

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

FORM 8-K

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

Date of Report (Date of earliest event reported): January 29, 2025

SMITHFIELD FOODS, INC.
(Exact name of registrant as specified in its charter)

Virginia
(State or other jurisdiction
of incorporation)

001-15321
(Commission
File Number)

52-0845861
(IRS Employer
Identification No.)

200 Commerce Street
Smithfield, VA 23430
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (757) 365-3000

N/A
(Former name, or former address, if changed since last report)

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

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, no par value	SFD	The Nasdaq Global Select Market

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

Emerging growth company

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

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

On January 29, 2025, Smithfield Foods, Inc. (the “Company”) filed its amended and restated articles of incorporation (the “Articles of Incorporation”) with the State Corporation Commission of the Commonwealth of Virginia, and the Articles of Incorporation and its amended and restated bylaws (the “Bylaws”) became effective as of the filing of the Articles of Incorporation. For further information regarding the Articles of Incorporation and the Bylaws, see the descriptions set forth in the section titled “Description of Capital Stock” in the final prospectus, dated January 27, 2025 (the “Prospectus”), relating to the Registration Statement on Form S-1 (File No. 333-284141), as amended, filed with the Securities and Exchange Commission on January 28, 2025, pursuant to Rule 424(b) under the Securities Act of 1933, as amended. These descriptions of the Articles of Incorporation and the Bylaws do not purport to be complete and are qualified in their entirety by reference to the full text of the Articles of Incorporation and the Bylaws, which are filed as Exhibits 3.1 and 3.2 hereto, respectively, and are incorporated herein by reference.

Item 8.01. Other Events.

On January 29, 2025, the Company completed the initial public offering (the “IPO”) of 26,086,958 shares of its common stock, no par value (“Common Stock”), at a price to the public of \$20.00 per share (the “IPO Price”), 13,043,479 shares of which were sold by the Company and 13,043,479 shares of which were sold by the Company’s sole shareholder (the “Selling Shareholder”). The Selling Shareholder has granted the underwriters in the offering an option for 30 days from the date of the Prospectus to purchase up to 3,913,042 additional shares of Common Stock at the IPO Price.

The net proceeds to the Company from the IPO were approximately \$234.1 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by the Company. The Company did not receive any proceeds from the sale of shares of Common Stock in the IPO by the Selling Shareholder.

As described in the Prospectus, in connection with the IPO, the Company’s board of directors and its shareholder approved the Smithfield Foods, Inc. Omnibus Incentive Plan (the “Incentive Plan”) and the Smithfield Foods, Inc. Employee Stock Purchase Plan (the “ESPP”) and reserved under those plans a number of shares equal to, respectively, 5.0% and 0.5% of the outstanding shares of the Company immediately following the IPO corresponding to 19,655,635 shares and 1,965,563 shares. For further information regarding the Incentive Plan and the ESPP, see “Executive and Director Compensation—Future Compensation Programs—Smithfield Omnibus Incentive Plan” and “—Smithfield Employee Stock Purchase Plan” in the Prospectus.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	<u>Amended and Restated Articles of Incorporation of Smithfield Foods, Inc., effective as of January 29, 2025.</u>
3.2	<u>Amended and Restated Bylaws of Smithfield Foods, Inc., effective as of January 29, 2025.</u>
10.1†	<u>Smithfield Foods, Inc. Omnibus Incentive Plan.</u>
10.2†	<u>Smithfield Foods, Inc. Employee Stock Purchase Plan.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

† Compensatory arrangements for director(s) and/or executive officer(s).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: January 29, 2025

SMITHFIELD FOODS, INC.

By: /s/ C. Shane Smith
C. Shane Smith
Chief Executive Officer

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
SMITHFIELD FOODS, INC.**

ARTICLE I

The name of the corporation is Smithfield Foods, Inc. (the "Corporation").

ARTICLE II

The Corporation's purpose is to engage in any lawful business not required by law to be specifically stated in these Amended and Restated Articles of Incorporation (these "Articles").

ARTICLE III

The Corporation shall have the authority to issue 5,000,000,000 shares of common stock, no par value ("Common Stock"), and 100,000,000 shares of preferred stock, no par value ("Preferred Stock"). The rights, preferences, voting powers and the qualifications, limitations and restrictions of the authorized stock shall be as follows:

(A) Voting Powers

1. Each share of Common Stock outstanding on any voting record date shall be entitled to one vote on any action of shareholders for which that voting record date was fixed. Except as otherwise required by the Virginia Stock Corporation Act (as it may be amended from time to time, the "Act"), the general voting power for all purposes shall be vested in the Common Stock.

2. Except as otherwise required by these Articles, the Act, or the Board of Directors acting pursuant to the Act, and subject to the rights of the holders of any Preferred Stock then outstanding:

- (i) The vote required to constitute any voting group's approval of any corporate action, except the election of directors, an amendment of these Articles, an adoption, amendment or repeal of the bylaws of the Corporation (the "Bylaws"), a plan of merger, share exchange, domestication or conversion, a proposed sale or other disposition of the Corporation's assets that requires shareholder approval pursuant to Section 13.1-724 of the Act (or any successor provision), or the dissolution of the Corporation, shall be the affirmative vote of a majority of all votes cast on the matter by such voting group;

(ii) The Bylaws shall set forth the vote required for the election of directors or, if not set forth in the Bylaws, directors shall be elected by a plurality of the votes cast by the shares entitled to vote in such election; and

(iii) The vote required to constitute any voting group's approval of an amendment of these Articles, an adoption, amendment or repeal of the Bylaws, a plan of merger, share exchange, domestication or conversion, a proposed sale or other disposition of the Corporation's assets that requires shareholder approval pursuant to Section 13.1-724 of the Act (or any successor provision), or the dissolution of the Corporation shall be the affirmative vote of a majority of all votes entitled to be cast on the matter by such voting group.

(B) Common Stock

1. *Dividends*

Subject to the applicable provisions of the Act and any rights of the holders of any Preferred Stock then outstanding, the holders of Common Stock shall be entitled to receive such dividends and other distributions, if any, as the Board of Directors may declare thereon from time to time out of assets or funds of the Corporation and shall share equally on a per share basis in all such dividends and other distributions.

2. *Dissolution*

In the event of the Corporation's dissolution, whether voluntary or involuntary, after payment or provision for the payment of all liabilities and any amounts required to be paid to the holders of any Preferred Stock then outstanding, the remaining assets of the Corporation shall be distributed equally on a per share basis to the holders of Common Stock. For purposes of this Article III(B)(2), the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the assets of the Corporation or a merger or share exchange involving the Corporation and one or more other entity (whether or not the Corporation is the entity surviving such merger) shall not be deemed to be a dissolution of the Corporation.

(C) Preferred Stock

The Board of Directors, without shareholder action, may, by adoption of an amendment of these Articles:

1. Classify any unissued shares into one or more classes or into one or more series within one or more classes;

2. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or
3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within one or more classes.

If the Board of Directors acts pursuant to this Article III(C), the Board of Directors may determine the number of shares and the terms, including the preferences, limitations and rights (including, without limitation, voting rights, preferences and the relative, participating, optional or other special rights of the shares of any class or series of Preferred Stock and any qualifications, limitation and restrictions thereof), to the extent permitted by the Act, of any class of shares of Preferred Stock before the issuance of any shares of that class, or of one or more series within a class before the issuance of any shares of that series. Each class or series shall be appropriately designated by a distinguishing designation prior to the issuance of any shares thereof. The Preferred Stock of all classes and series shall have preferences, limitations and rights identical with those of other shares of the same class or series. The preferences, limitations and rights of each series shall be identical with those of shares of other series of the same class, except to the extent otherwise provided in the description of the series.

Prior to the issuance of any shares of a class or series of Preferred Stock, (1) the Board of Directors shall establish such class or series, without any action required by the shareholders, by adoption of an amendment of these Articles and by filing with the State Corporation Commission of Virginia articles of amendment setting forth the designation and number of shares of the class or series and the preferences, limitations and rights thereof, and (2) the State Corporation Commission of Virginia shall have issued a certificate of amendment.

(D) No Preemptive Rights

No holder of any capital stock of the Corporation shall have any preemptive right to subscribe for, purchase or acquire (1) any shares of capital stock of the Corporation or (2) any warrants, rights or options to acquire any shares of capital stock or any security or other obligation of the Corporation convertible into or carrying a right to subscribe for or acquire any shares of capital stock or warrants, rights or options to acquire shares of capital stock.

(E) Shareholder Action by Written Consent

Until such time as WH Group ceases to own, in the aggregate, a majority of the then outstanding shares of Common Stock, any action required or permitted to be taken at any annual or special meeting of shareholders may be taken without a meeting if one or more written consents bearing the date of signature and describing the action taken are signed by holders of Common Stock having not less than the minimum number of votes that would be necessary to

authorize or take such action at a meeting at which all shares of Common Stock entitled to vote thereon were present and voted and are delivered to the Corporation. After WH Group ceases to own, in the aggregate, a majority of the then outstanding shares of Common Stock, any action required or permitted to be taken at any annual or special meeting of shareholders may be taken without a meeting only if one or more written consents bearing the date of signature and describing the action taken are signed by all of the shareholders entitled to vote on the action and are delivered to the Corporation. Notice of any action taken without a meeting shall be given before or after the action is taken, in each case, to the extent such notice is required by the Act.

ARTICLE IV

(A) Board of Directors

The number of directors shall be fixed by or in accordance with the Bylaws. Commencing on the effective date of these Articles, the Board of Directors shall be divided into three classes, Class I, Class II and Class III, as nearly equal in number as may be practicable, with the directors in Class I having a term expiring at the first annual meeting of shareholders after their election, the directors in Class II having a term expiring at the second annual meeting of shareholders after their election and the directors in Class III having a term expiring at the third annual meeting of shareholders after their election and, in each case, until such directors' successors are duly elected and qualified. At each annual meeting of shareholders, the successors to the class of directors whose terms then shall expire shall be identified as being of the same class as the directors they succeed and elected to hold office for a term expiring at the third succeeding annual meeting of shareholders and until such directors' successors are duly elected and qualified. For purposes of this Article IV, "annual meeting of shareholders" means an annual meeting of shareholders or, to the extent permitted by Article III(E), shareholder action by written consent expressly taken to elect directors in lieu of holding an annual meeting of shareholders. When the number of directors is changed, any newly created directorships or any decrease in directorships shall be apportioned among the classes by the Board of Directors as to make all classes as nearly equal in number as may be practicable.

Until such time as WH Group ceases to own, in the aggregate, a majority of the then outstanding shares of Common Stock, directors may be removed, with or without cause, by the affirmative vote of a majority of the votes entitled to be cast by the then outstanding shares of capital stock of the Corporation that are entitled to vote generally in the election of directors. After WH Group ceases to own, in the aggregate, a majority of the then outstanding shares of Common Stock, directors may be removed only for cause and only by the affirmative vote of a majority of the votes entitled to be cast by the then outstanding shares of capital stock of the Corporation that are entitled to vote generally in the election of directors.

Except pursuant to the limitations set forth below with respect to the WH Group Parties' designation rights, any vacancy on the Board of Directors, including a vacancy resulting from an increase in the number of directors, shall be filled by the Board of Directors by the affirmative vote of a majority of the directors in office or, if the directors remaining in office are less than a quorum of the Board of Directors, then by the affirmative vote of a majority of such directors remaining in office, or, if there are no directors remaining in office, then by the shareholders.

To the full extent permitted by the Act, the Board of Directors is expressly empowered to adopt, amend and repeal the Bylaws.

(B) WH Group Directors

1. WH Group Parties Designation Rights

For purposes of this Article IV(B), the following terms shall have the meanings indicated:

“Applicable Exchange Standards” shall mean listing standards of the NYSE, Nasdaq or the securities exchange registered with the United States Securities and Exchange Commission under Section 6 of the Exchange Act on which the Common Stock is then primarily listed for trading, as applicable.

“Cause” shall mean with respect to a director (a) willful and continued failure substantially to perform his or her duties as a director, (b) willful conduct which is materially injurious to the Corporation or any of its subsidiaries, monetarily or otherwise, (c) conviction for, or guilty plea to, a felony or a crime involving moral turpitude, or (d) abuse of illegal drugs or other controlled substances or habitual intoxication.

“Independent Director” shall mean a director that satisfies the independence requirements of Rule 10A-3(b)(1) under the Securities Exchange Act of 1934 (as amended, the “Exchange Act”) and Applicable Exchange Standards, including with respect to standards applicable to service on committees of the Board of Directors, as applicable.

“WH Group Director” shall mean any director on the Board of Directors who is a WH Group Designee.

For so long as WH Group owns, in the aggregate, a majority of the then outstanding shares of Common Stock, the WH Group Parties shall have the right to designate for inclusion in the slate of directors nominated by the Board of Directors (or any nominating committee thereof) for election to the Board of Directors (each person so designated, a “WH Group Designee”) a majority of the members of the Board of Directors.

If at any time WH Group owns, in the aggregate, shares of Common Stock representing less than a majority but at least 10% of the then outstanding shares of Common Stock, the number of persons the WH Group Parties shall be entitled to designate for inclusion in the slate of directors to be nominated by the Board of Directors (or any nominating committee thereof) for election to the Board of Directors shall be equal to the number of directors computed using the following formula (rounded up to the nearest whole number): the *product* of (i) the percentage of the then outstanding shares of Common Stock owned, in the aggregate, by WH Group and (ii) the number of directors then on the Board of Directors (assuming no vacancies exist). Notwithstanding the foregoing, if the calculation set forth in the foregoing sentence would result in the WH Group Parties being entitled to nominate a majority of the members of the Board of Directors solely as a result of rounding, the formula will be recalculated with the product being rounded down to the nearest whole number; *provided, however*, that if WH Group, at any time, acquires additional shares of Common Stock so that WH Group owns, in the aggregate, a majority of the outstanding shares of Common Stock, then the number of persons the WH Group Parties shall be entitled to designate for inclusion in the slate of directors being nominated by the Board of Directors (or any nominating committee thereof) for election to the Board of Directors shall be adjusted upward, if appropriate as a result of rounding, in accordance with the provisions of this Article IV(B).

For so long as the WH Group Parties are entitled to designate any WH Group Designees pursuant to this Article IV(B), the Board of Directors shall not nominate for election to the Board of Directors a number of directors greater than the authorized number of directorships at such time. With respect to each meeting of shareholders at which directors are to be elected to the Board of Directors, the Corporation shall cause each WH Group Designee designated by the WH Group Parties for election to the Board of Directors to be included in the slate of nominees set forth in the Corporation's proxy materials.

2. *Vacancies*

In the event that any WH Group Designee serving on the Board of Directors shall cease to serve as a director for any reason, the vacancy resulting therefrom shall be filled by the Board of Directors with a substitute WH Group Designee that is designated in writing by the WH Group Parties.

In the event that as a result of any increase in the size of the Board of Directors, the WH Group Parties are entitled to have one or more additional WH Group Designees elected to the Board of Directors pursuant to this Article IV(B), the Board of Directors shall appoint the appropriate number of such additional WH Group Designees.

3. *Change in Size of Board of Directors and Removal of Chairperson*

The number of directors shall be determined as provided in the Bylaws; provided, however, that for so long as WH Group owns, in the aggregate, a majority of the outstanding shares of Common Stock, the Corporation shall not (either directly or indirectly through a subsidiary, or through one or a series of related transactions), without the prior written consent of the WH Group Parties, (i) change the number of directors on the Board of Directors or (ii) remove (other than for Cause) the Chairperson of the Board of Directors.

4. *Committees*

Audit Committee. At any time during which the Board of Directors includes a WH Group Director who is also an Independent Director, at least one member of the audit committee of the Board of Directors shall, at the option of the WH Group Parties, be a WH Group Director, provided that such WH Group Director shall also meet the standards for audit committee membership as set forth in Applicable Exchange Standards.

Compensation and Nominating and Governance Committees. For so long as WH Group owns, in the aggregate, at least 25% of the then outstanding shares of Common Stock, the WH Group Parties shall have the right to designate a number of WH Group Directors who are serving on the Board of Directors to serve on each of the compensation committee and the nominating and governance committee of the Board of Directors (“Standing Committees”) equal, in each case, to the product of (i) the percentage of the then outstanding shares of Common Stock owned by WH Group and (ii) the total number of directors entitled to serve on such Standing Committee (the “Standing Committee Designation Number”); *provided*, that at any time following the first date on which WH Group ceases to own, in the aggregate, a majority of the then outstanding shares of Common Stock, any such WH Group Directors shall be Independent Directors. Within 60 days of a decrease in the number of WH Group Directors to which the WH Group Parties are entitled to cause to serve on a Standing Committee pursuant to the immediately preceding sentence, unless otherwise determined by a majority of the Independent Directors who are not WH Group Designees, the WH Group Parties shall instruct a sufficient number of WH Group Designees to promptly resign from such Standing Committee such that the number of WH Group Designees equals the Standing Committee Designation Number and shall use their reasonable best efforts to cause such individual to so resign from such Standing Committee.

ARTICLE V

(A) Definitions

For purposes of this Article V, the following terms shall have the meanings indicated:

1. “eligible person” means a person who is or was a director or officer of the Corporation or a person who, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, manager, partner, trustee, employee or agent of another entity or employee benefit plan. A person shall be considered to be serving an employee benefit plan at the Corporation’s request if his or her duties to the Corporation also impose duties on, or otherwise involve services by, him or her to the plan or to participants in or beneficiaries of the plan;
2. “expenses” includes, without limitation, counsel fees and expenses;
3. “liability” means the obligation to pay a judgment, settlement, penalty, fine (including any excise tax assessed with respect to an employee benefit plan) or reasonable expenses incurred with respect to a proceeding;
4. “party” includes, without limitation, an individual who was, is or is threatened to be made a defendant or respondent in a proceeding; and
5. “proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative and whether formal or informal.

(B) Limitation of Liability

To the full extent permitted by the Act, as it exists on the effective date of this Article V or as hereafter amended, in any proceeding brought by or in the right of the Corporation or brought by or on behalf of shareholders of the Corporation, no director or officer of the Corporation shall be liable to the Corporation or its shareholders for monetary damages arising out of any transaction, occurrence or course of conduct, whether occurring prior or subsequent to the effective date of this Article V.

(C) Indemnification

To the full extent permitted by the Act, as it exists on the effective date of this Article V or as hereafter amended, the Corporation shall indemnify and hold harmless any person who was or is a party to any proceeding, including a proceeding brought by or in the right of the Corporation or brought by or on behalf of shareholders of the Corporation, by reason of the fact

that such person is or was an eligible person against any liability incurred by such person in connection with such proceeding, except for liability resulting from such person's having engaged in willful misconduct or a knowing violation of the criminal law.

(D) Termination of Proceeding

The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the eligible person did not meet the relevant standard of conduct that is a prerequisite to the limitation or elimination of liability provided in Article V(B) or to such person's entitlement to indemnification under Article V(C).

(E) Determination of Availability

The Corporation shall indemnify and hold harmless under Article V(C) any eligible person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which such person was a party by reason of the fact that such person is or was an eligible person. Any other indemnification under Article V(C) (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case after a determination has been made that indemnification is proper in the circumstances because the eligible person has met the relevant standard of conduct under Article V(C).

The determination shall be made:

1. If there are two or more disinterested directors (as that term is used in Section 13.1-701 of the Act (or any successor provision)), by the Board of Directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

2. By special legal counsel:

(a) Selected in the manner prescribed in subdivision 1 of this subsection; or

(b) If there are fewer than two disinterested directors, selected by the Board of Directors, in which selection directors who do not qualify as disinterested directors may participate;

3. By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination; or

4. In any other manner permitted by the Act.

Notwithstanding the other provisions of this Article V(E), in the event there has been a change in the composition of a majority of the Board of Directors after the date of the alleged act or omission with respect to which indemnification is claimed other than through successor directors whose nomination or election was approved by the Board of Directors as it existed prior to such date, any determination as to such indemnification shall be made by special legal counsel agreed upon by the Board of Directors and the eligible person. If the Board of Directors and the eligible person are unable to agree upon such special legal counsel, the Board of Directors and the eligible person each shall select a nominee, and the nominees shall select such special legal counsel.

(F) Advances

To the full extent permitted by the Act, as it exists on the effective date of this Article V or as hereafter amended, the Corporation shall, before the final disposition of a proceeding, pay for or reimburse the reasonable expenses incurred in connection with the proceeding by any eligible person who is a party to the proceeding by reason of the fact that such person is an eligible person if such eligible person delivers to the Corporation a signed written undertaking to repay funds advanced if it is ultimately determined that he or she is not entitled to be indemnified under this Article V or the Act. The undertaking required by this Article V(F) shall be an unlimited general obligation but need not be secured and shall be accepted without reference to the financial ability of the eligible person to make repayment.

(G) Indemnification of Others

The Corporation is empowered to indemnify and advance expenses to or contract to indemnify or advance expenses to any person not specified in Article V(C) or Article V(F) who was, is or may become a party to any proceeding, by reason of the fact that he or she is or was an employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, manager, partner, trustee, employee or agent of another entity or employee benefit plan, to the same or a lesser extent as if such person were specified as one to whom indemnification or advancement of expenses is granted in Article V(C) or Article V(F).

(H) Application; Amendment

The provisions of this Article V shall be applicable to all proceedings commenced after it becomes effective arising from any act or omission, whether occurring before or after such effective date. No amendment or repeal of this Article V shall impair or otherwise diminish the rights provided under this Article V (including those created by contract) with respect to any act or omission occurring prior to such amendment or repeal. The Corporation shall promptly take

all such actions and make all such determinations and authorizations as shall be necessary or appropriate to comply with its obligation to make any indemnity against liability, or to advance any expenses, under this Article V and shall promptly pay or reimburse all reasonable expenses incurred by any eligible person in connection with such actions and determinations or proceedings of any kind arising therefrom.

(I) Insurance

The Corporation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability assumed by it in accordance with this Article and may also procure insurance, in such amounts as the Board of Directors may determine, on behalf of any eligible person (and for a person referred to in Article V(G)) against any liability asserted against or incurred by such person whether or not the Corporation would have power to indemnify such person against such liability under the provisions of this Article V or the Act.

(J) Further Indemnity

1. Every reference herein to directors, officers, managers, trustees, partners, employees or agents shall include former directors, officers, managers, trustees, partners, employees or agents and their respective heirs, estates, executors, personal representatives and administrators. The indemnification hereby provided and provided hereafter pursuant to the power hereby conferred by this Article V shall not be exclusive of any other rights to which any person may be entitled, including any right under policies of insurance that may be purchased and maintained by the Corporation or others, with respect to claims, issues or matters in relation to which the Corporation would not have the power to indemnify such person under the provisions of this Article V.

2. Nothing herein shall prevent or restrict the power of the Corporation to make or provide for any further indemnity or advancement of expenses, or provisions for determining entitlement to indemnity or advancement of expenses, pursuant to one or more agreements, Bylaws, resolutions of directors or shareholders, or other arrangements (including, without limitation, creation of trust funds or security interests funded by letters of credit or other means); *provided, however*, that any provision of any such agreement, Bylaw, resolution or other arrangement shall not be effective if and to the extent that it is determined to be contrary to this Article or applicable laws of the Commonwealth of Virginia, but other provisions of any such agreement, Bylaw, resolution or other arrangement shall not be affected by any such determination.

(K) Severability

Each provision of this Article V shall be severable, and an adverse determination as to any such provision shall in no way affect the validity of any other provision.

ARTICLE VI

Article 14 of Chapter 9 of Title 13.1 of the Code of Virginia shall not apply to the Corporation.

Article 14.1 of Chapter 9 of Title 13.1 of the Code of Virginia shall not apply to the Corporation.

ARTICLE VII

(A) **Affiliated Transactions**

The Corporation shall not engage in any affiliated transaction with any interested shareholder for a period of three years following such interested shareholder's determination date unless approved by the affirmative vote of a majority (but not less than two) of the disinterested directors and by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by the interested shareholder. The Corporation may engage in an affiliated transaction with an interested shareholder beginning three years after such interested shareholder's determination date, provided such transaction complies with the provisions of Article VII(B).

(B) **Voting Requirements for Affiliated Transactions**

Except as provided in Article VII(D) and notwithstanding the provisions of Article III or subsection A of Section 13.1-638 of the Act (or any successor provision), in addition to any affirmative vote required by any other section of this Article VII or by these Articles, an affiliated transaction shall be approved by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by the interested shareholder.

(C) **Determination by Disinterested Directors**

A majority of the disinterested directors shall have the power to determine for the purposes of this Article VII:

1. Whether a person is an interested shareholder;
2. The number of voting shares beneficially owned by any person;
3. Whether a person is an affiliate or associate of another;
4. Whether the securities to be issued or transferred by the Corporation or any of its subsidiaries to any interested shareholder have an aggregate fair market value equal to or greater

than five percent of the aggregate fair market value of all of the outstanding voting shares of the Corporation or any of its subsidiaries as of the determination date; and

5. Whether the assets or amount of indebtedness guaranteed that may be the subject of any affiliated transaction constitutes more than five percent of the consolidated net worth of the Corporation.

(D) Exceptions

The voting requirements set forth in Article VII(B) do not apply to a particular affiliated transaction if either of the following conditions are met:

1. The affiliated transaction has been approved by a majority of the disinterested directors; or

2. If the affiliated transaction consideration will be paid to the holders of each class or series of voting shares and the following conditions will be met:

(a) The aggregate amount of the cash and the fair market value as of the valuation date of consideration other than cash to be received per share by holders of each class or series of voting shares in such affiliated transaction is at least equal to the highest of the following:

(1) if applicable, the highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees paid by the interested shareholder for any shares of such class or series acquired by it (i) within the two-year period immediately preceding the determination date or (ii) in the transaction in which it became an interested shareholder, whichever is higher, plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid, being the "share acquisition date," through the date the affiliated transaction is effected at the rate for one-year United States Treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series, since the share acquisition date, up to the amount of such interest;

(2) the fair market value per share of such class or series on the announcement date or on the determination date, whichever is higher being the "measuring date," plus, in either case, interest compounded annually from the measuring date through the date the affiliated transaction is effected at the rate for one-year United States Treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series, since the measuring date, up to the amount of such interest;

(3) if applicable, the price per share equal to the per share amount determined pursuant to Article VII(D)(2)(a)(2) multiplied by the ratio of (i) the highest per share price including any brokerage commissions, transfer taxes and soliciting dealers' fees paid by the interested shareholder for any shares of such class or series acquired by it within the two-year period immediately preceding the determination date to (ii) the fair market value per share of such class or series on the first day in such two-year period on which the interested shareholder acquired any shares of such class or series; and

(4) if applicable, the highest preferential amount, if any, per share to which the holders of such class or series are entitled in the event of any voluntary or involuntary dissolution of the Corporation;

(b) The consideration to be received by holders of outstanding shares shall be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series and if the interested shareholder has paid for shares with varying forms of consideration, the form of the consideration will be either cash or the form used to acquire the largest number of shares of such class or series previously acquired by the interested shareholder;

(c) During such portion of the three-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors:

(1) There shall have been no failure to declare and pay at the regular date therefor any full periodic dividends, whether or not cumulative, on any outstanding shares of the Corporation;

(2) There shall have been (i) no reduction in the annual rate of dividends paid on any class or series of voting shares, except as necessary to reflect any subdivision of the class or series, and (ii) an increase in such annual rate of dividends as necessary to reflect any reclassification, including any reverse stock split, recapitalization, reorganization, or similar transaction that has the effect of reducing the number of outstanding shares of the class or series; and

(3) Such interested shareholder shall not have become the beneficial owner of any additional voting shares except as part of the transaction that results in such interested shareholder becoming an interested shareholder;

(d) During such portion of the three-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors, such interested shareholder shall not have received

the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such affiliated transaction or otherwise; and

(e) Except as otherwise approved by a majority of the disinterested directors, a proxy or information statement describing the affiliated transaction and complying with the requirements of the Exchange Act and the rules and regulations thereunder (or any subsequent provisions replacing the Exchange Act or such rules or regulations) is mailed to holders of voting shares of the Corporation at least 25 days before the consummation of such affiliated transaction, whether or not such proxy or information statement is required to be mailed pursuant to such Act, rules, regulations, or subsequent provisions.

(E) Definitions

For purposes of this Article VII, the following terms shall have the meanings indicated:

“affiliate” shall mean a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

“affiliated transaction” shall mean any of the following transactions:

1. Any merger of the Corporation or any of its subsidiaries with any interested shareholder or with any other corporation that immediately after the merger would be an affiliate of an interested shareholder that was an interested shareholder immediately before the merger;
2. Any share exchange pursuant to Section 13.1-717 of the Act (or any successor provision) in which any interested shareholder acquires one or more classes or series of voting shares of the Corporation or any of its subsidiaries;
3. Except for transactions in the ordinary course of business, (i) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any interested shareholder of any assets of the Corporation or of any of its subsidiaries having an aggregate fair market value in excess of five percent of the Corporation’s consolidated net worth as of the date of the Corporation’s most recently available financial statements, or (ii) any guaranty by the Corporation or any of its subsidiaries (in one transaction or a series of transactions) of indebtedness of any interested shareholder in an amount in excess of five percent of the Corporation’s consolidated net worth as of the date of the Corporation’s most recently available financial statements;

4. The sale or other disposition by the Corporation or any of its subsidiaries to an interested shareholder (in one transaction or a series of transactions) of any voting shares of the Corporation or any of its subsidiaries having an aggregate market value in excess of five percent of the aggregate market value of all outstanding voting shares of the Corporation except pursuant to a share dividend or the exercise of rights or warrants distributed or offered on a basis affording substantially proportionate treatment to all holders of the same class or series of voting shares;

5. The dissolution, domestication or conversion of the Corporation if proposed by or on behalf of an interested shareholder; or

6. Any reclassification of securities, including any reverse stock split, or recapitalization of the Corporation, or any merger of the Corporation with any of its subsidiaries or any distribution or other transaction, whether or not with or into or otherwise involving an interested shareholder, which has the effect, directly or indirectly (in one transaction or a series of transactions), of increasing by more than five percent the percentage of the outstanding voting shares of the Corporation or any of its subsidiaries beneficially owned by any interested shareholder.

“associate” shall mean as to any specified person:

1. Any entity, other than the Corporation and any of its subsidiaries, of which such person is an officer, director, manager, or general partner or is the beneficial owner of 10 percent or more of any class of voting shares or other interests;

2. Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and

3. Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is an officer or director of the Corporation or any of its affiliates.

“beneficially own”, “beneficially owned” and “beneficial owner” shall have the meanings set forth in Section 13(d) of the Exchange Act and the rules and regulations thereunder.

“control” shall mean the possession, directly or indirectly, through the ownership of voting securities, by contract, arrangement, understanding, relationship or otherwise, of the power to direct or cause the direction of the management and policies of a person. The beneficial ownership of 10 percent or more of a corporation’s voting shares shall be deemed to constitute control.

“determination date” shall mean the date on which an interested shareholder became an interested shareholder.

“disinterested director” shall mean as to any particular interested shareholder (i) any member of the Board of Directors of the Corporation who was a member of the Board of Directors before the determination date and (ii) any member of the Board of Directors of the Corporation who was recommended for election by, or was elected to fill a vacancy and received the affirmative vote of, a majority of the disinterested directors then on the Board of Directors.

“fair market value” shall mean:

1. In the case of shares, the highest closing sale price of a share quoted during the 30-day period immediately preceding the date in question on the composite tape for shares listed on the NASDAQ Stock Market, or, if such shares are not quoted on the composite tape on the NASDAQ Stock Market, on the principal United States securities exchange registered under the Exchange Act on which such shares are listed, or, if such shares are not listed on any such exchange, the highest closing bid quotation with respect to a share during the 30-day period preceding the date in question on the NASDAQ stock market automated quotations system or any similar system then in general use, or, if no such quotations are available, the fair market value of a share on the date in question as determined by a majority of the disinterested directors; and

2. In the case of property other than cash or shares, the fair market value of such property on the date in question as determined by a majority of the disinterested directors.

“interested shareholder” shall mean any person that is:

1. The beneficial owner of more than 10 percent of any class of the outstanding voting shares of the Corporation; *provided, however*, that the term “interested shareholder” shall not include (i) the Corporation or any of its subsidiaries, (ii) any savings, employee stock ownership, or other employee benefit plan of the Corporation or any of its subsidiaries, or any fiduciary with respect to any such plan when acting in such capacity, (iii) any member of WH Group or (iv) any “group” (as contemplated under Rule 13d-5 of the Exchange Act (or any successor provision)) and any member of any such “group” to which any member of WH Group is a party. For the purpose of determining whether a person is an interested shareholder, the number of voting shares deemed to be outstanding shall include shares deemed owned by the interested shareholder through application of subdivision 3 under the definition of “beneficial owner” but shall not include any other voting shares that may be issuable pursuant to any contract, arrangement, or understanding, upon the exercise of any conversion right, exchange right, warrant, or option, or otherwise; or

2. An affiliate or associate of the Corporation and at any time within the preceding three years was an interested shareholder of such corporation.

“valuation date” shall mean, if the affiliated transaction is voted upon by shareholders, the day before the date of the vote of shareholders or, if the affiliated transaction is not voted upon by shareholders, the date of the consummation of the transaction.

“voting shares” shall mean the outstanding shares of all classes or series of the Corporation entitled to vote generally in the election of directors.

ARTICLE VIII

(A) **Waiver of Business Opportunities**

In recognition and anticipation of the fact that (i) certain directors, principals, officers, employees or other representatives of members of WH Group may serve as directors, officers or employees of the Corporation, (ii) members of WH Group may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage, or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (iii) members of WH Group and the Corporation may have contractual and business relations with each other, the provisions of this Article VIII are set forth to regulate and define the conduct and certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve members of WH Group and the powers, rights, duties and liabilities of the Corporation and its directors, officers and shareholders in connection therewith.

The Corporation hereby agrees that no member of WH Group or any director, officer or employee of the Corporation or its subsidiaries who is also a director, officer or employee of a member of WH Group (collectively, “Identified Persons” and, individually, an “Identified Person”) shall, to the fullest extent permitted by applicable law, have any duty to refrain from, directly or indirectly, (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its shareholders or to any affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity that may be a business opportunity for an Identified Person and the Corporation or any of its affiliates, except as provided in Article VIII(B). Subject to Article VIII(B), in the event that any Identified Person acquires knowledge of a potential

transaction or other business opportunity that may be a business opportunity for itself, herself or himself and the Corporation or any of its affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its shareholders or to any affiliate of the Corporation for breach of any fiduciary duty as a shareholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such business opportunity for itself, herself or himself, or offers or directs such business opportunity to another person or does not communicate information regarding such business opportunity to the Corporation.

Any person or entity purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article VIII.

(B) Exceptions

Notwithstanding anything to the contrary contained in Article VIII(A), the Corporation does not renounce its interest in any business opportunity offered to an Identified Person if such opportunity is expressly offered to such person solely in his or her capacity as a director or officer of the Corporation, and the provisions of Article VIII(A) shall not apply to any such business opportunity.

ARTICLE IX

Except as otherwise required by the Act, special meetings of shareholders may be called only by (i) the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the directors then in office, (ii) the Chairman of the Board of Directors, (iii) the President of the Corporation, or (iv) for so long as WH Group owns, in the aggregate, a majority of the then outstanding shares of Common Stock, any WH Group Party.

ARTICLE X

For purposes of these Articles, "WH Group" means (a) WH Group Limited, a Cayman Islands limited liability company ("WH Group Limited"); (b) any and all successors to WH Group Limited by way of merger, consolidation or sale of all or substantially all of its assets or equity; (c) any corporation, limited liability company, joint venture, partnership, trust, association or other entity in which WH Group Limited: (i) beneficially owns, either directly or indirectly, more than 50 percent of (A) the total combined voting power of all classes of voting securities of such entity, (B) the total combined equity interests or (C) the capital or profits interest, in the case of a partnership or (ii) otherwise has the power to vote, either directly or indirectly, sufficient securities to elect a majority of the board of directors or similar governing

body, but in each case shall not include the Corporation or any subsidiary of the Corporation; or (d) any person or entity that acquires a majority of the then outstanding shares of Common Stock directly from one or more WH Group Parties. Any member of WH Group that is a shareholder of the Corporation is referred to as a "WH Group Party."

**AMENDED AND RESTATED
BYLAWS
of
SMITHFIELD FOODS, INC.**

ARTICLE I

Meetings of Shareholders

Section 1. Annual Meetings. The annual meeting of the shareholders for the election of directors and for the transaction of such other business as may properly come before the meeting, and any postponement or adjournment thereof, shall be held on such date and at such time as the Board of Directors may in its discretion determine.

Section 2. Special Meetings. Special meetings of shareholders may be called as provided in the Articles of Incorporation or required by the Virginia Stock Corporation Act (as amended from time to time, the “VSCA”).

Section 3. Place of Meetings. Each meeting of the shareholders shall be held at such place (or no place, if the meeting is to be held solely by means of remote communication as authorized by the Board of **Directors**) as may be fixed by the Board of Directors and stated in the notice of the meeting.

Section 4. Notice of Meetings.

(a) Notice, stating the date, time and place (if any) and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than 10 nor more than 60 days before the date of the meeting (except as a different time is specified herein or required by the VSCA), to each shareholder of record entitled to notice of or to vote at such meeting. Notice of a meeting of the shareholders to act on an amendment or restatement of the Articles of Incorporation, a plan of merger, share exchange, domestication or conversion, a proposed sale or other disposition of the Corporation’s assets that requires shareholder approval or the dissolution of the Corporation shall be given not less than 25 nor more than 60 days before the date of the meeting. If the Board of Directors has authorized participation by means of remote communication for holders of any class or series of shares, the notice to the holders of such class or series of shares shall describe the means of remote communication to be used. A record date fixed by the Board of Directors with respect to any meeting of the shareholders shall be the record date for determining shareholders entitled to notice of and to vote at such meeting, unless the Board of Directors, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine

the shareholders entitled to vote at the meeting. Notice may be given in any manner permitted by the VSCA. The Board of Directors may postpone any previously scheduled meeting.

(b) Notwithstanding Section 4(a) of this Article I, a written waiver of notice signed by the person or persons entitled to such notice, either before or after the time stated therein, shall be equivalent to the giving of such notice. A shareholder's attendance at a meeting (i) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and (ii) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Section 5. Quorum and Vote Required. At all meetings of the shareholders, unless a greater number or voting by groups is required by the Articles of Incorporation or the VSCA, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment thereof unless there is a new record date for that adjourned meeting.

If a quorum exists, action on a matter is approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the vote of a greater number or voting by groups is required by the VSCA or the Articles of Incorporation, and except that directors shall be elected by a plurality of the votes cast by the shares entitled to vote in the election. In the absence of a quorum, the chair of the meeting or a majority of the votes cast may adjourn such meeting, provided that no business other than adjournment shall be conducted in the absence of a quorum.

Section 6. Organization. At all meetings of the shareholders, the Chair of the Board of Directors or, in the Chair of the Board of Directors' absence, the Vice Chair of the Board of Directors or, in the Vice Chair of the Board of Directors' absence, the Chief Executive Officer or, in the Chief Executive Officer's absence, the President or, in the President's absence, such other person selected by the Board of Directors, shall act as chair of the meeting. In the absence of the foregoing persons, a majority of the shares present and entitled to vote at such meeting may appoint any person to act as chair. The Secretary or, in the Secretary's absence, an Assistant Secretary, shall act as secretary at each meeting of the shareholders. In the event that neither the Secretary nor any Assistant Secretary is present, the chair of the meeting may appoint any person to act as secretary of the meeting. The Board of Directors may adopt such rules, regulations and procedures for the conduct of any meeting of shareholders as it shall deem appropriate. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chair of any meeting of shareholders shall have the right

and authority to prescribe such rules, regulations and procedures and to do all such acts and things as, in the judgment of such person, are appropriate for the proper conduct of the meeting. Such rules, regulations and procedures, whether adopted by the Board of Directors or prescribed by the chair of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to shareholders of record, their duly authorized and constituted proxies or such other persons as the chair of the meeting shall permit; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. The chair of the meeting shall have the power to recess or adjourn any meeting.

Section 7. Order of Business.

(a) Annual Meeting of Shareholders. At any annual meeting of the shareholders, only such nominations of persons for election to the Board of Directors shall be made, and only such other business shall be conducted or considered, as shall have been properly brought before the meeting. For nominations to be properly made at an annual meeting, and proposals of other business to be properly brought before an annual meeting, nominations and proposals of other business must be (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly made at the annual meeting, by or at the direction of the Board of Directors, or (iii) otherwise properly requested to be brought before the annual meeting by a shareholder of the Corporation in accordance with these Bylaws. For nominations of persons for election to the Board of Directors or proposals of other business to be properly requested by a shareholder to be made at an annual meeting, a shareholder must (x) be a shareholder of record at the time of giving of notice of such annual meeting by or at the direction of the Board of Directors, at the time the shareholder provides the notice required by Section 8 of Article I of these Bylaws and at the time of the annual meeting, (y) be entitled to vote at such annual meeting and (z) comply with the procedures set forth in these Bylaws as to such business or nomination. The immediately preceding sentence shall be the exclusive means for a shareholder to make nominations or other business proposals (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and included in the Corporation's notice of meeting) before an annual meeting of shareholders.

(b) Special Meeting of Shareholders. At any special meeting of the shareholders, only such business shall be conducted or considered as shall have been properly brought before the meeting pursuant to the Corporation's notice of meeting.

To be properly brought before a special meeting, proposals of business must be (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or (ii) otherwise properly brought before the special meeting, by or at the direction of the Board of Directors. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the Corporation's notice of meeting (A) by or at the direction of the Board of Directors or (B) provided that the special meeting was properly called for the purpose of electing directors, or the Board of Directors has determined that directors shall be elected at such meeting, by any shareholder of the Corporation who (x) is a shareholder of record at the time of giving of notice of such special meeting, at the time the shareholder provides the notice required by Section 8 of Article I of these Bylaws and at the time of the special meeting, (y) is entitled to vote at the meeting and (z) complies with the procedures set forth in these Bylaws as to such nomination. The immediately preceding sentence shall be the exclusive means for a shareholder to make nominations or other business proposals before a special meeting of shareholders (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the Corporation's notice of meeting).

(c) General. Except as otherwise provided by the VSCA, the Articles of Incorporation or these Bylaws, the Board of Directors shall have the power to determine whether a nomination or any other business proposed to be brought before a meeting was made or proposed, as the case may be, in accordance with these Bylaws and, if any proposed nomination or other business is not in compliance with these Bylaws, the chair of the meeting shall have the power to declare that no action shall be taken on such nomination or other proposal and such nomination or other proposal shall be disregarded.

Section 8. Advance Notice of Shareholder Business and Nominations.

(a) Annual Meeting of Shareholders. Without qualification or limitation, subject to Section 8(c)(iv) of Article I of these Bylaws, for any nominations or any other business to be properly brought before an annual meeting by a shareholder pursuant to Section 7(a) of Article I of these Bylaws, the shareholder must have given timely notice thereof in proper form (including, in the case of nominations, the completed and signed questionnaire, representation and agreement required by Section 9 of Article I of these Bylaws) and timely updates and supplements thereof in writing to the Secretary and such other business must otherwise be a proper matter for shareholder action. To be timely, a shareholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the shareholder must

be so delivered not later than the close of business on the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period for the giving of a shareholder's notice as described above. Notwithstanding anything in the preceding two sentences to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased by the Board of Directors, and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a shareholder's notice required by this Section 8(a) of Article I shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation. In addition, to be timely, a shareholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight business days prior to the date for the meeting, any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof. No such update or supplement shall be deemed to cure a shareholder's notice that did not fully comply with these Bylaws on the date that such notice was delivered to the Corporation. If a shareholder who has given timely notice as required herein to make a nomination or bring other business before any such meeting and intends to authorize another person to act for such shareholder as a proxy to present the proposal at such meeting, the shareholder shall give notice of such authorization in writing to the Secretary not less than three business days before the date of the meeting, including the name and contact information for such person.

(b) Special Meeting of Shareholders. Subject to Section 8(c)(iv) of Article I of these Bylaws, in the event a special meeting of shareholders has been properly called for the purpose of electing one or more directors to the Board of Directors, any shareholder may nominate a person or persons (as the case may be) for election to such position(s) to be elected as specified in the Corporation's notice of the meeting, provided that the shareholder gives timely notice thereof in proper form (including the completed and signed questionnaire, representation and agreement required by Section 9 of Article I of these Bylaws) and timely updates and supplements thereof in writing to the Secretary. In order to be timely, a shareholder's notice

shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting, or the public announcement thereof, commence a new time period for the giving of a shareholder's notice as described above. In addition, to be timely, a shareholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight business days prior to the date for the meeting, any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof. No such update or supplement shall be deemed to cure a shareholder's notice that did not fully comply with these Bylaws on the date that such notice was delivered to the Corporation. If a shareholder who has given timely notice as required herein to bring any business before any such meeting and intends to authorize another person to act for such shareholder as a proxy to present the proposal at such meeting, the shareholder shall give notice of such authorization in writing to the Secretary not less than three business days before the date of the meeting, including the name and contact information for such person.

(c) Other Provisions.

(i) To be in proper form, a shareholder's notice (whether given pursuant to Section 8(a) of Article I or Section 8(b) of Article I of these Bylaws) to the Secretary must include the following, as applicable:

(A) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, a shareholder's notice must set forth: (1) the name and address of such shareholder, as they appear on the Corporation's books, and of such beneficial owner, if any, and of their respective affiliates or associates or others acting in concert therewith, (2) (a) the class or series and number of shares of the Corporation and any other equity or debt securities of the Corporation which are, directly or indirectly, owned beneficially and of record by such shareholder, such beneficial owner or their respective affiliates or associates or others acting in concert therewith, and the names and

number of shares of the Corporation held by any nominees on behalf of any such persons, (b) 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, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise (any of the foregoing, a “Derivative Instrument”) directly or indirectly owned beneficially by such shareholder, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, (c) any proxy (other than a revocable proxy given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), contract, arrangement or understanding pursuant to which such shareholder, beneficial owner, if any, or affiliates or associates or others acting in concert therewith has a right to vote any class or series of shares or other securities of the Corporation, (d) any contract, agreement, arrangement or understanding, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by such shareholder, beneficial owner, if any, or affiliates or associates or others acting in concert therewith, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such shareholder, beneficial owner, if any, or affiliates or associates or others acting in concert therewith with respect to any class or series of the shares or other securities of the Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the shares or other securities of the Corporation (any of the foregoing, “Short Interests”), (e) any rights to dividends or other distributions on the shares of the Corporation owned beneficially by such shareholder, beneficial owner, if any, or affiliates or associates or others acting in concert therewith that are separated or separable from the underlying shares of the Corporation, (f) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such shareholder, beneficial owner, if any, or affiliates or associates or others acting in concert therewith is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, (g) any material transaction occurring during the prior twelve (12) months between such shareholder or beneficial owner, if

any, on the one hand, and the Corporation, any affiliate of the Corporation or any of their respective officers or directors, on the other hand, and (h) any other material relationship between such shareholder or beneficial owner, if any, on the one hand, and the Corporation, any affiliate of the Corporation or any of their respective officers or directors, on the other hand, (3) a representation that the shareholder 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 nomination or other business, (4) a description of any agreement, arrangement or understanding with respect to the director nomination or business proposal(s), existing presently or existing during the prior twenty-four (24) months, between or among the shareholder or the beneficial owner, if any, on the one hand, and any of their respective affiliates and associates, on the other hand, including, without limitation, any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Schedule 13D under the Exchange Act (regardless of whether the requirement to file a Schedule 13D is applicable), and (5) any other information relating to such shareholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement and form of proxy 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 a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(B) if the notice relates to any business other than a nomination of a director or directors that the shareholder proposes to bring before the meeting, a shareholder's notice must, in addition to the matters set forth in paragraph (A) above, also set forth: (1) a description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such shareholder and beneficial owner, if any, and their respective affiliates and associates or others acting in concert therewith in such business, (2) the text of the proposal or business (including the text of any resolutions or bylaw amendments proposed for consideration), (3) a description of all agreements, arrangements and understandings between such shareholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such shareholder, and (4) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act;

(C) as to each person, if any, whom the shareholder proposes to nominate for election or reelection to the Board of Directors, a shareholder's notice must, in addition to the matters set forth in paragraph (A) above, also set forth: (1) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a

contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in a proxy statement as a nominee and to serving as a director if elected) and (2) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such shareholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, on the other hand, including all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the shareholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant;

(D) if the notice relates to a nomination of a director or directors that the shareholder proposes to bring before the meeting, (1) a shareholder's notice must set forth a statement whether or not the shareholder or beneficial owner, if any, proposing to nominate directors for election or reelection to the Board of Directors will deliver a proxy statement and form of proxy to holders of at least 67 percent of the voting power of all of the shares of capital stock of the Corporation entitled to vote on the election of directors or otherwise solicit proxies or votes from shareholders in support of such nomination and, if so, naming the participants (as defined in Item 4 of Schedule 14A under the Exchange Act) in any such solicitation, and (2) if such shareholder or beneficial owner, if any, no longer plans to solicit proxies in accordance with its representation in the preceding sentence, such shareholder or beneficial owner shall inform the Corporation of this change by delivering a written notice to the Secretary at the principal executive offices of the Corporation no later than two (2) business days after making the determination not to proceed with a solicitation of proxies; and

(E) with respect to each person, if any, whom the shareholder proposes to nominate for election or reelection to the Board of Directors, a shareholder's notice must, in addition to the matters set forth in paragraphs (A), (C) and (D) above, also include a completed and signed questionnaire, representation and agreement required by Section 9 of Article I of these Bylaws. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee.

(ii) For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by a national news service, including the Dow Jones News Service or the Associated Press, or in a document publicly filed by the Corporation with the

Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(iii) No shareholder, beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith or any other participant in a solicitation shall solicit proxies in support of any nominees other than the nominees of the Board of Directors in connection with any meeting of shareholders unless such person has complied with Rule 14a-19 promulgated under the Exchange Act in connection with the solicitation of such proxies or an applicable exemption. Upon request by the Corporation, if the shareholder making the nomination, the beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act or includes the information required by Rule 14a-19(b) in a preliminary or definitive proxy statement previously filed by any such person (it being understood that any such notice or filing shall be in addition to any notice required by Section 8(a) or Section 8(b) of this Article I), such shareholder or beneficial owner, if any, shall deliver to the Corporation, no later than seven (7) business days prior to the date of the meeting, reasonable evidence that such person has met the requirements of Rule 14a-19 promulgated under the Exchange Act. In no event may a shareholder nominate a greater number of director candidates than are subject to election by the shareholders at the applicable meeting. Any shareholder or beneficial holder directly or indirectly soliciting proxies from other shareholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

(iv) Nothing in these Bylaws shall be deemed to affect any rights (1) of shareholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act, (2) of the holders of any series of preferred stock of the Corporation if and to the extent provided for under law, the Articles of Incorporation or these Bylaws or (3) of shareholders to act by written consent in accordance with the Articles of Incorporation and applicable law.

(v) The disclosures required by Section 8(a) of Article I or Section 8(b) of Article I of these Bylaws shall not be required to include any disclosures with respect to ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a shareholder solely as a result of being the shareholder of record or nominee directed to prepare and submit the notice required by Section 8(a) of Article I or Section 8(b) of Article I, as the case may be, on behalf of a beneficial owner other than the name of any such entity and the number of shares held on behalf of such beneficial owner.

(vi) Notwithstanding the foregoing provisions of this Section 8 of Article I, a shareholder shall also comply with all applicable requirements of the Exchange Act

and the rules and regulations thereunder, including, but not limited to, Rule 14a-19 of the Exchange Act, with respect to the matters set forth in this Section 8 of Article I. If a shareholder fails to comply with any applicable requirements of the Exchange Act, including, but not limited to, Rule 14a-19 promulgated thereunder, such shareholder's business proposal(s) and/or director nomination shall be deemed to have not been made in compliance with these Bylaws and shall be disregarded.

Section 9. 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 Section 8 of Article I of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire 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 (the required form of which shall be 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") that has not been disclosed to the Corporation or (ii) any Voting Commitment that could limit or interfere with such person's 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 that has not been disclosed therein and (c) 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, resignation, confidentiality and stock ownership and trading policies and guidelines of the Corporation publicly disclosed from time to time.

Section 10. Voting. Each holder of record of stock of any class shall, as to all matters in respect of which stock of such class has voting power, be entitled to such vote as is provided in the Articles of Incorporation for each share of stock of such class standing in the holder's name on the books of the Corporation as of the voting record date for the meeting of shareholders. Unless required by statute or determined by the chair of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the shareholder voting or by such shareholder's proxy, if there be such proxy; *provided, however*, that if authorized by the Board of Directors, any shareholder vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the

shareholder or the shareholder's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the shareholder or the shareholder's proxy.

Section 11. Proxies. A shareholder may vote his, her or its shares in person or by proxy. A shareholder or a shareholder's duly authorized agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine the date of transmission and that the shareholder, the shareholder's duly authorized agent or the shareholder's duly authorized attorney-in-fact authorized the transmission. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this Section 11 of Article I may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. Any proxy shall be delivered to the secretary of the meeting or to the inspectors of election at or prior to the time designated by the chair of the meeting or in the rules or order of business for so delivering such proxies. An appointment of a proxy is valid for the term provided in the appointment form and, if no term is provided, is valid for 11 months unless the appointment is irrevocable.

Section 12. Inspectors. At all meetings of the shareholders, the Corporation shall appoint one or more inspectors. Each inspector, before entering upon the discharge of his or her duties, shall verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. The inspectors shall (a) ascertain the number of shares outstanding and the voting power of each, (b) determine the shares represented at a meeting, (c) determine the validity of proxy appointments and ballots, (d) count all votes, (e) make a written report of the results and (e) perform such other duties as required by law or requested by the Corporation or the chair of the meeting in connection with such meeting. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

Section 13. Record Dates. The Board of Directors shall fix, in advance, a record date or dates to make a determination of shareholders entitled to notice of or to vote at any meeting of shareholders or to receive any dividend or distribution or for any other purpose, such date or dates to be not more than 70 days before the meeting or action requiring a determination of shareholders. When a determination of shareholders entitled to notice of or to vote at any meeting of shareholders has been made, such determination shall be effective for any adjournment of the meeting unless the Board of Directors fixes a new record date or dates, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the

original meeting. If not otherwise fixed under these Bylaws, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the Secretary unless prior action by the Board of Directors is required respecting the action to be taken without a meeting, in which case the record date shall be the close of business on the day the action of the Board of Directors is taken.

ARTICLE II

Board of Directors

Section 1. General Powers. All corporate powers shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Corporation managed under the direction, and subject to the oversight, of the Board of Directors.

Section 2. Number. The number of directors shall be determined from time to time by the Board of Directors.

Section 3. Term of Office. Each director shall hold office for his or her applicable term in accordance with the Articles of Incorporation and until his or her successor shall have been duly elected and qualified.

Section 4. Organization. At all meetings of the Board of Directors, the Chair of the Board of Directors or, in the Chair of the Board of Directors' absence, the Vice Chair of the Board of Directors, or in the Vice Chair of the Board of Directors' absence, the Chief Executive Officer (if a director) shall act as chair of the meeting. In the absence of the foregoing persons, the majority of the directors present at the meeting may appoint any director who is present at such meeting to act as chair. The Secretary or, in the Secretary's absence, an Assistant Secretary, shall act as secretary of meetings of the Board of Directors. In the event that neither the Secretary nor any Assistant Secretary is present at such meeting, the chair of the meeting shall appoint any person to act as secretary of the meeting.

Section 5. Vacancies. Any vacancy occurring in the Board of Directors, including a vacancy resulting from an increase in the number of directors, shall be filled in accordance with the Articles of Incorporation.

Section 6. Place of Meeting. Meetings of the Board of Directors, regular or special, may be held either within or outside the Commonwealth of Virginia.

Section 7. Organizational Meeting. Unless otherwise determined by the Board of Directors, the annual organizational meeting of the Board of Directors shall be held immediately

following adjournment of the annual meeting of shareholders and at the same place, without the requirement of any notice other than this provision of the Bylaws.

Section 8. Regular Meetings; Notice. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors may from time to time determine. Notice of such meetings need not be given if the time and place have been fixed at a previous meeting.

Section 9. Special Meetings; Notice. Special meetings of the Board of Directors shall be held whenever called by order of the Chair of the Board of Directors or any two of the directors. Notice of each such meeting, which need not specify the business to be transacted thereat, shall be (a) mailed to each director, addressed to his or her residence or usual place of business, at least two days before the day on which the meeting is to be held, (b) given at least 24 hours before the time of the meeting by electronic transmission or (c) given personally or by telephone at least 24 hours before the time of the meeting.

Section 10. Waiver of Notice. Whenever any notice is required to be given to a director of any meeting for any purpose under the provisions of the VSCA, the Articles of Incorporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, either before or after the time stated therein, shall be equivalent to the giving of such notice. A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless at the beginning of the meeting or promptly upon the director's arrival, he or she objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 11. Quorum and Manner of Acting. Except as otherwise required by the VSCA, the Articles of Incorporation or these Bylaws, a majority of the directors fixed in accordance with these Bylaws at the time of any regular or special meeting of the Board of Directors shall constitute a quorum for the transaction of business at such meeting, and the act of a majority of the directors present at any such meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of those present may adjourn the meeting from time to time until a quorum be had. Notice of any such adjourned meeting need not be given.

Section 12. Remote Meetings. Any or all directors may participate in any regular or special meeting of the Board of Directors or any committee thereof by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 13. Action Without Meeting. Action required or permitted to be taken by the Board of Directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the Corporation.

Section 14. Order of Business. At all meetings of the Board of Directors, business may be transacted in such order as from time to time the Board of Directors may determine.

Section 15. Resignation of Director. Any director may resign at any time by giving written notice to the Board of Directors, the Chair of the Board of Directors or the Secretary. Unless the resignation is contingent on acceptance by the Board of Directors, or as otherwise stated in the notice of resignation, it shall take effect when delivered.

Section 16. Chair. The Board of Directors may elect a chair from among the directors. The Chair of the Board of Directors shall preside at meetings of the Board of Directors and perform such other duties as may be set forth in these Bylaws or requested by the Board of Directors or otherwise incident to such office.

Section 17. Vice Chair. The Board of Directors may elect a vice chair from among the directors. The Vice Chair of the Board of Directors shall, at the request of or in the absence of the Chair of the Board of Directors, preside at meetings of the Board of Directors and perform all duties of the Chair of the Board of Directors as may be set forth in these Bylaws or requested by the Board of Directors.

Section 18. Committees. The Board of Directors may create one or more committees and appoint directors to serve on them. Each committee shall have at least two members. The creation of a committee shall be approved by the greater number of (a) a majority of all directors in office at the time the action is being taken or (b) the number of directors required to take action under Section 11 of Article II hereof. Any such committee, to the extent provided in the resolution of the Board of Directors designating the committee, shall have and may exercise the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, except as limited by the VSCA.

ARTICLE III

Officers

Section 1. Officers. The officers of the Corporation may include a Chief Executive Officer, a President, a Chief Financial Officer, one or more Vice Presidents (each of whom may be designated Executive, Senior, Assistant or Associate Vice Presidents or given similar designations), a Treasurer, a Secretary, one or more Assistant Treasurers or Assistant Secretaries and such other officers of the Corporation as may be determined by the Board of Directors or any

other officer with authority to appoint officers. The Chief Executive Officer and the President, and any other officer to whom such power is conferred from time to time by the Board of Directors, shall have the power to appoint inferior officers. Any two or more offices may be held by the same person.

Section 2. Term of Office; Removal; Resignation; and Vacancies. Each officer shall hold office until a successor shall have been duly elected or until such officer's resignation, death or removal. Any officer of the Corporation may be removed at any time, with or without cause, by the Board of Directors or by any officer who has the power to appoint the officer who is to be removed. Any officer may resign at any time by delivering a notice of his or her resignation to the Board of Directors, the Chair of the Board, the Chief Executive Officer or the President. Any such resignation shall be effective when the notice is delivered unless the notice specifies a later effective date. If any vacancy shall occur among the officers of the Corporation, such vacancy may be filled by the Board of Directors or by the Chief Executive Officer, the President or any other officer to whom such power has been delegated by the Board of Directors.

Section 3. Duties. The officers of the Corporation shall have such duties as generally pertain to their offices, respectively, as well as such powers and duties as are prescribed by law or are provided for in these Bylaws or as from time to time shall be conferred by the Board of Directors or, in the case of inferior officers, the Chief Executive Officer or the President. The Chief Executive Officer, the President, the Treasurer, the Secretary and such other persons as the Board of Directors may authorize may sign and execute in the name of the Corporation contracts, agreements, representations, securities, deeds, mortgages, leases, licenses, releases, bonds, powers of attorney and other instruments, and each officer may sign and execute, on behalf and in the name of the Corporation, such contracts, agreements and other instruments as are incidental to such officer's duties in the ordinary course of business, subject in each case to any limitations on such delegation of authority as may be adopted by the Board of Directors. The Board of Directors may require any officer to give such bond for the faithful performance of his or her duties as the Board may see fit.

Section 4. Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall be responsible for the entire business and affairs of the Corporation, unless there is no Chief Executive Officer, in which case such duties and responsibilities shall be those of the President. The Chief Executive Officer shall, from time to time, report to the Board of Directors on matters within his or her knowledge which the interests of the Corporation may require be brought to its attention. The Chief Executive Officer shall do and perform such other duties as from time to time the Board of Directors may prescribe.

Section 5. President. The President, if any, shall be responsible for the general management of the business of the Corporation. The offices of President and Chief Executive

Officer may be held by the same or separate persons, each having the powers and duties hereunder and as determined by the Board of Directors. In the event that such offices are held by separate persons, the Chief Executive Officer shall be the more senior ranked officer. In the absence or disability of the Chief Executive Officer, the President shall perform the powers and duties of the Chief Executive Officer. The President shall, from time to time, report to the Chief Executive Officer, if any, and the Board of Directors on matters within his or her knowledge which the interests of the Corporation may require be brought to their attention. The President shall do and perform such other duties as from time to time the Chief Executive Officer, if any, and the Board of Directors may prescribe.

Section 6. Treasurer. The Treasurer shall exercise general supervision over the receipt, custody and disbursement of corporate funds and shall coordinate the financial and accounting affairs of the Corporation. The Treasurer shall have such further powers and duties and shall be subject to such directions as may be granted or imposed upon him or her from time to time by the Chief Executive Officer, the President or the Board of Directors.

Section 7. Secretary. The Secretary shall give, or cause to be given, notices of all meetings of shareholders and directors, and all other notices required by law or by these Bylaws. The Secretary shall record the proceedings of the meetings of the shareholders, Board of Directors and committees of the Board of Directors in books kept for that purpose and shall keep the seal of the Corporation and attach it to all documents requiring such impression unless some other officer is designated to do so by the Board of Directors. The Secretary shall have such further powers and duties and shall be subject to such directions as may be granted or imposed upon him or her from time to time by the Chief Executive Officer, the President or the Board of Directors.

ARTICLE IV

Capital Stock

The shares of stock of the Corporation may be represented by certificates or may be uncertificated shares, or a combination of both; provided, that all shares of stock of the Corporation shall be uncertificated unless otherwise determined by the Board of Directors. To the extent that shares are represented by certificates, such certificates shall be in such form as prescribed by the Board of Directors and shall bear the seal of the Corporation and the signature of at least two of the following officers of the Corporation: the Chief Executive Officer, the President, the Treasurer, the Secretary, any Vice President or any other officers designated by the Board of Directors to sign such certificates. Transfer agents and/or registrars for the stock of the Corporation may be appointed by the Board of Directors and may be required to countersign stock certificates. Any or all of the signatures on a stock certificate may be a facsimile. In the

event that any officer whose signature shall have been used on a stock certificate shall for any reason cease to be an officer of the Corporation and such certificate shall not then have been delivered by the Corporation, the Board of Directors may nevertheless adopt such certificate, and it may then be issued and delivered as though such person had not ceased to be an officer of the Corporation.

ARTICLE V

Miscellaneous Provisions

Section 1. Seal. The Board of Directors shall provide a suitable seal or seals, which shall be in the form of a circle, and shall bear around the circumference the words “Smithfield Foods, Inc.”

Section 2. Fiscal Year. The fiscal year of the Corporation shall end on the Sunday nearest to December 31 unless otherwise determined by the Board of Directors.

Section 3. Amendment of Bylaws. These Bylaws may be amended, altered or repealed by the Board of Directors by the vote of a majority of the directors in office. The shareholders shall have the power to rescind, alter, amend, or repeal any Bylaws and to enact Bylaws which, if expressly provided, may not be amended, altered or repealed by the Board of Directors.

Section 4. Voting of Securities. Unless otherwise provided by the Board of Directors, the Chief Executive Officer, the President and such other officers as may be authorized by the Board of Directors, the Chief Executive Officer or the President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as a shareholder or otherwise in any other corporation or entity, any of whose stock or securities may be held by the Corporation, at meetings of the holders of the stock or other securities of any other corporations or entities, or to consent in writing to any action by any such other corporations or entities, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed on behalf of the Corporation and under its corporate seal, or otherwise, such written proxies, consents, waivers, or other instruments as may be necessary or proper in the premises. The Chief Executive Officer, the President or another officer of the Corporation may attend any meeting of the holders of stock or other securities of any such other corporation or entity and thereat vote, consent or otherwise exercise any or all other powers of the Corporation as the holder of such stock or other securities of such other corporation or entity.

Section 5. Exclusive Forum

Unless the Corporation consents in writing to the selection of an alternative forum (an “Alternative Forum Consent”), the United States District Court for the Eastern District of Virginia, Richmond Division, or in the event that court lacks jurisdiction to hear such action, the Circuit Court of Henrico County, Virginia, 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 of breach of duty owed by any current or former director, officer, employee, shareholder or agent of the Corporation to the Corporation or the Corporation’s shareholders, including a claim alleging the aiding and abetting of such a breach of duty, (iii) any action asserting a claim arising pursuant to any provision of the Virginia Stock Corporation Act, the Articles of Incorporation or these Bylaws (in each case, as may be amended from time to time) or (iv) any action asserting a claim governed by the internal affairs doctrine or asserting one or more “internal corporate claims,” as that term is defined in subsection C of Section 13.1-624 of the Virginia Stock Corporation Act, in each case to the extent not addressed in clauses (i), (ii), (iii) or (iv), in all cases to the fullest extent permitted by law and subject to one of the courts having personal jurisdiction over the indispensable parties named as defendants; *provided, however*, the foregoing provision will not apply to claims arising under the Securities Act of 1933 (the “Securities Act”) or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States will be the sole and exclusive forum for the resolution of any action asserting a claim arising under the Securities Act.

Any person or entity purchasing or otherwise acquiring or holding 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 5 of Article V. If any action the subject matter of which is within the scope of this Section 5 of Article V is filed in a court other than a court located within the Commonwealth of Virginia (a “Foreign Action”) by or in the name of any shareholder (including any beneficial owner), such shareholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the Commonwealth of Virginia in connection with any action brought in any such court to enforce the provisions of this Section 5 of Article V and (ii) having service of process made upon such shareholder in any such action by service upon such shareholder’s counsel in the Foreign Action as agent for such shareholder. Failure to enforce the provisions of this Section 5 of Article V would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance to enforce the provisions of this Section 5 of Article V.

If any provision of this Section 5 of Article V shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such

provision in any other circumstance and of the remaining provisions of this Section 5 of Article V (including, without limitation, each portion of any sentence of this Section 5 of Article V containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation's ongoing consent right as set forth in this Section 5 of Article V with respect to any current or future actions or proceedings. To the extent that the United States District Court for the Eastern District of Virginia, Richmond Division, and the Circuit Court of Henrico County, Virginia, do not have personal jurisdiction over the indispensable parties named as defendants, such parties must be given a reasonable opportunity to consent to such jurisdiction before any action or proceeding may be brought or maintained in any other court.

**SMITHFIELD FOODS, INC.
OMNIBUS INCENTIVE PLAN**

ARTICLE I.
PURPOSE

The purpose of this Smithfield Foods, Inc., Omnibus Incentive Plan (this “**Plan**”) is to promote the success of the Company’s business for the benefit of its stockholders by aligning employee and stockholder interests through the grant to Eligible Individuals of cash and equity-based incentives in order to attract, retain, and reward such individuals and strengthen the alignment of interests between such individuals and the Company’s stockholders.

ARTICLE II.
DEFINITIONS

2.1 “**Affiliate**” means a corporation or other entity controlled by, controlling, or under common control with the Company. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such Person, whether through the ownership of voting or other securities, by contract or otherwise.

2.2 “**Applicable Law**” means the requirements applicable to the Company or any Eligible Individual relating to equity- or cash-based compensation and the related equity interests under U.S. federal, state, and local law, non-U.S. law, the rules or requirements of any stock exchange or quotation system on which the Common Stock is listed or quoted, and any other applicable laws, including the Code and other tax laws.

2.3 “**Award**” means an award under this Plan of any Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Dividend Equivalent Right, Other Stock-Based Award, or Cash Award.

2.4 “**Award Agreement**” means the written or electronic agreement, contract, certificate, or other instrument or document evidencing the terms and conditions of an individual Award.

2.5 “**Board**” means the Board of Directors of the Company.

2.6 “**Cash Award**” means an award payable in cash at such time or times and subject to such terms and conditions as set forth in an Award Agreement.

2.7 “**Cause**” means, unless otherwise defined in the applicable Award Agreement, either (a) where there is an employment agreement, offer letter, consulting agreement, change in control agreement, or similar agreement in effect between the Company or an Affiliate and the Participant at the time of the grant of the Award that defines “cause” (or term of like import), “cause” (or term of like import) as defined under such agreement, or (b) where

clause (a) above does not apply, the Participant's (i) commission of, or plea of guilty or no contest to, a felony or a crime involving moral turpitude or the commission of any other act or omission involving willful malfeasance or material fiduciary breach with respect to the Company or an Affiliate, (ii) substantial and repeated failure to perform duties as reasonably directed by the person to whom the Participant reports, (iii) conduct that brings or is reasonably likely to bring the Company or an Affiliate negative publicity or into public disgrace, embarrassment, or disrepute, (iv) gross negligence or willful misconduct with respect to the Company or an Affiliate, (v) material violation of the Company's policies or codes of conduct, including policies related to discrimination, harassment, performance of illegal or unethical activities, or ethical misconduct, or (vi) breach of any non-competition, non-solicitation, no-hire, or confidentiality covenant between the Participant and the Company or an Affiliate.

2.8 **"Change in Control"** means each of the following, unless otherwise set forth in the applicable Award Agreement or other written agreement with a Participant that is approved by the Committee:

(a) any Person (other than the Company, WH Group Limited, any trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its Affiliates, or any entity owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of the Company), becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then-outstanding securities, excluding for purposes herein, acquisitions pursuant to a Business Combination (as defined below) that does not constitute a Change in Control as defined in Section 2.8(b),

(b) a merger, reorganization, or consolidation of the Company or in which equity securities of the Company are issued (each, a **"Business Combination"**), other than a merger, reorganization, or consolidation after which the voting securities of the Company outstanding immediately prior thereto continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its direct or indirect parent) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity (or, as applicable, a direct or indirect parent of the Company or such surviving entity) outstanding immediately after such merger, reorganization, or consolidation and such voting power among the holders thereof is in substantially the same proportion as the voting power of such voting securities among holders thereof immediately prior to the merger, reorganization, or consolidation; provided, however, that a merger, reorganization, or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than those covered by the exceptions in Section 2.8(a)) acquires more than 50% of the combined voting power of the Company's then-outstanding securities will not constitute a Change in Control,

(c) during any two-year period, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a Person who has entered into an agreement with the Company to effect a

transaction described in Sections 2.8(a) or (b)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, or

(d) a complete liquidation or dissolution of the Company or the consummation of a sale or disposition by the Company of all or substantially all of the Company's assets other than the sale or disposition of all or substantially all of the assets of the Company to a Person or Persons who beneficially own, directly or indirectly, more than 50% of the combined voting power of the outstanding voting securities of the Company at the time of the sale.

Notwithstanding the foregoing, with respect to any Award that provides for a "deferral of compensation" within the meaning of Section 409A that is payable upon a Change in Control, an event will not constitute a Change in Control under this Plan for purposes of payment of such Award unless such event is also a "change in ownership," a "change in effective control," or a "change in the ownership of a substantial portion of the assets" of the Company within the meaning of Section 409A. For the avoidance of doubt, a Change in Control will not be deemed to occur solely by virtue of a "spin-off" or distribution of Shares owned by WH Group Limited to its stockholders for no consideration in substantially the same proportions as their ownership of WH Group Limited.

2.9 "**Change in Control Price**" means the highest price per Share paid in any transaction related to a Change in Control.

2.10 "**Code**" means the U.S. Internal Revenue Code of 1986, as amended from time to time. Any reference to a specific section of the Code or regulation thereunder includes such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.11 "**Committee**" means any committee of the Board duly authorized by the Board to act at the Committee hereunder; provided, however, that unless otherwise determined by the Board, the Committee must consist solely of two or more members of the Board who are each (a) a "non-employee director" within the meaning of Rule 16b-3(b) and (b) "independent" under the listing standards or rules of the securities exchange upon which the Common Stock is traded, but only to the extent that such independence is required in order to take the action at issue pursuant to such standards or rules. If the Board does not duly any such committee, the term "Committee" will be deemed to refer to the Board for all purposes under this Plan. The Board may abolish any Committee or re-vest in itself any previously delegated authority from time to time and will retain the right to exercise the authority of the Committee to the extent consistent with Applicable Law.

2.12 "**Common Stock**" means the common stock, no par value, of the Company.

2.13 “**Company**” means Smithfield Foods, Inc., a Virginia corporation, and its successors by operation of law.

2.14 “**Consultant**” means any natural person who is an advisor or consultant or other service provider to the Company or any of its Affiliates.

2.15 “**Detrimental Conduct**” means a Participant’s serious misconduct or unethical behavior, including any of the following: (a) any violation by the Participant of a restrictive covenant agreement to which the Participant is a party with the Company or an Affiliate (covering, for example, confidentiality, non-competition, non-solicitation, non-disparagement, etc.), (b) any conduct by the Participant that could result in the Participant’s Termination of Service for Cause, (c) the commission of a criminal act by the Participant, whether or not performed in the workplace, that subjects, or if generally known would subject, the Company or an Affiliate to public ridicule or embarrassment, or other improper or intentional conduct by the Participant causing reputational harm to the Company, an Affiliate, or a client or former client of the Company or an Affiliate, (d) the Participant’s breach of a fiduciary duty owed to the Company or an Affiliate or a client or customer or a former client or customer of the Company or an Affiliate, or (e) the Participant’s intentional violation, or grossly negligent disregard, of the Company’s or an Affiliate’s policies, rules, or procedures.

2.16 “**Disability**” means, unless otherwise defined in the applicable Award Agreement, the Participant’s inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, after accounting for reasonable accommodations (if applicable and required by Applicable Law); provided, however, for purposes of an Incentive Stock Option, the term Disability will have the meaning ascribed to it under Section 22(e)(3) of the Code. The Committee will determine whether an individual has a Disability, and in so doing the Committee may rely on any determination that a Participant is disabled for purposes of eligibility for benefits under any long-term disability plan in which the Participant participates that is maintained by the Company or any Affiliate.

2.17 “**Dividend Equivalent Right**” means a right granted to a Participant under this Plan to receive the equivalent value (in cash or Shares) of dividends paid on Shares.

2.18 “**Effective Date**” means the effective date of this Plan as defined in ARTICLE XIII.

2.19 “**Eligible Employee**” means an employee of the Company or any of its Affiliates. An employee on a leave of absence may be an Eligible Employee.

2.20 “**Eligible Individual**” means an Eligible Employee, Non-Employee Director, or Consultant whom the Committee designates in its discretion as eligible to receive an Award in accordance with the terms and conditions of this Plan.

2.21 “**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended from time to time. Any reference to a specific section of the Exchange Act or regulation thereunder includes such section or regulation, any valid regulation or interpretation

promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.22 **“Fair Market Value”** means, unless otherwise required by Applicable Law, as of any date and except as provided below, either (a) the last sales price reported for the Common Stock on the applicable date on the principal national securities exchange in the United States on which it is then traded, listed, or otherwise reported or quoted, or (b) if the Common Stock is not traded, listed, or otherwise reported or quoted on a national securities exchange in the United States, the Committee will determine in good faith the Fair Market Value in whatever manner it considers appropriate. When determining Fair Market Value under clause (a) above for any purpose in connection with the grant of an Award, the date of determination will be the trading day immediately prior to the date on which the Award is granted. When determining Fair Market Value under clause (a) above for any purpose in connection with the exercise of an Award, the date of determination will be the date on which a notice of exercise is received by the Company or, if not a date on which the applicable market is open, the next day on which it is open.

2.23 **“Family Member”** has meaning given to it in the general instructions of Form S-8.

2.24 **“Incentive Stock Option”** means any Stock Option granted to an Eligible Employee who is an employee of the Company, its Parents, or its Subsidiaries and that is intended to be, and is designated in the applicable Award Agreement as, an “incentive stock option” within the meaning of Section 422 of the Code.

2.25 **“Non-Employee Director”** means a director on the Board who is not an employee of the Company.

2.26 **“Non-Qualified Stock Option”** means any Stock Option that is not an Incentive Stock Option.

2.27 **“Other Stock-Based Award”** means an award pursuant to ARTICLE VIII that is valued in whole or in part by reference to, or is payable in or otherwise based on, Shares, but may be settled in the form of Shares or cash.

2.28 **“Parent”** means any “parent corporation” of the Company within the meaning of Section 424(e) of the Code.

2.29 **“Participant”** means an Eligible Individual who has accepted and holds an Award.

2.30 **“Person”** has the meaning given to it in Sections 13(d) and 14(d) of the Exchange Act.

2.31 **“Restricted Stock”** means an award of Shares that are subject to vesting and forfeiture conditions.

2.32 “**Restricted Stock Unit**” means an unfunded, unsecured right to receive, on the applicable settlement date, one Share or an amount in cash or other consideration determined by the Committee to be of equal value as of such settlement date.

2.33 “**Rule 16b-3**” means Rule 16b-3 under Section 16(b) of the Exchange Act as then in effect or any successor provision.

2.34 “**Section 409A**” means Section 409A of the Code.

2.35 “**Securities Act**” means the U.S. Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder. Any reference to a specific section of the Securities Act or regulation thereunder includes such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.36 “**Shares**” means shares of Common Stock.

2.37 “**Stock Appreciation Right**” means a stock appreciation right pursuant to ARTICLE VI.

2.38 “**Stock Option**” means an option to purchase Shares pursuant to ARTICLE VI.

2.39 “**Subsidiary**” means a subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

2.40 “**Ten-Percent Stockholder**” means a Person owning stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, its Parent, or its Subsidiaries.

2.41 “**Termination of Service**” means the termination of the applicable Participant’s employment with, or performance of services for, the Company and its Affiliates. Unless otherwise determined by the Committee, (a) if a Participant’s employment or services with the Company and its Affiliates terminates but such Participant continues to provide services to the Company and its Affiliates in a non-employee capacity, such change in status will not be deemed a Termination of Service with the Company and its Affiliates, and (b) a Participant employed by, or performing services for, an Affiliate that ceases to be an Affiliate will also be deemed to have suffered a Termination of Service if the Participant does not immediately thereafter become an employee of, or other service provider to, the Company or another Affiliate. Notwithstanding the foregoing, with respect to any Award that provides for a “deferral of compensation” within the meaning of Section 409A that is payable upon a Termination of Service, a Participant will not be considered to have suffered a “Termination of Service” for purposes of payment of such Award unless the Participant has suffered a “separation from service” within the meaning of Section 409A.

ARTICLE III.
ADMINISTRATION

3.1 Authority of the Committee. The Committee will administer this Plan in accordance with its terms and Applicable Law, and in furtherance thereof, the Committee will have complete authority at any time and from time to time, in its sole discretion, to cause the Company to grant Awards to Eligible Individuals and to do the following, in each case to the extent not inconsistent with the terms of this Plan:

- (a) determine whether and to what extent one or more Awards are to be granted to one or more Eligible Individuals,
- (b) determine the number of Shares or cash amount to be covered by each Award,
- (c) determine the terms and conditions of Awards, including but not limited to the exercise or purchase price (if any), any condition, restriction, or limitation on receipt or retention, any vesting schedule and vesting terms, including performance-related vesting terms, and any forfeiture restrictions or waiver thereof,
- (d) determine whether, to what extent, and under what circumstances Awards are to operate on a tandem basis or in conjunction with or apart from other awards made by the Company outside of this Plan,
- (e) determine whether, to what extent, and under what circumstances an Award may be settled in cash, Shares, other property, or a combination of the foregoing,
- (f) determine whether, to what extent, and under what circumstances cash, Shares, or other property payable with respect to an Award must or may be deferred either automatically or at the election of the Participant,
- (g) modify, waive, amend, or adjust the terms and conditions of any Award,
- (h) determine whether a Stock Option is an Incentive Stock Option or Non-Qualified Stock Option,
- (i) determine whether to require a Participant, as a condition of the granting, retention, or settlement of any Award, to not sell or otherwise dispose of Shares acquired pursuant to the exercise, vesting, or settlement of an Award for a specified period of time following the date of the acquisition of such Award or Shares,
- (j) modify, extend, or renew an Award,
- (k) determine how the Disability, death, retirement, authorized leave of absence, or any other change or purported change in a Participant's status affects an Award and the extent to which, and the period during which, the Participant or the Participant's legal

representative, conservator, guardian, or beneficiary may exercise rights under the Award, if applicable,

(l) adopt, alter, and repeal administrative rules, guidelines, and practices governing this Plan,

(m) construe and interpret the terms and provisions of this Plan and any Award (and any agreements or sub-plans relating thereto),

(n) correct any defect, supply any omission, or reconcile any inconsistency in this Plan or in any agreement relating thereto in the manner and to the extent that it deems necessary to effectuate the purpose and intent of this Plan, and

(o) adopt special rules, sub-plans, guidelines, and provisions for persons who are residing in or employed in, or subject to, the laws of any domestic or foreign jurisdictions to satisfy or accommodate such laws or to qualify for preferred tax treatment thereunder.

3.2 Designation of Consultants; Delegation of Authority.

(a) The Committee may employ such legal counsel, consultants, and agents as it deems desirable for the administration of this Plan and may in good faith rely upon any opinion or calculation received from any of them. The Company will pay for all expenses incurred in connection with any such engagement. To the maximum extent permitted by Applicable Law, neither the Board, the Committee, nor any of their respective members or delegates, nor any third party engaged pursuant to this Section 3.2, will be liable for any action or determination made in good faith with respect to this Plan or any Award.

(b) The Committee may delegate any or all of its powers and duties under this Plan to a subcommittee of directors or to any officer of the Company, including the power to perform administrative functions (including executing agreements or other documents on behalf of the Committee) and to grant Awards, provided that such delegation does not (i) violate Applicable Law or (ii) result in the loss of an exemption under Rule 16b-3(d)(1) for Awards granted to Participants subject to Section 16 of the Exchange Act in respect of the Company. Upon any such delegation, all references in this Plan to the "Committee" are deemed to include any subcommittee or person to whom the Committee has delegated such powers. No such delegation will limit the right of such subcommittee members or officers to receive Awards; provided, however, that no such delegate may cause the Company to grant Awards to himself or herself, a member of the Board, or any executive officer of the Company or an Affiliate, or take any action with respect to any Award previously granted to himself or herself, a member of the Board, or any executive officer of the Company or an Affiliate. The Committee may also designate employees or professional advisors who are not officers of the Company or members of the Board to assist in administering this Plan, provided, however, that such individuals may not be delegated the authority to grant or modify any Awards that will, or may, be settled in Shares.

3.3 Administrative Discretion; Decisions Final. Each decision, interpretation, and other action made or taken in good faith by or at the direction of the Company, the Board, or the Committee (or any of its members), or any of their respective delegates, arising out of or in connection with this Plan may be made in the absolute discretion of all and each of them, as the case may be, and will be final, binding, and conclusive on the Company and all employees and other service providers, including prospective employees and service providers, and all Participants, and their respective heirs, executors, administrators, successors, and assigns.

3.4 Indemnification. To the maximum extent permitted by Applicable Law and to the extent not covered by insurance directly insuring such person, the Company will indemnify and hold harmless each officer and employee of the Company and its Affiliates, and each member of the Committee or the Board, whether during or after his or her service with the Company and its Affiliates, against all costs and expenses (including reasonable fees of counsel acceptable to the Committee) and liabilities (including any sum paid in settlement of a claim with the approval of the Committee), arising out of any act or omission to act that is authorized by the terms of this Plan in connection with the administration of this Plan, and will advance amounts necessary to pay the foregoing as incurred, except in any case to the extent arising out of such person's own fraud or bad faith. Such indemnification will be in addition to any right of indemnification that such person has under Applicable Law or under the by-laws of the Company or any of its Affiliates.

ARTICLE IV. SHARE LIMITATIONS

4.1 Shares. The aggregate number of Shares that the Company may issue or deliver pursuant to this Plan may not exceed 19,655,635 Shares (subject to any increase or decrease pursuant to this ARTICLE IV), which Shares may be either authorized and unissued Shares or Shares held in or acquired for the treasury of the Company or both. The aggregate number of Shares that the Company may issue or deliver with respect to any Incentive Stock Option may not exceed 19,655,635 Shares (subject to any increase or decrease pursuant to Section 4.3). Any Award under this Plan settled in cash will not count against the foregoing maximum share limitations. Notwithstanding anything to the contrary contained herein, Shares subject to an Award will again be made available for issuance or delivery under this Plan if such Shares are (i) delivered, withheld, or surrendered in payment of the exercise or purchase price of an Award, (ii) delivered, withheld, or surrendered to satisfy any tax withholding obligation, or (iii) subject to a stock-settled Award that expires or is canceled, forfeited, or terminated without issuance of the full number of Shares to which the Award related.

4.2 Substitute Awards. In connection with an entity's merger or consolidation with the Company or the Company's acquisition of an entity's property or stock, the Committee may grant Awards in substitution for any options or other stock or stock-based awards granted before such merger or consolidation by such entity or its Affiliate ("**Substitute Awards**"). Substitute Awards may be granted on such terms as the Committee deems appropriate, notwithstanding limitations on Awards in this Plan. Substitute Awards will not count against the Shares authorized for grant under this Plan (nor will Shares subject to a Substitute Award be

added to the Shares available for Awards under this Plan as provided under Section 4.1 above), except that Shares acquired by exercise of substitute Incentive Stock Options will count against the maximum number of Shares that may be issued pursuant to the exercise of Incentive Stock Options under this Plan, as set forth in Section 4.1 above. Additionally, if a Person acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grants pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination, or if such consideration is in the form of cash, such exchange ratio or other adjustment or valuation ratio or formula determined by the Committee as referring the ration between such cash consideration and the Fair Market Value of the Common Stock at the time of such transaction) may be used for Awards under this Plan without reducing the Shares authorized for issuance or delivery pursuant to this Plan (and Shares subject to such Awards will not be added back to the Shares available for Awards under this Plan as provided under Section 4.1 above); provided that Awards using such available shares may not be granted after the last date on which awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and may be granted only to individuals who were not Eligible Employees or Non-Employee Directors prior to such acquisition or combination.

4.3 Adjustments.

(a) The existence of this Plan and the Awards granted hereunder will not affect in any way the right or power of the Board or the stockholders of the Company to make or authorize (i) any adjustment, recapitalization, reorganization, or other change in the Company's capital structure or its business, (ii) any merger or consolidation of the Company or any Affiliate, (iii) any issuance of bonds, debentures, or preferred or prior preference stock ahead of or affecting the Shares, (iv) the dissolution or liquidation of the Company or any Affiliate, (v) any sale or transfer of all or part of the assets or business of the Company or any Affiliate, or (vi) any other corporate act or proceeding.

(b) Subject to the provisions of ARTICLE IX:

(i) If the Company at any time subdivides the outstanding Shares into a greater number of Shares (by any split, recapitalization, or otherwise), or combines its outstanding Shares into a lesser number of Shares (by reverse split, combination, or otherwise), then the Committee will, to the extent that it deems necessary, adjust the respective exercise prices for outstanding Awards subject to exercise and the number of Shares covered by outstanding Awards to prevent dilution or enlargement of the rights granted to, or available for, Participants under this Plan.

(ii) Excepting transactions covered by Section 4.3(b)(i), if the Company effects any merger, consolidation, statutory exchange, spin-off, reorganization, sale or transfer of all or substantially all the Company's assets or business, or other corporate transaction or event in such a manner that the Company's outstanding Shares are converted into the right to

receive (or the holders of Common Stock are entitled to receive in exchange therefor), either immediately or upon liquidation of the Company, securities or other property of the Company or other entity, then the Committee will, to the extent that it deems necessary, adjust (A) the aggregate number or kind of securities that thereafter may be issued or delivered pursuant to this Plan, (B) the number or kind of securities or other property (including cash) to be issued or delivered pursuant to Awards (including as a result of the assumption of this Plan and the obligations hereunder by a successor entity, as applicable), and (C) the exercise or purchase price thereof to prevent dilution or enlargement of the rights granted to, or available for, Participants under this Plan.

(iii) If there occurs any change in the capital structure of the Company other than those covered by Section 4.3(b)(i) or (ii), or any conversion, adjustment, or issuance of any class of securities convertible or exercisable into, or exercisable for, any class of equity securities of the Company, then the Committee will, to the extent that it deems necessary, adjust any Award and make such other adjustments to this Plan to prevent dilution or enlargement of the rights granted to, or available for, Participants under this Plan.

(iv) In the event of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation, or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other extraordinary transaction or change affecting the Shares or the Share price, including any securities offering or other similar transaction, for administrative convenience, the Committee may refuse to permit the exercise of any Award for up to 60 days before or after such transaction.

(v) The Committee may adjust the vesting terms applicable to any Awards to reflect any unusual or non-recurring events and other extraordinary items, impact of charges for restructurings, discontinued operations, and the cumulative effects of accounting or tax changes, each as defined by generally accepted accounting principles or as identified in the Company's financial statements, notes to the financial statements, management's discussion and analysis, or other Company public filing.

(vi) Except as expressly determined by the Committee pursuant to this Section 4.3 or in the applicable Award Agreement, no Participant will have any additional rights under this Plan by reason of any transaction or event described in this Section 4.3.

4.4 Annual Limit on Non-Employee Director Compensation. In each calendar year during any part of which this Plan is in effect, a Non-Employee Director may not receive Awards for service on the Board that, taken together with any cash fees paid to such Non-Employee Director during such calendar year for such individual's service on the Board, have a value in excess of \$750,000 (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes); provided, that (a) the Committee may make exceptions to this limit, except that the Non-Employee Director receiving such additional compensation may not participate in the decision to award such compensation or in other contemporaneous decisions involving compensation for Non-Employee Directors and (b) for any calendar year in which a Non-Employee Director (i) first commences service on the Board, (ii) serves on a special committee of the Board, or (iii) serves as lead director or non-

executive chair of the Board, additional compensation may be provided to such Non-Employee Director in excess of such limit; provided, further, that the limit set forth in this Section 4.4 will apply without regard to Awards or other compensation, if any, provided to a Non-Employee Director during any period in which such individual was an employee of the Company or any Affiliate or was otherwise providing services to the Company or to any Affiliate other than in the capacity as a Non-Employee Director.

ARTICLE V.
GENERALLY APPLICABLE TERMS OF AWARDS AND PARTICIPATION

5.1 General Eligibility. All current and prospective Eligible Individuals are eligible to receive Awards as the Committee determines. No Eligible Individual is entitled to any automatic grant of Awards. In addition to any other terms and conditions in the applicable Award Agreement, the right to vest, exercise, and receive Shares, cash, or other property in settlement of, Awards granted to a prospective Eligible Individual are conditioned upon such individual's commencement of service as an Eligible Employee, Consultant, or Non-Employee Director, as applicable.

5.2 Terms and Conditions of Awards. Each Award will be evidenced by, and subject to, an Award Agreement and will be subject to the terms, conditions, and limitations in this Plan. Awards may be granted alone or in addition to, or in tandem with, other Awards.

5.3 Vesting, Exercisability, and Settlement. The Committee will determine and set forth in the applicable Award Agreement at the time of grant the terms (including performance-vesting terms), conditions, and periods for vesting into, forfeiting, and if applicable, exercise or settlement of, each Award, and the Committee may, but is not required to, provide for an acceleration of vesting and, if applicable, exercisability upon the occurrence of one or more specified events.

5.4 Non-Transferability. Participants may not transfer Awards other than by will or by the laws of descent and distribution, and Awards subject to exercise may not be exercised during the Participant's lifetime other than by the Participant. Notwithstanding the foregoing, the Committee may determine that an Award that is otherwise not transferable pursuant to this Section 5.4 may be transferred to a Family Member of the Participant in whole or in part. An Award that is transferred to a Family Member pursuant to the preceding sentence (a) may not be subsequently transferred other than by will or by the laws of descent and distribution and (b) remains subject to the terms of this Plan and the applicable Award Agreement as if retained by the original grantee. A Participant may not transfer any Shares issued in respect of any Award, including Restricted Stock, until such shares vest in accordance with the terms of the applicable Award Agreement.

5.5 No Rights as a Stockholder. No Participant will have any rights as a stockholder in respect of Shares subject to any Award, including, without limitation, the right to receive dividends, the right to vote such Shares, and the right to tender such shares, unless and until the Company issues or delivers such Shares to the Participant and all other terms and conditions hereunder are satisfied.

5.6 Deferral of Awards. The Committee may establish one or more programs under this Plan to permit selected Participants the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of performance criteria, or other event Award. The Committee may establish the election procedures, the timing of such elections, the mechanisms for payments of, and accrual of interest or other earnings, if any, on amounts, Shares, or other consideration so deferred, and such other terms, conditions, rules, and procedures that the Committee deems advisable for the administration of any such deferral program.

5.7 Non-Exempt Employees. No Stock Option or Stock Appreciation Right, whether or not vested, granted to a Participant who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, will be first exercisable for any shares of Common Stock until at least six months following the date of grant of such Award. Notwithstanding the foregoing, in accordance with the provisions of the Worker Economic Opportunity Act, any vested portion of such Award may be exercised earlier than six months following the date of grant of such Award in the event of (i) such Participant's death or Disability, (ii) a corporate transaction in which such Award is not assumed, continued, or substituted, (iii) a Change in Control, or (iv) such Participant's retirement (as such term may be defined in the Award Agreement or another applicable agreement between the Participant and the Company or one of its Affiliates or, in the absence of any such definition, in accordance with the Company's then-current employment policies and guidelines). This Section 5.7 is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of a Stock Option or Stock Appreciation Right will be exempt from his or her regular rate of pay.

ARTICLE VI.
STOCK OPTIONS; STOCK APPRECIATION RIGHTS

6.1 Stock Option Designation. The applicable Award Agreement evidencing a Stock Option must designate such Stock Option as either an Incentive Stock Option or a Non-Qualified Stock Option.

6.2 Exercise Price. The Committee will determine the exercise price per Share of each Stock Option or Stock Appreciation Right at the time of grant, and the per-Share exercise price may not be less than 100% (or, in the case of an Incentive Stock Option granted to a Ten-Percent Stockholder, 110%) of the Fair Market Value on the date of grant. Notwithstanding the foregoing, the per-Share exercise price of a Stock Option or Stock Appreciation Right that is a Substitute Award may be less than the Fair Market Value on the date of grant, provided that such exercise price is determined in a manner consistent with Section 409A and, if applicable, Section 424(a) of the Code.

6.3 Exercise Period. The Committee will determine the length of the exercise period of each Stock Option or Stock Appreciation Right at the time of grant, and such exercise period may not extend beyond ten years (or, in the case of an Incentive Stock Option granted to a Ten-Percent Stockholder, five years) after the grant date.

6.4 Exercisability. Unless the Committee determines otherwise, if the exercise of a Non-Qualified Stock Option or Stock Appreciation Right within the permitted time periods is prohibited because such exercise would violate Applicable Law, the Company's insider trading policy (including any blackout periods), or a "lock-up" agreement entered into in connection with the issuance of securities by the Company, then the expiration of exercise period will extend until the date that is 30 days after the end of the period during which such prohibition exists, but in no event beyond the original term of such Award.

6.5 Method of Exercise. To the extent vested and exercisable and not subject to any prohibition on exercise contemplated by Section 6.4, a Participant may exercise any Stock Option or Stock Appreciation Right in whole or in part at any time during its term by giving written notice of exercise (which may be electronic) to the Company specifying the number of Shares subject to exercise, together with payment in full of the exercise price (which will equal the product of such number of Shares to be purchased multiplied by the applicable per-Share exercise price). The Participant must deliver such notice and pay the exercise price on such terms and conditions as the Company determines from time to time or as set forth in the applicable Award Agreement. Without limiting the foregoing, the Committee may establish payment terms for the exercise of Stock Options pursuant to which the Company may withhold a number of Shares that would otherwise be issued to the Participant in connection with the exercise of the Stock Option having a Fair Market Value on the date of exercise equal to the exercise price, or that permit the Participant to deliver cash or Shares with a Fair Market Value equal to the exercise price on the date of payment, or through a simultaneous sale through a broker of Shares acquired on exercise, all to the extent permitted by Applicable Law. The Company will not issue any Shares without payment. Upon the exercise of a Stock Appreciation Right a Participant will be entitled to receive, for each Stock Appreciation Right exercised, up to, but no more than, an amount in cash and/or Shares (as chosen by the Committee in its sole discretion) equal in value to the excess of the Fair Market Value of one Share on the date of exercised over the Fair Market Value of one Share on the grant date.

6.6 Termination. Unless the Committee determines otherwise at the time of grant or, if no rights of the Participant are materially impaired, thereafter, and subject to the provisions of the applicable Award Agreement, Stock Options and Stock Appreciation Rights will remain exercisable following a Participant's Termination of Service as follows:

(a) Termination by Death or Disability. If a Participant's Termination of Service is by reason of death or Disability, all Stock Options and Stock Appreciation Rights that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant (or in the case of the Participant's death, by the legal representative of the Participant's estate) at any time within a period of one year from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options and Stock Appreciation Rights; provided, however, that in the event of a Participant's Termination of Service by reason of Disability, if the Participant dies within such exercise period, all unexercised Stock Options and Stock Appreciation Rights held by such Participant will thereafter be exercisable, to the same extent to which they were

exercisable at the time of death, for a period of one year from the date of such death, but in no event beyond the expiration of the stated term of such Awards.

(b) Involuntary Termination Without Cause. If a Participant's Termination of Service is by involuntary termination by the Company without Cause, all Stock Options and Stock Appreciation Rights that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant at any time within a period of 90 days from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Awards.

(c) Voluntary Resignation. If a Participant's Termination of Service is voluntary (other than a voluntary termination described in Section 6.6(d)), all Stock Options and Stock Appreciation Rights that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant at any time within a period of 30 days from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Awards.

(d) Termination for Cause. If a Participant's Termination of Service (i) is for Cause or (ii) is a voluntary Termination of Service (as provided in Section 6.6(c)) after the occurrence of an event that would be grounds for a Termination of Service for Cause, all Stock Options and Stock Appreciation Rights, whether vested or not vested, that are held by such Participant will thereupon immediately terminate and expire as of the date of such Termination of Service.

(e) Unvested Stock Options and Stock Appreciation Rights. Stock Options and Stock Appreciation Rights that are not vested as of the date of a Participant's Termination of Service for any reason will terminate and expire as of the date of such Termination of Service.

6.7 Incentive Stock Option Limitations. Notwithstanding anything herein to the contrary, only Eligible Employees who are employees of the Company, its Parents, or its Subsidiaries are eligible to receive Incentive Stock Options. To the extent that the aggregate Fair Market Value (determined as of the time of grant) of the Shares with respect to which Stock Options are exercisable for the first time by an Eligible Employee during any calendar year under this Plan or any other stock option plan of the Company, any Parent, or any Subsidiary exceeds \$100,000, such Stock Options will be treated as Non-Qualified Stock Options without regard to whether the Award Agreement designates them as Incentive Stock Options. In addition, if an Eligible Employee does not remain employed by the Company, any Parent, or any Subsidiary at all times from the time a Stock Option is granted until three months prior to the date of exercise thereof (or such other period as required by Applicable Law), such Stock Option will be treated as a Non-Qualified Stock Option without regard to whether the Award Agreement designates it as an Incentive Stock Option. Should any provision of this Plan not be necessary in order for the Stock Options to qualify as Incentive Stock Options, or should any additional provisions be required, the Committee may amend this Plan accordingly without the necessity of obtaining the approval of the stockholders of the Company. To the extent that any Stock Option does not qualify as an Incentive Stock Option (whether because of its provisions or the time or manner of

its exercise or otherwise), such Stock Option or the portion thereof that does not so qualify will constitute a separate Non-Qualified Stock Option.

6.8 Modification, Extension, and Renewal of Stock Options. The Committee may (i) modify, extend, or renew outstanding Stock Options (provided that the rights of a Participant are not materially impaired without such Participant's consent and provided further that such action does not subject the Stock Options to Section 409A), and (ii) accept the surrender of outstanding Stock Options and authorize the granting of new Stock Options in substitution therefor. Notwithstanding the foregoing, the Committee may not modify any outstanding Stock Option to reduce its exercise price or substitute a surrendered Stock Option with a new Stock Option with a lower exercise price (other than in connection with adjustments or substitutions in accordance with ARTICLE IV), unless such action is approved by the stockholders of the Company.

6.9 Automatic Exercise. The Committee may include a provision in an Award Agreement providing for the automatic exercise of a Non-Qualified Stock Option or Stock Appreciation Right on a cashless basis on the last day of the term of such Stock Option or Stock Appreciation Right, to the extent then exercisable, if the Participant has failed to exercise the Stock Option or Stock Appreciation Right as of such date, and if the Fair Market Value of the Shares underlying the Stock Option or Stock Appreciation Right exceeds the exercise price of such Stock Option or Stock Appreciation Right on the date of expiration, subject to Section 12.4.

ARTICLE VII.
RESTRICTED STOCK; RESTRICTED STOCK UNITS

7.1 Restricted Stock.

(a) Purchase Price. The Committee will determine the purchase price of Restricted Stock at the time of grant. The purchase price for shares of Restricted Stock may be zero to the extent permitted by Applicable Law, and to the extent not so permitted, such purchase price may not be less than the minimum price permitted under Applicable Law.

(i) Legend. Each Participant receiving Restricted Stock will be issued a stock certificate in respect of such Restricted Stock, unless the Committee elects to use another system, such as book entries by the Company's transfer agent, as evidencing ownership of shares of Restricted Stock. Such certificate will be registered in the name of such Participant and will, in addition to such legends required by Applicable Law, bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

(ii) Custody. If stock certificates are issued in respect of shares of Restricted Stock, the Committee may require that any stock certificates evidencing such shares be held in custody by the Company until the restrictions thereon have lapsed, and that, as a condition of any grant of Restricted Stock, the Participant deliver a duly signed stock power or other instruments of assignment (including a power of attorney), each endorsed in blank with a guarantee of signature if the Committee deems necessary or appropriate, which would permit

transfer to the Company of all or a portion of the shares subject to the Award of Restricted Stock in the event that such Award is forfeited in whole or part.

(iii) Rights as a Stockholder. Except as provided in Section 7.1(a) or as the Committee determines otherwise in an Award Agreement, the Participant will have, with respect to the shares of Restricted Stock, all of the rights of a holder of Shares, including, without limitation, the right to receive dividends, the right to vote such shares, and, subject to and conditioned upon the full vesting of shares of Restricted Stock, the right to tender such shares; provided, that the Award Agreement will specify on what terms and conditions the Participant will be entitled to dividends payable on the Shares.

(iv) Lapse of Restrictions. If and when the applicable vesting period expires without a prior forfeiture of the Restricted Stock, the certificates for such Shares will be delivered to the Participant. All legends will be removed from said certificates at the time of delivery to the Participant, except as otherwise required by Applicable Law or other limitations imposed by the Committee.

(b) Restricted Stock Units.

(i) Settlement. The Committee may provide that settlement of Restricted Stock Units will occur upon or as soon as reasonably practical after the Restricted Stock Units vest or will instead be deferred, on a mandatory basis or at the Participant's election, in a manner intended to comply with Section 409A.

(ii) Dividend Equivalent Rights. If the Committee so provides, a grant of Restricted Stock Units may provide a Participant with Dividend Equivalent Rights. Dividend Equivalent Rights may be paid to the Participant currently or credited to an account for the Participant, settled in cash or Shares, and subject to the same restrictions on transferability and forfeitability as the Restricted Stock Units to which the Dividend Equivalent Rights relate and subject to other terms and conditions as set forth in the Award Agreement.

7.2 Termination. Unless the Committee determines otherwise at the time of grant or, if no rights of the Participant are materially impaired, thereafter, and subject to the provisions of the applicable Award Agreement, all Restricted Stock or Restricted Stock Units that are not vested as of the Participant's Termination of Service for any reason will be forfeited without payment to the Participant or to any other Person.

ARTICLE VIII.
OTHER STOCK-BASED AND CASH AWARDS

8.1 Other Stock-Based Awards. The Committee is authorized to cause the Company to grant to Eligible Individuals Other Stock-Based Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, including but not limited to, Shares awarded purely as a bonus and not subject to restrictions or conditions, Shares in payment of the amounts due under an incentive or performance plan sponsored or maintained

by the Company, stock equivalent units, and Awards valued by reference to the book value of Shares.

8.2 Cash Awards. The Committee is authorized to cause the Company to grant Cash Awards to Eligible Individuals in such amounts, on such terms and conditions, and for such consideration, including no consideration or such minimum consideration as may be required by Applicable Law. Cash Awards may be granted subject to the satisfaction of vesting conditions or may be awarded purely as a bonus and not subject to restrictions or conditions. No grant of a Cash Award will require the Company or any of its Affiliates to segregate any assets for satisfaction of the Company's payment obligation thereunder.

ARTICLE IX. CHANGE IN CONTROL PROVISIONS

Upon a Change in Control, and except as otherwise provided by the Committee in an Award Agreement or any applicable employment agreement, offer letter, consulting agreement, change in control agreement, or similar agreement in effect between the Company or an Affiliate and the Participant, a Participant's unvested Awards will not vest automatically and will be treated in accordance with one or more of the following methods as determined by the Committee:

9.1 Assumption. Awards, whether or not then vested, will be continued, be assumed, or have new rights substituted therefor, in a manner consistent with the requirements of Section 409A, and any applicable vesting or other restrictions will not lapse, upon the Change in Control, and the Award will receive the Change in Control consideration consistent with the other stockholders on such terms as determined by the Committee; provided, that the Committee may decide to award additional Restricted Stock or other Awards in lieu of any cash distribution. Notwithstanding anything to the contrary herein, for purposes of Incentive Stock Options, any assumed or substituted Stock Option must comply with the requirements of Treasury Regulation Section 1.424-1.

9.2 Settlement and Cancellation. Awards may be settled by the Company for an amount of cash equal to the excess (if any) of the Change in Control Price of the Shares covered by such Awards over the aggregate exercise price of such Awards (if applicable); provided, however, that if the exercise price of a Stock Option or Stock Appreciation Right exceeds the Change in Control Price, such Award may be canceled for no consideration.

9.3 Termination. The Committee may terminate all outstanding and unexercised Awards subject to exercise, effective as of the closing date of the Change in Control, by delivering notice of termination to each Participant at least 20 days prior to such closing date, in which case during the period from the date on which such notice of termination is delivered to such closing date, each such Participant will have the right to exercise in full all of such Participant's Awards that are then outstanding (without regard to any limitations on exercisability otherwise contained in the Award Agreements), but any such exercise will be contingent on the closing of the Change in Control, and if the Change in Control does not close

within a specified period after giving such notice for any reason whatsoever, the notice and exercise pursuant thereto will be null and void.

9.4 Vesting Acceleration. Notwithstanding any other provision herein to the contrary, the Committee may, in its sole discretion, provide for accelerated vesting or lapse of restrictions, of an Award at any time.

ARTICLE X.
TERMINATION OR AMENDMENT OF PLAN

Notwithstanding any other provision of this Plan, the Board or the Committee may at any time, and from time to time, amend, in whole or in part, any or all of the provisions of this Plan (including any amendment deemed necessary to ensure that this Plan complies with Applicable Law), or suspend or terminate it entirely, retroactively or otherwise; provided, however, that, unless otherwise required by Applicable Law or specifically provided herein, the rights of a Participant with respect to Awards granted prior to such amendment, suspension, or termination may not be materially impaired without the consent of such Participant and, provided, further, that without the approval of the holders of the Shares entitled to vote in accordance with Applicable Law, no amendment may (a) increase the aggregate number of Shares issuable under this Plan (except by operation of Section 4.1); (b) change the classification of individuals eligible to receive Awards; (c) reduce the exercise price of any Stock Option or Stock Appreciation Right; (d) grant any new Stock Option, Stock Appreciation Right, or other Award subject to exercise in substitution for, or upon the cancellation of, any previously granted Award that has the effect of reducing the exercise price thereof; (e) exchange any Stock Option or Stock Appreciation Right for Common Stock, cash, or other consideration when the exercise price per Share under such Stock Option or Stock Appreciation Right exceeds the Fair Market Value of a Share; or (f) take any action that would be considered a “repricing” of a Stock Option or Stock Appreciation Right under the applicable listing standards of the national exchange on which the Common Stock is listed (if any). Notwithstanding anything herein to the contrary, the Board or the Committee may amend this Plan or any Award Agreement at any time without a Participant’s consent to comply with Applicable Law. The Committee may amend the terms of any Award theretofore granted, prospectively or retroactively, but, subject to ARTICLE IV or as otherwise specifically provided herein, no such amendment or other action by the Committee may materially impair the rights of any Participant without the Participant’s consent.

ARTICLE XI.
UNFUNDED STATUS OF PLAN

This Plan is intended to constitute an “unfunded” plan for incentive and deferred compensation. With respect to any payment as to which a Participant has a fixed and vested interest but that is not yet made to a Participant by the Company, nothing contained herein will give any such Participant any right that is greater than those of a general unsecured creditor of the Company.

ARTICLE XII.
GENERAL PROVISIONS

12.1 Lock-Up; Legend. The Committee may require each person receiving Shares pursuant to an Award to represent to and agree with the Company in writing that the Participant is acquiring the Shares without a view to distribution thereof. The Company may, in connection with registering the offering of any Company securities under the Securities Act, prohibit Participants from directly or indirectly selling or otherwise transferring any Shares or other Company securities during any period determined by the underwriter or the Company. In addition to any legend required by this Plan, the certificates for such Shares may include any legend that the Committee deems appropriate to reflect any restrictions on transfer. All certificates for Shares delivered under this Plan will be subject to such stop-transfer orders and other restrictions as the Committee may deem advisable under Applicable Law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. If the Shares are held in book-entry form, then the book-entry will indicate any restrictions on such Shares.

12.2 Other Plans. Nothing contained in this Plan prevents the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required, and such arrangements may be either generally applicable or applicable only in specific cases.

12.3 No Right to Continued Service. Neither this Plan nor the grant of any Award hereunder gives any Participant or other employee, Consultant, or Non-Employee Director any right to continued employment or service with the Company or any Affiliate or limits the Company or any Affiliate in any way to terminate such employment, consultancy, or directorship at any time.

12.4 Withholding of Taxes. Each Participant is required to pay to the Company or one of its Affiliates, as applicable, or make arrangements satisfactory to the Company regarding the payment of, all income tax, social insurance contribution, and other applicable taxes that are required to be paid by the Participant in respect of an Award. The Committee may (but is not obligated to), in its sole discretion, permit or require a Participant to satisfy all or any portion of the applicable taxes that are required to be withheld with respect to an Award by (a) the delivery of Shares (which are not subject to any pledge or other security interest) that have been both held by the Participant and vested for at least six months (or such other period as established from time to time by the Committee in order to avoid adverse accounting treatment under applicable accounting standards) having an aggregate Fair Market Value equal to such withholding liability (or portion thereof), (b) having the Company withhold from the Shares otherwise issuable or deliverable to, or that would otherwise be retained by, the Participant upon the grant, exercise, vesting, or settlement of the Award, as applicable, a number of Shares with an aggregate Fair Market Value equal to the amount of such withholding liability, or (c) by any other means specified in the applicable Award Agreement or otherwise determined by the Committee.

12.5 Fractional Shares. No fractional Shares may be issued or delivered pursuant to this Plan. The Committee will determine whether cash, additional Awards, or other securities or property will be used or paid in lieu of fractional Shares or whether any fractional shares should be rounded, forfeited, or otherwise eliminated.

12.6 No Assignment of Benefits. No Award or other benefit payable under this Plan will, except as otherwise specifically provided in this Plan or under Applicable Law or permitted by the Committee, be transferable in any manner, and any attempt to transfer any such benefit will be void, and no such benefit will in any manner be liable for or subject to the debts, contracts, liabilities, engagements, or torts of any person who is entitled to such benefit, nor will it be subject to attachment or legal process for or against such person.

12.7 Clawbacks; Detrimental Conduct.

(a) Clawbacks. All Awards, and all payments, benefits, and realizations with respect thereto, will be subject to clawback, cancellation, recoupment, rescission, payback, reduction, or other similar action in accordance with any clawback or similar policy of the Company or any Affiliate or any Applicable Law. A Participant's acceptance of an Award will constitute the Participant's acknowledgement of and consent to the Company's or its Affiliate's application, implementation, and enforcement of any clawback or similar policy of the Company or its Affiliate that may apply to the Participant, whether adopted before or after the Effective Date or the grant date of any Award, and any Applicable Law relating to clawback, cancellation, recoupment, rescission, payback, or reduction of compensation, and the Participant's agreement that the Company may take any actions that may be necessary to effectuate any such policy or Applicable Law, without further consideration or action.

(b) Detrimental Conduct. Except as otherwise determined by the Committee, notwithstanding any other term or condition of this Plan, if a Participant engages in Detrimental Conduct, whether during or after the Participant's service, in addition to any other penalties or restrictions that may apply under this Plan, Applicable Law, or otherwise, the Participant must forfeit or pay, or cause any permitted transferees to pay, to the Company the following:

(i) any and all outstanding Awards granted to the Participant, including Awards that have become vested or exercisable,

(ii) any cash or Shares received by the Participant in connection with this Plan within the 12-month period immediately preceding the date on which the Company determines the Participant has engaged in Detrimental Conduct, less any exercise price or purchase price paid therefor, and

(iii) the profit realized by the Participant from the sale, or other disposition for consideration, of any Shares received by the Participant under this Plan within the 36-month period immediately before the date the Company determines the Participant has engaged in Detrimental Conduct.

12.8 Listing and Other Conditions.

(a) Unless otherwise determined by the Committee, as long as the Common Stock is listed on a national securities exchange or system sponsored by a national securities association, the issuance of Shares pursuant to an Award will be conditioned upon such Shares' being listed on such exchange or system. The Company will have no obligation to issue such Shares unless and until such Shares are so listed, and the right to exercise any Stock Option or other Award with respect to such Shares will be suspended until such listing has been made effective.

(b) If at any time counsel to the Company advises the Company that any sale or delivery of Shares pursuant to an Award is or may be unlawful or result in the imposition of excise taxes on the Company under Applicable Law, the Company will have no obligation to make such sale or delivery, or to make any application or to effect or to maintain any qualification or registration under the Securities Act or otherwise, with respect to Shares or Awards, and the right to exercise any Stock Option or other Award will be suspended until such sale or delivery is, based on the advice of said counsel, lawful or will not result in the imposition of excise taxes on the Company.

(c) Upon termination of any period of suspension under this Section 12.8, any Award affected by such suspension that has not then yet expired or terminated will be reinstated as to all Shares available before such suspension and as to Shares that would otherwise have become available during the period of such suspension, but no such suspension will extend the term of any Award.

(d) A Participant will be required to supply the Company with certificates, representations, and information that the Company requests and otherwise cooperate with the Company in obtaining any listing, registration, qualification, exemption, consent, or approval that the Committee deems necessary or appropriate.

12.9 Governing Law. This Plan and actions taken in connection herewith are governed by, and should be construed in accordance with, the laws of Virginia, without reference to principles of conflict of laws.

12.10 Construction. Wherever any words are used in this Plan in the masculine gender, they should be construed as though they were also used in the feminine gender in all cases where they would so apply, and wherever words are used herein in the singular form, they should be construed as though they were also used in the plural form in all cases where they would so apply.

12.11 Other Benefits. No Award granted or paid out under this Plan will be deemed compensation for purposes of computing benefits under any retirement plan of the Company or its Affiliates or affect any benefit or compensation under any other plan now or subsequently in effect under which the availability or amount of benefits is related to the level of compensation.

12.12 No Right to Same Benefits. The provisions of Awards need not be the same with respect to each Participant, and Awards to individual Participants need not be the same as any previously granted Awards.

12.13 Death/Disability. The Committee may in its discretion require the transferee of a Participant to supply it with written notice of the Participant's death or Disability and to supply it with a copy of the will (in the case of the Participant's death) or such other evidence that the Committee deems necessary to establish the validity of the transfer of an Award. The Committee may also require the agreement of the transferee to be bound by all of the terms and conditions of this Plan.

12.14 Section 16(b) of the Exchange Act. The Company intends that this Plan satisfy, and be interpreted in a manner that satisfies, the applicable requirements of Rule 16b-3 so that Participants will be entitled to the benefit of Rule 16b-3, or any other rule promulgated under Section 16 of the Exchange Act, and will not be subject to short-swing liability under Section 16 of the Exchange Act with respect to Awards. Accordingly, if the operation of any provision of this Plan would conflict with the intent expressed in this Section 12.14, such provision should be interpreted or deemed amended so as to avoid such conflict.

12.15 Section 409A. This Plan and Awards are intended to comply with or be exempt from the applicable requirements of Section 409A and should be construed and interpreted in accordance with such intent. To the extent that any Award is subject to Section 409A, it will be paid in a manner that will comply with Section 409A. Notwithstanding anything herein to the contrary, any provision in this Plan that is inconsistent with the foregoing intent will be deemed to be amended to comply with or be exempt from Section 409A as determined by the Committee, and to the extent that such provision cannot be amended to comply therewith or be exempt therefrom, such provision will be null and void. The Company will have no liability to a Participant, or any other Person, if an Award that is intended to be exempt from, or compliant with, Section 409A is not so exempt or compliant or for any action taken by the Committee or the Company, and if any amount or benefit under this Plan becomes subject to penalties under or by operation of Section 409A, responsibility for payment of such penalties will rest solely with the affected Participants and not with the Company or any Affiliate. Notwithstanding any contrary provision in this Plan or Award Agreement, any payments in respect of an Award constituting a "deferral of compensation" within the meaning of Section 409A that are otherwise required to be made under this Plan to a "specified employee" (as defined under Section 409A) as a result of such employee's separation from service will be delayed for the first six months following such separation from service (or, if earlier, until the date of death of the specified employee) and will instead be paid (in a manner set forth in the Award Agreement) upon expiration of such delay period without interest.

12.16 Data Privacy. As a condition to receiving any Award, each Participant explicitly and unambiguously consents to the collection, use, and transfer, in electronic or other form, of personal data as described in this Section 12.16 by and among, as applicable, the Company and its Affiliates, for the exclusive purpose of implementing, administering, and managing this Plan and Awards and the Participant's participation in this Plan. In furtherance of

such implementation, administration, and management, the Company and its Affiliates may hold certain personal information about a Participant, including but not limited to the Participant's name, home address, telephone number, date of birth, social security or insurance number or other identification number, salary, nationality, job title(s), information regarding any securities of the Company or any of its Affiliates, and details of all Awards (the "Data"). In addition to transferring the Data amongst themselves as necessary for the purpose of implementation, administration, and management of this Plan and Awards and the Participant's participation in this Plan, the Company and its Affiliates may each transfer the Data to any third parties assisting them in the implementation, administration, and management of this Plan and Awards and the Participant's participation in this Plan. Recipients of the Data may be located in the Participant's country or elsewhere, and the Participant's country and any given recipient's country may have different data privacy laws and protections. By accepting an Award, each Participant authorizes such recipients to receive, possess, use, retain, and transfer the Data, in electronic or other form, for the purposes of assisting the Company in the implementation, administration, and management of this Plan and Awards and the Participant's participation in this Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom the Company or the Participant may elect to deposit any shares of Common Stock. The Data related to a Participant will be held only as long as is necessary to implement, administer, and manage this Plan and Awards and the Participant's participation in this Plan. A Participant may, at any time, view the Data held by the Company with respect to such Participant, request additional information about the storage and processing of the Data with respect to such Participant, recommend any necessary corrections to the Data with respect to the Participant, or refuse or withdraw the consents herein in writing, in any case without cost, by contacting the Participant's local human resources representative. The Committee may cancel the Participant's eligibility to participate in this Plan, and in the Committee's discretion, the Participant may forfeit any or all outstanding Awards if the Participant refuses or withdraws the consents described herein. For more information on the consequences of refusal to consent or withdrawal of consent, Participants may contact their local human resources representative.

12.17 Successor and Assigns. This Plan is binding on all successors and permitted assigns of a Participant, including, without limitation, the estate of such Participant and the executor, administrator, or trustee of such estate.

12.18 Severability of Provisions. If any provision of this Plan are held invalid or unenforceable, such invalidity or unenforceability will not affect any other provisions hereof, and this Plan should be construed and enforced as if such provisions had not been included.

12.19 Headings and Captions. The headings and captions herein are provided for reference and convenience only, should not be considered part of this Plan, and may not be employed in the construction of this Plan.

ARTICLE XIII.
PLAN EFFECTIVENESS

13.1 Effective Date of Plan. This Plan became effective on January 16, 2025, which is the date of its adoption by the Board, subject to the approval of this Plan by the

stockholders of the Company in accordance with the stockholder voting rules applicable to the Company under Applicable Law and its organization documents.

13.2 Expiration of Plan. No Award may be granted pursuant to this Plan on or after the tenth anniversary of the earlier of the date on which this Plan was adopted by the Board or the date of stockholder approval, but Awards granted prior to such tenth anniversary may extend beyond that date.

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SMITHFIELD FOODS, INC.
EMPLOYEE STOCK PURCHASE PLAN

ARTICLE I.
PURPOSE

The purpose of this Smithfield Foods, Inc., Employee Stock Purchase Plan (this “**Plan**”) is to provide an opportunity to Eligible Employees of the Company and its Designated Subsidiaries to acquire a stock ownership interest in the Company. The Company intends for this Plan to qualify as an “*employee stock purchase plan*” under Section 423 of the Code and to be administered, interpreted, and construed in a manner consistent with the requirements of Section 423 of the Code.

ARTICLE II.
DEFINITIONS

2.1 “**Affiliate**” means a corporation or other entity controlled by, controlling, or under common control with the Company. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such Person, whether through the ownership of voting or other securities, by contract or otherwise.

2.2 “**Applicable Law**” means the requirements applicable to the Company or any Eligible Individual relating to equity- or cash-based compensation and the related equity interests under U.S. federal, state, and local law, non-U.S. law, the rules or requirements of any stock exchange or quotation system on which the Common Stock is listed or quoted, and any other applicable laws, including the Code and other tax laws.

2.3 “**Board**” means the Board of Directors of the Company.

2.4 “**Code**” means the U.S. Internal Revenue Code of 1986, as amended from time to time. Any reference to a specific section of the Code or regulation thereunder includes such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.5 “**Committee**” means any committee of the Board duly authorized by the Board to act as the Committee hereunder. If the Board does not duly authorize any such a committee to administer this Plan, the term “Committee” will be deemed to refer to the Board for all purposes under this Plan. The Board may abolish any Committee or re-vest in itself any previously delegated authority from time to time and will retain the right to exercise the authority of the Committee to the extent consistent with Applicable Law.

2.6 “**Common Stock**” means the common stock, no par value per share, of the Company.

2.7 “**Company**” means Smithfield Foods, Inc., a Virginia corporation, and its successors by operation of law.

2.8 “**Compensation**” of an Eligible Employee means the gross cash compensation received by such Eligible Employee as compensation for services to the Company or any Designated Subsidiary, including prior week adjustment and overtime payments, but excluding any commissions and periodic bonuses, vacation pay, holiday pay, jury duty pay, funeral leave pay, military leave pay, one-time bonuses (e.g., retention or sign on bonuses), education or tuition reimbursements, travel expenses, business and moving reimbursements, income received in connection with any stock options, stock appreciation rights, restricted stock, restricted stock units or other compensatory equity awards, fringe benefits, other special payments and all contributions made by the Company or any Designated Subsidiary for the Employee’s benefit under any employee benefit plan now or hereafter established.

2.9 “**Designated Subsidiary**” means any Subsidiary designated by the Committee in accordance with Section 3.1(b).

2.10 “**Effective Date**” means the effective date of this Plan as defined in ARTICLE XII.

2.11 “**Eligible Employee**” means an Employee who satisfies the requirements of Section 6.1.

2.12 “**Employee**” means any individual who is an employee of the Company or any Designated Subsidiary within the meaning of Section 3401(c) of the Code. For purposes of this Plan, an individual’s employment relationship will be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company or Designated Subsidiary and meeting the requirements of Treasury Regulation Section 1.421-1(h)(2). Where the period of leave exceeds three months and the individual’s right to reemployment is not guaranteed either by statute or by contract, the employment relationship will be deemed to have terminated on the first day immediately following such three-month period.

2.13 “**Enrollment Date**” means the first Trading Day of each Offering Period, unless otherwise specified in the Offering Document.

2.14 “**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended from time to time. Any reference to a specific section of the Exchange Act or regulation thereunder includes such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.15 “**Fair Market Value**” means, unless otherwise required by Applicable Law, as of any date and except as provided below, either (a) the last sales price reported for the Common Stock on the applicable date on the principal national securities exchange in the United States on which it is then traded, listed, or otherwise reported or quoted, or (b) if the Common Stock is not traded, listed, or otherwise reported or quoted on a national securities exchange in

the United States, the Committee will determine in good faith the Fair Market Value in whatever manner it considers appropriate.

2.16 “**Offering**” means an offer a right to purchase Shares that may be exercised during an Offering Period. Unless otherwise specified by the Committee, each Offering will be deemed a separate Offering, even if the dates and other terms of the applicable Offering Periods of each such Offering are identical, and the provisions of this Plan will apply separately to each Offering. To the extent permitted by Treasury Regulation Section 1.423-2(a)(1), the terms of each separate Offering need not be identical, provided that the terms of the Plan and an Offering thereunder together satisfy Treasury Regulation Section 1.423-2(a)(2) and (a)(3).

2.17 “**Offering Document**” has the meaning given to such term in Section 5.1.

2.18 “**Offering Period**” has the meaning given to such term in Section 5.1.

2.19 “**Parent**” means any “parent corporation” of the Company within the meaning of Section 424(e) of the Code.

2.20 “**Participant**” means an Eligible Employee who has executed a subscription agreement and been granted rights to purchase Common Stock pursuant to this Plan.

2.21 “**Purchase Date**” means the last Trading Day of each Purchase Period, unless otherwise specified in the Offering Document.

2.22 “**Purchase Period**” means one or more periods within an Offering Period, as designated in the applicable Offering Document; provided, however, that if the Committee does not designate any Purchase Period in the applicable Offering Document, the Purchase Period for each Offering Period covered by such Offering Document will be the same as the applicable Offering Period.

2.23 “**Purchase Price**” means the purchase price that the Committee designates in the applicable Offering Document (which purchase price may not be less than 85% of the Fair Market Value of a Share on either the Enrollment Date or on the Purchase Date, whichever is lower); provided, however, that if the Committee does not designate any purchase price in the applicable Offering Document, the purchase price for the Offering Periods covered by such Offering Document will be 85% of the Fair Market Value of a Share on either the Enrollment Date or on the Purchase Date, whichever is lower; provided, further, that the Committee may adjust the Purchase Price pursuant to ARTICLE IV or ARTICLE IX, and the Purchase Price may not be less than the par value of a Share.

2.24 “**Section 409A**” means Section 409A of the Code.

2.25 “**Securities Act**” means the U.S. Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder. Any reference to a specific section of the Securities Act or regulation thereunder includes such section or regulation, any valid regulation

or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.26 “**Shares**” means shares of Common Stock.

2.27 “**Subsidiary**” means a subsidiary corporation of the Company within the meaning of Section 424(f) of the Code; provided, however, that a limited liability company or partnership may be treated as a Subsidiary to the extent that either (a) such entity is treated as a disregarded entity under Treasury Regulation Section 301.7701-3(a) by reason of being wholly owned by the Company or any other Subsidiary that is a corporation, or (b) such entity elects to be classified as a corporation under Treasury Regulation Section 301.7701-3(a) and such entity would otherwise qualify as a Subsidiary.

2.28 “**Trading Day**” means a day on which national stock exchanges in the United States are open for trading.

ARTICLE III. ADMINISTRATION

3.1 Authority of the Committee. The Committee will administer this Plan in accordance with its terms and Applicable Law, and in furtherance thereof, the Committee will have complete authority at any time and from time to time, in its sole discretion, to do the following, in each case to the extent not inconsistent with the terms of this Plan:

- (a) determine when and how rights to purchase Shares are granted, and the provisions of each Offering (which need not be identical),
- (b) designate from time to time which Subsidiaries of the Company are Designated Subsidiaries, which designation may be made without the approval of the stockholders of the Company.
- (c) impose a mandatory holding period pursuant to which Employees may not dispose of or transfer Shares purchased under this Plan,
- (d) adopt, alter, and repeal administrative rules, guidelines, and practices governing this Plan,
- (e) construe and interpret the terms and provisions of this Plan and any Offering,
- (f) correct any defect, supply any omission, or reconcile any inconsistency in this Plan or any Offering to the extent that it deems necessary to effectuate the purpose and intent of this Plan,
- (g) exercise such powers and to perform such acts that the Committee deems necessary to promote the best interests of the Company and the Designated Subsidiaries

and to carry out the intent that this Plan be treated as an “employee stock purchase plan” within the meaning of Section 423 of the Code, and

(h) adopt special rules, sub-plans, guidelines, and provisions for persons who are residing in or employed in, or subject to, the laws of any domestic or foreign jurisdictions to satisfy or accommodate such laws or to qualify for preferred tax treatment thereunder.

3.2 Designation of Consultants; Delegation of Authority.

(a) The Committee may employ such legal counsel, consultants, and agents as it deems desirable for the administration of this Plan and may in good faith rely upon any opinion or calculation received from any of them. The Company will pay for all expenses incurred in connection with any such engagement. To the maximum extent permitted by Applicable Law, neither the Board, the Committee, nor any of their respective members or delegates, nor any third party engaged pursuant to this Section 3.2, will be liable for any action or determination made in good faith with respect to this Plan or any Award.

(b) The Committee may delegate any or all of its powers and duties under this Plan to a subcommittee of directors or to any officer of the Company, including the power to perform administrative functions (including executing agreements or other documents on behalf of the Committee), provided that such delegation does not violate Applicable Law. Upon any such delegation, all references in this Plan to the “Committee” are deemed to include any subcommittee or person to whom the Committee has delegated such powers. The Committee may also designate employees or professional advisors who are not officers of the Company or members of the Board to assist in administering this Plan.

3.3 Administrative Discretion; Decisions Final. Each decision, interpretation, and other action made or taken in good faith by or at the direction of the Company, the Board, or the Committee (or any of its members), or any of their respective delegates, arising out of or in connection with this Plan may be made in the absolute discretion of all and each of them, as the case may be, and will be final, binding, and conclusive on the Company and all employees and other services providers, including prospective employees and service providers, and all Participants, and their respective heirs, executors, administrators, successors, and assigns.

3.4 Indemnification. To the maximum extent permitted by Applicable Law and to the extent not covered by insurance directly insuring such person, the Company will indemnify and hold harmless each officer and employee of the Company and its Affiliates, and each member of the Committee or the Board, whether during or after his or her service with the Company and its Affiliates, against all costs and expenses (including reasonable fees of counsel acceptable to the Committee) and liabilities (including any sum paid in settlement of a claim with the approval of the Committee), arising out of any act or omission to act that is authorized by the terms of this Plan in connection with the administration of this Plan, and will advance amounts necessary to pay the foregoing as incurred, except in any case to the extent arising out of such person’s own fraud or bad faith. Such indemnification will be in addition to any right of

indemnification that such person has under Applicable Law or under the by-laws of the Company or any of its Affiliates.

ARTICLE IV.
SHARE LIMITATIONS

4.1 Shares. The aggregate number of Shares that the Company may issue or deliver pursuant to this Plan may not exceed 1,965,563 Shares (subject to any increase or decrease pursuant to this ARTICLE IV), which Shares may be either authorized and unissued Shares or Shares held in or acquired for the treasury of the Company or both. If any right granted under this Plan terminates for any reason without having been exercised, the Shares not purchased under such right will again become available for issuance under this Plan.

4.2 Rights of the Company. The existence of this Plan and the rights granted hereunder will not affect in any way the right or power of the Board or the stockholders of the Company to make or authorize (a) any adjustment, recapitalization, reorganization, or other change in the Company's capital structure or its business, (b) any merger or consolidation of the Company or any Affiliate, (c) any issuance of bonds, debentures, or preferred or prior preference stock ahead of or affecting the Shares, (d) the dissolution or liquidation of the Company or any Affiliate, (e) any sale or transfer of all or part of the assets or business of the Company or any Affiliate, or (f) any other corporate act or proceeding.

4.3 Change in Capitalization. If the Committee determines that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), change in control, reorganization, merger, amalgamation, consolidation, combination, repurchase, recapitalization, liquidation, dissolution, or sale, transfer, exchange, or other disposition of all or substantially all of the assets of the Company, or sale or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase Common Stock or other securities of the Company, or other similar corporate transaction or event affects the Common Stock such that an adjustment would be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under this Plan or with respect to any outstanding purchase rights under this Plan, the Committee must make equitable adjustments, if any, to reflect such change with respect to (a) the aggregate number, type, and class of Shares (or other securities or property) that may be issued under this Plan (including, but not limited to, adjustments of the limitations in Section 4.1 and the limitations established pursuant to Section 5.2 (as may be modified by the Offering Documents) on the maximum number of Shares that may be purchased), and (b) the Purchase Price with respect to any outstanding rights.

4.4 Other Adjustments. If any transaction or event described in Section 4.3 or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate, or of changes in Applicable Law or accounting principles, the Committee may take any one or more of the following actions whenever the Committee determines that such action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made

available under this Plan or with respect to any right under this Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations, or principles:

(a) To provide for either (i) the termination of any outstanding right to purchase Shares granted under this Plan in exchange for an amount of cash, if any, equal to the amount that would have been obtained upon the exercise of such right had such right been currently exercisable or (ii) the replacement of such outstanding right with other rights or property that the Committee selects in its sole discretion,

(b) To provide that the outstanding rights to purchase Shares granted under this Plan be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or substituted for by similar rights covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices,

(c) To adjust the number and type of Shares (or other securities or property) subject to outstanding rights to purchase Shares granted under this Plan and/or the terms and conditions of outstanding rights and rights that may be granted under this Plan in the future,

(d) To provide that Participants' accumulated payroll deductions may be used to purchase Shares prior to the next occurring Purchase Date on such date that the Committee determines, and that the Participants' rights under the ongoing Offering Period(s) be terminated as of such prior purchase date, and

(e) To provide that all outstanding rights to purchase Shares granted under this Plan terminate without being exercised.

4.5 No Adjustment Under Certain Circumstances. No adjustment or action described in this ARTICLE IV or in any other provision of this Plan will be effective to the extent that it would cause the Plan to fail to satisfy the requirements of Section 423 of the Code.

4.6 No Other Rights. Except as expressly provided in this Plan, no Participant will have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in this Plan or pursuant to Committee action, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, will affect, and no adjustment by reason thereof must be made with respect to, the number of Shares subject to outstanding rights under this Plan or the Purchase Price with respect to any outstanding rights.

ARTICLE V.
TERMS OF OFFERING PERIODS

5.1 Offering Periods. The Committee may from time to time grant, or provide for the grant of, rights to purchase Shares under this Plan during one or more specified periods (each, an “**Offering Period**”). The Committee will adopt an “**Offering Document**” setting forth the terms and conditions applicable to each Offering Period, including the designation of one or more Purchase Periods during such Offering Period during which rights granted under this Plan will be exercised and purchases of Shares carried out during such Offering Period will be made effective in accordance with such Offering Document and this Plan. The terms of separate Offering Periods under this Plan need not be identical.

5.2 Offering Documents. Each Offering Document with respect to an Offering Period must specify (through incorporation of the provisions of this Plan by reference or otherwise):

- (a) the length of the Offering Period, which period may not exceed 27 months,
- (b) the length of the Purchase Period(s) within the Offering Period, if applicable,
- (c) the maximum number of Shares that may be purchased by any Eligible Employee during such Offering Period (which, in the absence of a contrary designation by the Committee, will be 2,000 Shares), and
- (d) such other provisions as the Committee determines are appropriate, consistent with the terms of this Plan.

ARTICLE VI.
ELIGIBILITY AND PARTICIPATION

6.1 Eligible Employees.

(a) An “Eligible Employee” means an Employee who does not, immediately after the Company grants any rights to such Employee under this Plan, own (directly or through attribution) stock possessing five percent or more of the total combined voting power or value of all classes of Shares and other securities of the Company, a Parent, or a Subsidiary (as determined under Section 423(b)(3) of the Code). For purposes of the foregoing, the rules of Section 424(d) of the Code relating to the attribution of stock ownership apply in determining the stock ownership of an individual, and stock that an Employee may purchase under outstanding options are treated as stock owned by the Employee.

(b) Notwithstanding the general definition in Section 6.1(a), the Committee may provide in an Offering Document that one or more of the following categories of Employees are not eligible to participate in an Offering Period; provided, that the Committee

must apply the following exclusions in an identical manner under each Offering Period to all Employees, in accordance with Treasury Regulation Section 1.423-2(e):

- (i) Highly compensated employees within the meaning of Section 423(b)(4)(D) of the Code,
- (ii) Employees who have not met a service requirement that the Committee designates pursuant to Section 423(b)(4)(A) of the Code (which service requirement may not exceed two (2) years),
- (iii) Employees who customarily work no more than 20 hours per week for the Company or a Designated Subsidiary,
- (iv) Employees who customarily work for the Company or a Designated Subsidiary for fewer than five months in any calendar year, and
- (v) Citizens or residents of a foreign jurisdiction in which the grant of a right to purchase Shares under this Plan would be prohibited under Applicable Law or the grant of a right to purchase Shares under this Plan in compliance with Applicable Law would cause this Plan to violate the requirements of Section 423 of the Code.

6.2 General Eligibility. Any Eligible Employee employed by the Company or a Designated Subsidiary on a given Enrollment Date for an Offering Period will be eligible to participate in such Offering Period, subject to the requirements of this ARTICLE VI and the limitations imposed by Section 423(b) of the Code.

6.3 Enrollment.

(a) Except as otherwise set forth herein, in an Offering Document, or as the Committee determines, an Eligible Employee may become a Participant in this Plan for an Offering Period by delivering to the Company a subscription agreement, in a form provided by the Company, by such time prior to the Enrollment Date for such Offering Period that the Committee designates.

(b) Each subscription agreement for an Offering Period must designate a whole number percentage of such Eligible Employee's Compensation to be withheld by the Company or the Designated Subsidiary employing such Eligible Employee on each payday during the Offering Period as payroll deductions under this Plan. Such payroll deductions may not be less than the minimum amount that the Committee specifies in the applicable Offering Document (which will be one percent in the absence of any such designation) and may not be greater than the maximum amount that the Committee specifies in the applicable Offering Document (which will be fifteen percent in the absence of any such designation). The Company will credit all payroll deductions made for each Participant to an account for such Participant under this Plan and will maintain such deductions with the general funds of the Company.

(c) A Participant may decrease (but not increase) the percentage of Compensation designated in the Participant's subscription agreement (to as low as zero) at any time during an Offering Period; provided, however, that the Committee may limit in the applicable Offering Document the number of times that a Participant may decrease payroll deduction elections during each Offering Period (and in the absence of any specific designation by the Committee, a Participant may make one decrease to the Participant's payroll deduction elections during each Offering Period). Any change of payroll deductions will be effective with the first full payroll period commencing at least ten business days after the Company's receipt of such change (or such shorter or longer period as the Committee may specify in the applicable Offering Document). If a Participant decreases the Participant's payroll deductions to zero, then, unless the Participant withdraws from participation in this Plan pursuant to ARTICLE VIII, such Participant's cumulative payroll deductions prior to such decrease will remain credited to the Participant's account and applied to the purchase of Shares on the next occurring Purchase Date in accordance with the terms of the Offering.

(d) Except as otherwise set forth in Section 6.9, in an Offering Document, or as the Committee determines, a Participant may participate in this Plan only by means of payroll deduction and may not make contributions by lump sum payment for any Offering Period; however, in non-U.S. jurisdictions where participation in this Plan through payroll deductions is prohibited, the Committee may provide that an Eligible Employee may elect to participate through contributions to the Participant's account under this Plan in a form acceptable to the Committee in lieu of or in addition to payroll deductions; provided, however, that, any such alternative method of contribution must comply with the requirements of Section 423 of the Code.

6.4 Payroll Deductions. Except as otherwise set forth in Section 6.9, in an Offering Document, or as the Committee determines, payroll deductions for a Participant will commence on the first payroll following the Enrollment Date and will end on the last payroll in the Offering Period to which the Participant's authorization applies, unless sooner terminated by the Participant as provided in ARTICLE VIII or suspended by the Participant or the Committee as provided in Sections 6.3 and 6.7, respectively. No interest will accrue on the payroll deductions or contributions of a Participant under this Plan.

6.5 Effect of Enrollment. A Participant's completion of a subscription agreement will automatically enroll such Participant in this Plan for each subsequent Offering Period on the terms contained therein until the Participant either submits a new subscription agreement, withdraws from participation under this Plan as provided in ARTICLE VIII, or otherwise becomes ineligible to participate in this Plan.

6.6 Purchase Limitations. An Eligible Employee may be granted rights under the Plan only if such rights, together with all other rights granted to such Eligible Employee under any "employee stock purchase plans" of the Company, any Parent, or any Subsidiary, as specified by Section 423(b)(8) of the Code, do not permit such Eligible Employee's rights to purchase stock of the Company or any Parent or Subsidiary to accrue at a rate that exceeds \$25,000 (based on the fair market value of such stock as of the first day of the Offering Period

during which such rights are granted) for each calendar year in which such rights are outstanding at any time.

6.7 Suspension of Payroll Deductions. To the extent necessary to comply with Section 423(b)(8) of the Code, Section 6.6, or the other limitations set forth in this Plan, the Committee may suspend a Participant's payroll deductions at any time during an Offering Period. The Company will pay to the Participant the balance of the amount credited to the account of each Participant that has not been applied to the purchase of Shares by reason of Section 423(b)(8) of the Code, Section 6.6, or the other limitations set forth in this Plan, without interest, in one lump sum in cash as soon as reasonably practicable after the Purchase Date for such Offering Period.

6.8 Non-U.S. Employees. The Committee may provide for such special terms applicable to Participants who are citizens or residents of a non-U.S. jurisdiction or who are employed by a Designated Subsidiary outside of the United States, as the Committee may consider necessary or appropriate to accommodate differences in local law, tax policy, or custom. Such special terms may not be more favorable than the terms of rights granted under this Plan to Eligible Employees who are residents of the United States and must satisfy the requirements for rights to purchase Shares granted pursuant to an "employee stock purchase plan" that are set forth under Section 423 of the Code. Further, the Committee may approve such supplements to, or amendments, restatements, or alternative versions of, this Plan as it may consider necessary or appropriate for such purposes without thereby affecting the terms of this Plan as in effect for any other purpose. Notwithstanding the foregoing, no such special terms, supplements, amendments, or restatements may include any provisions that are inconsistent with the terms of this Plan as then in effect unless this Plan could have been amended to eliminate such inconsistency without further approval by the stockholders of the Company. Without limiting the foregoing, the Committee is hereby authorized to adopt rules and procedures with respect to Participants who are foreign nationals or employed in non-U.S. jurisdictions regarding the exclusion of particular Subsidiaries from participation in the Plan, eligibility to participate, the definition of Compensation, handling of payroll deductions or other contributions by Participants, payment of interest, conversion of local currency, data privacy security, payroll tax, withholding procedures, and the establishment of bank or trust accounts to hold payroll deductions or contributions.

6.9 Leaves of Absence. During leaves of absence approved by the Company meeting the requirements of Treasury Regulation Section 1.421-1(h)(2) under the Code, a Participant may continue participation in this Plan by making cash payments to the Company on the Participant's normal payday equal to the Participant's authorized payroll deduction.

ARTICLE VII. GRANT AND EXERCISE OF RIGHTS

7.1 Grant of Rights. On the Enrollment Date of each Offering Period, the Company will grant each Eligible Employee participating in such Offering Period pursuant to the terms of the Plan a right to purchase, subject to the maximum number of Shares specified under Section 5.2 and the limits in Section 6.6, on each Purchase Date during such Offering Period (at

the applicable Purchase Price), a number of whole Shares determined by dividing (a) such Participant's payroll deductions accumulated prior to such Purchase Date and retained in the Participant's account as of the Purchase Date by (b) the Purchase Price (rounded down to the nearest Share). Such right will expire on the earliest to occur of (x) the last Purchase Date of the Offering Period, (y) the last day of the Offering Period, and (z) the date on which the Participant withdraws from participation in the Plan in accordance with ARTICLE VIII.

7.2 Exercise of Rights. On each Purchase Date, each Participant's accumulated payroll deductions and any other additional payments specifically provided for in the applicable Offering Document will be applied to the purchase of whole Shares at the Purchase Price pursuant to Section 7.1, up to the maximum number of Shares permitted pursuant to the terms of this Plan and the applicable Offering Document. No fractional Shares may be issued upon the exercise of rights granted under this Plan unless the Offering Document specifically provides otherwise. Any cash in lieu of fractional Shares remaining after the purchase of whole Shares upon exercise of a purchase right will be carried forward and applied toward the purchase of whole Shares for the immediately subsequent Offering Period (subject to the Participant's right to withdraw from the Plan). Shares issued pursuant to this Plan may be evidenced in such manner as the Committee may determine and may be issued in certificated form or issued pursuant to book-entry procedures.

7.3 Pro Rata Allocation of Shares. If the Committee determines that, on a given Purchase Date, the number of Shares with respect to which rights are to be exercised may exceed (a) the number of Shares available for issuance under this Plan on the Enrollment Date of the Offering Period, or (b) the number of Shares available for issuance under this Plan on such Purchase Date, the Committee may in its sole discretion provide that the Company make a pro rata allocation of the Shares available for purchase on such Enrollment Date or Purchase Date, as applicable, in as uniform a manner as practicable and as it determines in its sole discretion to be equitable among all Participants holding rights to purchase Shares on such Purchase Date, and the Committee must either (x) continue all Offering Periods then in effect or (y) terminate any or all Offering Periods then in effect pursuant to ARTICLE IX. The Company may make a pro rata allocation of the Shares available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence notwithstanding any authorization of additional Shares for issuance under this Plan by the Company's stockholders subsequent to such Enrollment Date. The Company will pay to each applicable Participant the balance of the amount credited to such Participant's account that is not applied to the purchase of Shares, without interest, in one lump sum in cash as soon as reasonably practicable after the Purchase Date or such earlier date as the Committee determines.

7.4 Withholding. At the time a Participant's rights under this Plan are exercised, in whole or in part, or at the time the Participant disposes of some or all of the Shares issued under this Plan, the Participant must make adequate provision for the Company's federal, state, or other tax withholding obligations, if any, that arise. At any time, the Company may, but is not obligated to, withhold from the Participant's compensation the amount necessary for the Company to meet applicable withholding obligations, including, without limitation, any

withholding required to make available to the Company any tax deductions or benefits attributable to the Participant's sale or early disposition of Shares.

7.5 Conditions to Issuance of Shares. The Company is not required to issue or deliver any certificate or certificates for, or make any book entries evidencing, Shares purchased upon the exercise of rights under this Plan prior to fulfillment of all of the following conditions:

- (a) The admission of such Shares to listing on all stock exchanges, if any, on which the Common Stock is then listed,
- (b) The completion of any registration or other qualification of such Shares under Applicable Law that the Committee deems necessary or advisable,
- (c) The obtaining of any approval or other clearance from any state or federal governmental agency that the Committee deems necessary or advisable,
- (d) The Participants satisfaction of any obligations pertaining to tax withholding pursuant to Section 7.4, and
- (e) The lapse of such reasonable period of time following the exercise of the rights as the Committee may from time to time establish for reasons of administrative convenience.

7.6 Notice of Disposition of Shares. Each Participant must give prompt notice to the Company of any disposition or other transfer of any Shares purchased upon exercise of a right under this Plan if such disposition or transfer is made (a) within two years from the Enrollment Date of the Offering Period in which the Shares were purchased or (b) within one year after the Purchase Date on which such Shares were purchased. Such notice must specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness, or other consideration, by the Participant in such disposition or other transfer.

ARTICLE VIII.
WITHDRAWAL; CESSATION OF ELIGIBILITY

8.1 Withdrawal. A Participant may withdraw during an Offering Period all, but not less than all, of the payroll deductions credited to the Participant's account and not yet used to exercise the Participant's rights under this Plan by delivering written notice to the Company in a form acceptable to the Committee and at such time prior to the Purchase Date for such Offering Period as the Committee may establish in the applicable Offering Document (and in the absence of any specific Committee designation, no later than two weeks prior to the Purchase Date for such Offering Period). As soon as reasonably practicable after receiving a duly and timely delivered notice of withdrawal, the Company will pay to the Participant all of the payroll deductions credited to the Participant's account during such Offering Period not yet used to exercise the Participant's rights under this Plan, without interest, such Participant's rights for such Offering Period will automatically terminate, and no further payroll deductions for the

purchase of Shares will be made on such Participant's behalf for such Offering Period. If a Participant withdraws from an Offering Period, payroll deductions will not resume at the beginning of the next Offering Period unless the Participant timely delivers to the Company a new subscription agreement pursuant to Section 6.3.

8.2 Participation Following a Withdrawal. A Participant's withdrawal from an Offering Period will not have any effect upon the Participant's eligibility to participate in any similar plan that may hereafter be adopted by the Company or a Designated Subsidiary, or in any subsequent Offering Period that commences after the termination of the Offering Period from which the Participant withdraws.

8.3 Cessation of Eligibility. Upon a Participant's ceasing to be an Eligible Employee for any reason, such Participant will be deemed to have elected to withdraw from this Plan pursuant to this ARTICLE VIII.

ARTICLE IX. TERMINATION OR AMENDMENT OF PLAN

9.1 General Rules. Notwithstanding any other provision of this Plan, the Board or the Committee may at any time, and from time to time, amend, in whole or in part, any or all of the provisions of this Plan (including any amendment deemed necessary to ensure that this Plan complies with Applicable Law), or suspend or terminate it entirely, retroactively or otherwise; provided, however, that approval of the Company's stockholders is required to amend this Plan to (a) increase the aggregate number, or change the type, of Shares that may be sold pursuant to rights granted under this Plan (other than an adjustment as provided by ARTICLE IV) or (b) change this Plan in any manner that would be considered the adoption of a new plan within the meaning of Treasury Regulation Section 1.423-2(c)(4).

9.2 Effects of Plan Termination. If the Plan is terminated, the Committee may elect to terminate all outstanding Offering Periods either immediately (without exercise of any rights to purchase Shares then outstanding) or upon completion of the purchase of Shares on the next Purchase Date (which may be sooner than originally scheduled, if the Committee so determines), or may elect to permit Offering Periods to expire in accordance with their terms. If the Offering Periods are terminated at or prior to their natural expiration, all amounts then credited to Participants' accounts that have not been used to purchase Shares will be returned to the Participants (without interest thereon, except as otherwise required under applicable law) as soon as administratively practicable.

9.3 Certain Administrative Actions. Without stockholder approval but subject to Section 9.1 and, to the extent permitted by Section 423 of the Code, the Committee may amend the terms of, or terminate, any one or more Offering Periods, limit the frequency and/or number of changes in the amount withheld from Compensation during any one or more Offering Periods, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of payroll withholding elections, and establish reasonable waiting and adjustment periods and/or accounting and

crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with amounts withheld from the Participant's Compensation.

9.4 Actions in the Event of Unfavorable Accounting Consequences. If the Committee determines that the ongoing operation of this Plan may result in unfavorable financial accounting consequences for the Company or any Designated Subsidiary, the Committee may, without stockholder approval, modify or amend this Plan to reduce or eliminate such unfavorable accounting consequence, including, but not limited to, taking any of the following actions:

- (a) modifying the Purchase Price for any Offering Period including an Offering Period underway at the time of such modification,
- (b) shortening any Offering Period so that the Offering Period ends on a new Purchase Date, including an Offering Period underway at the time of such action,
- (c) reducing the maximum percentage of Compensation that a Participant may elect to have withheld under the Plan, and
- (d) reducing the maximum number of Shares that a Participant may purchase during any Offering Period.

ARTICLE X.
UNFUNDED STATUS OF PLAN

This Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payment as to which a Participant has a fixed and vested interest but that is not yet made to a Participant by the Company, nothing contained herein will give any such Participant any right that is greater than those of a general unsecured creditor of the Company. All payroll deductions received or held by the Company under this Plan may be used by the Company for any corporate purpose, and the Company is not obligated to segregate such payroll deductions.

ARTICLE XI.
GENERAL PROVISIONS

11.1 Other Plans. Nothing contained in this Plan prevents the Company or any Designated Subsidiary from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required, and such arrangements may be either generally applicable or applicable only in specific cases.

11.2 No Right to Continued Employment. This Plan does not give any Participant or other Employee any right to continued employment with the Company or any Designated Subsidiary, nor does it limit the Company or any Designated Subsidiary in any way from terminating such employment at any time.

11.3 No Assignment of Benefits. No right under this Plan are, except as otherwise specifically provided in this Plan or under Applicable Law or permitted by the Committee, transferable in any manner, and any attempt to transfer any such benefit will be void, and no such benefit will in any manner be liable for or subject to the debts, contracts, liabilities, engagements, or torts of any person who is entitled to such benefit, nor will it be subject to attachment or legal process for or against such person.

11.4 Rights as a Stockholder. With respect to Shares subject to a right granted under this Plan, a Participant will not be deemed a stockholder of the Company, and the Participant will not have any of the rights or privileges of a stockholder, until such Shares have been issued to the Participant or the Participant's nominee following exercise of the Participant's rights under this Plan. No adjustments will be made for dividends (ordinary or extraordinary, whether in cash securities, or other property) or distributions or other rights for which the record date occurs prior to the date of such issuance, except as otherwise expressly provided herein or as the Committee determines.

11.5 Listing and Other Conditions.

(a) Unless otherwise determined by the Committee, as long as the Common Stock is listed on a national securities exchange or system sponsored by a national securities association, the issuance of Shares pursuant to rights granted under this Plan will be conditioned upon such Shares' being listed on such exchange or system. The Company will have no obligation to issue such Shares unless and until such Shares are so listed, and the right to exercise any rights with respect to such Shares will be suspended until such listing has been made effective.

(b) If at any time counsel to the Company advises the Company that any sale or delivery of Shares pursuant to rights granted under this Plan is or may be unlawful or result in the imposition of excise taxes on the Company under Applicable Law, the Company will have no obligation to make such sale or delivery, or to make any application or to effect or to maintain any qualification or registration under the Securities Act or otherwise, with respect to Shares, and the right to exercise any right granted under this Plan will be suspended until such sale or delivery is, based on the advice of said counsel, lawful or will not result in the imposition of excise taxes on the Company.

(c) Upon termination of any period of suspension under this Section 11.5, any right granted under this Plan that is affected by such suspension any not then yet expired or terminated will be reinstated as to all Shares available before such suspension and as to Shares that would otherwise have become available during the period of such suspension, but no such suspension will extend the term of any Offering Period.

(d) A Participant will be required to supply the Company with certificates, representations, and information that the Company requests and otherwise cooperate with the Company in obtaining any listing, registration, qualification, exemption, consent, or approval that the Committee deems necessary or appropriate.

11.6 Governing Law. This Plan and actions taken in connection herewith are governed by, and should be construed in accordance with, the laws of the State of Virginia, without reference to principles of conflict of laws.

11.7 Statements of Account. The Company will provide statements of account to Participants at least annually, which statements must set forth the amounts of payroll deductions, the Purchase Price, the number of Shares purchased, and the remaining cash balance, if any.

11.8 Construction. Wherever any words are used in this Plan in the masculine gender, they should be construed as though they were also used in the feminine gender in all cases where they would so apply, and wherever words are used herein in the singular form, they should be construed as though they were also used in the plural form in all cases where they would so apply.

11.9 Other Benefits. No Award granted or paid out under this Plan will be deemed compensation for purposes of computing benefits under any retirement plan of the Company or its Affiliates or affect any benefit or compensation under any other plan now or subsequently in effect under which the availability or amount of benefits is related to the level of compensation.

11.10 Equal Rights and Privileges. Subject to Section 6.8, all Eligible Employees will have equal rights and privileges under this Plan so that this Plan qualifies as an “employee stock purchase plan” within the meaning of Section 423 of the Code. Subject to Section 6.8, any provision of this Plan that is inconsistent with Section 423 of the Code will, without further act or amendment by the Company, the Board, or the Committee, be deemed reformed to comply with the equal rights and privileges requirement of Section 423 of the Code.

11.11 Section 16(b) of the Exchange Act. The Company intends that this Plan satisfy, and be interpreted in a manner that satisfies, the applicable requirements of Rule 16b-3 so that Participants will be entitled to the benefit of Rule 16b-3, or any other rule promulgated under Section 16 of the Exchange Act, and will not be subject to short-swing liability under Section 16 of the Exchange Act with respect to rights granted under this Plan. Accordingly, if the operation of any provision of this Plan would conflict with the intent expressed in this Section 11.11, such provision should be interpreted or deemed amended so as to avoid such conflict.

11.12 Section 409A. This Plan and the rights to purchase Shares granted pursuant to Offerings thereunder are intended to be exempt from the application of Section 409A. Notwithstanding any provision of the Plan to the contrary, if the Committee determines that any right to purchase Shares granted under the Plan may be or become subject to Section 409A or that any provision of the Plan may cause a right to purchase Shares granted under the Plan to be or become subject to Section 409A, the Committee may adopt such amendments to the Plan and/or adopt other policies and procedures (including amendments, policies, and procedures with retroactive effect), or take any other actions as the Committee determines are necessary or appropriate to avoid the imposition of taxes under Section 409A,

either through compliance with the requirements of Section 409A or with an available exemption therefrom.

11.13 Data Privacy. As a condition to receiving any right under this Plan, each Participant explicitly and unambiguously consents to the collection, use, and transfer, in electronic or other form, of personal data as described in this Section 11.13 by and among, as applicable, the Company and its Affiliates, for the exclusive purpose of implementing, administering, and managing this Plan and rights under this Plan and the Participant's participation in this Plan. In furtherance of such implementation, administration, and management, the Company and its Affiliates may hold certain personal information about a Participant, including but not limited to the Participant's name, home address, telephone number, date of birth, social security or insurance number or other identification number, salary, nationality, job title(s), information regarding any securities of the Company or any of its Affiliates, and details of all rights under this Plan (the "**Data**"). In addition to transferring the Data amongst themselves as necessary for the purpose of implementation, administration, and management of this Plan and rights under this Plan and the Participant's participation in this Plan, the Company and its Affiliates may each transfer the Data to any third parties assisting them in the implementation, administration, and management of this Plan and rights under this Plan and the Participant's participation in this Plan. Recipients of the Data may be located in the Participant's country or elsewhere, and the Participant's country and any given recipient's country may have different data privacy laws and protections. By accepting any rights under this Plan, each Participant authorizes such recipients to receive, possess, use, retain, and transfer the Data, in electronic or other form, for the purposes of assisting the Company in the implementation, administration, and management of this Plan and rights under this Plan and the Participant's participation in this Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom the Company or the Participant may elect to deposit any shares of Common Stock. The Data related to a Participant will be held only as long as is necessary to implement, administer, and manage this Plan and rights under this Plan and the Participant's participation in this Plan. A Participant may, at any time, view the Data held by the Company with respect to such Participant, request additional information about the storage and processing of the Data with respect to such Participant, recommend any necessary corrections to the Data with respect to the Participant, or refuse or withdraw the consents herein in writing, in any case without cost, by contacting the Participant's local human resources representative. The Committee may cancel the Participant's eligibility to participate in this Plan, and in the Committee's discretion, the Participant may forfeit any or all outstanding rights under this Plan if the Participant refuses or withdraws the consents described herein. For more information on the consequences of refusal to consent or withdrawal of consent, Participants may contact their local human resources representative.

11.14 Successor and Assigns. This Plan is binding on all successors and permitted assigns of a Participant, including, without limitation, the estate of such Participant and the executor, administrator, or trustee of such estate.

11.15 Severability of Provisions. If any provision of this Plan are held invalid or unenforceable, such invalidity or unenforceability will not affect any other provisions hereof, and this Plan should be construed and enforced as if such provisions had not been included.

11.16 Headings and Captions. The headings and captions herein are provided for reference and convenience only, should not be considered part of this Plan, and may not be employed in the construction of this Plan.

ARTICLE XII.
PLAN EFFECTIVENESS

12.1 Effective Date of Plan. This Plan became effective on January 16, 2025, which is the date of its adoption by the Board, subject to the approval of this Plan by the stockholders of the Company in accordance with the stockholder voting rules applicable to the Company under Applicable Law and its organization documents.

12.2 Expiration of Plan. No Offering Period may commence after the tenth anniversary of the earlier of the date on which this Plan was adopted by the Board and the date of stockholder approval.

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