST System** shall mean American Stock Transfer's Equity Plan Solutions participant platform or any successor participant platform.

(c) **Board** shall mean the Corporation's Board of Directors.

(d) **Change in Control** shall have the meaning ascribed to such term in the Plan.

(e) **Code** shall have the meaning ascribed to such term in the Plan.

(f) **Committee** shall have the meaning ascribed to such term in the Plan.

(g) **Common Stock** shall have the meaning ascribed to such term in the Plan.

(h) **Corporation** shall mean Abeona Therapeutics Inc., a Delaware corporation, and any successor corporation to all or substantially all of the assets or voting stock of Abeona Therapeutics Inc.

(i) **Director** shall have the meaning ascribed to such term in the Plan.

(j) **Disability** shall have the meaning ascribed to such term in the Plan.

(k) **Employee** shall have the meaning ascribed to such term in the Plan.

(l) **Employer** shall have the meaning ascribed to such term in the Plan.

(m) **Family Member** shall mean any of the following members of Participant's family: any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law.

(n) **Forfeiture Restriction** shall have the meaning assigned to such term in Paragraph 3.

(o) **Grant Date** shall mean the award date of the restricted stock award as specified in the Grant Notice.

(p) **Grant Notice** shall mean the notice of restricted stock award provided to Participant through the AST System, pursuant to which Participant has been informed of the basic terms of the grant evidenced hereby.

(q) **Issued Shares** shall have the meaning assigned to such term in Paragraph 1(a).

(r) **Key Advisor** shall have the meaning ascribed to such term in the Plan.

(s) **Misconduct** shall have the meaning ascribed to such term in the Plan.



(t) **Participant** shall mean the person to whom Issued Shares are issued under the Plan, as specified in the Grant Notice.

(u) **Permitted Transfer** shall mean (i) a gratuitous transfer of the Issued Shares to one or more of Participant's Family Members or to a trust established for Participant or one or more such Family Members, provided and only if Participant obtains the Corporation's prior written consent to such transfer, (ii) a transfer of title to the Issued Shares effected pursuant to Participant's will or the laws of inheritance following Participant's death or (iii) a transfer to the Corporation in pledge as security for any purchase-money indebtedness incurred by Participant in connection with the acquisition of the Issued Shares.

(v) **Plan** shall mean the Corporation's 2023 Employment Inducement Equity Incentive Plan.

(w) **Recapitalization** shall mean any of the following transactions affecting the Corporation's outstanding Common Stock as a class without the Corporation's receipt of consideration: any stock split, stock dividend, spin-off transaction, extraordinary distribution (whether in cash, securities or other property), recapitalization, reincorporation, combination of shares, exchange of shares or other similar transaction affecting the Common Stock without the Corporation's receipt of consideration.

(x) **Service** shall mean Participant's performance of services for the Corporation (or any Subsidiary, whether now existing or subsequently established) in the capacity of an Employee, Key Advisor or Director. For purposes of this Agreement, Participant shall be deemed to cease Service immediately upon the occurrence of either of the following events: (i) Participant no longer performs services in any of the foregoing capacities for the Corporation or any Subsidiary or (ii) the entity for which Participant is performing such services ceases to remain a Subsidiary of the Corporation, even though Participant may subsequently continue to perform active services for that entity, unless Participant transfers employment or service to an Employer. Service shall not be deemed to cease during a period of military leave, sick leave or other bona fide leave approved by the Corporation; provided that such leave does not exceed the longer of 90 days or the period during which the absent Participant's reemployment rights, if any, are guaranteed by statute or contract. To the extent consistent with applicable law, the Committee may provide that the Issued Shares continue to vest for all or a portion of the period of such leave, or that vesting shall be tolled during such leave and only recommence upon Participant's return from such leave.

(y) **Subsidiary** shall have the meaning ascribed to such term in the Plan.

(z) **Unvested Shares** shall have the meaning assigned to such term in Paragraph 3(a).

(aa) **Vesting Schedule** shall mean the vesting schedule specified in Paragraph 3(b) pursuant to which Participant is to vest in the Issued Shares over Participant's period of Service.

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## Calculation of Filing Fee Table

**Form S-8**  
(Form Type)

**ABEONA THERAPEUTICS INC.**  
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities.

| Security Type | Security Class Title                     | Fee Calculation Rule   | Amount Registered <sup>(1)</sup> | Proposed Maximum Offering Price Per Share <sup>(2)</sup> | Maximum Aggregate Offering Price <sup>(2)</sup> | Fee Rate   | Amount of Registration Fee |
|---------------|--|------------------------|----------------------------------|--|---|------------|----------------------------|
| Equity        | Common stock, par value \$0.01 per share | Rule 457(c) and 457(h) | 1,000,000 <sup>(3)</sup>         | \$ 4.05  | \$ 4,050,000                                    | 0.00014760 | \$ 597.78                  |
|               |  |                        | Total Offering Amounts           |  | 4,050,000                                       |            | 597.78                     |
|               |  |                        | Total Fee Offsets                |  |   |            | \$ 0.00                    |
|               |  |                        | Net Fees Due                     |  |   |            | \$ 597.78                  |

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, (the "Securities Act"), the Registration Statement on Form S-8 to which this exhibit relates shall be deemed to cover an indeterminate amount of additional shares of the registrant's common stock, par value \$0.01 per share (the "Common Stock"), that may be offered and issued pursuant to the registrant's 2023 Employment Inducement Equity Incentive Plan (the "Inducement Plan") as a result of any share split, share dividend, recapitalization or similar transactions affecting the Common Stock.

(2) Calculated pursuant to Rules 457(c) and 457(h) under the Securities Act solely for the purpose of calculating the registration fee. The registration fee is calculated based on a price of \$4.05 per share, which is the average of the high and low prices of the Common Stock as reported on the Nasdaq Capital Market on October 9, 2023.

(3) Represents the 1,000,000 shares of Common Stock reserved and available for issuance under the Inducement Plan.

Table 2: Fee Offset Claims and Sources

Not applicable.