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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): April 29, 2021

Lexicon Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

000-30111
(Commission File Number)

76-0474169
(I.R.S. Employer
Identification Number)

8800 Technology Forest Place
The Woodlands, Texas 77381
(Address of principal executive offices and Zip Code)

(281) 863-3000
(Registrant's telephone number, including area code)

Securities	registered	pursuant	to	Section	12(b)	of	the	Act:
Title of each class				Trading Symbol(s)				Name of each exchange on which registered
Common Stock, par value \$0.001				LXRX				The Nasdaq Global Select Market

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

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

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement

On April 29, 2021, our stockholders approved an amendment to our 2017 Non-Employee Directors' Equity Incentive Plan increasing the total number of shares of our common stock that may be issued pursuant to stock awards granted under the plan from 600,000 to 1,200,000.

The foregoing summary does not purport to be complete and is qualified in its entirety by our 2017 Non-Employee Directors' Equity Incentive Plan, as amended, a copy of which is attached to this report as Exhibit 10.1 and incorporated herein by reference.

Item 3.03 Material Modification to Rights of Security Holders

To the extent required by Item 3.03 of Form 8-K, the information contained in Item 5.03 of this report is incorporated herein by reference.

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

On April 30, 2021, we filed a Second Amended and Restated Certificate of Incorporation with the Secretary of State of Delaware, which became effective on the filing date. The Second Amended and Restated Certificate of Incorporation grants holders of 20% or more of our issued and outstanding common stock (a) customary preemptive rights and (b) consent rights prior to us taking any of the following actions: (i) creating or issuing any new class or series of shares of capital stock (or securities convertible into or exercisable for shares of capital stock) having rights, preferences or privileges senior to or on parity with the common stock, (ii) subject to certain customary exceptions, repurchasing, retiring, redeeming or otherwise acquiring any of our equity securities (or securities convertible into or exchangeable for our equity securities) and (iii) adopting, or proposing to adopt, or maintaining any shareholders' rights plan, "poison pill" or other similar plan or agreement, unless such stockholder is exempt from the provisions of such shareholders' rights plan, "poison pill" or other similar plan or agreement.

The foregoing summary does not purport to be complete and is qualified in its entirety by our Second Amended and Restated Certificate of Incorporation, a copy of which is attached to this report as Exhibit 3.1 and incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders

Our annual meeting of stockholders was held on April 29, 2021 to consider and vote on the following proposals. The voting results with respect to each matter are set forth below:

(1)	Election of Class III Directors				
	<u>Name of Director</u>		<u>For</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
	Philippe J. Amouyal		104,066,289	9,551,121	11,677,330
	Lonnell Coats		113,017,046	600,364	11,677,330
	Frank P. Palantoni		108,872,113	4,745,297	11,677,330
(2)	Ratification and approval of the Company's Second Amended and Restated Certificate of Incorporation	<u>For</u>	<u>Against</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
		92,542,672	20,518,676	556,062	11,677,330
(3)	Ratification and approval of the amendment to the Company's 2017 Non-Employee Directors' Equity Incentive Plan	<u>For</u>	<u>Against</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
		111,261,130	2,288,483	67,797	11,677,330
(4)	Advisory vote to approve the compensation paid to the Company's named executive officers	<u>For</u>	<u>Against</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
		94,641,717	18,373,001	602,692	11,677,330
(5)	Ratification and approval of the appointment of Ernst & Young LLP as Company's independent auditors for the fiscal year ending December 31, 2021	<u>For</u>	<u>Against</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
		125,012,456	116,013	166,271	—

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>		<u>Description</u>
3.1	—	Second Amended and Restated Certificate of Incorporation
10.1	—	2017 Non-Employee Directors' Equity Incentive Plan, as amended

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

LEXICON PHARMACEUTICALS, INC.

LEXICON PHARMACEUTICALS, INC. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware ("DGCL"), hereby certifies as follows pursuant to Sections 242 and 245 of the DGCL:

- FIRST: The name of the Corporation is "Lexicon Pharmaceuticals, Inc." The Corporation was previously incorporated as "Lexicon Genetics Incorporated."
- SECOND: The original Certificate of Incorporation of the Corporation was filed in the Office of the Secretary of State of the State of Delaware (the "Secretary of State") on July 7, 1995. An Amended and Restated Certificate of Incorporation of the Corporation was filed in the Office of the Secretary of State on April 26, 2012 and was subsequently amended by a Certificate of Amendment to the Amended and Restated Certificate of Incorporation filed in the Office of the Secretary of State on May 20, 2015.
- THIRD: The Board of Directors of the Corporation (the "Board of Directors"), in accordance with Sections 242 and 245 of the DGCL, (i) adopted and approved this Second Amended and Restated Certificate of Incorporation (including the amendments to the Corporation's Certificate of Incorporation effected hereby) and (ii) proposed that the Corporation's stockholders adopt and approve this Second Amended and Restated Certificate of Incorporation (including the amendments to the Corporation's Certificate of Incorporation effected hereby).
- FOUR: The holders of not less than a majority of the outstanding shares of the Corporation's common stock, par value \$.001 per share, and preferred stock, par value \$0.01 per share, in accordance with Sections 242 and 245 of the DGCL, approved and adopted on behalf of the stockholders this Second Amended and Restated Certificate of Incorporation (including the amendments to the Corporation's Certificate of Incorporation effected hereby).
- FIFTH: This Second Amended and Restated Certificate of Incorporation shall become effective on its filing with the Secretary of State.
- SIXTH: The Amended and Restated Certificate of Incorporation of the Corporation, as amended, is hereby amended and restated to read in its entirety as follows:

ARTICLE I
Name

The name of the Corporation is “Lexicon Pharmaceuticals, Inc.”

ARTICLE II
Registered Office and Registered Agent

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

ARTICLE III
Purpose

The purpose for which the Corporation is organized is to engage in any lawful acts and activities for which corporations may be organized under the General Corporation Law of the State of Delaware (“DGCL”).

ARTICLE IV
Capitalization

Section 4.01. Authorized Capital. (a) The total number of shares of stock that the Corporation shall have the authority to issue is 230,000,000 shares of capital stock, consisting of (i) 5,000,000 shares of preferred stock, par value \$0.01 per share (the “Preferred Stock”), and (ii) 225,000,000 shares of common stock, par value \$0.001 per share (the “Common Stock”).

(b) Subject to the provisions of this Certificate of Incorporation and the Preferred Stock Designation (as defined below) creating any series of Preferred Stock, the Corporation may issue shares of its capital stock from time to time for such consideration (not less than the par value thereof) as may be fixed by the Board of Directors of the Corporation (the “Board of Directors”), which is expressly authorized to fix the same in its absolute discretion subject to the foregoing conditions. Shares so issued for which the consideration shall have been paid or delivered to the Corporation shall be deemed fully paid stock and shall not be liable to any further call or assessment thereon, and the holders of such shares shall not be liable for any further payments in respect of such shares.

(c) The right to cumulate votes for the election of directors as provided in Section 214 of the DGCL shall not be granted and is hereby expressly denied.

(d) Subject to Article XII, no stockholder of the Corporation shall by reason of his or her holding shares of any class of capital stock of the Corporation have any preemptive or preferential right to acquire or subscribe for any additional, unissued or treasury shares (whether now or hereafter acquired) of any class of capital stock of the Corporation now or hereafter to be

authorized, or any notes, debentures, bonds or other securities convertible into or carrying any right, option or warrant to subscribe for or acquire shares of any class of capital stock of the Corporation now or hereafter to be authorized, whether or not the issuance of any such shares or such notes, debentures, bonds or other securities would adversely affect the dividends or voting or other rights of that stockholder.

Section 4.02. Preferred Stock. (a) The Preferred Stock may be issued from time to time in one or more series. Authority is hereby expressly granted to and vested in the Board of Directors to authorize from time to time the issuance of Preferred Stock in one or more series. With respect to each series of Preferred Stock authorized by it, the Board of Directors shall be authorized to establish by resolution or resolutions, and by filing a certificate pursuant to applicable law of the State of Delaware (the "Preferred Stock Designation"), the following to the fullest extent now or hereafter permitted by the DGCL:

- (1) the designation of such series;
- (2) the number of shares to constitute such series;
- (3) whether such series is to have voting rights (full, special or limited) or is to be without voting rights;
- (4) if such series is to have voting rights, whether or not such series is to be entitled to vote as a separate class either alone or together with the holders of the Common Stock or one or more other series of Preferred Stock;
- (5) the preferences and relative, participating, optional, conversion or other special rights (if any) of such series and the qualifications, limitations or restrictions (if any) with respect to such series;
- (6) the redemption rights and price(s), if any, of such series, and whether or not the shares of such series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement and, if such retirement or sinking funds or funds are to be established, the periodic amount thereof and the terms and provisions relative to the operation thereof;
- (7) the dividend rights and preferences (if any) of such series, including, without limitation, (i) the rates of dividends payable thereon, (ii) the conditions upon which and the time when such dividends are payable, (iii) whether or not such dividends shall be cumulative or noncumulative and, if cumulative, the date or dates from which such dividends shall accumulate and (iv) whether or not the payment of such dividends shall be preferred to the payment of dividends payable on the Common Stock or any other series of Preferred Stock;
- (8) the preferences (if any), and the amounts thereof, which the holders of such series shall be entitled to receive upon the voluntary or involuntary liquidation, dissolution or winding-up of, or upon any distribution of the assets of, the Corporation;

(9) whether or not the shares of such series, at the option of the Corporation or the holders thereof or upon the happening of any specified event, shall be convertible into or exchangeable for (i) shares of Common Stock, (ii) shares of any other series of Preferred Stock or (iii) any other stock or securities of the Corporation;

(10) if such series is to be convertible or exchangeable, the price or prices or ratio or ratios or rate or rates at which such conversion or exchange may be made and the terms and conditions (if any) upon which such price or prices or ratio or ratios or rate or rates may be adjusted; and

(11) such other rights, powers and preferences with respect to such series as may to the Board of Directors seem advisable.

Any series of Preferred Stock may vary from any other series of Preferred Stock in any or all of the foregoing respects and in any other manner.

(b) The Board of Directors may, with respect to any existing series of Preferred Stock but subject to the Preferred Stock Designation creating such series, (i) increase the number of shares of Preferred Stock designated for such series by a resolution adding to such series authorized and unissued shares of Preferred Stock not designated for any other series and (ii) decrease the number of shares of Preferred Stock designated for such series by a resolution subtracting from such series shares of Preferred Stock designated for such series (but not below the number of shares of such series then outstanding), and the shares so subtracted shall become authorized, unissued and undesignated shares of Preferred Stock.

(c) No vote of the holders of the Common Stock or the Preferred Stock shall, unless otherwise expressly provided in a Preferred Stock Designation creating any series of Preferred Stock, be a prerequisite to the issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Certificate of Incorporation. Shares of any series of Preferred Stock that have been authorized for issuance pursuant to this Certificate of Incorporation and that have been issued and reacquired in any manner by the Corporation (including upon conversion or exchange thereof) shall be restored to the status of authorized and unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors and a Preferred Stock Designation as set forth above.

Section 4.03. Common Stock. (a) The holders of shares of the Common Stock shall be entitled to vote upon all matters submitted to a vote of the common stockholders of the Corporation and shall be entitled to one vote for each share of the Common Stock held.

(b) Subject to the prior rights and preferences (if any) applicable to shares of Preferred Stock of any series, the holders of shares of the Common Stock shall be entitled to receive such dividends (payable in cash, stock or otherwise) as may be declared thereon by the Board of Directors at any time and from time to time out of any funds of the Corporation legally available therefor.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and subject to the preferential or other rights (if any) of the holders of shares of the Preferred Stock in respect thereof, the holders of shares of the Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of the Common Stock held by them. For purposes of this paragraph (c), a liquidation, dissolution or winding-up of the Corporation shall not be deemed to be occasioned by or to include (i) any consolidation or merger of the Corporation with or into another corporation or other entity or (ii) a sale, lease, exchange or conveyance of all or a part of the assets of the Corporation.

Section 4.04. Stock Options, Warrants, etc. Unless otherwise expressly prohibited in the Preferred Stock Designation creating any series of Preferred Stock, the Corporation shall have authority to create and issue warrants, rights and options entitling the holders thereof to purchase from the Corporation shares of the Corporation's capital stock of any class or series or other securities of the Corporation for such consideration and to such persons, firms or corporations as the Board of Directors, in its sole discretion, may determine, setting aside from the authorized but unissued capital stock of the Corporation the requisite number of shares for issuance upon the exercise of such warrants, rights or options. Such warrants, rights and options shall be evidenced by one or more instruments approved by the Board of Directors. The Board of Directors shall be empowered to set the exercise price, duration, time for exercise and other terms of such warrants, rights or options; *provided, however*, that the consideration to be received for any shares of capital stock subject thereto shall not be less than the par value thereof.

ARTICLE V Directors

Section 5.01. Number and Term. The number of directors of the Corporation shall from time to time be fixed exclusively by the Board of Directors in accordance with, and subject to the limitations set forth in, the bylaws of the Corporation (the "Bylaws"); *provided, however*, that the Board of Directors shall at all times consist of a minimum of three and a maximum of 13 directors, subject, however, to increases above 13 directors as may be required in order to permit the holders of any series of Preferred Stock to exercise their right (if any) to elect additional directors under specified circumstances or to permit the election or appointment to the Board of Directors of the Required Director Number of Investor Designated Directors (each as defined in the Stockholders' Agreement, dated as of June 17, 2007, between Invus, L.P. and the Corporation (as amended, supplemented or otherwise modified, the "Stockholders' Agreement")) pursuant to the Stockholders' Agreement. No decrease in the number of directors shall have the effect of shortening the term of any incumbent director. Anything in this Certificate of Incorporation or the Bylaws to the contrary notwithstanding, each director shall hold office until his successor is elected and qualified or until his earlier death, resignation or removal.

Section 5.02. Limitation of Personal Liability. (a) No person who is or was a director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages

for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit.

(b) If the DGCL is hereafter amended to authorize corporate action further limiting or eliminating the personal liability of directors, then the personal liability of the directors to the Corporation or its stockholders shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended from time to time.

Section 5.03. Classification. The Board of Directors shall be divided into three classes designated as Class I, Class II and Class III, respectively, all as nearly equal in number as possible, with each director then in office receiving the classification to be determined with respect to such director by the Board of Directors. The initial term of office of Class I directors shall expire at the annual meeting of the Corporation's stockholders in 2001. The initial term of office of Class II directors shall expire at the annual meeting of stockholders in 2002. The initial term of office of Class III directors shall expire at the annual meeting of stockholders in 2003. Each director elected at an annual meeting of stockholders to succeed a director whose term is then expiring shall hold office until the third annual meeting of stockholders after his election or until his successor is elected and qualified or until his earlier death, resignation or removal. Increases and decreases in the number of directors shall be apportioned among the classes of directors so that all classes will be as nearly equal in number as possible. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 5.04. Nomination and Election. (a) Nominations of persons for election or reelection to the Board of Directors may be made by or at the direction of the Board of Directors. The Bylaws may set forth procedures for the nomination of persons for election or reelection to the Board of Directors and only persons who are nominated in accordance with such procedures (if any) shall be eligible for election or reelection as directors of the Corporation; *provided, however*, that such procedures shall not infringe upon (i) the right of the Board of Directors to nominate persons for election or reelection to the Board of Directors or (ii) the rights of the holders of any class or series of Preferred Stock, voting separately by class or series, to elect additional directors under specified circumstances.

(b) Each director shall be elected in accordance with this Certificate of Incorporation, the Bylaws and applicable law. Election of directors by the Corporation's stockholders need not be by written ballot unless the Bylaws so provide.

Section 5.05. Removal. No director of any class may be removed before the expiration of his term of office except for cause and then only by the affirmative vote of the holders of not less than a majority in voting power of all the outstanding shares of capital stock of the Corporation entitled to vote generally in an election of directors, voting together as a single class. The Board of Directors may not remove any director, and no recommendation by the Board of Directors that a director be removed may be made to the Corporation's stockholders unless such recommendation is set forth in a resolution adopted by the affirmative vote of not less than 66-2/3% of the whole Board of Directors.

Section 5.06. Vacancies. (a) In case any vacancy shall occur on the Board of Directors because of death, resignation or removal, such vacancy may be filled only by a majority (or such higher percentage as may be specified in the Bylaws) of the directors remaining in office (though less than a quorum), or by the sole remaining director. The director so appointed shall serve for the unexpired term of his predecessor or until his successor is elected and qualified or until his earlier death, resignation or removal. If there are no directors then in office, an election of directors may be held in the manner provided by applicable law.

(b) Any newly-created directorship resulting from any increase in the number of directors may be filled only by a majority (or such higher percentage as may be specified in the Bylaws) of the directors then in office (though less than a quorum), or by the sole remaining director. The director so appointed shall be assigned to such class of directors as such majority of directors or the sole remaining director, as the case may be, shall determine; *provided, however*, that newly-created directorships shall be apportioned among the classes of directors so that all classes will be as nearly equal in number as possible. Each director so appointed shall hold office for the remaining term of the class to which he is assigned or until his successor is elected and qualified or until his earlier death, resignation or removal.

(c) Except as expressly provided in this Certificate of Incorporation or as otherwise provided by applicable law, stockholders of the Corporation shall not have the right to fill vacancies on the Board of Directors, including newly-created directorships.

Section 5.07. Subject to Rights of Holders of Preferred Stock. Notwithstanding the foregoing provisions of this Article V, if the Preferred Stock Designation creating any series of Preferred Stock entitles the holders of such Preferred Stock, voting separately by class or series, to elect additional directors under specified circumstances, then all provisions of such Preferred Stock Designation relating to the nomination, election, term of office, removal, filling of vacancies and other features of such directorships shall, as to such directorships, govern and control over any conflicting provisions of this Article V, and such directors so elected need not be divided into classes pursuant to this Article V unless expressly provided by the provisions of such Preferred Stock Designation.

ARTICLE VI Amendment of Bylaws

The Board of Directors is expressly authorized and empowered to adopt, alter, amend or repeal the Bylaws. Stockholders of the Corporation shall have the power to alter, amend, expand or repeal the Bylaws but only by the affirmative vote of the holders of not less than 66-2/3% in voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally at an election of directors, voting together as a single class.

ARTICLE VII
Actions and Meetings of Stockholders

Section 7.01. No Action by Written Consent. No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders. Stockholders of the Corporation may not act by written consent in lieu of a meeting.

Section 7.02. Meetings. (a) Meetings of the stockholders of the Corporation (whether annual or special) may only be called by the Board of Directors or by such officer or officers of the Corporation as the Board of Directors may from time to time authorize to call meetings of the stockholders of the Corporation. Stockholders of the Corporation shall not be entitled to call any meeting of stockholders or to require the Board of Directors or any officer or officers of the Corporation to call a meeting of stockholders except as otherwise expressly provided in the Bylaws or in the Preferred Stock Designation creating any series of Preferred Stock.

(b) Stockholders of the Corporation shall not be entitled to propose business for consideration at any meeting of stockholders except as otherwise expressly provided in the Bylaws or in the Preferred Stock Designation creating any series of Preferred Stock.

(c) Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice or waivers of notice of such meeting. The person presiding at a meeting of stockholders may determine whether business has been properly brought before the meeting and, if the facts so warrant, such person may refuse to transact any business at such meeting which has not been properly brought before such meeting.

Section 7.03. Appoint and Remove Officers, etc. The stockholders of the Corporation shall have no right or power to appoint or remove officers of the Corporation nor to abrogate the power of the Board of Directors to elect and remove officers of the Corporation. The stockholders of the Corporation shall have no power to appoint or remove directors as members of committees of the Board of Directors nor to abrogate the power of the Board of Directors to establish one or more such committees or the power of any such committee to exercise the powers and authority of the Board of Directors.

Section 7.04. Compromises and Arrangements. Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall,

if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

ARTICLE VIII

Indemnification of Directors and Officers

The Corporation shall indemnify, to the fullest extent permitted by applicable law and pursuant to the Bylaws, each person who is or was a director or officer of the Corporation, and may indemnify each employee and agent of the Corporation and all other persons whom the Corporation is authorized to indemnify under the provisions of the DGCL.

ARTICLE IX

Election to be Governed by Section 203 of the DGCL

The Corporation hereby elects to be governed by Section 203 of the DGCL; *provided, however*, that the provisions of this Article IX shall not apply to restrict a business combination between the Corporation and an interested stockholder (as defined in Section 203 of the DGCL) of the Corporation if either (i) such business combination was approved by the Board of Directors prior to the time that such stockholder became an interested stockholder or (ii) such stockholder became an interested stockholder as a result of, and at or prior to the effective time of, a transaction which was approved by the Board of Directors prior to the time that such stockholder became an interested stockholder.

ARTICLE X

Amendment of Certificate of Incorporation

The Corporation reserves the right to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by applicable law, and all rights conferred upon stockholders, directors or any other persons by or pursuant to this Certificate of Incorporation are granted subject to this reservation. Notwithstanding the foregoing or any other provision of this Certificate of Incorporation or any provision of law that might otherwise permit a lesser or no vote, the provisions of this Article X and of Articles V, VI, VII and VIII may not be repealed or amended in any respect, and no provision inconsistent with any such provision or imposing cumulative voting in the election of directors may be added to this Certificate of Incorporation, unless such action is approved by the affirmative vote of the holders of not less than 66-2/3% in voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally at an election of directors, voting together as a single class; *provided, however*, that any amendment or repeal of Section 5.02 or Article VIII of this Certificate of Incorporation shall not adversely affect any right or protection existing thereunder in respect of any act or omission occurring prior to such amendment or repeal and, *provided further*, that no Preferred Stock Designation shall be amended after the issuance of any shares of the Series of Preferred Stock created thereby, except in accordance with the terms of such Preferred Stock Designation and the requirements of applicable law.

ARTICLE XI
Voting Requirements Not Exclusive

The voting requirements contained in this Certificate of Incorporation shall be in addition to the voting requirements imposed by law or by the Preferred Stock Designation creating any series of Preferred Stock.

ARTICLE XII
Certain Rights of Covered Stockholders

Section 12.01. Rights to Purchase New Securities. (a) Notwithstanding Section 4.01(d), in the event that the Corporation proposes to issue New Securities, a Covered Stockholder shall have the right to purchase, in lieu of the person to whom the Corporation proposed to issue such New Securities, in accordance with paragraph (b) below, a number of New Securities equal to the product of (i) the total number or amount of New Securities which the Corporation proposes to issue at such time and (ii) a fraction, the numerator of which shall be the total number of shares of Common Stock which the Covered Stockholder beneficially owns at the relevant measurement point, and the denominator of which shall be the aggregate number of shares of Common Stock then outstanding (the number referred to in clause (ii), the “Pro Rata Share”).

(b) Subject to the provisions of Section 12.01(c), in the event that the Corporation proposes to undertake an issuance of New Securities, it shall give written notice (a “Notice of Issuance”) of its intention to the Covered Stockholder indicating the price per New Security (or, to the extent not reasonably known to the Corporation at such time, the methodology for determining such price) and the number of New Securities to be issued by the Corporation, and describing the material terms of the New Securities and the material terms upon which the Corporation proposes to issue such New Securities. The Covered Stockholder shall have two business days from the date of receipt of the Notice of Issuance to agree to purchase all or a portion of the Covered Stockholder’s Pro Rata Share of such New Securities (as determined pursuant to paragraph (a) above) for the same consideration and otherwise upon the terms specified in the Notice of Issuance (unless better terms are provided to any other purchaser) by giving written notice to the Corporation and stating therein the quantity of New Securities to be purchased by the Covered Stockholder. If the Covered Stockholder exercises its right to purchase New Securities pursuant to this Section 12.01(b), the purchase and sale of such New Securities shall close at the same time as the issuance of New Securities to the other purchaser or purchasers and, subject to the preceding sentence, shall be issued on the same terms and subject to the same conditions as applicable to the other purchaser or purchasers; *provided* that (i) such terms and conditions applicable to the Covered Stockholder shall not include any restrictions on the transferability of such New Securities (except pursuant to applicable laws and regulations) or any standstill, voting or other restrictions, (ii) the Covered Stockholder shall not be required to make any representations and warranties except those that relate solely to the Covered Stockholder and (iii) the Covered Stockholder will not be required to undertake any indemnification obligation.

The rights given by the Corporation under this Section 12.01(b) shall terminate if unexercised within two business days after receipt of the Notice of Issuance referred to in this

Section 12.01(b). Notwithstanding anything to the contrary contained herein, if (i) the price or any other material terms upon which the Corporation proposes to issue such New Securities are amended by the Corporation following the delivery to the Covered Stockholder of the Notice of Issuance or (ii) the offering of New Securities to which a Notice of Issuance relates is not completed within five business days from the delivery of such notice to the Covered Stockholder, the Covered Stockholder's election with respect to the purchase of New Securities covered by such Notice of Issuance shall be void and the Corporation shall be obligated to deliver a new Notice of Issuance to the Covered Stockholder, and the Covered Stockholder shall be entitled to make a new election with respect to the purchase by it of New Securities covered by such notice within the two-business day period from the date of delivery of the new Notice of Issuance and otherwise in accordance with the procedure specified in the second sentence of this Section 12.01(b).

(c) Notwithstanding anything to the contrary contained in Section 12.01(b), if the Corporation proposes to issue New Securities in an aggregate amount of at least \$25,000,000 in a Public Offering, the Notice of Issuance may, in lieu of specifying the price at which the Corporation proposes to issue New Securities and the number of New Securities to be issued by the Corporation in such offering, provide an estimated aggregate public offering size (in dollar amount) of the New Securities (exclusive of any Overallotment Securities, as contemplated by the following paragraph) that the Corporation estimates will ultimately be issued in such offering (the "Estimated Offering Size") and, to the extent different from the closing price per share of the Common Stock on the Nasdaq Stock Market or the principal securities exchange on which the Common Stock is then listed on the date immediately prior to the date on which the Notice of Issuance is delivered to the Covered Stockholder pursuant to this Section 12.01(c), an estimated public offering price per New Security (such closing price of the Common Stock or, if specified in such Issuance Notice, the estimated price per New Security so specified, the "Estimated Offering Price"). If the Covered Stockholder desires to exercise its rights under this Section 12.01 with respect to such Public Offering, the Covered Stockholder shall be required to make an election with respect to the purchase, at the public offering price in such Public Offering, of a dollar amount of New Securities up to its Pro Rata Share of the Estimated Offering Size no later than two business days from the date of receipt of the Notice of Issuance (which period shall be reduced to one business day if, prior to delivery of such Notice of Issuance, such Covered Stockholder, to the extent requested by the Corporation, had not entered into a customary agreement reasonably satisfactory to the Corporation requiring that the Covered Stockholder maintain the confidentiality of the proposed Public Offering unless and until publicly announced by the Corporation); *provided* that the Covered Stockholder's obligation to purchase the dollar amount of New Securities subject to its election shall be conditioned upon (i) the issuance by the Corporation of New Securities in such Public Offering at an aggregate public offering price of at least 85% and no more than 115% of the Estimated Offering Size and (ii) the New Securities so issued being priced not higher than 15% above the Estimated Offering Price. For clarity, in the event the Covered Stockholder does not purchase the dollar amount of New Securities subject to its election in reliance upon the foregoing proviso, the Covered Stockholder shall be deemed to have chosen not to exercise its rights under this Section 12.01 with respect to such Public Offering.

Any Notice of Issuance provided by the Corporation to the Covered Stockholder in connection with a Public Offering may specify that the underwriters or agents in such offering shall be entitled to purchase upon exercise of an overallotment option, if any, additional New Securities in

an amount up to 15% of the New Securities issued in such Public Offering (the “Overallotment Securities”). If the Covered Stockholder desires to exercise its rights under this Section 12.01 with respect to Overallotment Securities, the Covered Stockholder shall be required to make an election with respect to the purchase of up to its Pro Rata Share of the Overallotment Securities at the same time the Covered Stockholder makes an election pursuant to Section 12.01(c); *provided* that the Covered Stockholder’s obligation to purchase Overallotment Securities in accordance with its election shall be subject to the same conditions to which its obligations to purchase New Securities in the Public Offering, before giving effect to such Overallotment Securities, are subject.

If a Public Offering contemplated by Section 12.01(c) is not completed within five business days following the Notice of Issuance with respect thereto, then the Corporation will be required to comply again with the provisions of this Section 12.01(c) in order to avail itself of the benefits of Section 12.01(c). In case a Public Offering contemplated by this Section 12.01(c) is consummated, the Covered Stockholder shall be obligated to purchase the New Securities which it has elected to purchase hereunder at the closing of such Public Offering if and to the extent the conditions to the Covered Stockholder’s obligations hereunder are met, on the same terms and subject to the same conditions that would be applicable to the underwriters in such offering; *provided, however*, that (i) such terms and conditions applicable to the Covered Stockholder shall not include any restrictions on the transferability of such New Securities (except pursuant to applicable laws and regulations) or any standstill, voting or other restrictions,, (ii) the Covered Stockholder shall not be required to make any representations and warranties except those that relate solely to the Covered Stockholder and (iii) the Covered Stockholder shall not be required to undertake any indemnity obligations.

Notwithstanding any other provision of this section, the Corporation may, in lieu of allowing the Covered Stockholder to participate in a Public Offering in fulfillment of its rights under this Section 12.01(c), offer instead to issue and sell to the Covered Stockholder up to a number of New Securities equal to the Covered Stockholder’s Pro Rata Share of the New Securities issued in such Public Offering in a concurrent private placement on terms reasonably acceptable to both parties and at a price equal to the price at which the New Securities are sold to the public in the Public Offering.

Section 12.02. Approval of the Covered Stockholder Required for Certain Actions. In addition to any approval by the Board of Directors required by this Certificate of Incorporation, the Bylaws, applicable laws and regulations or Nasdaq Stock Market, the prior written approval of the Covered Stockholder shall be required in order for the Corporation to take, or the Board of Directors to approve, authorize or effect, any of the following (including by merger, consolidation or otherwise):

(a) the creation (by reclassification or otherwise) or issuance of any new class or series of shares of capital stock of the Corporation (or securities convertible into or exercisable for shares of capital stock of the Corporation) having rights, preferences or privileges senior to or on parity with the Common Stock;

(b) any action to repurchase, retire, redeem or otherwise acquire any equity securities (or securities convertible into or exchangeable for equity securities) of the Corporation or any subsidiary of the Corporation, pursuant to self-tender offers, stock repurchase programs, open

market transactions, privately-negotiated purchases or similar transactions; *provided* that no consent of the Covered Stockholder pursuant to this section shall be required in connection with the repurchase, retirement, redemption or other acquisition by the Corporation of securities issued or issuable upon any exercise of options or vesting or exercise of any other equity-based award, in each case under the Corporation's equity incentive plans or any other plan or agreement approved by the Board of Directors, to pay the applicable exercise price or taxes associated with such awards;

(c) take any action to adopt, or propose to adopt, or maintain any shareholders' rights plan, "poison pill" or other similar plan or agreement, unless the Covered Stockholder is exempt from the provisions of such shareholders' rights plan, "poison pill" or other similar plan or agreement; or

(d) any authorization of, or entering into an agreement for, or the commitment to agree to take, any of the foregoing actions.

Section 12.03. Definitions. For purposes of this Article XII:

"Covered Stockholder" means a person that is the beneficial owner of 20% or more of the Corporation's outstanding Common Stock as reflected in the person's most recent filings under section 13 of the Securities Exchange Act of 1934, as amended, and that continues to be the beneficial owner of more than 20% of the Corporation's Common Stock immediately prior to the time of the transaction or event to which the Covered Stockholder is entitled to rights under this Article XII; *provided* that for a person to be considered a "Covered Stockholder," such person must send a written notice to the Corporation at its corporate offices, which notice must contain the number of shares of Common Stock beneficially owned by such person and the notice information, which must include a valid email address, at which such person may be reached for purposes of this Article XII.

"New Securities" means any capital stock of the Corporation, whether now authorized or not, and rights, options or warrants to purchase such capital stock, and securities of any type whatsoever (including convertible debt securities) that are, or may become, convertible into or exchangeable or exercisable for capital stock of the Corporation; *provided* that the term "New Securities" does not include (a) Common Stock or rights, options or warrants to acquire Common Stock of the Corporation issued to employees, consultants, officers or directors of the Corporation or any Subsidiary, or which have been reserved for issuance, pursuant to an employee stock option, stock purchase, stock bonus plan, or other similar compensation plan or arrangement approved by the Board of Directors, (b) securities of the Corporation issued to all then-existing stockholders in connection with any stock split, stock dividend, reclassification or recapitalization of the Corporation, (c) securities of the Corporation issued upon the conversion or exercise of exchangeable or convertible securities of the Corporation, including warrants and convertible notes, that are (i) outstanding as of the date of this Certificate of Incorporation of the Corporation or (ii) issued subsequently after receipt of the consent of the Covered Stockholder pursuant to Section 12.02, (d) securities of the Corporation issued as consideration in the acquisition of business or assets of another person, (e) Common Stock not otherwise contemplated by the foregoing clauses (a) through (d) issued in a given fiscal year pursuant to an "at the market" offering in an amount that does not exceed, in the aggregate, 2% of the outstanding Common Stock of the Corporation

calculated as of the end of the preceding fiscal year, and (g) securities of the Corporation issued in connection with a transaction of the type described in Rule 145 under the Securities Act of 1933, as amended.

“Public Offering” means an underwritten public offering of New Securities that is registered under the Securities Act of 1933, as amended.

IN WITNESS WHEREOF, this Second Amended and Restated Certificate of Incorporation has been executed for and on behalf and in the name of the Corporation by its officers thereunto duly authorized on April 29, 2021.

LEXICON PHARMACEUTICALS, INC.

By: /s/ Lonnel Coats
Lonnel Coats
President and Chief Executive Officer

Attest:

By: /s/ Brian T. Crum
Brian T. Crum
Secretary

LEXICON PHARMACEUTICALS, INC.
2017 NON-EMPLOYEE DIRECTORS' EQUITY INCENTIVE PLAN

This Plan initially was established as the 2000 Non-Employee Directors' Stock Option Plan, effective as of April 12, 2000 (the "2000 Non-Employee Directors' Stock Option Plan") which was adopted by the Board on February 3, 2000 and approved by the Company's stockholders on March 15, 2000. The 2000 Non-Employee Directors' Stock Option Plan, as amended, was subsequently amended and restated in its entirety and renamed the Non-Employee Directors' Stock Option Plan (the "Non-Employee Directors' Stock Option Plan"), which was adopted by the Board on February 27, 2009 and approved by the Company's stockholders on April 23, 2009. A subsequent amendment to the Non-Employee Directors' Stock Option Plan pursuant to which it was renamed the Non-Employee Directors' Equity Incentive Plan (the "Non-Employee Directors' Equity Incentive Plan") was adopted by the Board on February 16, 2012 and approved by the Company's stockholders on April 26, 2012. The Non-Employee Directors' Equity Incentive Plan, as amended, was subsequently amended and restated in its entirety and renamed the 2017 Non-Employee Directors' Equity Incentive Plan, which was adopted by the Board on February 9, 2017 and approved by the Company's stockholders on April 27, 2017. A subsequent amendment to the 2017 Non-Employee Directors' Equity Incentive Plan was adopted by the Board on October 25, 2018. An additional amendment to the 2017 Non-Employee Directors' Equity Incentive Plan was adopted by the Board on February 11, 2021 and approved by the Company's stockholders on April 29, 2021. The terms of this 2017 Non-Employee Directors' Equity Incentive Plan, as amended, shall supersede the terms of the 2000 Non-Employee Directors' Stock Option Plan, Non-Employee Directors' Stock Option Plan and Non-Employee Directors' Equity Incentive Plan in their entirety.

1. PURPOSES.

(a) **ELIGIBLE STOCK AWARD RECIPIENTS.** The persons eligible to receive Stock Awards are the Non-Employee Directors of the Company.

(b) **AVAILABLE STOCK AWARDS.** The purpose of the Plan is to provide a means by which Non-Employee Directors may be given an opportunity to benefit from increases in value of the Common Stock through the granting of the following Stock Awards: (i) Nonstatutory Stock Options, (ii) Restricted Stock Awards and (iii) Restricted Stock Unit Awards.

(c) **GENERAL PURPOSE.** The Company, by means of the Plan, seeks to retain the services of its Non-Employee Directors, to secure and retain the services of new Non-Employee Directors and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

2. DEFINITIONS.

(a) **"AFFILIATE"** means any parent corporation or subsidiary corporation of the Company, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(b) **"BOARD"** means the Board of Directors of the Company.

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

(d) **"COMMON STOCK"** means the common stock, par value \$.001 per share, of the Company.

(e) **"COMPANY"** means Lexicon Pharmaceuticals, Inc., a Delaware corporation.

(f) **"CONSULTANT"** means any person other than a Director or Employee who is engaged by the Company or an Affiliate to render consulting or advisory services and who is compensated for such services.

(g) “CONTINUOUS SERVICE” means that the Participant’s service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. The Participant’s Continuous Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant’s Continuous Service. For example, a change in status from a Non-Employee Director of the Company to a Consultant of an Affiliate or an Employee of the Company will not constitute an interruption of Continuous Service. The Board or the chief executive officer of the Company, in that party’s sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave.

(h) “DIRECTOR” means a member of the Board of Directors of the Company.

(i) “DISABILITY” means the permanent and total disability of a person within the meaning of Section 22(e)(3) of the Code.

(j) “EMPLOYEE” means any person employed by the Company or an Affiliate. Mere service as a Director or payment of a director’s fee by the Company or an Affiliate shall not be sufficient to constitute “employment” by the Company or an Affiliate.

(k) “EXCHANGE ACT” means the Securities Exchange Act of 1934, as amended.

(l) “FAIR MARKET VALUE” means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on the Nasdaq Stock Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the last market trading day prior to the day of determination, as reported in The Wall Street Journal or such other source as the Board deems reliable.

(ii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined in good faith by the Board in such manner as it deems appropriate and as is consistent with the requirements of section 409A of the Code.

(m) “NON-EMPLOYEE DIRECTOR” means a Director who is not an Employee.

(n) “NONSTATUTORY STOCK OPTION” means an option to purchase Common Stock that is not intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(o) “OPTION” means a Nonstatutory Stock Option to purchase Common Stock granted pursuant to Section 6 of the Plan.

(p) “PARTICIPANT” means any Non-Employee Director to whom a Stock Award is granted pursuant to the Plan.

(q) “PLAN” means this Lexicon Pharmaceuticals, Inc. 2017 Non-Employee Directors’ Equity Incentive Plan.

- (r) "RESTRICTED STOCK AWARD" means a right to receive restricted Common Stock granted pursuant to Section 7(a) of the Plan.
- (s) "RESTRICTED STOCK UNIT AWARD" means a right to receive shares of Common Stock (or a cash payment equal to the Fair Market Value thereof) granted pursuant to Section 7(b) of the Plan.
- (t) "RULE 16B-3" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.
- (u) "SECURITIES ACT" means the Securities Act of 1933, as amended.
- (v) "STOCK AWARD" means any right granted under the Plan, including an Option, a Restricted Stock Award or a Restricted Stock Unit Award.
- (w) "STOCK AWARD AGREEMENT" means a written agreement between the Company and a holder of a Stock Award evidencing the terms and conditions of an individual Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

3. ADMINISTRATION.

- (a) ADMINISTRATION BY BOARD. The Board shall administer the Plan. The Board may not delegate administration of the Plan to a committee.
- (b) POWERS OF BOARD. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:
 - (i) To determine from time to time which of the Non-Employee Directors shall be granted Stock Awards; when and how each Stock Award shall be granted; what type or combination of types of Stock Award shall be granted; the provisions of each Stock Award granted (which need not be identical), including the time or times when a Non-Employee Director shall be permitted to receive Common Stock pursuant to a Stock Award; and the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such Non-Employee Director.
 - (ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.
 - (iii) To amend the Plan or a Stock Award as provided in Section 12.
 - (iv) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company that are not in conflict with the provisions of the Plan.
- (c) EFFECT OF BOARD'S DECISION. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

4. SHARES SUBJECT TO THE PLAN.

(a) **SHARE RESERVE.** Subject to the provisions of Section 11 relating to adjustments upon changes in the Common Stock, the Common Stock that may be issued pursuant to Stock Awards shall not exceed in the aggregate one million two hundred thousand (1,200,000) shares of Common Stock.

(b) **ANNUAL LIMIT ON STOCK AWARDS.** No Participant shall be eligible to be granted Stock Awards with an aggregate grant date fair value (computed in accordance with the Company's financial reporting policies) of more than \$500,000 during any calendar year, taken together with any cash fees paid to such Participant in compensation for such Participant's service on the Board during such calendar year.

(c) **REVERSION OF SHARES TO THE SHARE RESERVE.** If any Stock Award shall for any reason expire or otherwise terminate, in whole or in part, without the shares of Common Stock issuable thereunder being issued in full, the shares of Common Stock not issued under such Stock Award shall revert to and again become available for issuance under the Plan. For clarity, shares subject to a Stock Award that are not delivered to a Participant because (i) such Participant's right to purchase such shares subject to an Option are surrendered in payment of the exercise price for other shares subject to such Option in a "net exercise," or (ii) such shares are withheld in satisfaction of the withholding of taxes incurred in connection with the exercise of an Option, or the issuance of shares under a Restricted Stock Award or Restricted Stock Unit Award, the shares so surrendered or withheld shall not remain available for subsequent issuance under the Plan.

(d) **SOURCE OF SHARES.** The shares of Common Stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

5. ELIGIBILITY.

Stock Awards may be granted under the Plan to all Non-Employee Directors.

6. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions, not inconsistent with the Plan, as the Board shall deem appropriate. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) **TERM.** No Option shall be exercisable after the expiration of ten (10) years from the date it was granted.

(b) **EXERCISE PRICE.** The exercise price of each Option shall be one hundred percent (100%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

(c) **CONSIDERATION.** The purchase price of stock acquired pursuant to an Option may be paid, to the extent permitted by applicable statutes and regulations, in any combination of (i) cash or check, (ii) delivery to the Company of other Common Stock, or (iii) surrender of Participant's right to purchase shares subject to any Option with a term expiring in less than one (1) year from the date of exercise (valued, for such purposes, as the Fair Market Value of such surrendered shares on the date of exercise less the exercise price for such surrendered shares) in payment of the exercise price for other shares subject to such Option in a "net exercise" of such Option.

(d) **TRANSFERABILITY.** An Option is not transferable, except (i) by will or by the laws of descent and distribution, (ii) by instrument to an inter vivos or testamentary trust, in a form accepted by the Company, in

which the Option is to be passed to beneficiaries upon the death of the trustor (settlor) and (iii) by gift, in a form accepted by the Company, to a member of the "immediate family" of the Participant as that term is defined in 17 C.F.R. 240.16a-1(e). In addition, the Participant may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Participant, shall thereafter be entitled to exercise the Option.

(e) VESTING. The total number of shares of Common Stock subject to an Option may, but need not, vest and therefore become exercisable in periodic installments that may, but need not, be equal. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary.

(f) TERMINATION OF CONTINUOUS SERVICE. In the event an Participant's Continuous Service terminates (other than upon the Participant's death or Disability), the Participant may exercise his or her Option (to the extent that the Participant was entitled to exercise it as of the date of termination) but only within such period of time ending on the earlier of (i) the date six (6) months following the termination of the Participant's Continuous Service, or (ii) the expiration of the term of the Option as set forth in the Stock Award Agreement. If, after termination, the Participant does not exercise his or her Option within the time specified in the Stock Award Agreement, the Option shall terminate.

(g) EXTENSION OF TERMINATION DATE. If the exercise of the Option following the termination of the Participant's Continuous Service (other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in Section 6(a) or (ii) the expiration of a period of three (3) months after the termination of the Participant's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements.

(h) DISABILITY OF PARTICIPANT. In the event an Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option (to the extent that the Participant was entitled to exercise it as of the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination or (ii) the expiration of the term of the Option as set forth in the Stock Award Agreement. If, after termination, the Participant does not exercise his or her Option within the time specified herein, the Option shall terminate.

(i) DEATH OF PARTICIPANT. In the event (i) an Participant's Continuous Service terminates as a result of the Participant's death or (ii) the Participant dies within the three-month period after the termination of the Participant's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Participant was entitled to exercise the Option as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Participant's death, but only within the period ending on the earlier of (A) the date eighteen (18) months following the date of death or (B) the expiration of the term of such Option as set forth in the Stock Award Agreement. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate.

7. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS.

(a) RESTRICTED STOCK AWARDS. Each Restricted Stock Award shall be in such form and shall contain such terms and conditions, not inconsistent with the Plan, as the Board shall deem appropriate. The provisions of separate Restricted Stock Awards need not be identical, but each Restricted Stock Award shall include (through incorporation of provisions hereof by reference in the Restricted Stock Award or otherwise) the substance of each of the following provisions:

(i) CONSIDERATION. Except as otherwise determined by the Board, no further consideration will be payable by the Participant upon grant of the Restricted Stock Award or delivery of each share of Common Stock subject to the Restricted Stock Award. Any such consideration to be paid by

the Participant may be paid in any form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(ii) VESTING. At the time of the grant of a Restricted Stock Award, the Board may, but need not, determine that Shares of Common Stock acquired under a Restricted Stock Award shall be subject to a share repurchase option in favor of the Company in accordance with a vesting schedule to be determined by the Board in its sole discretion.

(iii) TERMINATION OF PARTICIPANT'S CONTINUOUS SERVICE. In the event a Participant's Continuous Service terminates, the Company may repurchase or otherwise reacquire any or all of the shares of Common Stock held by the Participant which have not vested as of the date of termination under the terms of the Restricted Stock Award.

(iv) TRANSFERABILITY. Rights under the Restricted Stock Award shall be transferable by the Participant only upon such terms and conditions as the Board shall determine in its sole discretion.

(b) RESTRICTED STOCK UNIT AWARDS. Each Restricted Stock Unit Award shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The provisions of separate Restricted Stock Unit Awards need not be identical, but each Restricted Stock Unit Award shall include (through incorporation of provisions hereof by reference in the Restricted Stock Unit Award or otherwise) the substance of each of the following provisions:

(i) CONSIDERATION. Except as otherwise determined by the Board, no further consideration will be payable by the Participant upon grant of the Restricted Stock Unit Award or delivery of each share of Common Stock subject to the Restricted Stock Unit Award. Any such consideration to be paid by the Participant may be paid in any form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(ii) VESTING. At the time of the grant of a Restricted Stock Unit Award, the Board may, but need not, impose such restrictions or conditions to the vesting of the Restricted Stock Unit Award as determined by the Board in its sole discretion.

(iii) PAYMENT. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board in its sole discretion.

(iv) DIVIDEND EQUIVALENTS. Except as otherwise determined by the Board, dividend equivalents shall not be credited in respect of shares of Common Stock subject to a Restricted Stock Unit Award. If any such dividend equivalents are so credited, such dividend equivalents may be converted into additional shares of Common Stock subject to the Restricted Stock Unit Award in such manner as determined by the Board in its sole discretion. Any additional shares of Common Stock subject to the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all the terms and conditions of the underlying Restricted Stock Unit Award to which they relate.

(v) TERMINATION OF PARTICIPANT'S CONTINUOUS SERVICE. Except as otherwise determined by the Board, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(vi) TRANSFERABILITY. Rights under the Restricted Stock Unit Award shall be transferable by the Participant only upon such terms and conditions as the Board shall determine in its sole discretion.

8. COVENANTS OF THE COMPANY.

(a) **AVAILABILITY OF SHARES.** During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Stock Awards.

(b) **SECURITIES LAW COMPLIANCE.** The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise, grant or vesting of the Stock Awards; *provided, however*, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise or grant of such Stock Awards unless and until such authority is obtained.

9. USE OF PROCEEDS FROM STOCK.

Proceeds from the sale of Common Stock pursuant to any Stock Award shall constitute general funds of the Company.

10. MISCELLANEOUS.

(a) **STOCKHOLDER RIGHTS.** No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such Stock Award unless and until such Participant has satisfied all requirements for the acquisition of shares of Common Stock underlying the Stock Award pursuant to its terms.

(b) **NO SERVICE RIGHTS.** Nothing in the Plan or any instrument executed or Stock Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company as a Non-Employee Director or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(c) **INVESTMENT ASSURANCES.** The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring the Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (iii) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act or (iv) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(d) **WITHHOLDING OBLIGATIONS.** The Participant may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of Common Stock under a Stock Award by any of the

following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold shares from the shares of the Common Stock otherwise issuable to the Participant as a result of the exercise or acquisition of stock under the Stock Award; or (iii) delivering to the Company owned and unencumbered shares of the Common Stock.

11. ADJUSTMENTS UPON CHANGES IN STOCK.

(a) **CAPITALIZATION ADJUSTMENTS.** If any change is made in the stock subject to the Plan, or subject to any Stock Award, without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company), the Plan will be appropriately adjusted in the class(es) and number of securities subject to the Plan pursuant to Section 4(a) and the outstanding Stock Awards will be appropriately adjusted in the class(es) and number of securities and price per share of stock subject to such outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. For clarity, the conversion of any convertible securities of the Company shall not be treated as a transaction "without receipt of consideration" by the Company.

(b) **DISSOLUTION OR LIQUIDATION.** In the event of a dissolution or liquidation of the Company, then all outstanding Stock Awards shall terminate immediately prior to such event.

(c) **ASSET SALE, MERGER, CONSOLIDATION OR REVERSE MERGER.**

(i) In the event of (i) a sale, lease or other disposition of all or substantially all of the assets of the Company, (ii) a merger or consolidation in which the Company is not the surviving corporation or (iii) a reverse merger in which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, then any surviving corporation or acquiring corporation shall assume any Stock Awards outstanding under the Plan or shall substitute similar stock awards (including an award to acquire the same consideration paid to the stockholders in the transaction described in this subsection 11(c) for those outstanding under the Plan).

(ii) In the event any surviving corporation or acquiring corporation refuses to assume such Stock Awards or to substitute similar stock awards for those outstanding under the Plan, then the vesting of such Stock Awards shall be accelerated in full, and the Stock Awards shall terminate if not exercised (if applicable) at or prior to such event.

(iii) In the event any surviving corporation or acquiring corporation assumes such Stock Awards or substitutes similar stock awards for those outstanding under the Plan but the Participant is not elected or appointed to the board of directors of the surviving corporation or acquiring corporation at the first meeting of such board of directors after such change in control event, then the vesting of such Stock Awards shall be accelerated by eighteen (18) months on the day after the first meeting of the board of directors of the surviving corporation or acquiring corporation.

(iv) In the event any surviving corporation or acquiring corporation assumes such Stock Awards or substitutes similar stock awards for those outstanding under the Plan and the Participant is elected or appointed to the board of directors of the surviving corporation or acquiring corporation at the first meeting of such board of directors after such change in control event, then the vesting of such Stock Awards shall not be accelerated.

12. AMENDMENT OF THE PLAN AND STOCK AWARDS.

(a) **AMENDMENT OF PLAN.** The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 11 relating to adjustments upon changes in stock, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy the requirements of Rule 16b-3 or any Nasdaq or other securities exchange listing requirements.

(b) **STOCKHOLDER APPROVAL.** The Board may, in its sole discretion, submit any other amendment to the Plan for stockholder approval.

(c) **NO IMPAIRMENT OF RIGHTS.** Rights under any Option granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

(d) **AMENDMENT OF STOCK AWARDS.** The Board at any time, and from time to time, may amend the terms of any one or more Stock Awards; *provided, however*, that the rights under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

(e) **SUBSTITUTE AWARDS; NO REPRICING.** Stock Awards may be granted in substitution or exchange for any other Stock Award granted under the Plan or under another plan of the Company or an Affiliate or any other right of an eligible person to receive payment from the Company or an Affiliate. Stock Awards may also be granted under the Plan in substitution for awards held by individuals who become eligible persons as a result of a merger, consolidation or acquisition of another entity or the assets of another entity by or with the Company or an Affiliate (“Substitute Awards”). Such Substitute Awards referred to in the immediately preceding sentence that are Options may have an exercise price that is less than the Fair Market Value of a share of Common Stock on the date of the substitution if such substitution complies with applicable laws (including rules regarding nonqualified deferred compensation) and exchange rules. Except as provided in this Section 12(e) or in Section 11, without the approval of the stockholders of the Company, the terms of outstanding Stock Awards may not be amended to (i) reduce the exercise price of an outstanding Option, (ii) grant a new Option or other Stock Award in substitution for, or upon the cancellation of, any previously granted Option that has the effect of reducing the exercise price thereof, (iii) exchange any Option for Common Stock, cash or other consideration when the exercise price or grant price per share of Common Stock under such Option exceeds the Fair Market Value of a share of Common Stock.

13. TERMINATION OR SUSPENSION OF THE PLAN.

(a) **PLAN TERM.** The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate on the day before the tenth (10th) anniversary of the date the Plan is adopted by the Board or approved by the stockholders of the Company, whichever is earlier. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) **NO IMPAIRMENT OF RIGHTS.** Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the Participant.

14. EFFECTIVE DATE OF PLAN.

The Plan shall become effective as determined by the Board, but no Option shall be exercised and no Restricted Stock Award or Restricted Stock Unit Award shall be granted unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

15. CHOICE OF LAW.

All questions concerning the construction, validity and interpretation of this Plan shall be governed by the law of the State of Delaware, without regard to such state's conflict of laws rules.