

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

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

AEROCLEAN TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

45-3213164
(I.R.S. Employer
Identification No.)

10455 Riverside Drive
Palm Beach Gardens, Florida
(Address of principal executive offices)

33410
(Zip Code)

AEROCLEAN TECHNOLOGIES, INC. 2021 DEFERRED COMPENSATION PLAN
AEROCLEAN TECHNOLOGIES, INC. NON-EMPLOYEE DIRECTORS STOCK AND DEFERRED COMPENSATION PLAN
(Full title of the plan)

Jason DiBona
c/o AeroClean Technologies, Inc.
10455 Riverside Drive
Palm Beach Gardens, FL 33410
(833) 652-5326
(Name, address and telephone number, including area code, of agent for service)

Copies to:

Valerie Ford Jacob, Esq.
Freshfields Bruckhaus Deringer US LLP
601 Lexington Avenue
New York, New York 10022
(212) 277-4000

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 ☐
Non-accelerated filer ☒

Accelerated filer ☐
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 of 1933, as amended (the “Securities Act”). ☐

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price ⁽²⁾	Amount of Registration Fee
Deferred compensation obligations under the AeroClean Technologies, Inc. 2021 Deferred Compensation Plan	5,000,000	100% \$	5,000,000	\$ 463.50
Deferred compensation obligations under the AeroClean Technologies, Inc. Non-Employee Directors Stock and Deferred Compensation Plan	1,000,000	100% \$	1,000,000	\$ 92.70

- (1) The deferred compensation obligations (the “Obligations”) under the AeroClean Technologies, Inc. 2021 Deferred Compensation Plan (the “Deferred Compensation Plan”) and the AeroClean Technologies, Inc. Non-Employee Directors Stock and Deferred Compensation Plan (the “Director Deferred Compensation Plan” and, together with the Deferred Compensation Plan, the “Plans”) are unsecured obligations of AeroClean Technologies, Inc. (the “Registrant”) to pay deferred compensation in the future in accordance with the terms of the Plans.
- (2) Solely for purposes of computing the registration fee pursuant to Rule 457(h) of the Securities Act, the proposed maximum aggregate offering price with respect to the Plans is based on an estimate of the amount of compensation participants may defer under the Plans.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information*

Item 2. Registrant Information and Employee Plan Annual Information*

* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act and the “Note” to Part I of Form S-8. The documents containing the information specified in this Part I of Form S-8 will be sent or given to the participants (“participants”) in the Plans covered by this Registration Statement, as specified by the U.S. Securities and Exchange Commission (the “Commission”), pursuant to Rule 428(b)(1) under the Securities Act. Such documents are not required to be and are not filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents filed by the Registrant with the Commission are incorporated as of their respective dates in this Registration Statement by reference:

- (a) [The Registrant's Offering Circular dated November 23, 2021 \(File No. 024-11650\), filed with the Commission pursuant to Rule 253\(g\)\(1\) promulgated under the Securities Act on November 24, 2021, which contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed; and](#)
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), since the end of the fiscal year covered by the Registrant document referred to in (a) above.

All other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (except for any portions of the Registrant's Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 thereof and any corresponding exhibits thereto not filed with the Commission, and other documents or information deemed furnished but not filed under the rules of the Commission), prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document all or a portion of which is incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities

Under the Plans, the Registrant may provide eligible employees and directors with awards of deferred cash compensation or with the opportunity to agree to the deferral of a specified percentage of their cash or equity-based compensation. The Obligations of the Registrant under the Plans to a participating employee or director (a "Participant") represent at all times an unfunded, contingent and unsecured contractual obligation of the Registrant to pay the Obligations in the future in accordance with the terms of the Plans. Each Participant is an unsecured general creditor of the Registrant with respect to all Obligations and will rank pari passu with other unsecured and unsubordinated indebtedness of the Registrant from time to time outstanding. In addition, the rights of Participants in the Plans are subject to the prior claims of creditors of the Registrant's subsidiaries. Obligations shall be satisfied solely out of the general assets of the Registrant, subject to the claims of its creditors. A Participant will not have any interest in any fund or in any specific asset of the Registrant of any kind by reason of any amount credited to the Participant under the Plans, nor will a Participant have any right to receive any distribution under the Plans except as, and to the extent, expressly provided in the applicable Plan document or the award certificate evidencing the Obligation. The Registrant will not segregate any funds or assets to provide for the Obligations or issue any notes or securities for the payment thereof.

The amount of compensation to be awarded to or deferred by each Participant will be determined in accordance with the terms of the Plans. Each Obligation will be payable on a date in the future in accordance with the terms of the Plans.

Under the Deferred Compensation Plan, the Obligations will be indexed to one or more notional investment options available under the Plans. Each Participant's Obligation will be adjusted to reflect the investment experience, whether positive or negative, and the fees and costs of the selected notional investment options, including any appreciation or depreciation and any applicable Plan administration fees. The value of Obligations held by a Participant is subject to risk at all times based upon the performance of the notional investment options and based upon currency fluctuation. Unless the administrator of the Plans determines otherwise in its sole discretion, all payments under the Plans to a Participant shall be made in the Participant's local currency.

The administrator of the Plans will determine the vesting schedule, as well as any other restrictions, applicable to the Obligations held by a Participant (which may include, without limitation, the effects of termination of employment and cancellation of the Obligations under specified circumstances). The administrator may also establish other terms and conditions applicable to the Obligations, including, without limitation, the consequences of a Participant's death.

A Participant may not assign, sell, garnish, transfer, pledge or encumber the Participant's interests in the Plans, except by a written designation of a beneficiary under the Plans, by written will or by the laws of descent and distribution. This prohibition includes any assignment or other transfer that purports to occur by operation of law or otherwise. During a Participant's lifetime, payments under the Plans shall be made only to the Participant. The Obligations are not convertible into another security of the Registrant. The Obligations will not have the benefit of a negative pledge or any other affirmative or negative covenant on the part of the Registrant. No trustee has been appointed having the authority to take action with respect to the Obligations.

The Registrant reserves the right to alter, amend or modify the Plans, any program under the Plans or any of the award documents under the Plans at any time in its sole discretion. The Registrant may not amend or modify the Plans in a manner that would materially impair a Participant's rights, if any, in the Participant's Obligations without the Participant's consent; provided, however, that the Registrant may, without a Participant's consent, amend or modify the Plans in any manner that the Registrant considers necessary or advisable to comply with any applicable law, regulation, ruling, judicial decision, accounting standards, regulatory guidance or other legal requirement or to ensure that neither the entirety nor any part of a Participant's Obligations is subject to United States federal, state or local income tax or any equivalent taxes in territories outside the United States prior to payment or to any interest or penalty tax.

Item 5. Interests of Named Experts and Counsel

None.

Item 6. Indemnification of Directors and Officers

Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") provides that a corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his/her conduct was unlawful. A similar standard is applicable in the case of derivative actions (i.e., actions by or in the right of the corporation), except that indemnification extends only to expenses, including attorneys' fees, incurred in connection with the defense or settlement of such action, and the statute requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation.

The Registrant's certificate of incorporation provides that, to the fullest extent permitted by the DGCL, no director will be personally liable to the Registrant or to its stockholders for monetary damages for breach of fiduciary duty as a director. Notwithstanding this provision, pursuant to Section 102(b) (7) of the DGCL, a director can be held liable (1) for any breach of the director's duty of loyalty to the Registrant or its stockholders, (2) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL (which concerns unlawful payments of dividends, stock purchases or redemptions) or (4) for any transaction from which the director derives an improper personal benefit.

While the certificate of incorporation provides directors with protection from awards for monetary damages for breaches of their duty of care, it does not eliminate this duty. Accordingly, the certificate of incorporation has no effect on the availability of equitable remedies such as an injunction or rescission based on a director's breach of his or her duty of care. The provisions of the certificate of incorporation described above apply to an officer of the Registrant only if he or she is a director of the Registrant and is acting in his or her capacity as director and do not apply to officers of the Registrant who are not directors.

The certificate of incorporation requires the Registrant to indemnify any person who was or is a party or is threatened to be made a party to, or was otherwise involved in (including, without limitation, as a witness), a legal proceeding by reason of the fact that he or she is or was a director or an officer of the Registrant or is or was serving at its request as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent authorized by the DGCL, as it exists or may be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement by or on behalf of such person) actually and reasonably incurred in connection with such service (provided that, in the case of a proceeding initiated by such person, the Registrant will only indemnify such person if the proceeding was specifically authorized by the board of directors of the Registrant (the "Board")). This right of indemnity will include, with certain limitations and exceptions, a right to be paid by the Registrant the expenses incurred in defending such proceedings. The Registrant is authorized under its certificate of incorporation to carry directors' and officers' insurance protecting the Registrant, any director, officer, employee or agent of the Registrant or another corporation, partnership, joint venture, trust or other enterprise against any liability, whether or not the Registrant would have the power to indemnify the person under the DGCL. The certificate of incorporation also permits the Board to indemnify or advance expenses to any of the Registrant's employees or agents to the fullest extent permitted with respect to the Registrant's directors and officers in the certificate of incorporation.

By its terms, the indemnification provided for in the certificate of incorporation is not exclusive of any other rights that the indemnified party may be or become entitled to under any law, agreement, vote of stockholders or directors, provisions of the certificate of incorporation or bylaws or otherwise. Any amendment, alteration or repeal of the certificate of incorporation's indemnification provisions will be, by the terms of the certificate of incorporation, prospective only and will not adversely affect the rights of any indemnitee in effect at the time of any act or omission occurring prior to such amendment, alteration or repeal.

The foregoing summaries are necessarily subject to the complete text of the DGCL, the certificate of incorporation and the Registrant's bylaws and the arrangements referred to above and are qualified in their entirety by reference thereto.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

The exhibits listed on the exhibit index at the end of this Registration Statement are included in this Registration Statement.

Item 9. Undertakings

(a) The undersigned Registrant hereby undertakes:

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

- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) to reflect in the prospectus any facts or events arising after the effective date of this 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 this Registration Statement; and
- (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement.

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

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

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

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

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

EXHIBITS

Exhibit No.	Description
<u>4.1*</u>	<u>Certificate of Incorporation of the Registrant</u>
<u>4.2*</u>	<u>Bylaws of the Registrant</u>
<u>5.1*</u>	<u>Opinion of Freshfields Bruckhaus Deringer US LLP, counsel to the Registrant, regarding the legality of the securities being offered hereby (including consent)</u>
<u>23.1*</u>	<u>Consent of Citrin Cooperman & Company, LLP</u>
<u>23.2*</u>	<u>Consent of Freshfields Bruckhaus Deringer US LLP (included in Exhibit 5.1)</u>
<u>24.1*</u>	<u>Power of Attorney (included as part of the signature pages hereto)</u>
<u>99.1*</u>	<u>AeroClean Technologies, Inc. 2021 Deferred Compensation Plan</u>
<u>99.2*</u>	<u>AeroClean Technologies, Inc. Non-Employee Directors Stock and Deferred Compensation Plan</u>

* Filed herewith

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act, 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 Palm Beach Gardens, Florida, on the 29th day of November, 2021.

AEROCLEAN TECHNOLOGIES, INC.

By: /s/ Jason DiBona

Name: Jason DiBona

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints each of Jason DiBona and Ryan Tyler as such person's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments to the Registration Statement, including post-effective amendments, and registration statements filed pursuant to Rule 462 under the Securities Act, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, and does hereby grant unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agent, or any substitute therefor, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities indicated on the 29th day of November, 2021:

Signature	Title
<u>/s/ Jason DiBona</u> Jason DiBona	Chief Executive Officer (Principal Executive Officer)
<u>/s/ Ryan Tyler</u> Ryan Tyler	Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/s/ Amin J. Khoury, PhD (Hon)</u> Amin J. Khoury, PhD (Hon)	Chairman of the Board
<u>/s/ David Helfet, M.D.</u> David Helfet, M.D.	Director
<u>/s/ Michael Senft</u> Michael Senft	Director
<u>/s/ Thomas P. McCaffrey</u> Thomas P. McCaffrey	Director
<u>/s/ Heather Floyd</u> Heather Floyd	Director

**CERTIFICATE OF INCORPORATION
OF
AEROCLEAN TECHNOLOGIES, INC.**

ARTICLE I

Name

The name of the corporation is AeroClean Technologies, Inc. (the “Corporation”).

ARTICLE II

Registered Office and Registered Agent

The address of the registered office of the Corporation in the State of Delaware is 850 New Burton Road, Suite 201 in the City of Dover County of Kent, 19904. The name of the registered agent of the Corporation at such address is Cogency Global Inc.

ARTICLE III

Corporate Purpose

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “General Corporation Law”).

ARTICLE IV

Capital Stock

(1) The total number of shares of all classes of stock that the Corporation shall have authority to issue is 121,000,000, of which 110,000,000 shall be shares of Common Stock of the Corporation, par value \$0.01 per share (“Common Stock”), and 11,000,000 shall be shares of Preferred Stock, at a par value of \$0.01 per share (“Preferred Stock”).

(2) The Board of Directors of the Corporation (the “Board”) is hereby expressly authorized to provide, out of the unissued shares of Preferred Stock, for the issuance of one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers, if any, of the shares of such series, and the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. The Corporation shall, from time to time and in accordance with applicable law, increase the number of authorized shares of Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit the conversion of any series of Preferred Stock that, as provided for or fixed pursuant to the provisions of this paragraph (2) of Article IV, is otherwise convertible into Common Stock.

ARTICLE V

Board of Directors

(1) The business and affairs of the Corporation shall be managed by, or under the direction of, the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or this Certificate of Incorporation directed or required to be exercised or done by stockholders.

(2) The Bylaws of the Corporation may fix and alter the number of directors and may prescribe the term of office, and from time to time the number of directors may be increased or decreased by amendment of the Bylaws of the Corporation; provided that in no case shall the number of directors be less than three.

(3) Any director or the entire Board may be removed from office only for cause and only by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the total voting power of the outstanding shares of the capital stock of the Corporation entitled to vote in any annual election of directors, voting together as a single class.

(4) Vacancies occurring on the Board for any reason, including, without limitation, vacancies occurring as a result of the death, resignation, retirement, disqualification or removal from office of a director, or the creation of new directorships that increase the number of directors, shall solely be filled by a majority vote of the directors then in office, even if the number of such directors is less than a quorum, or by a sole remaining director, or by the written consent of such directors as permitted by the General Corporation Law and as provided in the Bylaws of the Corporation, and shall not be filled by the stockholders.

(5) At any meeting of stockholders at which directors are elected, directors shall be elected by a plurality of the voting power of the shares entitled to vote on the election of directors and present in person or by proxy at the meeting. Elections of directors of the Corporation need not be by written ballot, except and to the extent provided in the Bylaws of the Corporation.

(6) To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no 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. For the avoidance of all doubt, notwithstanding any other provision in this Certificate of Incorporation, no amendment to, modification of or repeal of this paragraph (6) shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

(7) Nothing in this Article V shall be deemed to affect or restrict (i) any rights of the holders of any series of Preferred Stock to elect directors as provided for or fixed pursuant to the provisions of Article IV, or (ii) the ability of the Board to provide, pursuant to Article IV, for the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of any series of Preferred Stock, including with regard to those directors, if any, to be elected by the holders of any series of Preferred Stock.

ARTICLE VI

Interested Directors and Officers

(1) No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of the Corporation's directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because such director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because his or her vote is counted for such purpose, if (i) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum, (ii) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders, or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof or the stockholders.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

ARTICLE VII

Stockholder Action

(1) The annual meeting of stockholders of the Corporation for the election of directors of the Corporation, and for the transaction of such other business as may properly come before such meeting, shall be held at such place, date and time as shall be fixed by the Board in its sole and absolute discretion.

(2) Except as otherwise required by law, or as otherwise provided for or fixed pursuant to the provisions of Article IV with regard to the rights of holders of shares of one or more series of Preferred Stock, special meetings of stockholders of the Corporation may only be called by (i) the Board or (ii) the Chairman of the Board of the Corporation or the Chief Executive Officer of the Corporation.

(3) Any previously scheduled meeting of the stockholders may be postponed to another date, time or place by resolution of the Board.

(4) Except as otherwise provided for or fixed pursuant to the provisions of Article IV with regard to the rights of holders of shares of one or more series of Preferred Stock, no action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting; provided, however, that the taking of any action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting if such action and the taking of such action by written consent of stockholders in lieu of a meeting have each been expressly approved in advance by the Board.

ARTICLE VIII

Indemnification and Insurance

(1) Each person who was or is made a party or is threatened to be made a party to or is involved (including, without limitation, as a witness) in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a “proceeding”), by reason of the fact that he or she is or was a director or officer of the Corporation or, while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is an alleged action in an official capacity as a director or officer or in another capacity for or at the request of the Corporation, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys’ fees, judgments, fines, excise taxes or penalties, including under the Employee Retirement Income Security Act of 1974, as amended, and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to serve in the capacity that initially entitled such person to indemnity hereunder and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (2) of this Article VIII with respect to proceedings seeking to enforce rights to indemnification hereunder, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was specifically authorized by the Board. The right to indemnification conferred in this Article VIII shall be a contract right that vests upon a person becoming a director or officer of the Corporation or upon a person serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the General Corporation Law requires, the payment of such expenses incurred by a director or officer of the Corporation in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Article VIII or otherwise. Notwithstanding the foregoing, subsequent to an indictment of, or the filing of a civil complaint by a U.S. federal or state governmental enforcement agency against, a director or officer of the Corporation (in any capacity, including as an employee or agent of another enterprise and service to an employee benefit plan) entitled to or receiving advancement of expenses, the Corporation may, subject to applicable law (including to the extent indemnification is required under Section 145(c) of the General Corporation Law), terminate, reduce or place conditions upon any future advancement of expenses (including with respect to costs, charges, attorneys’ fees, experts’ fees and other fees) incurred by such director or officer relating to his or her defense thereof if (i) such director or officer does not prevail at trial, enters into a plea arrangement, agrees to the entry of a final administrative or judicial order imposing sanctions on such director or officer or otherwise admits, in a legal proceeding, to the alleged violation resulting in the relevant indictment or complaint, or (ii) if the Corporation initiates an internal investigation and a determination is made (x) by the disinterested directors, even though less than a quorum, or (y) if there are no disinterested directors or the disinterested directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-maker at the time such determination is made demonstrate that such director or officer acted in a manner that is not indemnifiable by the Corporation. Any future indemnification or similar agreement entered into by the Corporation with any director or officer of the Corporation and that addresses the advancement of expenses shall contain restrictions substantially similar to the immediately preceding sentence.

(2) If a claim under paragraph (1) of this Article VIII is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may, at any time thereafter, bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the General Corporation Law for the Corporation to indemnify the claimant for the amount claimed or, in the case of a claim regarding advancement of expenses, the Corporation has terminated, reduced or placed conditions upon advancement of expenses in accordance with paragraph (1) of this Article VIII, but in each case, the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board, a committee thereof, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law, nor an actual determination by the Corporation (including the Board, a committee thereof, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(3) The right to indemnification and the advancement and payment of expenses conferred in this Article VIII shall not be exclusive of any other right that any person may have or hereafter acquire under any law (common or statutory), provision of the Certificate of Incorporation of the Corporation, other bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

(4) If this Article VIII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each director or officer of the Corporation as to costs, charges and expenses (including attorneys' fees, experts' fees and other fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article VIII that shall not have been invalidated and to the full extent permitted by applicable law.

(5) For the avoidance of all doubt, notwithstanding any other provision in this Certificate of Incorporation, no amendment to, modification of or repeal of any provision of this Article VIII shall apply to or have any effect on the liability or alleged liability, or any right to indemnification or to advancement of expenses, of any director or officer of the Corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment, except as otherwise consented to in writing by such director or officer.

(6) The Board may, or may authorize one or more officers to, provide for the indemnification or advancement of expenses by the Corporation to any current or former employee or agent of the Corporation or any of the Corporation's subsidiaries who would not otherwise have a right to indemnification or advancement of expenses pursuant to this Article VIII and was or is made a party to or is threatened to be made a party to or is otherwise involved or threatened to be involved (including, without limitation, as a witness) in any proceeding, by reason of the fact that he or she is or was such an employee or agent or, while serving as an employee or agent, he or she is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or a partnership, joint venture, trust, nonprofit entity or other enterprise, including service with respect to an employee benefit plan, of such scope and effect and subject to such terms as determined by the Board or such officer or officers, in each case, as and to the extent permitted by applicable law.

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

ARTICLE IX

Bylaws

In furtherance and not in limitation of the powers conferred by the General Corporation Law, the Board shall expressly have the power to adopt, amend or repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board shall require the approval of a majority of the entire Board. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Corporation, provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the then-outstanding voting stock of the Corporation, voting together as a single class, shall be required for the stockholders of the Corporation to amend, repeal or adopt any provision of the Bylaws of the Corporation.

ARTICLE X

Amendment

(1) 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 law, and all the provisions of this Certificate of Incorporation and, except as expressly provided otherwise in this Certificate of Incorporation, all rights conferred on stockholders, directors, officers, employees or agents of the Corporation in this Certificate of Incorporation are subject to this reserved power.

(2) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, and in addition to any affirmative vote of the holders of any particular class of stock of the Corporation required by applicable law or this Certificate of Incorporation, the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the then-outstanding voting stock of the Corporation, voting together as a single class, shall be required for the stockholders of the Corporation to amend, repeal or adopt any provisions of this Certificate of Incorporation inconsistent with Article V, paragraphs (2) and (4) of Article VII or this Article X of this Certificate of Incorporation.

ARTICLE XI

Incorporator

The name and mailing address of the sole incorporator is as follows:

Name	Mailing Address
Ryan Tyler	10455 Riverside Drive, Palm Beach Gardens, FL 33410

[Remainder of page intentionally left blank]

I, THE UNDERSIGNED, being the sole incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this Certificate of Incorporation, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 23rd day of November, 2021.

/s/ Ryan Tyler

Ryan Tyler

[Signature Page – Certificate of Incorporation]

**BYLAWS
OF
AEROCLEAN TECHNOLOGIES, INC.**

<u>Table of Contents</u>		
Section		Page
	ARTICLE I OFFICES	
Section 1.01. Offices		1
	ARTICLE II MEETINGS OF STOCKHOLDERS	
Section 2.01. Annual Meetings		1
Section 2.02. Special Meetings		1
Section 2.03. Notice of Meetings		1
Section 2.04. Waiver of Notice		1
Section 2.05. Postponements and Adjournments		1
Section 2.06. Quorum		2
Section 2.07. Voting		2
Section 2.08. Proxies		2
Section 2.09. Nominations and Proposals		2
Section 2.10. Submission of Questionnaire, Representation and Agreement		6
	ARTICLE III BOARD	
Section 3.01. General		6
Section 3.02. Number		6
Section 3.03. Resignation		6
Section 3.04. Meetings		6
Section 3.05. Committees of the Board		7
Section 3.06. Directors' Consent in Lieu of Meeting		8
Section 3.07. Action by Means of Telephone or Similar Communications Equipment		8
Section 3.08. Compensation		8
	ARTICLE IV OFFICERS	
Section 4.01. Officers		8
Section 4.02. Authority and Duties		8
Section 4.03. Term of Office, Resignation and Removal		8
Section 4.04. Vacancies		8
Section 4.05. The Chairman		9
Section 4.06. The Chief Executive Officer		9
Section 4.07. The President		9
Section 4.08. Vice Presidents		9
Section 4.09. The Secretary		9
Section 4.10. Assistant Secretaries		9
Section 4.11. The Treasurer		9
Section 4.12. Assistant Treasurers		10
	ARTICLE V CHECKS, DRAFTS, NOTES AND PROXIES	
Section 5.01. Checks, Drafts and Notes		10
Section 5.02. Execution of Proxies		10
	ARTICLE VI SHARES AND TRANSFERS OF SHARES	
Section 6.01. Certificates Evidencing Shares		10
Section 6.02. Stock Ledger		10
Section 6.03. Transfers of Shares		10
Section 6.04. Addresses of Stockholders		10

Section 6.05. Lost, Destroyed and Mutilated Certificates		11
Section 6.06. Regulations		11
Section 6.07. Fixing Date for Determination of Stockholders of Record		11
	ARTICLE VII	
	SEAL	
Section 7.01. Seal		11
	ARTICLE VIII	
	FISCAL YEAR	
Section 8.01. Fiscal Year		11
	ARTICLE IX	
	FORUM AND VENUE	
Section 9.01. Forum and Venue		11
	ARTICLE X	
	AMENDMENTS	
Section 10.01. Amendments		12
	ARTICLE XI	
	CERTAIN DEFINITIONS	
Section 11.01. Certain Definitions		12

**BYLAWS
OF
AEROCLEAN TECHNOLOGIES, INC.**

**ARTICLE I
OFFICES**

Section 1.01. Offices. In addition to its registered office in the State of Delaware, AeroClean Technologies, Inc. (the “Corporation”) may also have an office or offices at any other place or places within or without the State of Delaware as the Board of Directors of the Corporation (the “Board”) may from time to time determine or the business of the Corporation may from time to time require.

**ARTICLE II
MEETINGS OF STOCKHOLDERS**

Section 2.01. Annual Meetings. The annual meeting of stockholders of the Corporation for the election of directors of the Corporation, and for the transaction of such other business as may properly come before such meeting, shall be held at such place, date and time as shall be fixed by the Board pursuant to the Certificate of Incorporation of the Corporation (the “Certificate of Incorporation”) and designated in the notice or waiver of notice of such annual meeting.

Section 2.02. Special Meetings. Special meetings of stockholders for any purpose or purposes may be called by the Board or the Chairman of the Board of the Corporation (the “Chairman”) or the Chief Executive Officer of the Corporation (the “Chief Executive Officer”), to be held at such place, date and time as shall be designated in the notice or waiver of notice thereof.

Section 2.03. Notice of Meetings. Except as otherwise provided by law, written notice of each annual or special meeting of stockholders stating the place, date and time of such meeting and, in the case of a special meeting, the purpose or purposes for which such meeting is to be held, shall be given personally, by internationally recognized overnight courier service, or by first-class mail (airmail in the case of international communications) to each recordholder of shares entitled to vote thereat, no less than ten (10) nor more than sixty (60) days before the date of such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears in the records of the Corporation. If sent by internationally recognized courier service, such notice shall be deemed to be given when deposited with such courier service, carriage and delivery prepaid, directed to the stockholder at such stockholder’s address as it appears in the records of the Corporation. If, prior to the time of mailing, the Secretary shall have received from any stockholder a written request that notices intended for such stockholder are to be mailed to some address other than the address that appears in the records of the Corporation, notices intended for such stockholder shall be mailed to the address designated in such request.

Section 2.04. Waiver of Notice. Notice of any annual or special meeting of stockholders need not be given to any stockholder who files a written waiver of notice with the Secretary, signed by the person entitled to notice, whether before or after such meeting. Neither the business to be transacted at, nor the purpose of, any meeting of stockholders need be specified in any written waiver of notice thereof. Attendance of a stockholder at a meeting, in person or by proxy, shall constitute a waiver of notice of such meeting, except when such stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the grounds that the notice of such meeting was inadequate or improperly given.

Section 2.05. Postponements and Adjournments. Whenever an annual or special meeting of stockholders is postponed to another date, time or place by the Board, notice need not be given of the postponed meeting if a public announcement of such postponement is made prior to the original date of the meeting. Whenever an annual or special meeting of stockholders is adjourned to another date, time or place, notice need not be given of the adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken. If the postponement or adjournment is for more than thirty (30) days, or if after the postponement or adjournment a new record date is fixed for the postponed or adjourned meeting, a notice of the postponed or adjourned meeting shall be given to each stockholder entitled to vote thereat. At any postponed or adjourned meeting, any business may be transacted that might have been transacted at the original meeting.

Section 2.06. Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the recordholders of a majority of the shares entitled to vote thereat, present in person or by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders, whether annual or special. If, however, such quorum shall not be present in person or by proxy at any meeting of stockholders, the chairman of the meeting or the stockholders present and entitled to vote thereat may, by the vote of the recordholders of a majority of the shares held by such present stockholders, adjourn the meeting from time to time in accordance with Section 2.05 hereof until a quorum shall be present in person or by proxy.

Section 2.07. Voting. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder that has voting power upon the matter in question, and any question brought before any such meeting shall be determined by the affirmative vote of the recordholders of a majority in voting power of the shares present in person or by proxy at the meeting and entitled to vote on such question.

Section 2.08. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. Such proxy shall be filed with the Secretary before such meeting of stockholders, at such time as the Board may require. No proxy shall be voted or acted upon more than three (3) years from its date, unless the proxy provides for a longer period.

Section 2.09. Nominations and Proposals. (a) At any annual meeting of the stockholders, only such nominations of persons for election to the Board and such other business shall be conducted as shall have been properly brought before the meeting.

(b) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting.

(c) To be properly brought before an annual meeting of stockholders, nominations or such other business must be: (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board or any committee thereof, (ii) otherwise properly brought before the meeting by or at the direction of the Board or any committee thereof, or (iii) otherwise properly brought before the meeting by a stockholder who is a stockholder of record of the Corporation at the time notice of such meeting is given, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.09. In addition, any proposal of business (other than the nomination of persons for election to the Board) must be a proper matter for stockholder action.

(d) For business (including, but not limited to, director nominations) to be properly brought before an annual meeting by a stockholder, the stockholder or stockholders of record intending to propose the business (the "Proposing Stockholder") must have given timely and proper notice thereof, in full compliance with this Section 2.09, in writing to the Secretary.

(e) To be timely, a Proposing Stockholder's notice of nominations or other business to be brought before an annual meeting must be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation:

(i) With regard to notice of nominations or other business proposed to be brought before an annual meeting of stockholders to be held on a day that is not more than thirty (30) days in advance of the anniversary of the previous year's annual meeting nor later than seventy (70) days after the anniversary of the previous year's annual meeting, not later than the close of business on the ninetieth (90th) day, nor earlier than the close of business on the one hundred and twentieth (120th) day, in advance of the anniversary of the previous year's annual meeting;

(ii) With regard to notice of nominations or other business proposed to be brought before any other annual meeting of stockholders, by the close of business on the tenth (10th) day following the public announcement of the date of such meeting.

In no event shall the public announcement of an adjournment or postponement of a meeting of stockholders commence a new notice time period (or extend any notice time period).

(f) To be proper, a Proposing Stockholder's notice must include:

(i) as to each person whom the stockholder proposes to nominate for election as a director (A) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, (B) such person's written consent to being named in the proxy statement as a nominee and to serve as a director if elected and (C) the information, written representation and agreement required to be delivered pursuant to Section 2.10;

(ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and

(iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made:

(A) the name and address of such stockholder, as they appear on the Corporation's books, and of (1) such beneficial owner (if any) and (2) each Associated Person (as defined below) of each such stockholder and such beneficial owner;

(B) the class or series and number of shares of capital stock of the Corporation that are, directly or indirectly, owned beneficially and of record by such stockholder and/or such beneficial owner, or by any Associated Person thereof;

(C) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing;

(D) a description of any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation (each of the foregoing, a "Derivative Instrument"), directly or indirectly owned or held beneficially by such stockholder, such beneficial owner and/or any Associated Person thereof;

(E) a description of any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder and/or such beneficial owner, and any Associated Person thereof, has a right to vote any shares of any security of the Corporation;

(F) a description of any short interest in any security of the Corporation held by such stockholder and/or such beneficial owner and any Associated Person thereof (for purposes of this Section 2.09(f), a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security);

(G) a description of any rights to dividends on the shares of the Corporation owned beneficially by such stockholder and/or such beneficial owner, and any Associated Person thereof, that are separated or separable from the underlying shares of the Corporation;

(H) a description of any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company in which such stockholder and/or such beneficial owner, and any Associated Person thereof, is a general partner or manager or, directly or indirectly, beneficially owns an interest in such general partner or manager;

(I) a description of any performance-related fees (other than an asset-based fee) that such stockholder and/or such beneficial owner, and any Associated Person thereof, is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice;

(J) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination;

(K) a representation as to whether the stockholder or the beneficial owner, if any, is or will be part of a group that intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination; and

(L) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

With regard to the information required by items (B)-(I) of this Section 2.09(f)(iii), such information shall include, without limitation, any such information with regard to any members of such stockholder's immediate family sharing the same household. The information required by this Section 2.09(f) shall be supplemented by such stockholder and beneficial owner, if any, not later than ten (10) days after the record date for the meeting to disclose such information as of the record date.

For the purposes of this Section 2.09(f), an "Associated Person" of any stockholder or beneficial owner means (1) any affiliate or person acting in concert with such stockholder or beneficial owner in relation to the nomination or proposal and (2) each director, officer, employee, general partner or manager of such stockholder or beneficial owner or any such affiliate or person with which such stockholder or beneficial owner is acting in concert in relation to the nomination or proposal.

(g) The foregoing notice requirements of Section 2.09(f) shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with the applicable rules and regulations promulgated under Section 14(a) of the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(h) In addition to the information required by the provisions of this Section 2.09 and the information, written representation and agreement required to be delivered pursuant to Section 2.10, the Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

(i) Notwithstanding anything in these Bylaws to the contrary: (i) no nominations shall be made and no business shall be conducted at any meeting of stockholders except in accordance with the procedures set forth in this Section 2.09; and (ii) unless otherwise required by law, if the Proposing Stockholder does not provide the information required under this Section 2.09 to the Corporation (or any such information provided should be found to be materially inaccurate) or the Proposing Stockholder (or a qualified representative of the Proposing Stockholder) does not appear at the meeting to present the proposed business or nominations, such business or nominations shall not be considered, notwithstanding that proxies in respect of such business or nominations may have been received by the Corporation. For purposes of this Section 2.09, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(j) Except as otherwise provided by law, the chairman of any meeting of stockholders shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.09 and (ii) if any proposed nomination or business was not made or proposed in compliance with this Section 2.09, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

(k) Notwithstanding the foregoing provisions of this Section 2.09, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.09; provided, however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.09, and compliance with the provisions of this Section 2.09 shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 2.09 shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (ii) of the holders of any series of preferred stock to elect directors as provided for or fixed pursuant to any applicable provision of the Certificate of Incorporation.

Section 2.10. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under the applicable sections of Section 2.09 above) to the Secretary at the principal executive offices of the Corporation a written and signed questionnaire (in the form customarily used by the Corporation for its directors) with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person:

(a) is not and will not become a party to (i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”), except as has been disclosed to the Board, or (ii) any Voting Commitment that could limit or interfere with such persons’ ability to comply, if elected as a director of the Corporation, with such person’s fiduciary duties under applicable law;

(b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation, except as has been disclosed to the Board;

(c) is not and will not become a party to any agreement, arrangement or understanding with any person or entity with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of any public company (other than the Corporation), except as has been disclosed to the Board;

(d) in such person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation;

(e) is not and will not serve as a director on the boards of more than two (2) other public companies, unless the Board has determined in advance that such simultaneous service will not impair his or her ability to effectively serve on the Board; and

(f) will promptly tender his or her resignation to the Board in the event that, at any time he or she is serving as a director of the Corporation, (i) any of the above representations are found by the Board to have been false at the time such representation was made or (ii) any of the above representations are found by the Board to have become false thereafter.

ARTICLE III BOARD

Section 3.01. General. The business and affairs of the Corporation shall be managed by the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by stockholders. Directors need not be stockholders of the Corporation.

Section 3.02. Number. The total number of directors shall be not less than three (3) nor more than nine (9), as such shall be fixed within these limits from time to time by the Board.

Section 3.03. Resignation. Any director may resign at any time by delivering his written resignation to the Board, the Chairman or the Secretary. Such resignation shall take effect at the time specified in such notice or, if the time be not specified, upon receipt thereof by the Board, the Chairman or the Secretary, as the case may be.

Section 3.04. Meetings. (a) Annual Meetings. As soon as practicable after each annual election of directors by the stockholders, the Board shall meet for the purpose of organization and the transaction of other business, unless it shall have transacted all such business by written consent pursuant to Section 3.06 hereof.

(b) Other Meetings. Other meetings of the Board shall be held at such times as the Chairman, the Secretary or a majority of the Board shall from time to time determine.

(c) Notice of Meetings. The Secretary shall give written notice to each director of each meeting of the Board, which notice shall state the place, date, time and purpose of such meeting. Notice of each such meeting shall be given to each director, if by mail, addressed to him or her at his or her residence or usual place of business, at least three (3) days before the day on which such meeting is to be held, or shall be sent to him or her at such place by telecopy, facsimile, electronic mail or other form of recorded communication, or be delivered personally or by an internationally recognized courier service or by telephone, not later than the day before the day on which such meeting is to be held. A written waiver of notice, signed by the director entitled to notice, whether before or after the time of the meeting referred to in such waiver, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any meeting of the Board need be specified in any written waiver of notice thereof. Attendance of a director at a meeting of the Board shall constitute a waiver of notice of such meeting, except as provided by law.

(d) Place of Meetings. The Board may hold its meetings at such place or places within or without the State of Delaware as the Board or the Chairman may from time to time determine, or as shall be designated in the respective notices or waivers of notice of such meetings.

(e) Quorum and Manner of Acting. A majority of the total number of directors then in office shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and the vote of a majority of those directors present at any such meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board, except as otherwise expressly required by law, the Certificate of Incorporation or these Bylaws. In the absence of a quorum for any such meeting, a majority of the directors present thereat may adjourn such meeting from time to time until a quorum shall be present.

(f) Organization. At each meeting of the Board, one of the following shall act as chairman of the meeting and preside, in the following order of precedence:

- (1) the Chairman;
- (2) the Chief Executive Officer;
- (3) any director chosen by a majority of the directors present.

The Secretary or, in the case of the Secretary's absence, any person (who shall be an Assistant Secretary (as defined below), if an Assistant Secretary is present) whom the chairman of the meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

Section 3.05. Committees of the Board. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more directors. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another director to act at the meeting in the place of any such absent or disqualified member; provided, however, that any director so appointed must be found by such committee to meet the qualifications, if any, for service on such committee, including any requirement of independence. Any committee of the Board, to the extent provided in the resolution of the Board designating such committee, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; provided, however, that no such committee shall have such power or authority in reference to amending the Certificate of Incorporation (except that such a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board, as provided in Section 151(a) of the General Corporation Law of the State of Delaware (the "General Corporation Law"), fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation under Sections 251, 252, 254, 255, 256, 257, 258, 263 or 264 of the General Corporation Law, recommending to the stockholders the sale, lease or exchange of all or substantially all the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or the revocation of a dissolution or amending these Bylaws; provided further, however, that, unless expressly so provided in the resolution of the Board designating such committee, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law. Each committee of the Board shall keep regular minutes of its proceedings and report the same to the Board when so requested by the Board.

Section 3.06. Directors' Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, without prior notice and without a vote, if a consent in writing or by electronic transmission, setting forth the action so taken, shall be signed by all the members of the Board or such committee and such consent or electronic transmission is filed with the minutes of the proceedings of the Board or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.07. Action by Means of Telephone or Similar Communications Equipment. Any one or more members of the Board, or of any committee thereof, may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

Section 3.08. Compensation. Unless otherwise restricted by the Certificate of Incorporation, the Board may determine the compensation of directors. In addition, as determined by the Board, directors may be reimbursed by the Corporation for their expenses, if any, in the performance of their duties as directors. No such compensation or reimbursement shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

ARTICLE IV OFFICERS

Section 4.01. Officers. The officers of the Corporation shall be chosen by the Board and may include the Chief Executive Officer, a president (the "President"), a chief financial officer (the "Chief Financial Officer"), a secretary (the "Secretary") and a treasurer (the "Treasurer"). Officers of the Corporation may include one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers (each as defined below) and such other officers as the Board may establish. Any two or more offices may be held by the same person.

Section 4.02. Authority and Duties. All officers shall have such authority and perform such duties in the management of the Corporation as may be provided in these Bylaws or, to the extent not so provided, by resolution of the Board.

Section 4.03. Term of Office, Resignation and Removal. (a) Each officer shall be appointed by the Board and shall hold office for such term as may be determined by the Board. Each officer shall hold office until such officer's successor has been appointed and qualified or such officer's earlier death or resignation or removal in the manner hereinafter provided. The Board may require any officer to give security for the faithful performance of such officer's duties.

(b) Any officer may resign at any time by giving written notice to the Board, the Chairman, the Chief Executive Officer or the Secretary. Such resignation shall take effect at the time specified in such notice or, if the time be not specified, upon receipt thereof by the Board, the Chairman, the Chief Executive Officer or the Secretary, as the case may be.

(c) All officers and agents appointed by the Board shall be subject to removal, with or without cause, at any time by the Board.

Section 4.04. Vacancies. Any vacancy occurring in any office of the Corporation, for any reason, shall be filled by action of the Board. Unless earlier removed pursuant to Section 4.03 hereof, any officer appointed by the Board to fill any such vacancy shall serve only until such time as the unexpired term of such officer's predecessor expires unless reappointed by the Board.

Section 4.05. The Chairman. The Chairman shall have the power to call special meetings of stockholders, to call special meetings of the Board and, if present, to preside at all meetings of stockholders and all meetings of the Board. The Chairman shall perform all duties incident to the office of Chairman of the Board and all such other duties as may from time to time be assigned to the Chairman by the Board or these Bylaws.

Section 4.06. The Chief Executive Officer. The Chief Executive Officer shall have general and active management and control of the business and affairs of the Corporation, subject to the control of the Board, and shall see that all orders and resolutions of the Board are carried into effect. The Chief Executive Officer shall perform all duties incident to the office of the Chief Executive Officer and all such other duties as may from time to time be assigned to the Chief Executive Officer by the Board or these Bylaws.

Section 4.07. The President. The President, subject to the authority of the Chief Executive Officer, shall have primary responsibility for, and authority with respect to, the management of the day-to-day business affairs of the Corporation, to the extent prescribed by the Chief Executive Officer. The President shall perform all duties incident to the office of President and all such other duties as may from time to time be assigned to the President by the Board, the Chief Executive Officer or these Bylaws.

Section 4.08. Vice Presidents. Vice Presidents of the Corporation ("Vice Presidents"), if any, in order of their seniority or in any other order determined by the Board, shall generally assist the President and perform such other duties as the Board, the Chief Executive Officer or the President shall prescribe and, in the absence or disability of the President, shall perform the duties and exercise the powers of the President.

Section 4.09. The Secretary. The Secretary of the Corporation shall, to the extent practicable, attend all meetings of the Board and all meetings of stockholders and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform the same duties for any committee of the Board when so requested by such committee. The Secretary shall give or cause to be given notice of all meetings of stockholders and of the Board, shall perform such other duties as may be prescribed by the Board, the Chairman and the Chief Executive Officer and shall act under the supervision of the Chairman. The Secretary shall keep in safe custody the seal of the Corporation and affix the same to any instrument that requires that the seal be affixed to it and which shall have been duly authorized for signature in the name of the Corporation, and when so affixed, the seal shall be attested by the Secretary's signature or by the signature of the Treasurer of the Corporation or an Assistant Secretary or Assistant Treasurer of the Corporation. The Secretary shall keep in safe custody the certificate books and stockholder records and such other books and records of the Corporation as the Board, the Chairman or the Chief Executive Officer may direct and shall perform all other duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Board, the Chairman or the Chief Executive Officer.

Section 4.10. Assistant Secretaries. Assistant Secretaries of the Corporation ("Assistant Secretaries"), if any, in order of their seniority or in any other order determined by the Board, shall generally assist the Secretary and perform such other duties as the Board or the Secretary shall prescribe and, in the absence or disability of the Secretary, shall perform the duties and exercise the powers of the Secretary.

Section 4.11. Chief Financial Officer. The Chief Financial Officer shall be the principal financial officer of the Corporation and shall have such powers and perform such duties as may be assigned by the Board, the Chairman or the Chief Executive Officer.

Section 4.12. The Treasurer. The Treasurer shall have the care and custody of all the funds of the Corporation and shall deposit such funds in such banks or other depositories as the Board, or any officer or officers, or any officer and agent jointly, duly authorized by the Board, shall, from time to time, direct or approve. The Treasurer shall disburse the funds of the Corporation under the direction of the Board and the Chief Executive Officer. The Treasurer shall keep a full and accurate account of all moneys received and paid on account of the Corporation and shall render a statement of the Treasurer's accounts whenever the Board, the Chairman or the Chief Executive Officer shall so request. The Treasurer shall perform all other necessary actions and duties in connection with the administration of the financial affairs of the Corporation and shall generally perform all the duties usually appertaining to the office of treasurer of a corporation. When required by the Board, the Treasurer shall give bonds for the faithful discharge of the Treasurer's duties in such sums and with such sureties as the Board shall approve.

Section 4.12. Assistant Treasurers. Assistant Treasurers of the Corporation ("Assistant Treasurers"), if any, in order of their seniority or in any other order determined by the Board, shall generally assist the Treasurer and perform such other duties as the Board or the Treasurer shall prescribe and, in the absence or disability of the Treasurer, shall perform the duties and exercise the powers of the Treasurer.

ARTICLE V

CHECKS, DRAFTS, NOTES AND PROXIES

Section 5.01. Checks, Drafts and Notes. All checks, drafts and other orders for the payment of money, notes and other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall be determined, from time to time, by resolution of the Board.

Section 5.02. Execution of Proxies. The Chairman, the Chief Executive Officer, the President or any Vice President may authorize, from time to time, the execution and issuance of proxies to vote shares of stock or other securities of other corporations held of record by the Corporation and the execution of consents to action taken or to be taken by any such corporation. All such proxies and consents, unless otherwise authorized by the Board, shall be signed in the name of the Corporation by the Chairman, the Chief Executive Officer, the President or any Vice President.

ARTICLE VI

SHARES AND TRANSFERS OF SHARES

Section 6.01. Certificates Evidencing Shares. Shares may be evidenced by certificates in such form or forms as shall be approved by the Board. Certificates shall be issued in consecutive order and shall be numbered in the order of their issue and shall be signed by the Chairman, the President or any Vice President and by the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer. If such a certificate is manually signed by one such officer, any other signature on the certificate may be a facsimile. In the event any such officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to hold such office or to be employed by the Corporation before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such officer had held such office on the date of issue.

Section 6.02. Stock Ledger. A stock ledger in one or more counterparts shall be kept by the Secretary, in which shall be recorded the name and address of each person, corporation or other entity owning the shares evidenced by each certificate evidencing shares issued by the Corporation, the number of shares evidenced by each such certificate, the date of issuance thereof and, in the case of cancellation, the date of cancellation. Except as otherwise expressly required by law, the person in whose name shares stand on the stock ledger of the Corporation shall be deemed the owner and recordholder of such shares for all purposes.

Section 6.03. Transfers of Shares. Registration of transfers of shares shall be made only in the stock ledger of the Corporation upon request of the registered holder of such shares, or of his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, and upon the surrender of the certificate or certificates evidencing such shares properly endorsed or accompanied by a stock power duly executed, together with such proof of the authenticity of signatures as the Corporation may reasonably require.

Section 6.04. Addresses of Stockholders. Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to such stockholder, and, if any stockholder shall fail to so designate such an address, corporate notices may be served upon such stockholder by mail directed to the mailing address, if any, as the same appears in the stock ledger of the Corporation or at the last known mailing address of such stockholder.

Section 6.05. Lost, Destroyed and Mutilated Certificates. Each recordholder of shares shall promptly notify the Corporation of any loss, destruction or mutilation of any certificate or certificates evidencing any share or shares of which such recordholder is the recordholder. The Board may, in its discretion, cause the Corporation to issue a new certificate in place of any certificate theretofore issued by it and alleged to have been mutilated, lost, stolen or destroyed, upon the surrender of the mutilated certificate or, in the case of loss, theft or destruction of the certificate, upon satisfactory proof of such loss, theft or destruction, and the Board may, in its discretion, require the recordholder of the shares evidenced by the lost, stolen or destroyed certificate or such recordholder's legal representative to give the Corporation a bond sufficient to indemnify the Corporation against any claim made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 6.06. Regulations. The Board may make such other rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates evidencing shares.

Section 6.07. Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to, or to dissent from, corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other such action. A determination of the stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any postponement or adjournment of such meeting; provided, however, that the Board may fix a new record date for the postponed or adjourned meeting.

ARTICLE VII SEAL

Section 7.01. Seal. The Board may approve and adopt a corporate seal, which shall be in the form of a circle and shall bear the full name of the Corporation, the year of its incorporation and the words "Corporate Seal Delaware".

ARTICLE VIII FISCAL YEAR

Section 8.01. Fiscal Year. The fiscal year of the Corporation shall end on the thirty-first day of December of each year unless changed by resolution of the Board.

ARTICLE IX FORUM AND VENUE

Section 9.01. Forum and Venue. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders; or (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the certificate of incorporation or the bylaws of the Corporation; or (iv) any action asserting a claim governed by the internal affairs doctrine; in each case subject to said court having personal jurisdiction over the indispensable parties named as defendants therein. If any action the subject matter of which is within the scope of this Section 9.01 is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to: (x) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce this Section 9.01 (an "Enforcement Action"); and (y) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 9.01.

**ARTICLE X
AMENDMENTS**

Section 10.01. Amendments. No Bylaw (including these Bylaws) may be altered, amended or repealed except by the requisite vote of the Board or the stockholders pursuant to the Certificate of Incorporation.

**ARTICLE XI
CERTAIN DEFINITIONS**

Section 11.01. Certain Definitions. As used in these Bylaws, the following terms shall have the meanings indicated in this Section 11.01:

(a) “Public announcement” shall mean an announcement: (i) made by a press release posted on the Corporation’s website or reported by the Dow Jones News Service, Associated Press or other national news service, or (ii) in a document publicly filed by the Corporation with the Securities and Exchange Commission;

(b) “Business day” shall mean any day other than a Saturday, Sunday or a day on which banking institutions in New York, New York are generally authorized or obligated by law or executive order to close.

(c) “Close of business” on any given date shall mean 5:00 p.m., New York City time on such date, or, if such date is not a business day, 5:00 p.m. New York City time on the next succeeding business day.

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AeroClean Technologies, Inc.
10455 Riverside Drive
Palm Beach Gardens, FL 33410

November 29, 2021

Ladies and Gentlemen:

We are acting as counsel to AeroClean Technologies, Inc., a Delaware corporation (the **Company**), in connection with the preparation and filing with the Securities and Exchange Commission (the **Commission**) of a registration statement on Form S-8 (as amended from time to time, the **Registration Statement**), under the Securities Act of 1933, as amended (the **Securities Act**), relating to 1,802,273 shares of common stock (the **Shares**), par value \$0.01 per share, of the Company, issuable pursuant to the AeroClean Technologies, Inc. 2021 Incentive Award Plan, the AeroClean Technologies, Inc. Employee Stock Purchase Plan and the AeroClean Technologies, Inc. Non-Employee Directors Stock and Deferred Compensation Plan (collectively, the **Plans**).

This opinion is confined to the General Corporation Law of the State of Delaware, as currently in effect. Accordingly, we express no opinion herein with regard to any other laws. The opinion expressed herein is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein. We do not undertake to advise you of changes in law or facts that may come to our attention after the date of this letter.

We have examined and have relied as to matters of fact upon such corporate and other records, agreements, documents and other instruments and certificates or comparable documents of public officials and of officers and representatives of the Company and such other persons, and we have made such other investigations, as we have deemed relevant and necessary as a basis for the opinion expressed below.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals and the conformity with authentic originals of all documents submitted to us as copies. As to any facts material to the opinion expressed herein that we did not independently establish or verify, we have relied, without independent verification, upon oral or written statements and representations of public officials, officers and other representatives of the Company. We have also assumed the due authorization, execution and delivery of all documents by all persons other than the Company where due authorization, execution and delivery are prerequisites to the effectiveness thereof. We have also assumed that the individual grants or awards under the Plans have been duly authorized by all necessary corporate action and duly granted or awarded and exercised in accordance with the requirements of law and the Plans (and the agreements and awards duly adopted hereunder and in accordance therewith).

Based upon the foregoing, and subject to limitations, qualifications and assumptions set forth herein, we are of the opinion that the Shares have been authorized by the Company and, when the Shares are issued by the Company in accordance with the terms of the Plans and the applicable award agreements pursuant to which the awards related to the Shares are made, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion with the Commission as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Sincerely yours,

/s/ Freshfields Bruckhaus Deringer US LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-8 of our report dated August 6, 2021, with respect to the financial statements of AeroClean Technologies, Inc., (formerly known as AeroClean Technologies, LLC) (the “Company”) included in the Offering Circular dated November 23, 2021 (File No. 024-11650). Our report includes an explanatory paragraph about the existence of substantial doubt concerning the Company’s ability to continue as a going concern.

/s/ CITRIN COOPERMAN & COMPANY, LLP

New York, New York
November 29, 2021

**AEROCLEAN TECHNOLOGIES, INC.
2021 DEFERRED COMPENSATION PLAN**

**Effective
January 1, 2022**

CONTENTS

CLAUSE	PAGE
ARTICLE I Establishment and Purpose	1
ARTICLE II Definitions	1
ARTICLE III Eligibility and Participation	9
ARTICLE IV Deferrals	9
ARTICLE V Company Contributions	12
ARTICLE VI Benefits	13
ARTICLE VII Modifications to Payment Schedules	16
ARTICLE VIII Valuation of Account Balances; Investments	16
ARTICLE IX Administration	17
ARTICLE X Amendment and Termination	18
ARTICLE XI Informal Funding	19
ARTICLE XII Claims	20
ARTICLE XIII General Provisions	20

ARTICLE I
Establishment and Purpose

AeroClean Technologies, Inc. (the “Company”) hereby adopts the AeroClean Technologies, Inc. 2021 Deferred Compensation Plan (the “Plan”), effective November 23, 2021.

The purpose of the Plan is to attract and retain key Employees by providing Participants with an opportunity to defer receipt of a portion of their salary, bonus and other specified Compensation. The Plan is not intended to meet the qualification requirements of Code Section 401(a) but is intended to meet the requirements of Code Section 409A and shall be operated, construed and administered accordingly.

The Plan constitutes an unsecured promise by a Participating Employer to pay benefits in the future. Participants in the Plan shall have the status of general unsecured creditors of the Company or the Adopting Employer, as applicable. Each Participating Employer shall be solely responsible for payment of the benefits of its Employees and their Beneficiaries. The Plan is unfunded for federal tax purposes and is intended to be an unfunded arrangement for Eligible Employees who are part of a select group of management or highly compensated Employees of the Employer within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. Any amounts set aside to defray the liabilities assumed by the Company or an Adopting Employer will remain the general assets of the Company or the Adopting Employer and shall remain subject to the claims of the Company’s or the Adopting Employer’s creditors until such amounts are distributed to the Participants.

ARTICLE II
Definitions

- 2.1 Account. Account means a bookkeeping account maintained by the Committee to record the payment obligation of a Participating Employer to a Participant as determined under the terms of the Plan. The Committee may maintain an Account to record the total obligation to a Participant and component Accounts to reflect amounts payable at different times and in different forms. Reference to an Account means any such Account established by the Committee, as the context requires. Accounts are intended to constitute unfunded obligations within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA.
- 2.2 Account Balance. Account Balance means, with respect to any Account, the total payment obligation owed to a Participant from such Account as of the most recent Valuation Date.
- 2.3 Adopting Employer. Adopting Employer means an Affiliate who, with the consent of the Company, has adopted the Plan for the benefit of its eligible employees.
- 2.4 Affiliate. Affiliate means a corporation, trade or business that, together with the Company, is treated as a single employer under Code Section 414(b) or (c).
- 2.5 Beneficiary. Beneficiary means a natural person, estate or trust designated by a Participant to receive payments to which a Beneficiary is entitled in accordance with provisions of the Plan. The Participant’s spouse, if living, otherwise the Participant’s estate, shall be the Beneficiary if: (i) the Participant has failed to properly designate a Beneficiary or (ii) all designated Beneficiaries have predeceased the Participant.
-

A former spouse shall have no interest under the Plan, as Beneficiary or otherwise, unless the Participant designates such person as a Beneficiary after dissolution of the marriage, except to the extent provided under the terms of a domestic relations order as described in Code Section 414(p)(1)(B).

2.6 Business Day. Business Day means each day on which the Nasdaq Global Market is open for business.

2.7 Cause. Cause shall have the meaning ascribed thereto in the Participant's employment agreement, offer letter or similar employment contract. If the Participant is not party to an employment agreement, offer letter or similar employment contract, Cause shall occur: (i) upon the Participant entering a plea of guilty or no-contest with respect to, or being convicted by a court of competent jurisdiction of, (x) any felony, whether or not involving the Company or (y) another crime involving dishonesty or moral turpitude or that could reflect negatively on the Company or otherwise impede its operations; (ii) if the Participant breaches a duty of loyalty owed to the Company or, as a result of the Participant's gross negligence, breaches a duty of care owed to Company; (iii) if the Participant fails or refuses to perform any of the Participant's material employment duties in any respect, after the Participant being given written notice by the Company of such failure or refusal, and his or her failure to cure the same within 30 calendar days of receipt of such notice; (iv) the Participant's breach of a written policy of the Company or the rules of any governmental or regulatory body, after the Participant being given written notice by the Company of such breach, and his or her failure to cure the same within 30 calendar days of receipt of such notice; (v) the Participant engaging in any misconduct, negligence, act of dishonesty, violence or threat of violence (including any violation of securities laws) that is injurious to the Company.

2.8 Change in Control. Change in Control means, with respect to a Participating Employer that is organized as a corporation, any of the following events: (i) a change in the ownership of the Participating Employer, (ii) a change in the effective control of the Participating Employer or (iii) a change in the ownership of a substantial portion of the assets of the Participating Employer.

For purposes of this Section, a "change in the ownership" of the Participating Employer occurs on the date on which any one person, or more than one person acting as a group, acquires ownership of stock of the Participating Employer that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Participating Employer. A "change in the effective control" of the Participating Employer occurs on the date on which either: (i) a person, or more than one person acting as a group, acquires ownership of stock of the Participating Employer possessing 50% or more of the total voting power of the stock of the Participating Employer, taking into account all such stock acquired during the 12-month period ending on the date of the most recent acquisition, or (ii) a majority of the members of the Participating Employer's Board of Directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of such Board of Directors prior to the date of the appointment or election, but only if no other corporation is a majority shareholder of the Participating Employer. A "change in the ownership of a substantial portion of assets" occurs on the date on which any one person, or more than one person acting as a group, other than a person or group of persons that is related to the Participating Employer, acquires assets from the Participating Employer that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Participating Employer immediately prior to such acquisition or acquisitions, taking into account all such assets acquired during the 12-month period ending on the date of the most recent acquisition.

An event constitutes a Change in Control with respect to a Participant only if the Participant performs services for the Participating Employer that has experienced the Change in Control, or the Participant's relationship to the affected Participating Employer otherwise satisfies the requirements of Treasury Regulation Section 1.409A- 3(i)(5)(ii).

Notwithstanding anything to the contrary herein, with respect to a Participating Employer that is a partnership, Change in Control means only a change in the ownership of the partnership or a change in the ownership of a substantial portion of the assets of the partnership, and the provisions set forth above respecting such changes relative to a corporation shall be applied by analogy.

The determination as to the occurrence of a Change in Control shall be based on objective facts and in accordance with the requirements of Code Section 409A.

2.9 Claimant. Claimant means a Participant or Beneficiary filing a claim under Article XII of this Plan.

2.10 Code. Code means the Internal Revenue Code of 1986, as amended from time to time and the regulations and guidance promulgated thereunder.

2.11 Code Section 409A. Code Section 409A means section 409A of the Code, and the regulations and guidance promulgated thereunder.

2.12 Committee. Committee means the committee appointed by the Board of Directors of the Company (or the appropriate committee of such board) to administer the Plan. If no designation is made, the Chief Executive Officer of the Company or his delegate shall have and exercise the powers of the Committee.

2.13 Company. Company means AeroClean Technologies, Inc.

2.14 Company Contribution. Company Contribution generally means a credit by a Participating Employer to a Participant's Retirement Account(s) in accordance with the provisions of Article V of the Plan. Company Contributions are credited at the sole discretion of the Participating Employer and the fact that a Company Contribution is credited in one year shall not obligate the Participating Employer to continue to make such Company Contribution in subsequent years. Unless the context clearly indicates otherwise, a reference to Company Contribution shall include Earnings attributable to such contribution.

- 2.15 Company Contribution Retirement Account. Company Contribution Retirement Account means an Account which may be established by the Committee to record amounts of specified Company Contributions that are separately tracked and payable to a Participant upon Separation from Service in a separate form of payment elected by the Participant for the Company Contribution Retirement Account. A separate Company Contribution Retirement Account may be established for each year's specified Company Contributions, provided that any Company Contribution Retirement Accounts with identical Payment Schedules may be combined.
- 2.16 Compensation. Compensation means that portion of a Participant's base salary, bonus, commission, and such other compensation (if any) approved by the Committee from time to time as Compensation that may be deferred under this Plan. Compensation shall not include any compensation that has been previously deferred under this Plan or any other arrangement subject to Code Section 409A. Compensation approved for Deferral may be reduced by the Committee as necessary so that it does not exceed 100% of the Compensation of the Participant remaining after deduction of all required income and employment taxes, employee benefit deductions, and other deductions required by law.
- 2.17 Compensation Deferral Agreement. Compensation Deferral Agreement means an agreement between a Participant and a Participating Employer that specifies: (i) the amount of each component of Compensation that the Participant has elected to defer to the Plan in accordance with the provisions of Article IV, and (ii) the Payment Schedule applicable to one or more Accounts. The Committee may permit different deferral amounts for each component of Compensation and may establish a minimum or maximum deferral amount for each such component. Unless otherwise specified by the Committee in the Compensation Deferral Agreement, Participants may defer up to 75% of their base salary and up to 100% of other types of Compensation for a Plan Year. A Compensation Deferral Agreement may also specify the investment allocation described in Section 8.4.
- 2.18 Death Benefit. Death Benefit means the benefit payable under the Plan to a Participant's Beneficiary(ies) upon the Participant's death as provided in Section 6.1 of the Plan.
- 2.19 Deferral. Deferral means a credit to a Participant's Account(s) that records that portion of the Participant's Compensation that the Participant has voluntarily elected to defer to the Plan in accordance with the provisions of Article IV. Unless the context of the Plan clearly indicates otherwise, a reference to Deferrals includes the amount of Deferrals credited to an Account and any Earnings attributable to such Deferrals.

Deferrals shall be calculated with respect to the gross Compensation payable to the Participant prior to any deductions or withholdings except as provided in Plan Section 2.14. Changes to payroll withholdings that affect the amount of Compensation being deferred to the Plan shall be allowed only to the extent permissible under Code Section 409A.

- 2.20 Disability. Disability means that the Participant, because of physical or mental disability or incapacity, is unable to perform the Participant's employment duties for an aggregate of 180 working days during any 12-month period. All disputes arising under this Plan regarding the Participant's disability or incapacity shall be determined by a reputable physician, selected by the Company at the time such dispute arises, whose decision shall be conclusively binding.
- 2.21 Earnings. Earnings mean a positive or negative adjustment to the value of an Account, based upon the allocation of the Account by the Participant among deemed investment options in accordance with Article VIII.
- 2.22 Effective Date. Effective Date means January 1, 2022.
- 2.23 Eligible Employee. Eligible Employee means a member of a "select group of management or highly compensated employees" of a Participating Employer within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA, as determined by the Committee from time to time.
- 2.24 Employee. Employee means a common-law employee of an Employer.
- 2.25 Employer. Employer means, with respect to Employees it employs, the Company and each Affiliate.
- 2.26 ERISA. ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time.
- 2.27 Fiscal Year Compensation. Fiscal Year Compensation means Compensation earned during one or more consecutive fiscal years of a Participating Employer, all of which is paid after the last day of such fiscal year or years.
- 2.28 Incumbent Board. Incumbent Board means the Board of Directors of the Company as constituted immediately prior to the consummation of a Change in Control.
- 2.29 Participant. Participant means an Eligible Employee who (i) has made a valid Deferral election that has been accepted by the Committee, (ii) has received a Company Contribution pursuant to Article V and (iii) any other person with an Account Balance greater than zero, regardless of whether such individual continues to be an Eligible Employee. A Participant's continued participation in the Plan shall be governed by Section 3.2 of the Plan.
- 2.30 Participating Employer. Participating Employer means the Company and each Adopting Employer.
- 2.31 Payment Schedule. Payment Schedule means the date as of which payment of an Account under the Plan will commence and the form in which payment of such Account will be made.

- 2.32 Performance-Based Compensation. Performance-Based Compensation means Compensation where the amount of, or entitlement to, the Compensation is contingent on the satisfaction of pre-established organizational or individual performance criteria relating to a performance period of at least 12 consecutive months. Organizational or individual performance criteria are considered pre-established if established in writing by not later than 90 days after the commencement of the period of service to which the criteria relate, provided that the outcome is substantially uncertain at the time the criteria are established. The determination of whether Compensation qualifies as “Performance Based Compensation” will be made in accordance with Treasury Regulation Section 1.409A-1(e) and subsequent guidance.
- 2.33 Plan. Generally, the term Plan means the “AeroClean Technologies, Inc. 2021 Deferred Compensation Plan” as documented herein and as may be amended from time to time hereafter. However, to the extent permitted or required under Code Section 409A, the term Plan may in the appropriate context also mean a portion of the Plan that is treated as a single plan under Treasury Regulation Section 1.409A-1(c), or the Plan or portion of the Plan and any other nonqualified deferred compensation plan or portion thereof that is treated as a single plan under such section.
- 2.34 Plan Year. Plan Year means January 1 through December 31.
- 2.35 Retirement. Retirement means a Participant’s Separation from Service after attainment of age 62 or completion of 10 years of service (or deemed service, as determined by the Committee). For purposes of this Plan, a “year of service” shall be any 12 month period of employment with the Company, or its predecessor, or an affiliate of the Company.
- 2.36 Retirement Benefit. Retirement Benefit means the benefits payable to a Participant from his or her Retirement Accounts under the Plan following the Retirement of the Participant.
- 2.37 Retirement Account. Retirement Account means an Account established by the Committee to record elective Deferrals and Earnings thereon payable to a Participant upon Separation from Service. A separate Retirement Account may be established for each year’s Deferrals, provided that any Retirement Accounts with identical Payment Schedules may be combined. Unless the Participant specifically allocates Deferrals to a Specified Date Account, all elective Deferrals and Company Contributions other than specified Company Contributions separately allocated to a Company Contribution Retirement Account shall be allocated to a Retirement Account on behalf of the Participant.
- 2.38 Separation from Service. Separation from Service means an Employee’s termination of employment with the Employer. Whether a Separation from Service has occurred shall be determined by the Committee in accordance with Code Section 409A.

Except in the case of an Employee on a bona fide leave of absence as provided below, an Employee is deemed to have incurred a Separation from Service if the Employer and the Employee reasonably anticipate that the level of services to be performed by the Employee after a date certain would be reduced to 20% or less of the average services rendered by the Employee during the immediately preceding 36-month period (or the total period of employment, if less than 36 months), disregarding periods during which the Employee was on a bona fide leave of absence.

An Employee who is absent from work due to military leave, sick leave, or other bona fide leave of absence shall incur a Separation from Service on the first date immediately following the later of: (i) the six month anniversary of the commencement of the leave, or (ii) the expiration of the Employee's right, if any, to reemployment under statute or contract. Notwithstanding the preceding, however, an Employee who is absent from work due to a physical or mental impairment that is expected to result in death or last for a continuous period of at least six months and that prevents the Employee from performing the duties of his or her position of employment or a similar position shall incur a Separation from Service on the first date immediately following the 29-month anniversary of the commencement of the leave.

For purposes of determining whether a Separation from Service has occurred, the Employer means the Employer as defined in Section 2.25 of the Plan, except that in applying Code Sections 1563(a)(1), (2) and (3) for purposes of determining whether another organization is an Affiliate of the Company under Code Section 414(b), and in applying Treasury Regulation Section 1.414(c)-2 for purposes of determining whether another organization is an Affiliate of the Company under Code Section 414(c), "at least 50 percent" shall be used instead of "at least 80 percent" each place it appears in those sections.

The Committee specifically reserves the right to determine whether a sale or other disposition of substantial assets to an unrelated party constitutes a Separation from Service with respect to a Participant providing services to the seller immediately prior to the transaction and providing services to the buyer after the transaction. Such determination shall be made in accordance with the requirements of Code Section 409A.

2.39 Specified Date Account. Specified Date Account means an Account established by the Committee to record the amounts of each year's elective Deferrals and, if applicable, specified Company Contributions that are payable at a future date as specified in the Participant's Compensation Deferral Agreement. A Specified Date Account may be identified in enrollment materials as an "In-Service Account" or such other name as established by the Committee without affecting the meaning thereof.

2.40 Specified Date Benefit. Specified Date Benefit means the benefits payable to a Participant under the Plan in accordance with Section 6.1(c).

2.41 Specified Employee. Specified Employee means an Employee who, as of the date of his or her Separation from Service, is a "key employee" of the Company or any Affiliate, any stock of which is actively traded on an established securities market or otherwise. An Employee is a key employee if he or she meets the requirements of Code Section 416(i)(1)(A)(i), (ii), or (iii) (applied in accordance with applicable regulations thereunder and without regard to Code Section 416(i)(5)) at any time during the 12-month period ending on the Specified Employee Identification Date. Such Employee shall be treated as a key employee for the entire 12-month period beginning on the Specified Employee Effective Date.

For purposes of determining whether an Employee is a Specified Employee, the compensation of the Employee shall be determined in accordance with the definition of compensation provided under Treasury Regulation Section 1.415(c)-2(d)(3) (wages within the meaning of Code section 3401(a) for purposes of income tax withholding at the source, plus amounts excludible from gross income under Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b), without regard to rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed); provided, however, that, with respect to a nonresident alien who is not a Participant in the Plan, compensation shall not include compensation that is not includible in the gross income of the Employee under Code Sections 872, 893, 894, 911, 931 and 933, provided such compensation is not effectively connected with the conduct of a trade or business within the United States.

Notwithstanding anything in this paragraph to the contrary: (i) if a different definition of compensation has been designated by the Company with respect to another nonqualified deferred compensation plan in which a key employee participates, the definition of compensation shall be the definition provided in Treasury Regulation Section 1.409A-1(i)(2), and (ii) the Company may through action that is legally binding with respect to all nonqualified deferred compensation plans maintained by the Company, elect to use a different definition of compensation.

In the event of corporate transactions described in Treasury Regulation Section 1.409A-1(i)(6), the identification of Specified Employees shall be determined in accordance with the default rules described therein, unless the Employer elects to utilize the available alternative methodology through designations made within the timeframes specified therein.

- 2.42 Specified Employee Identification Date. Specified Employee Identification Date means December 31, unless the Employer has elected a different date through action that is legally binding with respect to all nonqualified deferred compensation plans maintained by the Employer.
- 2.43 Specified Employee Effective Date. Specified Employee Effective Date means the first day of the fourth month following the Specified Employee Identification Date, or such earlier date as is selected by the Committee.
- 2.44 Substantial Risk of Forfeiture. Substantial Risk of Forfeiture means the description specified in Treasury Regulation Section 1.409A-1(d).
- 2.45 Termination Benefit. Termination Benefit means the benefit payable to a Participant under the Plan following the Participant's Separation from Service prior to Retirement.

- 2.46 Unforeseeable Emergency. Unforeseeable Emergency means a severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant's spouse, the Participant's dependent (as defined in Code Section 152, without regard to Section 152(b)(1), (b)(2) and (d)(1)(B)), or a Beneficiary; loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by insurance, for example, as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The types of events which may qualify as an Unforeseeable Emergency may be limited by the Committee.
- 2.47 Valuation Date. Valuation Date means each Business Day.

ARTICLE III

Eligibility and Participation

- 3.1 Eligibility and Participation. An Employee becomes an Eligible Employee upon meeting the criteria for eligibility established by the Committee from time to time and receiving written notification of eligibility from the Committee. An Eligible Employee becomes a Participant upon the earlier to occur of: (i) a credit of Company Contributions under Article V, or (ii) the acceptance by the Committee of a Deferral election made by the Eligible Employee on a timely basis in accordance with Article IV.
- 3.2 Duration. A Participant shall be eligible to defer Compensation and receive allocations of Company Contributions, subject to the terms of the Plan, for as long as such Participant remains an Eligible Employee. A Participant who is no longer an Eligible Employee but has not incurred a Separation from Service may not defer Compensation under the Plan beyond the Plan Year in which he or she became ineligible but may otherwise exercise all of the rights of a Participant under the Plan with respect to his or her Account(s). On and after a Separation from Service, a Participant shall remain a Participant as long as his or her Account Balance is greater than zero (0), and during such time may continue to make allocation elections as provided in Section 8.4. An individual shall cease being a Participant in the Plan when all benefits under the Plan to which he or she is entitled have been paid.

ARTICLE IV

Deferrals

- 4.1 Initial Deferral Elections, Generally.
- (a) Amount, Time and Form of Payment. A Participant may make elective Deferrals of Compensation by submitting a Compensation Deferral Agreement during the enrollment periods established by the Committee and in the manner specified by the Committee, but in any event, in accordance with Section 4.2. A Compensation Deferral Agreement that is not timely filed with respect to a service period or component of Compensation shall be considered void and shall have no effect with respect to such service period or Compensation.

The Participant shall specify on his or her Compensation Deferral Agreement for each Plan Year the amount of elective Deferrals for that Plan Year and whether a portion, or all, of such Deferrals will be paid at Retirement or earlier Separation from Service or on a specified date or dates. If a Deferral amount is identified but no designation regarding time of payment is made, all Deferrals for the Plan Year shall be paid upon Retirement or earlier Separation from Service. A Participant may also specify in his or her Compensation Deferral Agreement the Payment Schedules for amounts deferred to Retirement or to one or more specified dates. If the Payment Schedule is not specified in a Compensation Deferral Agreement, the Payment Schedule shall be a single lump sum.

- (b) Modification Prior to Filing Deadline. A Compensation Deferral Agreement may be revoked or modified by the Plan Administrator or by the Participant. Such modification or revocation must be made in writing by the deadline specified by the Plan Administrator, but in no event later than the latest date available for a specified form of compensation as set forth in Sections 4.2(a)-(g), below.

4.2 Timing Requirements for Compensation Deferral Agreements.

- (a) *First Year of Eligibility.* In the case of the first year in which an Eligible Employee becomes eligible to participate in the Plan, he or she has up to 30 days following his or her initial eligibility to submit a Compensation Deferral Agreement with respect to Compensation to be earned during such year. The Compensation Deferral Agreement described in this paragraph becomes irrevocable upon the end of such 30-day period. The determination of whether an Eligible Employee may file a Compensation Deferral Agreement under this paragraph shall be determined in accordance with the rules of Code Section 409A, including the provisions of Treasury Regulation Section 1.409A-2(a)(7).

A Compensation Deferral Agreement filed under this paragraph applies to Compensation earned on and after the date the Compensation Deferral Agreement becomes irrevocable.

- (b) *Prior Year Election.* Except as otherwise provided in this Section 4.2, Participants may defer Compensation by filing a Compensation Deferral Agreement no later than December 31 of the year prior to the year in which the Compensation to be deferred is earned. A Compensation Deferral Agreement described in this paragraph shall become irrevocable with respect to such Compensation as of January 1 of the year in which such Compensation is earned.

- (c) *Performance-Based Compensation.* Participants may file a Compensation Deferral Agreement with respect to Performance-Based Compensation no later than the date that is six months before the end of the performance period, provided that:
 - (i) the Participant performs services continuously from the later of the beginning of the performance period or the date the criteria are established through the date the Compensation Deferral Agreement is submitted; and
 - (ii) The Compensation is not readily ascertainable as of the date the Compensation Deferral Agreement is filed.

A Compensation Deferral Agreement becomes irrevocable with respect to Performance-Based Compensation as of the day immediately following the latest date for filing such election. Any election to defer Performance-Based Compensation that is made in accordance with this paragraph and that becomes payable as a result of the Participant's death or upon a Change in Control (as defined in Treasury Regulation Section 1.409A-3(i)(5)) prior to the satisfaction of the performance criteria, will be void.

- (d) *Sales Commissions.* Sales commissions (as defined in Treasury Regulation Section 1.409A-2(a)(12)(i)) are considered to be earned by the Participant in the taxable year of the Participant in which the sale occurs. The Compensation Deferral Agreement must be filed before the last day of the year preceding the year in which the sales commissions are earned, and becomes irrevocable after that date.
- (e) *Fiscal Year Compensation.* A Participant may defer Fiscal Year Compensation by filing a Compensation Deferral Agreement no later than the last day of the fiscal year prior to the fiscal year or years in which such Fiscal Year Compensation is earned. The Compensation Deferral Agreement described in this paragraph becomes irrevocable on the first day of the fiscal year or years to which it applies.
- (f) *Short-Term Deferrals.* Compensation that meets the definition of a "short-term deferral" described in Treasury Regulation Section 1.409A-1(b)(4) may be deferred in accordance with the rules of Article VII, applied as if the date the Substantial Risk of Forfeiture lapses is the date payments were originally scheduled to commence, provided, however, that the provisions of Section 7.3 shall not apply to payments attributable to a Change in Control (as defined in Treasury Regulation Section 1.409A-3(i)(5)).
- (g) *Certain Forfeitable Rights.* With respect to a legally binding right to a payment in a subsequent year that is subject to a forfeiture condition requiring the Participant's continued services for a period of at least 12 months from the date the Participant obtains the legally binding right, an election to defer such Compensation may be made on or before the 30th day after the Participant obtains the legally binding right to the Compensation, provided that the election is made at least 12 months in advance of the earliest date at which the forfeiture condition could lapse. The Compensation Deferral Agreement described in this paragraph becomes irrevocable after such 30th day. If the forfeiture condition applicable to the payment lapses before the end of the required service period as a result of the Participant's death or disability (as defined in Treasury Regulation Section 1.409A-3(i)(4)) or upon a Change in Control (as defined in Treasury Regulation Section 1.409A-3(i)(5)), the Compensation Deferral Agreement will be void unless it would be considered timely under another rule described in this Section.

- 4.3 Allocation of Deferrals; Minimum Deferral Period. A Compensation Deferral Agreement may designate a portion of each year's Deferrals for payment on one or more Specified Dates or upon Retirement or earlier Separation from Service. The Committee may establish a minimum Deferral period for the establishment of a Specified Date Account (for example, the third Plan Year following the year Compensation is earned.) and may waive the minimum Deferral period for Specified Date Accounts already in existence at the time of the allocation of a Deferral amount to such Specified Date Account.
- 4.4 Deductions from Pay. The Committee has the authority to determine the payroll practices under which any component of Compensation subject to a Compensation Deferral Agreement will be deducted from a Participant's Compensation.
- 4.5 Vesting. Participant Deferrals shall be 100% vested at all times to the extent the Compensation being deferred is vested pursuant to the terms of any agreement, plan or arrangement pursuant to which the Compensation was granted to the Participant.
- 4.6 Cancellation of Deferrals. The Committee may cancel a Participant's Deferrals: (i) for the balance of the Plan Year in which an Unforeseeable Emergency occurs, (ii) if the Participant receives a hardship distribution under the Employer's qualified 401(k) plan, through the end of the Plan Year in which the six month anniversary of the hardship distribution falls, and (iii) during periods in which the Participant is unable to perform the duties of his or her position or any substantially similar position due to a mental or physical impairment that can be expected to result in death or last for a continuous period of at least six months, provided cancellation occurs by the later of the end of the taxable year of the Participant or the 15th day of the third month following the date the Participant incurs the disability (as defined in this paragraph).

ARTICLE V

Company Contributions

- 5.1 Discretionary Company Contributions. The Participating Employer may, from time to time in its sole and absolute discretion, credit Company Contributions to any Participant in any amount determined by the Participating Employer. Such contributions will be allocated to a Retirement Account or Specified Date Account as determined by the Employer and be payable according to the Payment Schedule applicable to such Account. Deferrals of Compensation in the form of restricted stock awards deferred as restricted stock units shall not be eligible for Company Contributions.
- 5.2 Vesting. Company Contributions described in Section 5.1 above, and the Earnings thereon, shall vest in accordance with the vesting schedule(s) established by the Committee at the time that the Company Contribution is made. Unless otherwise specified by the Committee, Company Contributions will vest in equal installments on January 15th of each of the three (3) years succeeding the year in which the contribution is made. In addition, unless otherwise specified by the Committee at the time the Company Contribution is made, a Participant will fully vest in all Company Contributions upon (i) meeting the requirements of a Retirement, (ii) a Separation from Service by the Company without Cause, (iii) the Participant's death, (iv) a Change in Control and (v) meeting the requirements of a Disability. The Participating Employer may, at any time, in its sole discretion, increase a Participant's vested interest in a Company Contribution (for example, upon death, disability or a Change in Control). The portion of a Participant's Accounts that remains unvested upon his or her Separation from Service after the application of the terms of this Section 5.2 shall be forfeited.

ARTICLE VI
Benefits

6.1 Benefits, Generally. A Participant shall be entitled to the following benefits under the Plan:

- (a) *Retirement Benefit.* Upon the Participant's Separation from Service due to Retirement, he or she shall be entitled to a Retirement Benefit. The Retirement Benefit shall be equal to the sum of all his or her Retirement Account Balances. The Retirement Benefit shall be based on the value of the Retirement Account Balance(s) as of last day of the sixth month following the Participant's Separation from Service and is payable on the first day of the seventh month following the month in which the Separation from Service occurs.
- (b) *Termination Benefit.* Upon the Participant's Separation from Service for reasons other than death or Retirement, he or she shall be entitled to a Termination Benefit. The Termination Benefit shall be equal to the sum of his or her Retirement Account Balances. The Termination Benefit shall be based on the value of the Retirement Account Balance(s) as of last day of the sixth month following the Participant's Separation from Service and is payable on the first day of the seventh month following the month in which the Separation from Service occurs.
- (c) *Specified Date Benefit.* If the Participant has established one or more Specified Date Accounts, he or she shall be entitled to a Specified Date Benefit with respect to each such Specified Date Account. The Specified Date Benefit shall be equal to the Specified Date Account Balance, based on the value of that Account Balance as of the end of the month designated by the Participant at the time the Account was established. Except in the case of an earlier Separation from Service, the Specified Date Benefit will be payable on the first day of the month following the month designated by the Participant. In the event that the Participant incurs a Separation from Service, the remaining balances of any Specified Date Accounts, determined as of the last day of the sixth month following the Participant's Separation from Service, will be paid on the first day of the seventh month following the month in which the Separation from Service occurs.

- (d) *Death Benefit.* In the event of the Participant's death, his or her designated Beneficiary(ies) shall be entitled to a Death Benefit. The Death Benefit shall be equal to the vested portion of the Participant's total Account Balance. The Death Benefit shall be based on the value of the Participant's Accounts as of the end of the month in which death occurred and paid on the first day of the following month in a single lump sum.
- (e) *Unforeseeable Emergency Payments.* A Participant who experiences an Unforeseeable Emergency may submit a written request to the Committee to receive payment of all or any portion of his or her vested Accounts. Whether a Participant or Beneficiary is faced with an Unforeseeable Emergency permitting an emergency payment shall be determined by the Committee based on the relevant facts and circumstances of each case, but, in any case, a distribution on account of Unforeseeable Emergency may not be made to the extent that such emergency is or may be reimbursed through insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not cause severe financial hardship, or by cessation of Deferrals under this Plan. If an emergency payment is approved by the Committee, the amount of the payment shall not exceed the amount reasonably necessary to satisfy the need, taking into account the additional compensation that is available to the Participant as the result of cancellation of deferrals to the Plan, including amounts necessary to pay any taxes or penalties that the Participant reasonably anticipates will result from the payment. The amount of the emergency payment shall be subtracted first from the vested portion of the Participant's Retirement Accounts beginning with the Retirement Accounts with the longest Payment Schedule until depleted and then from the vested Specified Date Accounts, beginning with the Specified Date Account with the latest payment commencement date. Emergency payments shall be paid in a single lump sum within the 90-day period following the date the payment is approved by the Committee.
- (f) *Change in Control Benefit.* Notwithstanding any Payment Schedule in any Compensation Deferral Agreement to the contrary, upon a Change in Control, all Participants shall be entitled to a Change in Control Benefit. The Change in Control Benefit shall be equal to the vested portion of the Participant's total Account Balance. The Change in Control Benefit shall be based on the value of the Participant's Accounts as of the Change in Control and paid in a single lump sum on the first day of the following month in which the Change in Control occurred.

6.2 Form of Payment.

- (a) *Retirement Benefit.* A Participant who is entitled to receive a Retirement Benefit shall receive payment of each Retirement Account in a single lump sum, unless the Participant elects, pursuant to Section 4.2 or Article VII, to have such Retirement Account paid in one of the following alternative forms of payment (i) annual installments over a period of two to fifteen years, or (ii) a lump sum payment of a percentage of the Account Balance in the Retirement Account, with the balance paid in substantially equal annual installments over a period of two to fifteen years.
- (b) *Termination Benefit.* A Participant who is entitled to receive a Termination Benefit shall receive payment of the vested portion of his or her Retirement Accounts in a single lump sum.
- (c) *Specified Date Benefit.* A Specified Date Benefit shall be paid in a single lump sum, unless the Participant elects, pursuant to Section 4.2 or Article VII, to have the Specified Date Account paid in annual installments over a period of two to five years. Regardless of any prior elections, upon a Separation from Service all Specified Date Account Balances shall be paid in a single lump sum pursuant to the valuation and payment rules provided in Section 6.1(c).
- (d) *Death Benefit.* A designated Beneficiary who is entitled to receive a Death Benefit shall receive payment of such benefit in a single lump sum.
- (e) *Change in Control Benefit.* Notwithstanding any Payment Schedule in any Compensation Deferral Agreement to the contrary, upon a Change in Control, a Participant who is entitled to receive a Change in Control Benefit shall receive payment of such benefit in a single lump sum in accordance with Section 6.1(f) above.
- (f) *Small Account Balances.* The Committee shall pay the value of the Participant's Retirement Accounts in a single lump sum if the balance of such Accounts as of the valuation dates for payment of the Retirement Benefit is not greater than twenty-five thousand dollars (\$25,000).
- (g) *Rules Applicable to Installment Payments.* If a Payment Schedule specifies installment payments, annual payments will be made beginning as of the payment commencement date for such installments (e.g., the first day of the seventh month following the month in which the Separation from Service occurs) and shall continue on each anniversary thereof until the number of installment payments specified in the Payment Schedule has been paid. The amount of each installment payment shall be determined by dividing (a) by (b), where (a) equals the Account Balance as of the Valuation Date and (b) equals the remaining number of installment payments. For purposes of Article VII, each series of installment payments will be treated as a single payment.

- 6.3 Acceleration of or Delay in Payments. The Committee may elect to accelerate the time or form of payment of a benefit owed to the Participant hereunder, provided such acceleration is permitted under Treasury Regulation Section 1.409A-3(j)(4). The Committee may also delay the time for payment of a benefit owed to the Participant hereunder, to the extent permitted under Treasury Regulation Section 1.409A-2(b)(7). If the Plan receives a domestic relations order (within the meaning of Code Section 414(p)(1)(B)) directing that all or a portion of a Participant's Accounts be paid to an "alternate payee", any amounts to be paid to the alternate payee(s) shall be paid in a single lump sum.

ARTICLE VII

Modifications to Payment Schedules

- 7.1 Participant's Right to Modify. A Participant may modify a Retirement or Specified Date Payment Schedule with respect to an Account, consistent with the permissible Payment Schedules available under the Plan, provided such modification complies with the requirements of this Article VII.
- 7.2 Time of Election. The date on which a modification election is submitted to the Committee must be at least 12 months prior to the date on which payment is scheduled to commence under the Payment Schedule in effect prior to the modification.
- 7.3 Date of Payment under Modified Payment Schedule. In no event may the date payments are to commence under the modified Payment Schedule be earlier than five years after the date payment would have commenced under the original Payment Schedule. Under no circumstances may a modification election result in an acceleration of payments in violation of Code Section 409A.
- 7.4 Effective Date. A modification election submitted in accordance with this Article VII is revocable up to the latest time a valid election may be filed under Section 7.2 and becomes effective 12 months after such date.
- 7.5 Effect on Accounts. An election to modify a Payment Schedule is specific to the Account or payment event to which it applies, and shall not be construed to affect the Payment Schedules of any other Accounts.

ARTICLE VIII

Valuation of Account Balances; Investments

- 8.1 Valuation. Deferrals shall be credited to appropriate Accounts on the date such Compensation would have been paid to the Participant absent the Compensation Deferral Agreement. Company Contributions shall be credited to the Retirement Account at the times determined by the Committee. Valuation of Accounts shall be performed under procedures approved by the Committee.
- 8.2 Adjustment for Earnings. Each Account will be adjusted to reflect Earnings on each Business Day. Adjustments shall reflect the net earnings, gains, losses, expenses, appreciation and depreciation associated with an investment option for each portion of the Account allocated to such option ("investment allocation").
- 8.3 Investment Options. Investment options will be determined by the Committee. The Committee shall be permitted to add or remove investment options from the Plan menu from time to time, provided that any such additions or removals of investment options shall not be effective with respect to any period prior to the effective date of such change.

8.4 Investment Allocations. A Participant's investment allocation constitutes a deemed, not actual, investment among the investment options comprising the investment menu. At no time shall a Participant have any real or beneficial ownership in any investment option included in the investment menu, nor shall the Participating Employer or any trustee acting on its behalf have any obligation to purchase actual securities as a result of a Participant's investment allocation. A Participant's investment allocation shall be used solely for purposes of adjusting the value of a Participant's Account Balances.

A Participant shall specify an investment allocation for each of his or her Accounts in accordance with procedures established by the Committee. Allocation among the investment options must be designated in increments of 1%. The Participant's investment allocation will become effective on the same Business Day or, in the case of investment allocations received after a time specified by the Committee, the next Business Day.

A Participant may change an investment allocation on any Business Day, both with respect to future credits to the Plan and with respect to existing Account Balances, in accordance with procedures adopted by the Committee. Changes shall become effective on the same Business Day or, in the case of investment allocations received after a time specified by the Committee, the next Business Day, and shall be applied prospectively.

Notwithstanding anything in this Section 8.4 to the contrary, a Participant may not change his or her investment allocation with respect to restricted stock units deferred under the Plan until six months following the date such restricted stock units vest.

8.5 Unallocated Deferrals and Accounts. If the Participant fails to make an investment allocation with respect to an Account, such Account shall be invested in an investment option, the primary objective of which is the preservation of capital, as determined by the Committee.

ARTICLE IX *Administration*

9.1 Plan Administration. This Plan shall be administered by the Committee which shall have discretionary authority to make, amend, interpret and enforce all appropriate rules and regulations for the administration of this Plan and to utilize its discretion to decide or resolve any and all questions, including but not limited to eligibility for benefits and interpretations of this Plan and its terms, as may arise in connection with the Plan. Claims for benefits shall be filed with the Committee and resolved in accordance with the claims procedures in Article XII. All determinations by the Committee shall be made in good faith and in its sole discretion.

The Participating Employer shall, with respect to the Committee identified under this Section: (i) pay all reasonable expenses and fees of the Committee, (ii) indemnify the Committee (including individuals serving as Committee members) against any costs, expenses and liabilities including, without limitation, attorneys' fees and expenses arising in connection with the performance of the Committee's duties hereunder, except with respect to matters resulting from the Committee's gross negligence or willful misconduct, and (iii) supply full and timely information to the Committee on all matters related to the Plan, any rabbi trust, Participants, Beneficiaries and Accounts as the Committee may reasonably require.

- 9.2 Withholding. The Participating Employer shall have the right to withhold from any payment due under the Plan (or with respect to any amounts credited to the Plan) any taxes and other amounts required by law to be withheld in respect of such payment (or credit). Withholdings with respect to amounts credited to the Plan shall be deducted from Compensation that has not been deferred to the Plan.
- 9.3 Indemnification. The Participating Employers shall indemnify and hold harmless each employee, officer, director, agent or organization, to whom or to which are delegated duties, responsibilities, and authority under the Plan or otherwise with respect to administration of the Plan, including, without limitation, the Committee and its agents, against all claims, liabilities, fines and penalties, and all expenses reasonably incurred by or imposed upon him or her or it (including but not limited to reasonable attorneys' fees) which arise as a result of his or her or its actions or failure to act in connection with the operation and administration of the Plan to the extent lawfully allowable and to the extent that such claim, liability, fine, penalty, or expense is not paid for by liability insurance purchased or paid for by the Participating Employer. Notwithstanding the foregoing, the Participating Employer shall not indemnify any person or organization if his or her or its actions or failure to act are due to gross negligence or willful misconduct or for any such amount incurred through any settlement or compromise of any action unless the Participating Employer consents in writing to such settlement or compromise.
- 9.4 Delegation of Authority. In the administration of this Plan, the Committee may, from time to time, employ agents and delegate to them such administrative duties as it sees fit, and may from time to time consult with legal counsel who shall be legal counsel to the Company.
- 9.5 Binding Decisions or Actions. The decision or action of the Committee in respect of any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations thereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

ARTICLE X

Amendment and Termination

- 10.1 Amendment and Termination. The Company may at any time and from time to time amend the Plan or may terminate the Plan as provided in this Article X. Each Participating Employer may also terminate its participation in the Plan. Notwithstanding anything to the contrary, the Plan shall automatically terminate upon a Change in Control.

- 10.2 Amendments. The Company, by action taken by its Board of Directors, may amend or suspend the Plan at any time and for any reason, provided that any such amendment shall not reduce the vested Account Balances of any Participant accrued as of the date of any such amendment or restatement (as if the Participant had incurred a voluntary Separation from Service on such date) or reduce any rights of a Participant under the Plan or other Plan features with respect to Deferrals made prior to the date of any such amendment or restatement without the consent of the Participant. The Board of Directors of the Company may delegate to the Committee the authority to amend the Plan without the consent of Participants or the Board of Directors: (i) to comply with, or take into account changes in, or interpretations or rescissions of, applicable tax laws, securities laws, employment laws, accounting rules or standards and other applicable laws, rules, regulations, guidance, ruling, judicial decision or legal requirement; (ii) to facilitate the administration of the Plan; (iii) to clarify provisions based on the Committee's interpretation of the document; and (iv) to make such other amendments as the Board of Directors may authorize.
- 10.3 Termination. The Company, by action taken by its Board of Directors, may terminate the Plan and pay Participants and Beneficiaries their Account Balances in a single lump sum at any time, to the extent and in accordance with Treasury Regulation. Section 1.409A-3(j)(4)(ix). If a Participating Employer terminates its participation in the Plan, the benefits of affected Employees shall be paid at the time provided in Article VI.
- 10.4 Sections 409A and 457A of the Code Generally. If any provision of the Plan or a Compensation Deferral Agreement would, in the reasonable, good faith judgment of the Committee, result or likely result in the imposition on a Participant, a Beneficiary or any other person of (i) any additional tax, accelerated taxation, interest or penalties under Code Section 409A or (ii) accelerated taxation or penalties under Section 457A of the Code, the Committee may modify the terms of the Plan, the Compensation Deferral Agreement or may take any other such action, without the consent of the Participant, Beneficiary or such other person, in the manner that the Committee may reasonably and in good faith determine to be necessary or advisable to avoid the imposition of such additional tax, accelerated taxation, interest, or penalties or otherwise comply with Sections 409A and 457A of the Code. This Section 10.4 does not create an obligation on the part of the Company to make any modifications and does not guarantee that Account Balances will not be subject to additional taxes, accelerated taxation, interest or penalties under Sections 409A or 457A of the Code.

ARTICLE XI
Informal Funding

- 11.1 General Assets. Obligations established under the terms of the Plan may be satisfied from the general funds of the Participating Employers, or a trust described in this Article XI. No Participant, spouse or Beneficiary shall have any right, title or interest whatever in assets of the Participating Employers. Nothing contained in this Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind, or a fiduciary relationship, between the Participating Employers and any Employee, spouse, or Beneficiary. To the extent that any person acquires a right to receive payments hereunder, such rights are no greater than the right of an unsecured general creditor of the Participating Employer.
- 11.2 Rabbi Trust. A Participating Employer may, in its sole discretion, establish a grantor trust, commonly known as a rabbi trust, as a vehicle for accumulating assets to pay benefits under the Plan. Payments under the Plan may be paid from the general assets of the Participating Employer or from the assets of any such rabbi trust. Payment from any such source shall reduce the obligation owed to the Participant or Beneficiary under the Plan.

ARTICLE XII
Claims

- 12.1 Filing a Claim. Any controversy or claim arising out of or relating to the Plan shall be filed in writing with the Committee which shall make all determinations concerning such claim. Any claim filed with the Committee and any decision by the Committee denying such claim shall be in writing and shall be delivered to the Participant or Beneficiary filing the claim (the "Claimant").
- (a) *In General.* Notice of a denial of benefits will be provided within 90 days of the Committee's receipt of the Claimant's claim for benefits. If the Committee determines that it needs additional time to review the claim, the Committee will provide the Claimant with a notice of the extension before the end of the initial 90-day period. The extension will not be more than 90 days from the end of the initial 90-day period and the notice of extension will explain the special circumstances that require the extension and the date by which the Committee expects to make a decision.
- (b) *Contents of Notice.* If a claim for benefits is completely or partially denied, notice of such denial shall be in writing and shall set forth the reasons for denial in plain language. The notice shall: (i) cite the pertinent provisions of the Plan document, and (ii) explain, where appropriate, how the Claimant can perfect the claim, including a description of any additional material or information necessary to complete the claim and why such material or information is necessary. The claim denial also shall include an explanation of the claims review procedures and the time limits applicable to such procedures, including a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse decision on review.

12.2 Appeal of Denied Claims. A Claimant whose claim has been completely or partially denied shall be entitled to appeal the claim denial by filing a written appeal with a committee designated to hear such appeals (the “Appeals Committee”). A Claimant who timely requests a review of the denied claim (or his or her authorized representative) may review, upon request and free of charge, copies of all documents, records and other information relevant to the denial and may submit written comments, documents, records and other information relevant to the claim to the Appeals Committee. All written comments, documents, records, and other information shall be considered “relevant” if the information: (i) was relied upon in making a benefits determination, (ii) was submitted, considered or generated in the course of making a benefits decision regardless of whether it was relied upon to make the decision, or (iii) demonstrates compliance with administrative processes and safeguards established for making benefit decisions. The Appeals Committee may, in its sole discretion, if it deems appropriate or necessary, decide to hold a hearing with respect to the claim appeal.

- (a) *In General.* Appeal of a denied benefits claim must be filed in writing with the Appeals Committee no later than 60 days after receipt of the written notification of such claim denial. The Appeals Committee shall make its decision regarding the merits of the denied claim within 60 days following receipt of the appeal (or within 120 days after such receipt, in a case where there are special circumstances requiring extension of time for reviewing the appealed claim). If an extension of time for reviewing the appeal is required because of special circumstances, written notice of the extension shall be furnished to the Claimant prior to the commencement of the extension. The notice will indicate the special circumstances requiring the extension of time and the date by which the Appeals Committee expects to render the determination on review. The review will take into account comments, documents, records and other information submitted by the Claimant relating to the claim without regard to whether such information was submitted or considered in the initial benefit determination.
- (b) *Contents of Notice.* If a benefits claim is completely or partially denied on review, notice of such denial shall be in writing and shall set forth the reasons for denial in plain language. The decision on review shall set forth: (i) the specific reason or reasons for the denial, (ii) specific references to the pertinent Plan provisions on which the denial is based, (iii) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records, or other information relevant (as defined above) to the Claimant’s claim, and (iv) a statement describing any voluntary appeal procedures offered by the plan and a statement of the Claimant’s right to bring an action under Section 502(a) of ERISA.

Each Participating Employer shall, with respect to the Committee identified under this Section: (i) pay its proportionate share of all reasonable expenses and fees of the Appeals Committee, (ii) indemnify the Appeals Committee (including individual committee members) against any costs, expenses and liabilities including, without limitation, attorneys’ fees and expenses arising in connection with the performance of the Appeals Committee hereunder, except with respect to matters resulting from the Appeals Committee’s gross negligence or willful misconduct, and (iii) supply full and timely information to the Appeals Committee on all matters related to the Plan, any rabbi trust, Participants, Beneficiaries and Accounts as the Appeals Committee may reasonably require.

- 12.3 Legal Action. A Claimant may not bring any legal action, including commencement of any arbitration, relating to a claim for benefits under the Plan unless and until the Claimant has followed the claims procedures under the Plan and exhausted his or her administrative remedies under such claims procedures. Any such legal action must be commenced within one year of a final determination hereunder with respect to such claim. If a Participant or Beneficiary prevails in a legal proceeding brought under the Plan to enforce the rights of such Participant or any other similarly situated Participant or Beneficiary, in whole or in part, the Participating Employer shall reimburse such Participant or Beneficiary for all legal costs, expenses, attorneys' fees and such other liabilities incurred as a result of such proceedings. If the legal proceeding is brought in connection with a Change in Control, or a "change in control" as defined in a rabbi trust described in Section 11.2, the Participant or Beneficiary may file a claim directly with the trustee for reimbursement of such costs, expenses and fees.
- 12.4 Discretion of Appeals Committee. All interpretations, determinations and decisions of the Appeals Committee with respect to any claim shall be made in its sole discretion, and shall be final and conclusive.
- 12.5 Arbitration.
- (a) *Prior to Change in Control.* If, prior to a Change in Control, any claim or controversy between a Participating Employer and a Participant or Beneficiary is not resolved through the claims procedure set forth in Article XII, such claim shall be submitted to and resolved exclusively by expedited binding arbitration by a single arbitrator. Arbitration shall be conducted in accordance with the following procedures:

The complaining party shall promptly send written notice to the other party identifying the matter in dispute and the proposed remedy. Following the giving of such notice, the parties shall meet and attempt in good faith to resolve the matter. In the event the parties are unable to resolve the matter within 21 days, the parties shall meet and attempt in good faith to select a single arbitrator acceptable to both parties. If a single arbitrator is not selected by mutual consent within ten Business Days following the giving of the written notice of dispute, an arbitrator shall be selected from a list of nine persons each of whom shall be an attorney who is either engaged in the active practice of law or recognized arbitrator and who, in either event, is experienced in serving as an arbitrator in disputes between employers and employees, which list shall be provided by the main office of either JAMS, the American Arbitration Association ("AAA") or the Federal Mediation and Conciliation Service. If, within three Business Days of the parties' receipt of such list, the parties are unable to agree on an arbitrator from the list, then the parties shall each strike names alternatively from the list, with the first to strike being determined by the flip of a coin. After each party has had four strikes, the remaining name on the list shall be the arbitrator. If such person is unable to serve for any reason, the parties shall repeat this process until an arbitrator is selected.

Unless the parties agree otherwise, within 60 days of the selection of the arbitrator, a hearing shall be conducted before such arbitrator at a time and a place agreed upon by the parties. In the event the parties are unable to agree upon the time or place of the arbitration, the time and place shall be designated by the arbitrator after consultation with the parties. Within 30 days of the conclusion of the arbitration hearing, the arbitrator shall issue an award, accompanied by a written decision explaining the basis for the arbitrator's award.

In any arbitration hereunder, the Participating Employer shall pay all administrative fees of the arbitration and all fees of the arbitrator, except that the Participant or Beneficiary may, if he/she/it wishes, pay up to one-half of those amounts. Each party shall pay its own attorneys' fees, costs, and expenses, unless the arbitrator orders otherwise. The prevailing party in such arbitration, as determined by the arbitrator, and in any enforcement or other court proceedings, shall be entitled, to the extent permitted by law, to reimbursement from the other party for all of the prevailing party's costs (including but not limited to the arbitrator's compensation), expenses, and attorneys' fees. The arbitrator shall have no authority to add to or to modify this Plan, shall apply all applicable law, and shall have no lesser and no greater remedial authority than would a court of law resolving the same claim or controversy. The arbitrator shall, upon an appropriate motion, dismiss any claim without an evidentiary hearing if the party bringing the motion establishes that it would be entitled to summary judgment if the matter had been pursued in court litigation.

The parties shall be entitled to discovery as follows: Each party may take no more than three depositions. The Participating Employer may depose the Participant or Beneficiary plus two other witnesses, and the Participant or Beneficiary may depose the Participating Employer, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, plus two other witnesses. Each party may make such reasonable document discovery requests as are allowed in the discretion of the arbitrator.

The decision of the arbitrator shall be final, binding, and non-appealable, and may be enforced as a final judgment in any court of competent jurisdiction.

This arbitration provision of the Plan shall extend to claims against any parent, subsidiary, or affiliate of each party, and, when acting within such capacity, any officer, director, shareholder, Participant, Beneficiary, or agent of any party, or of any of the above, and shall apply as well to claims arising out of state and federal statutes and local ordinances as well as to claims arising under the common law or under this Plan.

Notwithstanding the foregoing, and unless otherwise agreed between the parties, either party may apply to a court for provisional relief, including a temporary restraining order or preliminary injunction, on the ground that the arbitration award to which the applicant may be entitled may be rendered ineffectual without provisional relief.

Any arbitration hereunder shall be conducted in accordance with the Federal Arbitration Act: provided, however, that, in the event of any inconsistency between the rules and procedures of the Act and the terms of this Plan, the terms of this Plan shall prevail.

If any of the provisions of this Section 12.5(a) are determined to be unlawful or otherwise unenforceable, in the whole part, such determination shall not affect the validity of the remainder of this section and this section shall be reformed to the extent necessary to carry out its provisions to the greatest extent possible and to ensure that the resolution of all conflicts between the parties, including those arising out of statutory claims, shall be resolved by neutral, binding arbitration. If a court should find that the provisions of this Section 12.5(a) are not absolutely binding, then the parties intend any arbitration decision and award to be fully admissible in evidence in any subsequent action, given great weight by any finder of fact and treated as determinative to the maximum extent permitted by law.

The parties do not agree to arbitrate any putative class action or any other representative action. The parties agree to arbitrate only the claims(s) of a single Participant or Beneficiary.

- (b) *Upon Change in Control.* If, upon the occurrence of a Change in Control, any dispute, controversy or claim arises between a Participant or Beneficiary and the Participating Employer out of or relating to or concerning the provisions of the Plan, such dispute, controversy or claim shall be finally settled by a court of competent jurisdiction which, notwithstanding any other provision of the Plan, shall apply a de novo standard of review to any determination made by the Company or its Board of Directors, a Participating Employer, the Committee, or the Appeals Committee.

ARTICLE XIII

General Provisions

- 13.1 Assignment. No interest of any Participant, spouse or Beneficiary under this Plan and no benefit payable hereunder shall be assigned as security for a loan, and any such purported assignment shall be null, void and of no effect, nor shall any such interest or any such benefit be subject in any manner, either voluntarily or involuntarily, to anticipation, sale, transfer, assignment or encumbrance by or through any Participant, spouse or Beneficiary. Notwithstanding anything to the contrary herein, however, the Committee has the discretion to make payments to an alternate payee in accordance with the terms of a domestic relations order (as defined in Code Section 414(p)(1)(B)).

The Company may assign any or all of its liabilities under this Plan in connection with any restructuring, recapitalization, sale of assets or other similar transactions affecting a Participating Employer without the consent of the Participant.

- 13.2 No Legal or Equitable Rights or Interest. No Participant or other person shall have any legal or equitable rights or interest in this Plan that are not expressly granted in this Plan.

Participation in this Plan does not give any person any right to be retained in the service of the Participating Employer. The right and power of a Participating Employer to dismiss or discharge an Employee is expressly reserved. The Participating Employers make no representations or warranties as to the tax consequences to a Participant or a Participant's beneficiaries resulting from a deferral of income pursuant to the Plan.

- 13.3 No Employment Contract. Nothing contained herein shall be construed to constitute a contract of employment between an Employee and a Participating Employer.
- 13.4 Notice. Any notice or filing required or permitted to be delivered to the Committee under this Plan shall be delivered in writing, in person, or through such electronic means as is established by the Committee. Notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification. Written transmission shall be sent by certified mail to:

AEROCLEAN TECHNOLOGIES, INC.
ATTN: CORPORATE SECRETARY
10455 RIVERSIDE DRIVE
PALM BEACH GARDENS, FL 33410

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing or hand-delivered, or sent by mail to the last known address of the Participant.

- 13.5 Headings. The headings of Sections are included solely for convenience of reference, and if there is any conflict between such headings and the text of this Plan, the text shall control.
- 13.6 Invalid or Unenforceable Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof and the Committee may elect to construe such invalid or unenforceable provisions in a manner that conforms to applicable law or as if such provisions, to the extent invalid or unenforceable, had not been included.
- 13.7 Lost Participants or Beneficiaries. Any Participant or Beneficiary who is entitled to a benefit from the Plan has the duty to keep the Committee advised of his or her current mailing address. If benefit payments are returned to the Plan or are not presented for payment after a reasonable amount of time, the Committee shall presume that the payee is missing. The Committee, after making such efforts as in its discretion it deems reasonable and appropriate to locate the payee, shall stop payment on any uncashed checks and may discontinue making future payments until contact with the payee is restored.
- 13.8 Facility of Payment to a Minor. If a distribution is to be made to a minor, or to a person who is otherwise incompetent, then the Committee may make such distribution: (i) to the legal guardian, or if none, to a parent of a minor payee with whom the payee maintains his or her residence, or (ii) to the conservator or committee or, if none, to the person having custody of an incompetent payee. Any such distribution shall fully discharge the Committee, the Company, and the Plan from further liability on account thereof.
- 13.9 Governing Law. To the extent not preempted by ERISA, the laws of the State of Delaware shall govern the construction and administration of the Plan.

IN WITNESS WHEREOF, the undersigned executed this Plan as of the 23rd day of November, 2021, to be effective as of the Effective Date.

AeroClean Technologies, Inc.

By:	<u>Ryan Tyler</u>	(Print Name)
Its:	<u>Authorized Agent and Signatory for AeroClean Technologies, Inc.</u>	(Title)

(Signature)	<u>/s/ Ryan Tyler</u>
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[Signature Page – Deferred Compensation Plan]

**AEROCLEAN TECHNOLOGIES, INC.
NON-EMPLOYEE DIRECTORS STOCK**

AND

DEFERRED COMPENSATION PLAN

**AEROCLEAN TECHNOLOGIES, INC.
NON-EMPLOYEE DIRECTORS STOCK
AND
DEFERRED COMPENSATION PLAN**

SECTION 1 PURPOSES AND AUTHORIZED SHARES

The purposes of the AeroClean Technologies, Inc. Non-Employee Directors Stock and Deferred Compensation Plan (the ***Plan***) are to attract, motivate and retain eligible non-employee directors of AeroClean Technologies, Inc. (the ***Company***) who elect to participate in this Plan by offering them opportunities to defer compensation and to encourage directors to increase their stock ownership in the Company. An aggregate number not to exceed 277,273 shares of Common Stock (subject to adjustments contemplated by Section 5.6 hereof) may be delivered pursuant to this Plan.

SECTION 2 DEFINITIONS

Whenever the following terms are used in this Plan, they shall have the meaning specified below unless the context clearly indicates to the contrary:

ACCOUNT or ACCOUNTS means one or more of the Participant's Cash Account(s) or Stock Unit Account(s), as the context requires.

APPLICABLE PERCENTAGE means the percentage of Eligible Compensation subject to deferral or payment in Shares.

AVERAGE FAIR MARKET VALUE means the average of the Fair Market Values of a share of Common Stock during the last ten (10) trading days preceding the applicable Award Date.

AWARD DATE means, in the case of Cash Account deferrals, each date on which cash would otherwise have been paid; in the case of Unit Account deferrals, the last day of each calendar quarter.

BOARD means the Board of Directors of the Company, as constituted from time to time.

CASH ACCOUNT means the bookkeeping account maintained by the Company on behalf of a Participant who elects to defer his or her Compensation in cash pursuant to SECTION 4.

CHANGE IN CONTROL means any of the following events: (i) a change in the ownership of the Company, (ii) a change in the effective control of the Company or (iii) a change in the ownership of a substantial portion of the assets of the Company. For purposes of this Plan, a “change in the ownership” of the Company occurs on the date on which any one person, or more than one person acting as a group, acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company. A “change in the effective control” of the Company occurs on the date on which either: (i) a person, or more than one person acting as a group, acquires ownership of stock of the Company possessing 30% or more of the total voting power of the stock of the Company, taking into account all such stock acquired during the 12-month period ending on the date of the most recent acquisition, or (ii) a majority of the members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of such Board prior to the date of the appointment or election, but only if no other corporation is a majority shareholder of the Company. A “change in the ownership of a substantial portion of assets” occurs on the date on which any one person, or more than one person acting as a group, other than a person or group of persons that is related to the Company, acquires assets from the Company that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions, taking into account all such assets acquired during the 12-month period ending on the date of the most recent acquisition. An event constitutes a Change in Control with respect to the Company only if the Participant performs services for the Company that has experienced the Change in Control, or the Participant’s relationship to the affected Company otherwise satisfies the requirements of Treasury Regulation Section 1.409A- 3(i)(5)(ii). The determination as to the occurrence of a Change in Control shall be based on objective facts and in accordance with the requirements of Code Section 409A.

CODE means the Internal Revenue Code of 1986, as amended from time to time, and the applicable guidance, rulings and regulations promulgated thereunder.

COMMON STOCK means the Common Stock of the Company, par value \$0.01 per share, subject to adjustment pursuant to Section 5.6 hereof.

COMMITTEE means the Board or a Committee of the Board acting under delegated authority from the Board.

COMPANY means AeroClean Technologies, Inc., a Delaware corporation, and its successors and assigns.

DIVIDEND EQUIVALENT means the amount of cash dividends or other cash distributions paid by the Company on that number of shares of Common Stock that is equal to the number of Stock Units then credited to a Participant’s Stock Unit Account on the applicable measurement date, which amount shall be allocated as additional Stock Units to the Participant’s Stock Unit Account, as provided in Section 5.3 hereof.

EARNINGS mean those earnings that are allocable to the Participant’s Cash Accounts in such manner as the Committee shall reasonably determine.

EFFECTIVE DATE means January 1, 2022.

ELIGIBLE COMPENSATION means retainer and/or meeting fees for services as a director, as established by the Board from time to time, which may be payable in cash or Shares.

ELIGIBLE DIRECTOR means a member of the Board who is not an officer or employee of the Company or a subsidiary and who is compensated in the capacity as a director.

EXCHANGE ACT means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder.

FAIR MARKET VALUE means on any date the average of the high and low prices of the Common Stock, as published in The Wall Street Journal or otherwise reliably reported, of the principal securities exchange or market on which the Common Stock is so listed, admitted to trade or quoted or, if there is no trading of the Common Stock on such date, then the average of the high and low prices of the Common Stock as quoted on the next preceding date on which there was trading in such shares. If the Common Stock is not so listed, admitted or quoted, the Committee may designate such other exchange, market or source of data as it deems appropriate for determining such value of purposes of this Plan.

PARTICIPANT means an Eligible Director who elects to participate in this Plan or otherwise has an Account balance under this Plan.

PLAN means the AeroClean Technologies, Inc. Non-Employee Directors Stock and Deferred Compensation Plan, as amended from time to time.

SHARES means shares of Common Stock.

STOCK UNIT OR UNIT means a non-voting unit of measurement that is deemed for bookkeeping and payment purposes to represent the right to receive one share of Common Stock of the Company pursuant to the terms of this Plan.

STOCK UNIT ACCOUNT means the bookkeeping account maintained by the Company on behalf of each Participant that is credited with Stock Units in accordance with Section 5.2.

YEAR means each calendar year during the term of this Plan.

SECTION 3 PARTICIPATION

Each Eligible Director may elect to defer under and subject to SECTION 4 of this Plan his or her Eligible Compensation for any Year.

SECTION 4 SHARE OR DEFERRAL ELECTIONS

4.1 TIME AND TYPES OF ELECTIONS. On or before December 31 immediately preceding each succeeding Year (or, in the case of a person who first becomes an Eligible Director during the Year, within 30 days after becoming an Eligible Director, but only with respect to Eligible Compensation that is designated as payable to the Eligible Director in the form of cash and that is earned following the Eligible Director's applicable election date), each Eligible Director may make the following two irrevocable elections, subject to Section 4.2 hereof:

(1) To the extent that Participant's Eligible Compensation is designated as payable to the Participant in the form of cash, the Company may, in its sole discretion, permit a Participant to elect, in lieu of cash:

(a) to receive such Eligible Compensation currently in Shares;

(b) to defer such Eligible Compensation in a Cash Account;

(c) to defer such Eligible Compensation in a Stock Unit Account; or

(d) to select one or more of the preceding payment or deferral methods in accordance with the Applicable Percentage increments set forth in Section 4.2 hereof such that the sum of all such Applicable Percentage increments does not exceed 100%.

(2) To the extent that Participant's Eligible Compensation is designated as payable to the Participant in the form of Common Stock, the Company may, in its sole discretion, permit a Participant to elect, in lieu of Common Stock, to defer all or a portion of such Eligible Compensation in a Stock Unit Account in accordance with the Applicable Percentage increments set forth in Section 4.2 hereof such that the sum of all such Applicable Percentage increments does not exceed 100%.

4.2 PERMITTED AMOUNTS; ELECTIONS. The portions of the Eligible Compensation subject to deferral or payment in Shares shall be limited to increments of 25%, 50%, 75% or 100% (the **Applicable Percentage**). All elections shall be in writing on forms provided by the Company (and such election forms may, in the discretion of the Company, require that a Participant defer all or a specified portion of such Participant's Eligible Compensation in accordance with this SECTION 4). If an election is made under this SECTION 4 and is not revoked or changed with respect to the following Year by the end of the current Year, the election shall be deemed a continuing one and shall remain in place with respect to compensation for the following Year.

SECTION 5 DEFERRAL ACCOUNTS

5.1 CASH ACCOUNT. If an Eligible Director has made an election under Section 4.1(1)(b) to defer the receipt of cash compensation in a Cash Account, the Company shall establish and maintain a Cash Account for the Participant under this Plan, which Account shall be a memorandum account on the books of the Company. A Participant's Cash Account shall be credited as follows:

(a) As of the date the Eligible Compensation would have been otherwise payable, the Company shall credit the Participant's Cash Account with an amount equal to the Applicable Percentage of the Eligible Compensation.

(b) As of the last day of each calendar quarter, each Participant's Cash Account shall be credited with the Earnings reasonably determined by the Committee to be allocable to such Account.

5.2 STOCK UNIT ACCOUNT.

(a) Elective Deferrals. If an Eligible Director has made an election under Section 4.1(1)(c) or 4.1(2) to defer receipt of cash compensation or stock compensation in a Stock Unit Account, the Committee shall, as of the last day of each calendar quarter in which the Eligible Compensation was earned and would otherwise be paid, credit the Participant's Stock Unit Account with a number of Units determined by dividing an amount which is equal to the Applicable Percentage of the Participant's Eligible Compensation by the Average Fair Market Value of a share of Common Stock as of the Award Date.

(b) Limitations on Rights Associated with Units. A Participant's Stock Unit Account shall be a memorandum account on the books of the Company. The Units credited to a Participant's Stock Unit Account shall be used solely as a device for the determination of the number of shares of Common Stock to be eventually distributed to the Participant in accordance with this Plan. The Units shall not be treated as property or as a trust fund of any kind. No Participant shall be entitled to any voting or other stockholder rights with respect to Units granted or credited under this Plan. The number of Units credited (and the number of Shares to which the Participant is entitled under this Plan) shall be subject to adjustment in accordance with Section 5.6 and the terms of this Plan.

5.3 **DIVIDEND EQUIVALENT CREDITS TO STOCK UNIT ACCOUNT.** As of the end of each quarter, a Participant's Stock Unit Account shall be credited with additional Units in an amount equal to the Dividend Equivalent representing dividends paid during the quarter on a number of shares equal to the aggregate number of Stock Units in the Participant's Stock Unit Account as of the end of the preceding quarter divided by the Average Fair Market Value of a share of Common Stock as of the applicable crediting date.

5.4 IMMEDIATE VESTING AND ACCELERATED CREDITING.

(a) Units and Other Amounts Vest Immediately. All Units or other amounts credited to one or more of a Participant's Accounts shall be at all times fully vested and not subject to a risk of forfeiture.

(b) Acceleration of Crediting of Accounts. In the event of a Change in Control of the Company, or in the event that a Participant ceases to serve as a director of the Company, the crediting of amounts to a Participant's Cash Account, if applicable, and the crediting of Units to a Participant's Stock Unit Account, if applicable, shall be accelerated to the date of the Change in Control or termination of service. In such case, the amount or number of Units credited for the quarter in which the Change in Control or termination of services occurs shall be prorated based on the number of days of service during the applicable quarter, and the Award Date shall be deemed to be the date of the Change in Control or termination of service, as applicable.

5.5 DISTRIBUTION OF CASH OR SHARES.

(a) Time and Manner of Distribution of Accounts. Except as otherwise provided herein, the cash or Shares payable under this Plan in respect of Cash Accounts or Stock Unit Accounts, respectively, shall be distributed to the Participant (or, in the event of his or her death, the Participant's Beneficiary) at such time and in such manner as elected by the Participant and set forth in the Participant's election form. Other than in the event of a distribution in connection with a Change in Control which shall be paid to the Participant in the form of a lump sum distribution, in the sole discretion of the Company (as set forth in the form of election form provided by the Company), a Participant may elect distributions in one of the following two forms: (i) a lump sum distribution, or (ii) annual installments not to exceed ten (10) such annual installments. Each annual installment shall be equal to the value of the Account being distributed multiplied by a fraction, the numerator of which is one (1) and the denominator of which is the number of installments remaining to be paid. In the event that a Participant fails to make an election, then distribution shall be made in the form of a lump sum. Each Account, less any applicable withholding taxes, shall be distributed commencing the earliest of (x) the date specified in the Participant's election form as described above, (y) the first day of the month immediately following the date of the Participant's termination of service, or as soon as administratively practicable thereafter or (z) the first day of the month immediately following a Change in Control.

(b) Small Distributions. Notwithstanding the foregoing, if after a termination of service the balance remaining in a Participant's Cash Account is less than \$10,000 or, if the aggregate fair market value of the Units remaining in the Participant's Stock Unit Account on the date of the termination of service is less than \$10,000, then such remaining balances shall be distributed in a lump sum.

(c) Election to Further Defer Distribution of Cash Accounts or Stock Unit Accounts. A Participant may, with the approval of the Administrator, elect to further defer the commencement of any distribution to be made with respect to amounts credited under any Cash or Stock Unit Account by filing a new written election with the Committee on a form approved by the Committee; provided, however, that (1) no such election shall be effective until twelve (12) months after such election is filed with the Committee, (2) no such new election shall be effective with respect to any Account after benefits with respect to the Account shall have commenced, and (3) such election must provide that the first payment with respect to such election must be deferred for at least five (5) years from the date such payment would otherwise have been made.

(d) Form of Distribution of Cash Accounts or Stock Unit Accounts. Stock Units credited to a Participant's Stock Unit Account shall be distributed in an equivalent whole number of Shares of the Company's Common Stock. Any fractional share interests shall be accumulated and paid in cash with the last distribution. All amounts credited to a Participant's Cash Account shall be distributed in cash.

5.6 ADJUSTMENTS IN CASE OF CHANGES IN COMMON STOCK. If there shall occur any change in the outstanding shares of the Company's Common Stock by reason of any stock dividend, stock split, recapitalization, merger, consolidation, combination or other reorganization, exchange of shares, sale of all or substantially all of the assets of the Company, split-up, split-off, spin-off, extraordinary redemption, liquidation or similar corporate change or change in capitalization or any distribution to holders of the Company's Common Stock (other than cash dividends and cash distributions), the Committee shall make such proportionate and equitable adjustments consistent with the effect of such event on stockholders generally (but without duplication of benefits if Dividend Equivalents are credited), as the Committee determines to be necessary or appropriate, in the number, kind and/or character of shares of Common Stock or other securities, property and/or rights contemplated hereunder, including any appropriate adjustments to the market prices used in the determination of the number of Shares and Units, and in rights in respect of Stock Unit Accounts credited under this Plan so as to preserve the benefits intended.

SECTION 6 ADMINISTRATION

6.1 THE ADMINISTRATOR. The Administrator of this Plan shall be the Board as a whole or a Committee as appointed from time to time by the Board to serve as administrator of this Plan. The participating members of any Committee so acting shall include, as to decisions in respect of participants who are subject to Section 16 of the Exchange Act, only those members who are Non-Employee Directors (as defined in Rule 16b-3 promulgated under the Exchange Act (**Rule 16b-3**)). Members of the Committee shall not receive any additional compensation for administration of this Plan.

6.2 COMMITTEE ACTION. A member of the Committee shall not vote upon any matter which relates solely to himself or herself as a Participant in this Plan. Action of the Committee with respect to the administration of this Plan shall be taken pursuant to a majority vote or (assuming compliance with Section 6.1) by unanimous written consent of its members.

6.3 RIGHTS AND DUTIES; DELEGATION AND RELIANCE; DECISIONS BINDING. Subject to the limitations of this Plan, the Committee shall be charged with the general administration of this Plan and the responsibility for carrying out its provisions, and shall have powers necessary to accomplish those purposes, including, but not by way of limitation, the following:

- (1) To construe and interpret this Plan;
- (2) To resolve any questions concerning the amount of benefits payable to a Participant (except that no member of the Committee shall participate in a decision relating solely to his or her own benefits);
- (3) To make all other determinations required by this Plan;

- (4) To maintain all the necessary records for the administration of this Plan; and
- (5) To make and publish forms, rules and procedures for the administration of this Plan.

The determination of the Committee made in good faith as to any disputed question or controversy and the Committee's determination of benefits payable to Participants, including decisions as to adjustments under Section 5.6, shall be conclusive and binding for all purposes of this Plan. In performing its duties, the Committee shall be entitled to rely on information, opinions, reports or statements prepared or presented by: (i) officers or employees of the Company whom the Committee believes to be reliable and competent as to such matters; and (ii) counsel (who may be employees of the Company), independent accountants and other persons as to matters which the Committee believes to be within such persons' professional or expert competence.

The Committee shall be fully protected with respect to any action taken or omitted by it in good faith pursuant to the advice of such persons. The Committee may delegate ministerial, bookkeeping and other non-discretionary functions to individuals who are officers or employees of the Company.

SECTION 7 PLAN CHANGES AND TERMINATION

7.1 AMENDMENTS. The Board shall have the right to amend this Plan in whole or in part from time to time or may at any time suspend or terminate this Plan (provided such amendment, suspension or termination complies with requirements under Code Section 409A); provided, however, that no amendment or termination shall cancel or otherwise adversely affect in any way, without his or her written consent, any Participant's rights with respect to then outstanding Accounts or Dividend Equivalent credits thereon so long as the Account is outstanding). Any amendments authorized hereby shall be stated in an instrument in writing, and all Participants shall be bound upon receipt of notice the amendment.

7.2 TERM. It is the current expectation of the Company that this Plan shall continue indefinitely, but continuance of this Plan is not assumed as a contractual obligation of the Company. If the Board of Directors decides to discontinue or terminate this Plan, it shall notify the Committee and Participants in this Plan of its action in writing, and this Plan shall be terminated at the time set forth on the notice. All Participants shall be bound thereby. Notwithstanding anything to the contrary, this Plan shall automatically terminate upon a Change in Control. No benefits shall accrue in respect of Eligible Compensation earned after a discontinuance or termination of this Plan.

SECTION 8 MISCELLANEOUS

8.1 UNFUNDED PLAN AND LIMITATION ON PARTICIPANTS' RIGHTS. Participants shall have the rights only if general unsecured creditors of the Company with respect to amounts credited and benefits payable, if any, on their Cash Account, and rights no greater than the right to receive the Common Stock (or equivalent value as a general unsecured creditor) with respect to Stock Units or Share Accounts. The Plan constitutes a mere promise by the Company to make distributions in the future. It is intended that this Plan shall constitute an "unfunded" plan for tax purposes. Participation in this Plan shall not give any person the right to serve as a member of the Board or any rights or interests other than as herein provided. Participants shall not be entitled to receive actual dividends or to vote Shares until after delivery of a certificate representing the Shares.

8.2 BENEFICIARIES.

(a) Beneficiary Designation. Upon forms provided by and subject to conditions imposed by the Company, each Participant may designate in writing the Beneficiary or Beneficiaries (as defined in Section 8.2(b)) whom such Participant desires to receive any amounts payable under this Plan after his or her death. The Company and the Committee may rely on the Participant's designation of a Beneficiary or Beneficiaries last filed in accordance with the terms of this Plan.

(b) Definition of Beneficiary. A Participant's "Beneficiary" or "Beneficiaries" shall be the person, persons, trust or trusts (or similar entity) designated by the Participant or, in the absence of a designation, entitled by will or the laws of descent and distribution to receive the Participant's benefits under this Plan in the event of the Participant's death, and shall mean the Participant's executor or administrator if no other Beneficiary is identified and able to act under the circumstances.

8.3 BENEFITS NOT TRANSFERABLE; OBLIGATIONS BINDING UPON SUCCESSORS. Benefits of a Participant under this Plan shall not be assignable or transferable and any purported transfer, assignment, pledge or other encumbrance or attachment of any payments or benefits under this Plan, or any interest therein, other than by operation of law or pursuant to Section 8.2, shall not be permitted or recognized. Shares deliverable under this Plan may be subject to restrictions on transfer under applicable securities laws, unless the Shares are duly registered prior to issuance. Obligations of the Company under this Plan shall be binding upon successors of the Company.

8.4 GOVERNING LAW; SEVERABILITY. The validity of this Plan or any of its provisions shall be construed, administered and governed in all respects under the laws of the State of Delaware. If any provision of this Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective.

8.5 COMPLIANCE WITH LAWS. This Plan and the offer, issuance and delivery of shares of Common Stock and/or the payment of money through the deferral of compensation under this Plan are subject to compliance with all applicable federal and state laws, rules and regulations (including but not limited to state and federal securities law) and to such approvals by any listing, agency or any regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. Any securities delivered under this Plan shall be subject to prior registration or such restrictions as the Company may deem necessary or desirable to assure compliance with all applicable legal requirements, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as it may reasonably request to assure such compliance.

8.6 PLAN CONSTRUCTION. This Plan is intended to comply with the requirements of Code Section 409A of the Internal Revenue Code and the regulations and other guidance issued thereunder, as in effect from time to time. To the extent a provision of the Plan is contrary to or fails to address the requirements of Code Section 409A, the Plan shall be construed and administered as necessary to comply with such requirements until this Plan is appropriately amended to comply with such requirements. A termination of service shall not be deemed to have occurred for purposes of any provision of this Plan providing for the payment of any amounts upon or following a termination of service unless such termination is also a “separation from service” within the meaning of Code Section 409A of the Internal Revenue Code and the regulations and other guidance issued thereunder and, for purposes of any such provision of this Plan, references to a “termination,” “termination of service” or like terms shall mean “separation from service.” For purposes of Code Section 409A of the Internal Revenue Code and the regulations and other guidance issued thereunder, a Participant’s right to receive any installment payments pursuant to this Plan shall be treated as a right to receive a series of separate and distinct payments.

It is the intent of the Company that transactions pursuant to this Plan satisfy and be interpreted in a manner that satisfies the applicable conditions for exemption under Rule 16b-3 so that to the extent elections are timely made, elective deferrals (including the crediting of Units and Dividend Equivalents and the distribution of Shares hereunder) will be entitled to the benefits of Rule 16b-3 or other exemptive rules under Section 16 of the Exchange Act and will not be subjected to avoidable liability thereunder. The Committee may, subject to Sections 8.5 hereof, permit elections by Eligible Directors that would not qualify for exemption under Section 16(b) of the Exchange Act, so long as the availability of any exemption thereunder for other Participants under this Plan is not compromised.

8.7 HEADINGS NOT PART OF PLAN. Headings and subheadings in this Plan are inserted for reference only and are not to be considered in the construction of the provisions hereof.