

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

**FORM S-8
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

SEATTLE GENETICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

91-1874389
(I.R.S. Employer
Identification Number)

21823 30th Drive SE
Bothell, Washington 98021
(Address of Principal Executive Offices) (Zip Code)

Seattle Genetics, Inc. Amended and Restated 2000 Employee Stock Purchase Plan
(Full title of the plan)

Clay B. Siegall, Ph.D.
President and Chief Executive Officer
Seattle Genetics, Inc.
21823 30th Drive SE
Bothell, Washington 98021
(425) 527-4000

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

Copies to:

Jean Liu
Executive Vice President,
Legal Affairs & General Counsel
Seattle Genetics, Inc.
21823 30th Drive SE
Bothell, Washington 98021
(425) 527-4000

Chadwick L. Mills
Cooley LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800
(415) 693-2000

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 Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company
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 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, \$0.001 par value per share	1,000,000	\$71.16	\$71,160,000	\$8,625

(1) Pursuant to Rule 416 promulgated under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of the Registrant's Common Stock that become issuable under the plan set forth herein by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Common Stock.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) promulgated under the Securities Act. The offering price per share and the aggregate offering price are based upon the average of the high and low prices of the Registrant's Common Stock as reported on The Nasdaq Global Select Market on June 24, 2019.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed by Seattle Genetics, Inc. (the “Registrant”) for the purpose of registering an additional 1,000,000 shares of the Registrant’s Common Stock to be issued pursuant to the Registrant’s Amended and Restated 2000 Employee Stock Purchase Plan (the “ESPP”). The shares of the Registrant’s Common Stock previously reserved for issuance under the ESPP were registered on the Registrant’s Registration Statements on Form S-8 (File Nos. 333-204331, 333-176144 and 333-56670), filed with the Securities and Exchange Commission on [May 20, 2015](#), [August 8, 2011](#) and [March 7, 2001](#), respectively.

PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents have been filed by the Registrant with the Securities and Exchange Commission (the “Commission”) and are incorporated herein by reference:

- the Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2018, filed with the Commission on February 7, 2019 (the “2018 Form 10-K”);
- the information specifically incorporated by reference into the 2018 Form 10-K from the Registrant’s definitive proxy statement on [Schedule 14A](#), filed with the Commission on April 4, 2019;
- the Registrant’s Quarterly Report on [Form 10-Q](#), filed with the Commission on April 26, 2019;
- the Registrant’s Current Reports on Form 8-K, filed with the Commission on [March 28, 2019](#) and [May 23, 2019](#); and
- the description of the Registrant’s common stock contained in the Registrant’s registration statement on [Form 8-A](#) filed with the Commission on February 28, 2001, including any amendments or reports filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all of the shares of Common Stock offered have been sold or which deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents.

For purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which 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.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant’s fourth amended and restated certificate of incorporation, as amended, provides that the Registrant is authorized to indemnify its directors, officers and other agents through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to a corporation, its stockholders, and others. In addition, the charter includes the elimination of liability for monetary damages to the Registrant and its stockholders for breach of fiduciary duty as a director. However, the Registrant’s directors may be personally liable for liability:

- for any breach of duty of loyalty to the Registrant or to its stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

- for unlawful payment of dividends or unlawful stock repurchases or redemptions under Section 174 of the Delaware General Corporation Law; or
- for any transaction from which the director derived an improper personal benefit.

In addition, the Registrant's amended and restated bylaws provide that:

- the Registrant is required to indemnify its directors and officers to the maximum extent and in the manner permitted by Delaware law, subject to limited exceptions;
- the Registrant is required to advance expenses to its directors and officers as incurred in connection with legal proceedings against them for which they may be indemnified; and
- the rights conferred in the amended and restated bylaws are not exclusive.

The Registrant has entered into indemnification agreements with each of its directors and certain officers. These agreements, among other things, require the Registrant to indemnify each director and officer to the fullest extent permitted by Delaware law, including indemnification for expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or officer in any action or proceeding, including any action by or in the right of the Registrant, arising out of the person's services as a director or officer of the Registrant, any subsidiary of the Registrant or any other company or enterprise to which the person provides services at the Registrant's request. The Registrant believes that its charter and bylaws provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

Exhibit Number	Description of Document
3.1	Fourth Amended and Restated Certificate of Incorporation of Seattle Genetics, Inc. (1)
3.2	Certificate of Amendment of Fourth Amended and Restated Certificate of Incorporation of Seattle Genetics, Inc. (2)
3.3	Amended and Restated Bylaws of Seattle Genetics, Inc. (3)
4.1	Reference is made to Exhibits 3.1 , 3.2 and 3.3
4.2	Specimen Common Stock Certificate (4)
5.1+	Opinion of Cooley LLP
23.1+	Consent of PricewaterhouseCoopers LLP, independent public accounting firm for Seattle Genetics, Inc.
23.3+	Consent of Cooley LLP (included in Exhibit 5.1)
24.1+	Power of Attorney (included in the signature page hereto)
99.1+	Seattle Genetics, Inc. Amended and Restated 2000 Employee Stock Purchase Plan, effective as of May 20, 2019

(1) Previously filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008, File No. 000-32405, filed with the Commission on November 7, 2008 and incorporated herein by reference.

(2) Previously filed as an exhibit to the Registrant's Current Report on Form 8-K, File No. 000-32405, filed with the Commission on May 26, 2011 and incorporated herein by reference.

(3) Previously filed as an exhibit to the Registrant's Current Report on Form 8-K, File No. 000-32405, filed with the Commission on November 25, 2015 and incorporated herein by reference.

(4) Previously filed as an exhibit to the Registrant's Registration Statement on Form S-1/A, File No. 333-50266, filed with the Commission on February 8, 2001 and incorporated herein by reference.

+Filed herewith

Item 9. Undertakings.

1. The undersigned Registrant hereby undertakes:

(a) 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 of 1933;

(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 set forth 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 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement.

(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)(i) and (a)(ii) do not apply 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 Securities Exchange Act of 1934 that are incorporated by reference herein.

(b) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) 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.

2. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

3. Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 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 of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Bothell, State of Washington on June 27, 2019.

SEATTLE GENETICS, INC.

By: /S/ CLAY B. SIEGALL
Clay B. Siegall, Ph.D.
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Clay B. Siegall, Todd E. Simpson and Jean Liu, and each or any one of them, his or her true and lawful attorney-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 (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission (the "SEC"), and generally to do all such things in their names and behalf in their capacities as officers and directors to enable the registrant to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes or substitute, 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 by the following persons in the capacities indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/S/ CLAY B. SIEGALL</u> Clay B. Siegall, Ph.D.	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	June 27, 2019
<u>/S/ TODD E. SIMPSON</u> Todd E. Simpson	Chief Financial Officer <i>(Principal Accounting and Financial Officer)</i>	June 27, 2019
<u>/S/ SRINIVAS AKKARAJU</u> Srinivas Akkaraju, M.D., Ph.D.	Director	June 27, 2019
<u>/S/ FELIX BAKER</u> Felix Baker, Ph.D.	Director	June 27, 2019
<u>/S/ DAVID W. GRYSKA</u> David W. Gryska	Director	June 27, 2019
<u>/S/ MARC E. LIPPMAN</u> Marc E. Lippman, M.D.	Director	June 27, 2019
<u>/S/ JOHN A. ORWIN</u> John A. Orwin	Director	June 27, 2019

/S/ ALPNA SETH
Alpna Seth, Ph.D.

Director

June 27, 2019

/S/ NANCY A. SIMONIAN
Nancy A. Simonian, M.D.

Director

June 27, 2019

/S/ DANIEL G. WELCH
Daniel G. Welch

Director

June 27, 2019



June 27, 2019

Seattle Genetics, Inc.
21823 30th Drive SE
Bothell, WA 98021

Ladies and Gentlemen:

We have represented Seattle Genetics, Inc., a Delaware corporation (the "**Company**"), in connection with the filing of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission covering the offering of up to 1,000,000 shares of the Company's Common Stock, par value \$0.001 per share (the "**Shares**"), pursuant to the Company's Amended and Restated 2000 Employee Stock Purchase Plan (the "**ESPP**"), and the Company has requested our opinion in connection with certain related matters.

In connection with this opinion, we have examined the Registration Statement and related Prospectus, the Company's Fourth Amended and Restated Certificate of Incorporation, as amended to date, and Amended and Restated Bylaws, as currently in effect, the ESPP and such other documents, records, certificates, memoranda and other instruments as we deem necessary as a basis for this opinion. We have assumed the genuineness and authenticity of all documents submitted to us as originals, and the conformity to originals of all documents submitted to us as copies thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the ESPP, and the Registration Statement and related Prospectus, will be validly issued, fully paid and nonassessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

COOLEY LLP

By: /s/ Alan D. Hambelton
Alan D. Hambelton

206301413 v3

Cooley LLP 1700 Seventh Avenue Suite 1900 Seattle, WA 98101-1355
t: (206) 452-8700 f: (206) 452-8800 cooley.com

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of Seattle Genetics, Inc. of our report dated February 7, 2019 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Seattle Genetics, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2018.

/s/ PricewaterhouseCoopers LLP
Seattle, Washington
June 27, 2019

SEATTLE GENETICS, INC.

AMENDED AND RESTATED 2000 EMPLOYEE STOCK PURCHASE PLAN

Adopted by the Board of Directors: November 16, 2000

Approved by the Stockholders: February 14, 2001

Amended and Restated by the Board of Directors: February 1, 2011

Amended and Restated by the Board of Directors: February 11, 2011

Approved by the Stockholders: May 20, 2011

Amended and Restated by the Board of Directors: February 9, 2015

Approved by the Stockholders: May 15, 2015

Amended and Restated by the Board of Directors: November 11, 2016

Amended and Restated by the Board of Directors: March 21, 2019

Approved by the Stockholders: May 20, 2019

The following constitute the provisions of the Amended and Restated 2000 Employee Stock Purchase Plan of Seattle Genetics, Inc.

1. **Purpose.** The purpose of the Plan is to provide eligible employees of the Company and its Designated Corporations with an opportunity to purchase Common Stock of the Company. The Company intends for the Plan to have two components: a component intended to qualify as an employee stock purchase plan within the meaning of Section 423 of the Code (the "423 Component") and a component that is not intended to qualify as an employee stock purchase plan under Section 423 of the Code (the "Non-423 Component"). The provisions of the 423 Component will be interpreted so as to extend and limit Plan participation in a uniform and nondiscriminatory basis consistent with the requirements of Section 423 of the Code. The provisions of the Non-423 Component shall be subject to rules, procedures, or sub-plans adopted by the Administrator from time to time for compliance with local tax, securities, exchange control, privacy and other laws that apply to Offerings under the Plan by Designated Corporations domiciled outside of the United States. Except as specifically set forth in the Plan or provided by action of the Administrator, the Non-423 Component will operate and be administered in the same manner as the 423 Component.

2. **Definitions.**

- (a) "**Administrator**" means the Board or its Committee.
- (b) "**Affiliate**" means any entity, whether now or hereafter existing, that is directly or indirectly controlled by the Company which does not meet the definition of a Subsidiary below, as determined by the Administrator, and which may participate only in an Offering under the Non-423 Component of the Plan.
- (c) "**Applicable Laws**" means the requirements relating to the administration of equity-based awards and the related issuance of Shares under state corporate laws, United States federal and state securities laws, the Code, any stock exchange or quotation system on which the Shares are listed or quoted and the applicable laws of any foreign country or jurisdiction where options are, or will be, granted under the Plan.
- (d) "**Board**" means the Board of Directors of the Company.
- (e) "**Code**" means the United States Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code or United States Treasury Regulation thereunder will include such section or regulation, any valid regulation or other official applicable guidance promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

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- (f) “**Common Stock**” means the Common Stock of the Company.
- (g) “**Company**” means Seattle Genetics, Inc., a Delaware corporation.
- (h) “**Committee**” means a committee of one (1) or more members of the Board to whom authority has been delegated by the Board in accordance with Section 14(c).
- (i) “**Compensation**” means total cash compensation received by an Employee from the Company or a Designated Corporation. By way of illustration, but not limitation, Compensation includes regular compensation such as salary, wages, overtime, shift differentials, bonuses (other than bonuses offered in connection with, and as an inducement for, the commencement of employment), commissions and incentive compensation, but excludes relocation payments or reimbursements, expense reimbursements, tuition or other reimbursements, automobile allowances, housing allowances, cash payments in lieu of sick or vacation time benefits and income realized as a result of participation in any stock option, stock purchase, or similar plan of the Company or any Designated Corporation. The Administrator shall have discretion to determine the application of this definition to Employees outside the United States.
- (j) “**Continuous Status as an Employee**” means the absence of any interruption or termination of service as an Employee. Continuous Status as an Employee shall not be considered interrupted in the case of (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided that such leave is for a period of not more than 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time or required under Applicable Laws; or (iv) in the case of transfers between locations of the Company or between the Company and Designated Corporations.
- (k) “**Contributions**” means the amount contributed by a Participant through payroll deductions or other means as may be permitted or required by the Administrator, and other additional payments that the Administrator may permit a Participant to make to fund the exercise of options granted pursuant to the Plan.
- (l) “**Corporate Transaction**” means any of the following, unless the Board provides otherwise: (i) an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation but excluding any merger effected exclusively for the purpose of changing the domicile of the Company), (ii) a sale of all or substantially all of the assets of the Company, so long as in either (i) or (ii) above, the Company’s stockholders of record immediately prior to such transaction will, immediately after such transaction, hold less than fifty percent (50%) of the voting power of the surviving or acquiring entity or (iii) any other event specified by the Board; provided, however, that no Corporate Transaction (or any analogous term) shall be deemed to occur upon announcement or commencement of a tender offer or upon a “potential” takeover or upon shareholder approval of a merger or other transaction, in each case without a requirement that the Corporate Transaction actually occur.
- (m) “**Designated Corporation**” means the Company and any present or future Subsidiary or Affiliate that is designated by the Administrator, from time to time in its sole discretion, as eligible to participate in the Plan. For purposes of the 423 Component, only the Company

and its Subsidiaries may be Designated Corporations, provided, however, that at any given time, a Subsidiary that is a Designated Corporation under the 423 Component will not be a Designated Corporation under the Non-423 Component. Unless otherwise determined by the Administrator, the term “Designated Corporation” shall include any corporation into which a Designated Corporation may be merged or consolidated or to which all or substantially all of its assets may be transferred.

- (n) “**Director**” means a member of the Board.
- (o) “**Employee**” means each Employee (within the meaning of Section 423(b)(1) of the Code) of a Designated Corporation. For purposes of clarity, the term “Employee” shall not include the following, regardless of any subsequent reclassification as an employee by the Company or a Designated Corporation, any governmental agency, or any court: (i) any independent contractor; (ii) any consultant; (iii) any individual performing services for the Company or a Designated Corporation who has entered into an independent contractor or consultant agreement with the Company or a Designated Corporation; (iv) any individual performing services for the Company or a Designated Corporation under an independent contractor or consultant agreement, a purchase order, a supplier agreement or any other agreement that the Company or a Designated Corporation enters into for services; (v) any individual classified by the Company or a Designated Corporation as contract labor (such as contractors, contract employees, job shoppers), regardless of length of service; (vi) any individual whose base wage or salary is not processed for payment by the payroll department(s) or payroll provider(s) of the Company or a Designated Corporation; and (vii) any leased employee. Further, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an “Employee” for purposes of the Plan. The Administrator shall have exclusive discretion to determine whether an individual is an Employee for purposes of the Plan.
- (p) “**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended.
- (q) “**Offering**” means an offer under the Plan of an option that may be exercised during an Offering Period as further described in Section 4. Unless otherwise specified by the Administrator, each Offering under the Plan to the Employees of the Company or a Designated Corporation shall be deemed a separate Offering, even if the dates of the applicable Offering Periods of each such Offering are identical, and the provisions of the Plan will separately apply to each Offering. To the extent permitted by U.S. Treasury Regulation Section 1.423-2(a)(1), the terms of each Offering need not be identical provided that the terms of the Plan and an Offering together satisfy U.S. Treasury Regulation Section 1.423-2(a)(2) and (a)(3).
- (r) “**Offering Date**” means the first business day of each Offering Period of the Plan.
- (s) “**Offering Period**” means a period of approximately six (6) months commencing on or about February 1 and August 1 of each year (or at such other time or times as may be determined by the Board of Directors) pursuant to Section 4 below.
- (t) “**Officer**” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.
- (u) “**Participant**” means an Employee who enrolls in the Plan.
- (v) “**Plan**” means this Amended and Restated 2000 Employee Stock Purchase Plan.
- (w) “**Purchase Date**” means the last day of each Offering Period of the Plan.

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- (x) “**Purchase Price**” means with respect to an Offering Period an amount equal to 85% of the Fair Market Value (as defined in Section 7(b) below) of a Share of Common Stock on the Offering Date or on the Purchase Date, whichever is lower.
 - (y) “**Securities Act**” means the United States Securities Act of 1933, as amended.
 - (z) “**Share**” means a share of Common Stock, as adjusted in accordance with Section 19 of the Plan.
 - (aa) “**Subsidiary**” means a corporation, domestic or foreign, as such term is defined in Section 424(f) of the Code, whether or not such corporation now exists or is hereafter organized or acquired by the Company or a Subsidiary.
 - (bb) “**Tax-Related Items**” Any income tax, social insurance, payroll tax, payment on account or other tax-related items arising in relation to the Participant’s participation in the Plan.
 - (cc) “**Trading Day**” means any day on which the exchange(s) or market(s) on which shares of Common Stock are listed, including the Nasdaq Global Select Market, the Nasdaq Global Market, or the Nasdaq Capital Market, is open for trading.

3. **Eligibility**

(a) Any person who has been an Employee for a continuous period of at least thirty (30) days ending on the Offering Date of a given Offering Period (or such other period of time as may be determined by the Administrator in its discretion) shall be eligible to participate in such Offering Period, subject to any limitations under Section 423 of the Code or adopted by the Administrator pursuant to subsections (b) through (d) hereof. Separate Offerings apply to each Designated Corporation and an Employee is only eligible to participate in the Offering made available to Employees of the Designated Corporation which is the employer of such Employee.

(b) An Employee who works for a Designated Corporation and is a citizen or resident of a jurisdiction other than the United States (without regard to whether such individual also is a citizen or resident of the United States or is a resident alien within the meaning of Section 7701(b)(1)(A) of the Code) may be excluded from participation in the Plan or an Offering if the participation of such Employee is prohibited under the laws of the applicable jurisdiction or if complying with the laws of the applicable jurisdiction would cause the Plan or an Offering under the Section 423 Component of the Plan to violate Section 423 of the Code. In the case of an Offering under the Non-423 Component of the Plan, an Employee (or group of Employees) may be excluded from participation in the Plan or an Offering if the Administrator has determined, in its sole discretion, that participation of such Employee(s) is not advisable or practicable for any reason.

(c) The Administrator, in its discretion, from time to time may, prior to an Offering Period for all options to be granted in an Offering, determine on a uniform and nondiscriminatory basis that the definition of Employee will or will not include an individual if he or she: (a) has not completed at least two (2) years of service since his or her last hire date (or such lesser period of time as may be determined by the Administrator in its discretion), (b) customarily works not more than twenty (20) hours per week (or such lesser period of time as may be determined by the Administrator in its discretion), (c) customarily works not more than five (5) months per calendar year (or such lesser period of time as may be determined by the Administrator in its discretion), (d) is a highly compensated employee within the meaning of Section 414(q) of the Code, or (e) is a highly compensated employee within the meaning of Section 414(q) of the Code with compensation above a certain level or is an officer or subject to the disclosure requirements of Section 16(a) of the Exchange Act, provided the exclusion is applied with respect to each Offering in an identical manner to all highly compensated individuals of the Designated Corporation whose employees are participating in that Offering.

(d) Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) if, immediately after the grant, such Employee (or any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company and/or hold outstanding options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or of any subsidiary of the Company, or (ii) if such option would permit his or her rights to purchase stock under all employee stock purchase plans (described in Section 423 of the Code) of the Company and its Subsidiaries to accrue at a rate which exceeds Twenty-Five Thousand Dollars (\$25,000) of the Fair Market Value (as defined in Section 7(b) below) of such stock (determined on the Offering Date of such option) for each calendar year in which such option is outstanding at any time.

4. Offering Periods.

(a) **Offering Periods.** The Plan shall be implemented by a series of Offering Periods of approximately six (6) months duration, with new Offering Periods commencing on or about February 1 and August 1 of each year (or at such other time or times as may be determined by the Board). The Plan shall continue until terminated in accordance with Section 21 hereof. The Board shall have the power to establish additional or alternative sequential or overlapping Offering Periods, a different duration for one or more Offering Periods or different commencement or ending dates for such Offering Periods with respect to future Offerings without shareholder approval, provided, however, that no Offering Period may have a duration exceeding twenty-seven (27) months. Notwithstanding the foregoing, if any Offering Date falls on a day that is not a Trading Day, then such Offering Date shall instead fall on the next subsequent Trading Day.

(b) **Purchase Dates.** The Purchase Date of an Offering Period commencing on February 1 shall be the next July 31 and the Purchase Date of an Offering Period commencing on August 1 shall be the next January 31. The Board shall have the power to change the frequency of Purchase Dates with respect to future purchases without stockholder approval. Notwithstanding the foregoing, if any Purchase Date falls on a day that is not a Trading Day, then such Purchase Date shall instead fall on the immediately preceding Trading Day.

5. Participation.

(a) An eligible Employee may become a Participant in the Plan by completing the electronic enrollment process designated by the Company (or other such enrollment process as the Company may designate) during the open enrollment period prescribed by the Company. The enrollment process shall require the Participant to specify the whole percentage of the Participant's Compensation (subject to Section 6 below) to be paid as Contributions pursuant to the Plan. Once an Employee affirmatively enrolls in an Offering Period and authorizes payroll deductions (if contributing via payroll deductions), the Employee automatically shall be enrolled for all subsequent Offering Periods until he or she elects to withdraw from an Offering Period pursuant to Section 11 or terminates his or her participation in the Plan.

(b) Payroll deductions, if applicable, shall commence on the first payroll paid following the Offering Date and shall end on the last payroll paid on or prior to the Purchase Date to which the election is applicable, unless sooner terminated by the Participant as provided in Section 11.

6. **Method of Payment For Purchase of Shares.**

(a) This Plan shall be operated as a payroll deduction plan, except to the extent the Administrator determines that Contributions may be made in another form (including payment by check at the end of an Offering Period or, due to local law requirements, in another form with respect to categories of Participants outside the United States).

(b) A Participant shall elect to have payroll deductions made on each payday during an Offering Period (or such other date as the Administrator may establish from time to time before an Offering Date) in an amount not less than one percent (1%) and not more than twenty percent (20%) (or such other maximum whole percentage as the Administrator may establish from time to time before an Offering Date) of such Participant's Compensation on each payday during the Offering Period. All payroll deductions made by a Participant shall be credited to his or her account under the Plan. Once a Participant is participating in the Plan on a payroll deduction basis, he or she may not make any additional payments into such account.

Notwithstanding the foregoing or anything to the contrary herein, due to certain payroll deductions and withholdings, a Participant's Contributions on any payday during an Offering Period may be less than the percentage of Compensation that the Participant elected to have contributed to the Plan on such payday. On each payday during an Offering Period, a Participant's Contributions shall be deducted from the Participant's Compensation after deducting any (i) amounts elected to be deferred by the Participant under any qualified cash or deferred arrangement described in Section 401(k) of the Code or other deferred compensation program or arrangement established by the Company or a Designated Corporation, (ii) payments for coverage under any Company or Designated Corporation health insurance plan or other employee benefit plan, (iii) contributions to any Company or Designated Corporation flexible spending account plan, (iv) other pre-tax deductions, (v) other deductions designated by the Company or a Designated Corporation, and (vi) applicable tax withholding. As a result, a Participant may not be able to make Contributions on any payday during an Offering Period at the percentage of Compensation that the Participant elected to have contributed to the Plan on such payday, and in such event, neither the Company nor any Designated Corporation shall have the obligation to make up for any difference between the Participant's actual Contributions on such payday and the percentage of Compensation that the Participant elected to have contributed to the Plan on such payday.

(c) A Participant may discontinue his or her participation in the Plan as provided in Section 11 or, on one occasion only during an Offering Period may decrease the rate of his or her Contributions with respect to the Offering Period to a rate not lower than one percent (1%), by authorizing a change in the rate of Contributions in the manner designated in the Company's electronic ESPP interface (or such other enrollment process as the Company may designate from time to time). Any change in the rate of Contributions pursuant to this Section 6(c) shall be effective as soon as administratively possible, but in no event later than thirty (30) days after the date the change is authorized. A Participant may not increase the rate of his or her Contributions with respect to the Offering Period during an Offering Period.

(d) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(d), a Participant's rate of Contributions may be decreased by the Company to 0% at any time during an Offering Period. Contributions shall re-commence at the rate provided in such Participant's election at the beginning of the first Offering Period, which is scheduled to end in the following calendar year, unless terminated by the Participant as provided in Section 11. In addition, a Participant's rate of Contributions may be decreased by the Company to 0% at any time during an Offering Period in order to avoid unnecessary Contributions as a result of application of the maximum share limit set forth in Section 7(a), or as a result of the limitations set forth in Section 3(d), in which case Contributions shall re-commence at the rate provided in such Participant's election at the beginning of the next Offering Period, unless terminated by the Participant as provided in Section 11.

7. **Grant of Option.**

(a) Subject to the final sentence of this Section 7(a), on the Offering Date of each Offering Period, each eligible Employee participating in such Offering Period shall be granted an option to purchase on each Purchase Date a number of Shares of the Company's Common Stock determined by dividing such Employee's Contributions accumulated prior to such Purchase Date and retained in the Participant's account as of the Purchase Date by the applicable Purchase Price. Notwithstanding the above, the maximum number of Shares an Employee may purchase during each Offering Period shall be 2,000 Shares (subject to any adjustment pursuant to Section 19 below), and provided further that such purchase shall be subject to the limitations set forth in Sections 3(d) and 13.

(b) If the Common Stock is listed on any established stock exchange or traded on any established market, the fair market value of the Company's Common Stock on a given date (the "Fair Market Value") shall be the closing price of the Common Stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in such source as the Board deems reliable. Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value shall be the closing selling price (or closing bid if no sales were reported) on the last preceding date for which such quotation exists. In the absence of such markets for the Common Stock, the Fair Market Value shall be determined by the Board in good faith.

8. **Exercise of Option.** Unless a Participant withdraws from the Plan as provided in Section 11, his or her option for the purchase of Shares will be exercised automatically on each Purchase Date of an Offering Period, and the maximum number of full Shares subject to the option will be purchased at the applicable Purchase Price with the accumulated Contributions in his or her account. No fractional Shares shall be issued. The Shares purchased upon exercise of an option hereunder shall be deemed to be transferred to the Participant on the Purchase Date. During his or her lifetime, a Participant's option to purchase Shares hereunder is exercisable only by him or her.

9. **Taxes.** At the time a Participant's option is exercised, in whole or in part, or at the time a Participant disposes of some or all of the Shares acquired under the Plan, the Participant shall make adequate provision for any Tax-Related Items, to the extent applicable. In their sole discretion, the Company or the Designated Corporation employing the Participant may satisfy their obligations to withhold Tax-Related Items by (i) withholding from the Participant's wages or other compensation, (ii) withholding a sufficient whole number of Shares otherwise issuable following purchase having an aggregate fair market value sufficient to pay the Tax-Related Items required to be withheld with respect to the Shares, as determined in accordance with generally accepted accounting principles, or (iii) withholding from proceeds from the sale of Shares issued upon purchase, either through a voluntary sale or a mandatory sale arranged by the Company.

10. **Delivery.** As promptly as practicable after each Purchase Date of each Offering Period, the Company shall arrange the delivery to each Participant, as appropriate, of the Shares purchased upon exercise of his or her option. No fractional Shares shall be purchased; any payroll deductions accumulated in a Participant's account which are not sufficient to purchase a full Share shall be retained in the Participant's account for the subsequent Offering Period, subject to earlier withdrawal by the Participant as provided in Section 11 below. Any other amounts left over in a Participant's account after a Purchase Date shall be returned to the Participant.

11. Voluntary Withdrawal; Termination of Employment.

(a) A Participant may withdraw all but not less than all the Contributions credited to his or her account under the Plan at any time prior to each Purchase Date by giving notice to the Company through the Company's electronic ESPP interface (or such other method as the Company may specify) at least ten days prior to the Purchase Date (other by such other date as the Company may specify). All of the Participant's Contributions credited to his or her account will be paid to him or her promptly after receipt of his or her notice of withdrawal and his or her option for the current period will be automatically terminated, and no further Contributions for the purchase of Shares will be made during the Offering Period.

(b) Upon termination of the Participant's Continuous Status as an Employee prior to the Purchase Date of an Offering Period for any reason, including retirement or death, the Contributions credited to his or her account will be returned to him or her or, in the case of his or her death, to the person or persons entitled thereto under Section 15, and his or her option will be automatically terminated.

(c) If a Participant transfers from an Offering under the 423 Component of the Plan to an Offering under the Non-423 Component due to a transfer of the Participant's employment between Designated Corporations, the exercise of the option will be qualified under the 423 Component only to the extent that such exercise complies with Section 423 of the Code. If a Participant transfers from an Offering under the Non-423 Component of the Plan to an Offering under the 423 Component, the exercise of the right will remain non-qualified under the Non-423 Component.

(d) A Participant's withdrawal from an Offering will not have any effect upon his or her eligibility to participate in a succeeding Offering or in any similar plan which may hereafter be adopted by the Company.

12. **Interest.** No interest shall accrue on the Contributions of a Participant in the Plan (except to the extent required under Applicable Laws).

13. **Stock.**

(a) Subject to adjustment as provided in Section 19, the maximum number of Shares which shall be made available for sale under the Plan shall be 2,896,190 Shares. If any option granted under the Plan shall for any reason terminate without having been exercised, the shares of Common Stock not purchased under such option shall again become available for issuance under the Plan. If the Board determines that, on a given Purchase Date, the number of shares with respect to which options are to be exercised may exceed (i) the number of shares of Common Stock that were available for sale under the Plan on the Offering Date of the applicable Offering Period, or (ii) the number of shares available for sale under the Plan on such Purchase Date, the Board may in its sole discretion provide (x) that the Company shall make a pro rata allocation of the Shares of Common Stock available for purchase on such Offering Date or Purchase Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all Participants exercising options to purchase Common Stock on such Purchase Date, and continue all Offering Periods then in effect, or (y) that the Company shall make a pro rata allocation of the shares available for purchase on such Offering Date or Purchase Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all Participants exercising options to purchase Common Stock on such Purchase Date, and terminate any or all Offering Periods then in effect pursuant to Section 21 below. The Company may make pro rata allocation of the Shares available on the Offering Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional Shares for issuance under the Plan by the Company's stockholders subsequent to such Offering Date.

(b) The Participant shall have no interest or voting right in Shares covered by his or her option until such option has been exercised.

(c) Shares to be delivered to a Participant under the Plan will be registered in the name of the Participant.

14. **Administration.**

(a) The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in Section 14(c).

(b) The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine how and when options to purchase Shares shall be granted and the provisions of each Offering Period (which need not be identical).

(ii) To designate from time to time which Subsidiaries and Affiliates of the Company shall be eligible to participate in the Plan.

(iii) To construe and interpret the Plan and options, 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, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(iv) To settle all controversies regarding the Plan and options granted under it, including whether Employees shall be granted an option and participate in the 423 Component or the Non-423 Component of the Plan, and which entities shall be Designated Corporations for participation in the 423 Component or the Non-423 Component of the Plan..

(v) To amend, suspend or terminate the Plan at any time as provided in Section 21.

(vi) Generally, to exercise such powers and to perform such acts as it deems necessary or expedient to promote the best interests of the Company and its Subsidiaries and Affiliates and to carry out the intent that the Plan be treated as an Employee Stock Purchase Plan.

(vii) Notwithstanding any provision to the contrary in this Plan, the Board may adopt rules or procedures relating to the operation and administration of the Plan to accommodate the specific requirements of local laws and procedures for jurisdictions outside of the United States. Without limiting the generality of the foregoing, the Board specifically is authorized to adopt rules, procedures and sub-plans, which, for purposes of the Non-423 Component, may be outside of the scope of Section 423 of the Code, regarding, without limitation, eligibility to participate, the definition of Compensation, the dates and duration of Offering Periods or other periods during which Participants may make Contributions toward the purchase of Shares, the method of determining the Purchase Price and the discount from Fair Market Value at which Shares may be purchased, any minimum or maximum amount of Contributions a Participant may make in an Offering Period or other specified period under the applicable sub-plan or policy, the treatment of options upon a change in control or a change in capitalization of the Company, the handling of Contributions, the making of Contributions to the Plan (including, without limitation, in forms other than payroll deductions), establishment of bank or trust accounts to hold Contributions, payment of interest, conversion of local currency, obligations to pay payroll tax, determination of beneficiary designation requirements, withholding procedures, and handling of Share issuances and stock certificates that vary with applicable local requirement.

(c) The Board, to the extent not prohibited by Applicable Laws, may delegate some or all of the administration of the Plan to a Committee or Committees. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revert in the Board some or all of the powers previously delegated. Whether or not the Board has delegated administration of the Plan to a Committee, the Board shall have the final power to determine all questions of policy and expediency that may arise in the administration of the Plan.

(d) 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 interested persons.

15. Designation of Beneficiary.

(a) A Participant may file a written designation of a beneficiary who is to receive any Shares and cash, if any, from the Participant's account under the Plan in the event of such Participant's death subsequent to the end of an Offering Period but prior to delivery to him or her of such Shares and cash. In addition, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under the Plan in the event of such Participant's death prior to the Purchase Date of an Offering Period. If a Participant is married and the designated beneficiary is not the spouse, spousal consent shall be required for such designation to be effective.

(b) Such designation of beneficiary may be changed by the Participant (and his or her spouse, if any) at any time by written notice. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company shall deliver such Shares and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such Shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

16. Transferability. Neither Contributions credited to a Participant's account nor any rights with regard to the exercise of an option or to receive Shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution, or as provided in Section 15) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw funds in accordance with Section 11.

17. Use of Funds. All Contributions received or held by the Company under the Plan may be used by the Company for any corporate purpose (except to the extent necessary to comply with Applicable Laws), and the Company shall not be obligated to segregate such Contributions (except to the extent necessary to comply with Applicable Laws). Proceeds from the sale of shares of Common Stock pursuant to options granted under the Plan shall constitute general funds of the Company.

18. Reports. Individual accounts will be maintained for each Participant in the Plan. Statements of account will be given to participating Employees at least annually, which statements will set forth the amounts of Contributions, the per Share Purchase Price, the number of Shares purchased and the remaining cash balance, if any.

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

(a) **Adjustment.** Subject to any required action by the stockholders of the Company, the number of Shares covered by each option under the Plan which has not yet been exercised and the number of Shares which have been authorized for issuance under the Plan but have not yet been placed under option (collectively, the “Reserves”), as well as the maximum number of shares of Common Stock which may be purchased by a Participant in an Offering Period, the number of shares of Common Stock set forth in Section 13(a) above, and the price per Share of Common Stock covered by each option under the Plan which has not yet been exercised, shall be proportionately adjusted for any increase or decrease in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, dividend in property other than cash, liquidating dividend, combination, exchange or reclassification of the Common Stock (including any such change in the number of Shares of Common Stock effected in connection with a change in domicile of the Company), or any other increase or decrease in the number of Shares effected without receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, change in corporate structure or other similar transaction); provided however that conversion of any convertible securities of the Company shall not be deemed to have been “effected without receipt of consideration.” Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an option.

(b) **Corporate Transactions.** In the event of a dissolution or liquidation of the Company, any Offering Period then in progress will terminate immediately prior to the consummation of such action, unless otherwise provided by the Board. In the event of a Corporate Transaction, each option outstanding under the Plan shall be assumed or an equivalent option shall be substituted by the successor corporation or a parent or subsidiary of such successor corporation. In the event that the successor corporation refuses to assume or substitute for outstanding options, the Offering Period then in progress shall be shortened and a new Purchase Date shall be set (the “New Purchase Date”), as of which date the Offering Period then in progress will terminate. The New Purchase Date shall be on or before the date of consummation of the transaction and the Board shall notify each Participant in writing, at least ten (10) days prior to the New Purchase Date, that the Purchase Date for his or her option has been changed to the New Purchase Date and that his or her option will be exercised automatically on the New Purchase Date, unless prior to such date he or she has withdrawn from the Offering Period as provided in Section 11. For purposes of this Section 19, an option granted under the Plan shall be deemed to be assumed, without limitation, if, at the time of issuance of the stock or other consideration upon a Corporate Transaction, each holder of an option under the Plan would be entitled to receive upon exercise of the option the same number and kind of shares of stock or the same amount of property, cash or securities as such holder would have been entitled to receive upon the occurrence of the transaction if the holder had been, immediately prior to the transaction, the holder of the number of Shares of Common Stock covered by the option at such time (after giving effect to any adjustments in the number of Shares covered by the option as provided for in this Section 19); provided however that if the consideration received in the transaction is not solely common stock of the successor corporation or its parent (as defined in Section 424(e) of the Code), the Board may, with the consent of the successor corporation, provide for the consideration to be received upon exercise of the option to be solely common stock of the successor corporation or its parent equal in Fair Market Value to the per Share consideration received by holders of Common Stock in the transaction.

The Board may, if it so determines in the exercise of its sole discretion, also make provision for adjusting the Reserves, as well as the price per Share of Common Stock covered by each outstanding option, in the event that the Company effects one or more reorganizations, recapitalizations, rights offerings or other increases or reductions of Shares of its outstanding Common Stock, and in the event of the Company’s being consolidated with or merged into any other corporation.

20. **Tax Qualification.** Although the Company may endeavor to (i) qualify an option for favorable tax treatment under the laws of the United States or jurisdictions outside of the United States or (ii) avoid adverse tax treatment (e.g., under Section 409A of the Code), the Company makes no representation to that effect and expressly disavows any covenant to maintain favorable or avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan. The Company shall be unconstrained in its corporate activities without regard to any potential negative tax impact on Participants under the Plan.

21. **Amendment or Termination.**

(a) The Board may at any time and for any reason terminate or amend the Plan. Except as provided in Section 19, no such termination of the Plan may affect options previously granted, provided that the Plan or an Offering Period may be terminated by the Board on a Purchase Date or by the Board's setting a new Purchase Date with respect to an Offering Period then in progress if the Board determines that termination of the Plan and/or the Offering Period is in the best interests of the Company and the stockholders. Except as provided in Section 19 and in this Section 21, no amendment to the Plan shall make any change in any option previously granted which adversely affects the rights of any Participant. In addition, to the extent necessary to comply with Rule 16b-3 under the Exchange Act, or under Section 423 of the Code with respect to the 423 Component (or any successor rule or provision or any applicable law or regulation), the Company shall obtain stockholder approval in such a manner and to such a degree as so required.

(b) Without stockholder consent and without regard to whether any Participant rights may be considered to have been adversely affected, the Administrator shall be entitled to change the Offering Periods, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with amounts withheld from the Participant's Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion advisable which are consistent with the Plan.

22. **Notices.** All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

23. **Conditions Upon Issuance of Shares.** Notwithstanding any other provision of the Plan, unless there is an available exemption from any registration, qualification or other legal requirement applicable to the Shares, the Company will not be required to deliver any Shares issuable upon exercise of an option under the Plan prior to the completion of any registration or qualification of the Shares under any local, state, federal or foreign securities or exchange control law or under rulings or regulations of any governmental regulatory body, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Administrator shall, in its absolute discretion, deem necessary or advisable. The Company is under no obligation to register or qualify the Shares with any state or foreign securities commission, or to seek approval or clearance from any governmental authority for the issuance or sale of the Shares. If, pursuant to this Section 23, the Administrator determines that the Shares will not be issued to any Participant, any Contributions credited to such Participant's account will be promptly refunded, without interest, to the Participant, without any liability to the Company or any of its Subsidiaries or Affiliates.

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

24. **Effective Date.** The Plan originally became effective on May 20, 2011. This amendment and restatement of the Plan is effective May 20, 2019.

25. **Miscellaneous Provisions.**

(a) A Participant shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, Shares subject to options unless and until the Participant's Shares acquired upon exercise of options under the Plan are recorded in the books of the Company (or its transfer agent).

(b) The Plan does not constitute an employment contract. Nothing in the Plan shall in any way alter the at will nature of an Employee's employment or be deemed to create in any way whatsoever any obligation on the part of any Employee to continue in the employ of the Company or a Subsidiary or Affiliate, or on the part of the Company or a Subsidiary or Affiliate to continue the employment of an Employee.

(c) The provisions of the Plan shall be governed by the laws of the State of Washington without resort to that state's conflicts of laws rules.