

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): July 26, 2023

**VECTOR GROUP LTD.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

1-5759

(Commission File Number)

65-0949535

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

4400 Biscayne Boulevard Miami Florida

(Address of Principal Executive Offices)

33137

(Zip Code)

(305) 579-8000

(Registrant's Telephone Number, Including Area Code)

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 (see General Instruction A.2. below):

- 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 12(b) of the Act:

Title of each class:	Trading Symbol(s)	Name of each exchange on which registered:
Common stock, par value \$0.10 per share	VGR	New York Stock Exchange

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 5.02. Departure of Directors or Certain Officers; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On July 26, 2023, at the annual meeting of stockholders (the “Annual Meeting”) of Vector Group Ltd. (the “Company”), the stockholders approved the Vector Group Ltd. 2023 Management Incentive Plan (the “MIP”), which was previously adopted by the Company’s board of directors subject to stockholder approval. A description of the terms and conditions of the MIP is included in the Company’s definitive proxy statement for the Annual Meeting (the “Definitive Proxy Statement”), filed with the U.S. Securities and Exchange Commission on June 16, 2023, which description is incorporated herein by reference.

The MIP replaces the Company’s Amended and Restated 2014 Management Incentive Plan (the “2014 MIP”) as of July 26, 2023 and as of such date, no further grants will be made under the 2014 MIP.

The foregoing description of the MIP is qualified in its entirety by reference to the full text of the MIP, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 5.07. Submission of Matters to a Vote of Security Holders**

On July 26, 2023, the Company held the Annual Meeting, where stockholders considered and voted upon the following proposals:

**Proposal 1: Election of Directors.**

Each of the directors nominated received the following votes:

<b>Nominee</b>	<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Broker Non-Votes <sup>(1)</sup></b>
Bennett S. LeBow	115,668,538	3,387,133	232,007	19,749,360
Howard M. Lorber	115,689,990	3,355,480	242,208	19,749,360
Richard J. Lampen	114,649,576	4,391,304	246,798	19,749,360
Henry C. Beinstein	106,830,563	12,224,832	232,283	19,749,360
Ronald J. Bernstein	116,272,949	2,782,310	232,419	19,749,360
Paul V. Carlucci	117,702,571	1,341,200	243,907	19,749,360
Jean E. Sharpe	101,899,782	17,162,277	225,619	19,749,360
Barry Watkins	93,085,682	25,963,845	238,151	19,749,360
Wilson L. White	117,095,750	1,818,558	373,370	19,749,360

<sup>(1)</sup> Under the Company’s governing documents, broker non-votes have no effect on the outcome of the matter acted on.

**Proposal 2: Advisory vote on executive compensation (the “say on pay vote”).**

The advisory vote to approve the compensation of the Company’s named executive officers received the following votes:

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<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Broker Non-Votes <sup>(1)</sup></b>
112,273,121	6,444,064	570,493	19,749,360

<sup>(1)</sup> Under the Company's governing documents, broker non-votes have no effect on the outcome of the matter acted on.

**Proposal 3: Approval of ratification of Deloitte & Touche LLP as independent registered public accounting firm for the year ending December 31, 2023.**

The ratification of the independent registered public accounting firm received the following votes:

<b>For</b>	<b>Against</b>	<b>Abstain</b>
137,863,923	868,853	304,262

**Proposal 4: Advisory vote on the frequency of holding the say on pay vote.**

<b>1 YEAR</b>	<b>2 YEARS</b>	<b>3 YEARS</b>	<b>Abstain</b>	<b>Broker Non-Votes <sup>(1)</sup></b>
114,486,408	245,532	4,144,426	411,312	19,749,360

<sup>(1)</sup> Under the Company's governing documents, broker non-votes have no effect on the outcome of the matter acted on.

After consideration of the recommendation of the Company's stockholders, the Company's board of directors has determined that the Company will hold future advisory votes on the compensation of the Company's named executive officers on an annual basis until the next advisory vote regarding frequency.

**Proposal 5: Approval of the Company's 2023 Management Incentive Plan.**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Broker Non-Votes <sup>(1)</sup></b>
114,679,712	4,004,231	603,735	19,749,360

<sup>(1)</sup> Under the Company's governing documents, broker non-votes have no effect on the outcome of the matter acted on.

**Proposal 6: Advisory vote on a stockholder proposal requesting the Company to amend its governing documents to require the Chairman of the Board of Directors be an independent director.**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Broker Non-Votes <sup>(1)</sup></b>
55,627,771	62,907,477	752,428	19,749,362

<sup>(1)</sup> Under the Company's governing documents, broker non-votes have no effect on the outcome of the matter acted on.

***Item 9.01 Financial Statements and Exhibit***

(d) Exhibits

[10.1](#)

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Vector Group Ltd. 2023 Management Incentive Plan.

Cover Page Interactive Data File (embedded within the Inline XBRL document).

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SIGNATURE

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

VECTOR GROUP LTD.

By: /s/ J. Bryant Kirkland III

J. Bryant Kirkland III

Senior Vice President, Treasurer and Chief Financial Officer

Date: July 31, 2023

VECTOR GROUP LTD.  
2023 MANAGEMENT INCENTIVE PLAN

1. **Establishment, Purpose and Duration.** Vector Group Ltd. (referred to below as the “**Company**”) hereby establishes an incentive compensation plan to be known as the 2023 Management Incentive Plan (the “**Plan**”), effective as of July 26, 2023 (the “**Effective Date**”). The Plan permits the grant of Nonqualified Stock Options, Incentive Stock Options, Stock Appreciation Rights, Restricted Shares, Restricted Stock Units, Performance Share Awards, Other Stock-Based Awards and Cash-Based Awards. The purpose of the Plan is to attract and retain Employees, Non-Employee Directors, and Consultants and to provide additional incentives for these persons consistent with the long-term success of the Company’s business. Unless sooner terminated as provided herein, the Plan shall terminate ten (10) years from the Effective Date. After the Plan is terminated, no further Awards may be granted but Awards previously granted shall remain outstanding in accordance with their applicable terms and conditions and the Plan’s terms and conditions. The Plan will replace the Company’s Amended and Restated 2014 Management Incentive Plan (“**2014 Plan**”) and, as of the Effective Date, no further grants will be made under the 2014 Plan.

2. **Definitions.** As used in the Plan, the following terms shall be defined as set forth below:

2.1 “**2014 Plan**” shall have the meaning set forth in Section 1.

2.2 “**Act**” means the Securities Exchange Act of the 1934, as amended.

2.3 “**Affiliate**” means, with respect to any person, any other person that directly or indirectly controls or is controlled by or under common control with such person. For the purposes of this definition, “control,” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or the power to elect directors, whether through the ownership of voting securities, by contract or otherwise; and the terms “affiliated,” “controlling” and “controlled” have correlative meanings.

2.4 “**Award**” or “**Awards**” means, individually or collectively, except where referring to a particular category of grant under the Plan, a grant under the Plan of Nonqualified Stock Options, Incentive Stock Options, Stock Appreciation Rights, Restricted Shares, Restricted Stock Units, Performance Share Awards, Cash-Based Awards or Other Stock-Based Awards, in each case subject to the terms of the Plan.

2.5 “**Award Agreement**” means an agreement, certificate, resolution or other form of writing or other evidence approved by the Committee which sets forth the terms and conditions of an Award. An Award Agreement may be in an electronic medium, may be limited to a notation on the Company’s books and records and, if approved by the Committee, need not be signed by a representative of the Company or a Participant.

2.6 “**Base Price**” means the price to be used as the basis for determining the Spread upon the exercise of a Stock Appreciation Right.

2.7 “**Beneficial Owner**” or “**Beneficial Ownership**” shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations under the Act.

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

2.9 “**Business Combination**” shall have the meaning set forth in Section 13.3.

2.10 “**Cash-Based Award**” means an award granted to a Participant as described in Section 11.

2.11 “**Cause**” means (a) with respect to a Participant employed pursuant to a written employment agreement which agreement includes a definition of “Cause”, “Cause” as defined in that agreement or (b) with respect to any other Participant, the occurrence of any of the following: (i) such Participant’s conviction of, or plea of guilty or no contest to, any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof or under the laws of any other jurisdiction, (ii) such Participant’s attempted

commission of, or participation in, a fraud or theft against the Company or any client of the Company, (iii) such Participant's engagement in gross negligence or misconduct that causes financial or reputational harm to the Company or its Affiliates, (iv) such Participant's repeated failure to substantially perform his or her duties and responsibilities to the Company (other than failure resulting from incapacity due to mental or physical illness or injury or from any permitted leave required by law) or (v) such Participant's material violation of any contract or agreement between the Participant and the Company (including any restrictive covenant agreements) or any written Company policy (including any code of conduct). The foregoing definition does not in any way limit the Company's ability to terminate a Participant's employment or consulting relationship at any time.

2.12 **"Change in Control"** shall have the meaning given to it in Section 13.3.

2.13 **"Code"** means the Internal Revenue Code of 1986, as amended from time to time.

2.14 **"Committee"** means the committee of the Board described in Section 4.

2.15 **"Consultant"** means any natural person, including an advisor, engaged by the Company or any Subsidiary to render bona fide services to such entity (other than in connection with the offer or sale of securities in a capital-raising transaction or to promote or maintain a market for the Company's securities).

2.16 **"Controlled Entity"** shall have the meaning set forth in Section 13.3.

2.17 **"Company"** means Vector Group Ltd. or its successor.

2.18 **"Effective Date"** shall have the meaning set forth in Section 1 above.

2.19 **"Election Contest"** shall have the meaning set forth in Section 13.3.

2.20 **"Employee"** means any person designated as an employee of the Company, any of its Affiliates, and/or any of its or their Subsidiaries on the payroll records thereof.

2.21 **"Executive Officer"** means an "executive officer" of the Company as defined by Rule 3b-7 under the Act. To the extent that the Board takes action to designate the persons who are the "executive officers" of the Company, the persons so designated (and no others) shall be deemed to be the "executive officers" of the Company for all purposes of the Plan.

2.22 **"Family Member"** means a Participant's spouse, parents, children and grandchildren.

2.23 **"Fair Market Value"** means a price that is based on the opening, closing, actual, high, low, or average selling prices of a Share reported on the New York Stock Exchange or other established stock exchange (or exchanges) on the applicable date, the preceding trading day, the next succeeding trading day, an average of trading days or on any other basis consistent with the requirements of the stock rights exemption under Section 409A of the

Code using actual transactions involving Shares, as determined by the Committee in its discretion. In the event Shares are not publicly traded at the time a determination of their value is required to be made hereunder, the determination of their Fair Market Value shall be made by the Committee in such manner as it deems appropriate. Such definition(s) of Fair Market Value shall be specified in each Award Agreement and may differ depending on whether Fair Market Value is in reference to the grant, exercise, vesting, settlement, or payout of an Award; provided, however, that upon a broker-assisted exercise of an Option, the Fair Market Value shall be the price at which the Shares are sold by the broker.

2.24 **"Good Reason"** means (a) with respect to a Participant employed pursuant to a written employment agreement which agreement includes a definition of "Good Reason," "Good Reason" as defined in that agreement or (b) with respect to any other Participant, the occurrence of any of the following in the absence of written consent of a Participant, (i) the transfer of the Participant's primary work site to a new primary work site that is more than 50 miles from the Participant's primary work site in effect immediately before a Change in Control; or

(ii) a diminution of the Participant's base salary in effect immediately before a Change in Control by more than 10%, unless such diminution applies to all similarly situated employees. Notwithstanding the foregoing, placing the Participant on a paid leave for up to 90 days, pending the determination of whether there is a basis to terminate the Participant for Cause, shall not constitute Good Reason. If the Participant does not deliver to the Company or the Subsidiary of whom he is an Employee, as applicable, a written notice of termination within 60 days after the Participant has knowledge that an event constituting Good Reason has occurred, the event will no longer constitute Good Reason. In addition, the Participant must give the Company or the Subsidiary, as applicable, notice and 30 days to cure the event constituting Good Reason.

2.25 **"Grant Date"** means the date specified by the Committee on which a grant of an Award shall become effective, which shall not be earlier than the date on which the Committee takes action with respect thereto.

2.26 **"Incentive Stock Option"** means any Option that is intended to qualify as an "incentive stock option" under Section 422 of the Code or any successor provision.

2.27 **"Incumbent Board"** shall have the meaning set forth in Section 13.3.

2.28 **"Non-Control Transaction"** shall have the meaning set forth in Section 13.3.

2.29 **"Non-Employee Director"** means a member of the Board who is not an Employee.

2.30 **"Nonqualified Stock Option"** means an Option that is not intended to qualify as an Incentive Stock Option.

2.31 **"Option"** means any option to purchase Shares granted under Section 5.

2.32 **"Option Price"** means the purchase price payable upon the exercise of an Option.

2.33 **"Other Stock-Based Awards"** means an equity-based or equity-related Award not otherwise described by the terms of this Plan granted under Section 10.

2.34 **"Participant"** means an Employee, Non-Employee Director or a Consultant who is selected by the Committee to receive benefits under the Plan, provided that only Employees shall be eligible to receive grants of Incentive Stock Options.

2.35 **"Performance Criteria"** means the criteria that the Committee selects for purposes of establishing the Performance Goal or Performance Goals for a Participant with respect to the Performance Cycle for a Performance-Share Award. The Performance Criteria may be described in terms of Company-wide objectives or objectives that are related to the performance of the individual Participant or an organizational level specified by the Committee, including, but not limited to, a Subsidiary or unit, division, group of the Company or a Subsidiary. Performance Criteria may be measured on an absolute or relative basis, including but not limited to performance as measured against a group of peer companies or by a financial market index. The Performance Criteria that will be used to establish such Performance Goal(s) may be, but are not required to be, based on any one of, or combination of, the following financial and non-financial metrics with respect to the entire Company or a business unit, as determined by the Committee: net sales or revenue, unit sales, return measures (including, but not limited to, return on invested capital, assets, net assets, capital, equity and sales), gross or net profit margin, operating expense ratios, operating expense targets, productivity ratios, adjusted operating income or earnings (on a financial reporting segment basis), gross or operating margins, adjusted earnings before or after taxes, interest, depreciation and/or amortization (on a financial reporting segment basis), net earnings or net income (before or after taxes), adjusted earnings per share, cash flow (including, but not limited to, operating cash flow, free cash flow, cash flow return on equity, and cash flow return on investment, funds from operations or similar measures, capital expenditures, share price (including, but not limited to, growth measures and total stockholder return), appreciation in the fair market value or book value of the Shares, cash dividends declared per Share, stockholder returns, dividends and other distributions, economic value added (net operating profit after tax minus the sum of capital multiplied by the cost of



the capital), debt to equity ratio, debt levels, budget achievement, expense reduction or cost savings, operating margins, quantitative measures of customer satisfaction, quantitative measures of employee satisfaction/engagement, market share and/or new or expanded market penetration, acquisitions, strategic transactions or business expansion, product line diversification, employee retention/attrition, productivity improvements, inventory control/efficiency, measures of diversity, equity and inclusion and measures of environmental factors, including targets of the impact of climate change.

2.36 **“Performance Cycle”** means one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Criteria will be measured for the purpose of determining a Participant’s right to and the payment of a Restricted Share Award, Restricted Stock Unit, Performance Share Award or Cash-Based Award. A Performance Cycle shall not be less than 12 months.

2.37 **“Performance Goals”** means, with respect to a Restricted Share Award, a Restricted Stock Unit Award, a Performance Share Award or a Cash-Based Award, the specific goal or goals established in writing by the Committee for the Performance Cycle applicable to such Award, which may be based upon one or more Performance Criteria.

2.38 **“Performance Share Award”** means an Award denominated in either Shares or share units granted pursuant to Section 9.

2.39 **“Plan”** shall have the meaning set forth in Section 1 above.

2.40 **“Proxy Contest”** shall have the meaning set forth in Section 13.3.

2.41 **“Restricted Period”** means a period of time established under Section 8 with respect to Restricted Stock Units.

2.42 **“Restricted Shares”** means Shares granted under Section 7 subject to a substantial risk of forfeiture.

2.43 **“Restricted Stock Units”** means an Award pursuant to Section 8 of the right to receive Shares at the end of a specified period.

2.44 **“Share Authorization”** means the maximum number of Shares available for grant under the Plan, as described in Section 3.

2.45 **“Shares”** means the common stock of the Company.

2.46 **“Spread”** means, in the case of a Stock Appreciation Right, the amount by which the Fair Market Value on the date when any such right is exercised exceeds the Base Price specified in such right.

2.47 **“Stock Appreciation Right”** means a right granted under Section 6.

2.48 **“Subcommittee”** means a subcommittee of the Board which shall be composed of at least two directors who are “non-employee” directors as defined in Rule 16b-3 under the Securities Exchange Act of 1934, as amended.

2.49 **“Subsidiary”** means any corporation or other entity, whether domestic or foreign, in which the Company has or obtains, directly or indirectly, a proprietary interest of more than fifty percent (50%) by reason of stock ownership or otherwise.

2.50 **“Substitute Award”** means any Award granted or issued to a Participant in assumption or substitution of either outstanding awards or the right or obligation to make future awards by an entity acquired by the Company or a Subsidiary or with which the Company or a Subsidiary combines.

2.51 “*Surviving Corporation*” shall have the meaning set forth in Section 13.3.

2.52 “*Voting Securities*” shall have the meaning set forth in Section 13.3.

### 3. *Award Limits Under the Plan.*

#### 3.1 *Number of Shares Reserved for Awards.*

(a) The aggregate number of Shares that may be issued and as to which grants of Awards may be made under the Plan is 8,000,000, which represents the sum of (i) 4,027,462 newly reserved Shares and (ii) 3,972,538 Shares, the number of Shares remaining available for grant under the 2014 Plan.

(b) No individual Participant may receive in any calendar year equity Awards exceeding 2,000,000 underlying Shares. In addition, during the term of the Plan, no individual Participant may receive equity Awards exceeding one-half of the maximum number of Shares in respect of which equity Awards may be granted or paid out under the Plan.

(c) Subject to the limits set forth in Section 3.1(a) on the number of Shares that may be granted in the aggregate under the Plan, the aggregate value of all compensation granted or paid, as applicable, to a Non-Employee Director with respect to any calendar year, including Awards granted and cash fees paid by the Company to such Non-Employee Director in his or her capacity as a Non-Employee Director, will not exceed \$500,000, calculating the value of any equity awards based on the grant date fair value of such equity awards for financial reporting purposes.

#### 3.2 *Share Usage.*

(a) Any Shares related to Awards that terminate by expiration, forfeiture, cancellation, or otherwise without the issuance of such Shares, are settled in cash in lieu of Shares, or are exchanged with the Committee’s permission, prior to the issuance of Shares, for Awards not involving Shares, shall be available again for grant under the Plan. In addition, Restricted Shares that are forfeited shall again be available for grant under the Plan.

(b) The full number of Nonqualified Stock Options, Incentive Stock Options and Stock Appreciation Rights granted that are to be settled by the issuance of Shares shall be counted against the number of Shares available for award under the Plan, regardless of the number of Shares actually issued upon settlement of any such Award.

(c) Any Shares withheld to satisfy tax withholding obligations on an Award issued under the Plan, Shares tendered to pay the exercise price of an Award under the Plan, and Shares repurchased on the open market with the proceeds of an Option exercise will not be eligible to be again available for grant under the Plan.

(d) Substitute Awards shall not be counted against the Shares available for granting Awards under the Plan.

### 4. *Plan Administration.*

4.1 ***Board Committee Administration.*** The Plan shall be administered by the Committee appointed by the Board from among its members, provided that the full Board may at any time act as the Committee. In the case of Awards intended to qualify for the exemption from Section 16(b) of the Exchange Act that is available under Rule 16b-3 of the Exchange Act, references in this Plan to the Committee shall mean the Subcommittee, unless the functions of the Subcommittee have been assumed by the Committee. The interpretation and construction by the Committee of any provision of the Plan or of any Award Agreement and any determination by the Committee pursuant to any provision of the Plan or any such agreement, notification or document shall be final and conclusive. No member of the Committee or the Subcommittee shall be liable to any person for any such action taken or determination made in good faith.

4.2 **Terms and Conditions of Awards.** The Committee shall have final discretion, responsibility, and authority to:

- (a) grant Awards;
- (b) determine the Participants to whom and the times at which Awards shall be granted;
- (c) determine the type and number of Awards to be granted, the number of Shares to which an Award may relate, and the applicable terms, conditions, and restrictions, including the length of time for which any restriction shall remain in effect;
- (d) establish and administer Performance Goals and Performance Cycles relating to any Award;
- (e) determine the rights of Participants with respect to an Award upon termination of employment or service as a director;
- (f) determine whether, to what extent, and under what circumstances an Award may be settled, cancelled, forfeited, exchanged, or surrendered;
- (g) accelerate the vesting of an Award;
- (h) interpret the terms and provisions of Award Agreements;
- (i) provide for forfeiture of outstanding Awards and recapture of realized gains and other realized value in such events as determined by the Committee; and
- (j) make all other determinations deemed necessary or advisable for the administration of the Plan.

The Committee may solicit recommendations from the Company's Chief Executive Officer with respect to the grant of Awards under the Plan. The Committee (or, as permitted under Section 4.3, the Company's Chief Executive Officer) shall determine the terms and conditions of each Award at the time of grant. No Participant or any other person shall have any claim to be granted an Award under the Plan at any time, and the Company is not obligated to extend uniform treatment to Participants under the Plan. The terms and conditions of Awards need not be the same with respect to each Participant.

4.3 **Committee Delegation.** The Committee may delegate to the Company's Chief Executive Officer the authority to grant Awards to Participants who are not Non-Employee Directors or Executive Officers and to interpret and administer Awards for such Non-Employee Directors and Executive Officers. Any such delegation shall be subject to the limitations of Section 157(c) of the Delaware General Corporate Law. The Committee may also delegate the authority to grant Awards to any subcommittee(s) consisting of members of the Board, including the Subcommittee.

4.4 **Awards to Non-Employee Directors.** Notwithstanding any other provision of the Plan to the contrary, all Awards to Non-Employee Directors must be authorized by the Board.

4.5 **Employee's Service as Non-Employee Director or Consultant.** An Employee who receives an Award, terminates employment, and immediately thereafter begins performing service as a Non-Employee Director or Consultant shall have such service treated as service as an Employee for purposes of the Award. The previous sentence shall not apply when (a) the Award is an Incentive Stock Option or (b) prohibited by law.

5. **Options.** The Committee may authorize grants to Participants of Options to purchase Shares upon such terms and conditions as the Committee may determine in accordance with the following provisions:

5.1 **Number of Shares.** Each grant shall specify the number of Shares to which it pertains.

5.2 **Option Price.** Each grant shall specify an Option Price per Share, which shall be equal to or greater than the Fair Market Value per Share on the Grant Date, except in the case of Substitute Awards as provided in Section 10. In the event of Awards that are contingent on stockholder approval of the Plan, the Committee shall provide for adjustment to the Option Price or Base Price to ensure that that price is not lower than the closing selling price of a Share reported on the New York Stock Exchange on the date of stockholder approval of the Plan.

5.3 **Consideration.** Each grant shall specify the form of consideration to be paid in satisfaction of the Option Price and the manner of payment of such consideration, which may include in the Committee's sole discretion: (a) cash in the form of currency or check or other cash equivalent acceptable to the Company, (b) non- forfeitable, unrestricted Shares owned by the Participant which have a value at the time of exercise that is equal to the Option Price, (c) a reduction in Shares issuable upon exercise which have a value at the time of exercise that is equal to the Option Price (a "net exercise"), (d) to the extent permitted by applicable law, the proceeds of sale from a broker-assisted cashless exercise, (e) any other legal consideration that the Committee may deem appropriate on such basis as the Committee may determine in accordance with the Plan or (f) any combination of the foregoing. For the avoidance of doubt, Participants who receive Options to purchase Shares shall have no legal right to own or receive Shares withheld from delivery upon exercise pursuant to Section 5.3(c), and otherwise shall have no rights in respect of such Shares whether as a stockholder or otherwise.

5.4 **Vesting.** Any grant may specify (a) a waiting period or periods before Options shall become exercisable and (b) permissible dates or periods on or during which Options shall be exercisable, and any grant may provide for the earlier exercise of such rights in the event of a termination of employment. Vesting may be further conditioned upon the attainment of Performance Goals established by the Committee.

5.5 **Ownership Rights.** During the period prior to exercise of an Option, the Participant shall not have any right to transfer any rights under the subject Award and shall not have any rights of ownership in the Shares underlying the Option, including the right to vote such Shares or receive dividend equivalents.

5.6 **Provisions Governing ISOs.** Options granted under the Plan may be Incentive Stock Options, Nonqualified Stock Options or a combination of the foregoing, provided that only Nonqualified Stock Options may be granted to Non-Employee Directors. Each grant shall specify whether (or the extent to which) the Option is an Incentive Stock Option or a Nonqualified Stock Option. Notwithstanding any such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by an Participant during any calendar year (under all plans of the Company) exceeds \$100,000, such Options shall be treated as Nonqualified Stock Options. Options failing to qualify as Incentive Stock Options for any reason will be treated as Nonqualified Stock Options, rather than being forfeited.

#### 5.7 **Exercise Period.**

(a) Subject to Section 18.9, no Option granted under the Plan may be exercised more than ten years from the Grant Date.

(b) If the Fair Market Value exceeds the Option Price on the last day that an Option may be exercised under an Award Agreement, the affected Participant shall be deemed to have exercised the vested portion of such Option in a net exercise under Section 5.3(c) above without the requirement of any further action.

5.8 **Award Agreement.** Each grant shall be evidenced by an Award Agreement containing such terms and provisions as the Committee may determine consistent with the Plan.

6. **Stock Appreciation Rights.** The Committee may authorize grants to Participants of Stock Appreciation Rights. A Stock Appreciation Right is the right of the Participant to receive from the Company an amount, which shall be determined by the Committee and shall be expressed as a percentage (not exceeding 100 percent) of the Spread at the time of the exercise of such right. Any grant of Stock Appreciation Rights under the Plan shall be upon such terms and conditions as the Committee may determine in accordance with the following provisions:

6.1 **Payment in Cash or Shares.** Any grant may specify that the amount payable upon the exercise of a Stock Appreciation Right will be paid by the Company in cash, Shares or any combination thereof or may grant to the Participant or reserve to the Committee the right to elect among those alternatives.

6.2 **Vesting.** Any grant may specify (a) a waiting period or periods before Stock Appreciation Rights shall become exercisable and (b) permissible dates or periods on or during which Stock Appreciation Rights shall be exercisable, and any grant may provide for the earlier exercise of such rights in the event of a termination of employment. Vesting may be further conditioned upon the attainment of Performance Goals established by the Committee.

6.3 **Exercise Period.** Subject to Section 18.9, no Stock Appreciation Right granted under the Plan may be exercised more than ten years from the Grant Date. If a Spread exists on the last day that a Stock Appreciation Right may be exercised under an Award Agreement, the affected Participant shall be deemed to have exercised the vested portion of such Stock Appreciation Right without the requirement of any further action.

6.4 **Award Agreement.** Each grant shall be evidenced by an Award Agreement containing such terms and provisions as the Committee may determine consistent with the Plan.

6.5 **Ownership Rights.** During the period prior to exercise of a Stock Appreciation Right, the Participant shall not have any right to transfer any rights under the subject Award and shall not have any rights of ownership in the Shares underlying the Stock Appreciation Right, including the right to vote such Shares or receive dividend equivalents.

7. **Restricted Shares.** The Committee may authorize grants to Participants of Restricted Shares upon such terms and conditions as the Committee may determine in accordance with the following provisions:

7.1 **Transfer of Shares.** Each grant shall constitute an immediate transfer of the ownership of Shares to the Participant in consideration of the performance of services, subject to the substantial risk of forfeiture and restrictions on transfer hereinafter referred to.

7.2 **Consideration.** To the extent permitted by Delaware law, each grant may be made without additional consideration from the Participant or in consideration of a payment by the Participant that is less than the Fair Market Value on the Grant Date.

7.3 **Substantial Risk of Forfeiture.** Each grant shall provide that the Restricted Shares covered thereby shall be subject to a “substantial risk of forfeiture” within the meaning of Section 83 of the Code for a period to be determined by the Committee on the Grant Date, and any grant or sale may provide for the earlier termination of such risk of forfeiture in the event of a termination of employment.

7.4 **Dividend, Voting and Other Ownership Rights.** During the period for which a substantial risk of forfeiture is to continue, the Participant shall not have any right to transfer any rights under the subject Award but the Participant shall have voting and other ownership rights (except for any rights to a liquidating distribution). The Committee may on or after the Grant Date authorize the right to receive dividends on such Restricted Shares on a current, deferred or contingent basis with respect to any or all dividends or other distributions paid by the Company; provided that, unless set forth otherwise in an Award Agreement, no dividends will be paid at a time when the Restricted Shares remain subject to a substantial risk of forfeiture and such dividends will revert back to the Company if the applicable restrictions, limitations and conditions are not satisfied.

7.5 **Performance-Based Restricted Shares.** Any grant or the vesting thereof may be further conditioned upon the attainment of Performance Goals established by the Committee in accordance with the applicable provisions of Section 9 regarding Performance Share Awards.

7.6 **Award Agreement; Certificates.** Each grant shall be evidenced by an Award Agreement containing such terms and provisions as the Committee may determine consistent with the Plan. Unless otherwise directed by the Committee, all certificates representing Restricted Shares, together with a stock power that shall be endorsed in blank by the Participant with respect to such Shares, shall be held in custody by the Company until all restrictions thereon lapse.

8. **Restricted Stock Units.** The Committee may authorize grants of Restricted Stock Units to Participants upon such terms and conditions as the Committee may determine in accordance with the following provisions:

8.1 **Restricted Period.** Each grant shall provide that the Restricted Stock Units covered thereby shall be subject to a Restricted Period, which shall be fixed by the Committee on the Grant Date, and any grant or sale may provide for the earlier termination of such period in the event of a termination of employment.

8.2 **Dividend Equivalents and Other Ownership Rights.** During the Restricted Period, the Participant shall not have any right to transfer any rights under the subject Award and shall not have any rights of ownership in the Shares underlying the Restricted Stock Units, including the right to vote such Shares, but the Committee may on or after the Grant Date authorize the payment of dividend equivalents on such Shares in cash or securities (including securities of another issuer) on a current, deferred or contingent basis with respect to any or all dividends or other distributions paid by the Company; provided that no dividend equivalents will be paid at a time when the Restricted Period applies to such Restricted Stock Units and such dividend equivalents will revert back to the Company if the applicable restrictions, limitations and conditions are not satisfied.

8.3 **Performance-Based Restricted Share Units.** Any grant or the vesting thereof may be further conditioned upon the attainment of Performance Goals established by the Committee in accordance with the applicable provisions of Section 9 regarding Performance Share Awards.

8.4 **Award Agreement.** Each grant shall be evidenced by an Award Agreement containing such terms and provisions as the Committee may determine consistent with the Plan.

9. **Performance Share Awards.** The Committee shall determine whether and to whom Performance Share Awards shall be granted and such terms, limitations and conditions as it deems appropriate in its sole discretion in accordance with the following provisions:

9.1 **Number of Performance Share Awards.** Each grant shall specify the number of Shares or share units to which it pertains, which may be subject to adjustment to reflect changes in compensation or other factors.

9.2 **Performance Cycle.** The Performance Cycle with respect to each Performance Share Award shall be determined by the Committee and set forth in the Award Agreement and may be subject to earlier termination in the event of a termination of employment.

9.3 **Performance Goals.** Each grant shall specify the Performance Goals that are to be achieved by the Participant and a formula for determining the amount of any payment to be made if the Performance Goals are achieved.

9.4 **Payment of Performance Share Awards.** Each grant shall specify the time and manner of payment of Performance Share Awards that shall have been earned.

9.5 **Determination of Performance Goals.** Following the completion of a Performance Cycle, the Committee shall meet to determine whether, and to what extent, the Performance Goals for the Performance Cycle have been achieved and, if so, to also calculate and determine the amount of the Performance Share Award earned for the Performance Cycle.

9.6 **Adjustments.** If the Committee determines after the Performance Goals have been established that a change in the business, operations, corporate structure or capital structure of the Company, or the manner in which it conducts its business, or other events or circumstances render the Performance Goals unsuitable, the Committee shall have sole discretion to modify such Performance Goals, in whole or in part, as the Committee deems appropriate and equitable. The Committee shall also have the right in its sole discretion to increase or decrease the amount payable at a given level of performance to take into account additional factors that the Committee may deem relevant to the assessment of individual or corporate performance for the Performance Cycle.

9.7 **Award Agreement.** Each grant shall be evidenced by an Award Agreement containing such terms and provisions as the Committee may determine consistent with the Plan.

10. **Other Equity Awards.** The Committee may grant other types of equity-based or equity-related Awards not otherwise described by the terms of the Plan in such amounts and subject to such terms and conditions, as the Committee shall determine. Such Awards may involve the transfer of actual Shares to Participants, or

payment in cash or otherwise of amounts based on the value of Shares and may include, without limitation, Awards designed to comply with or take advantage of the applicable local laws of jurisdictions other than the United States.

11. **Cash-Based Awards.** The Committee may, in its sole discretion, grant Cash-Based Awards to Executive Officers and key employees in such amounts and upon such terms, and subject to such conditions, as the Committee shall determine at the time of grant. The Committee shall determine the maximum duration of the Cash- Based Award, the amount of cash to which the Cash-Based Award pertains, the conditions upon which the Cash- Based Award shall become vested or payable, and such other provisions as the Committee shall determine. Each Cash-Based Award shall specify a cash-denominated payment amount, formula or payment ranges as determined by the Committee. Payment, if any, with respect to a Cash-Based Award shall be made in accordance with the terms of the Award and shall be made in cash.

12. **Adjustments.** The Committee shall make or provide for such adjustments in the (a) aggregate and per-person limitations specified in Section 3, (b) number of Shares covered by outstanding Awards, (c) Option Price or Base Price applicable to outstanding Options and Stock Appreciation Rights, and (d) kind of Shares available for grant and covered by outstanding Awards (including shares of another issuer), as the Committee in its sole discretion may in good faith determine to be equitably required in order to prevent dilution or enlargement of the rights of Participants that would otherwise result from (x) any stock dividend, stock split, combination or exchange of Shares, recapitalization, extraordinary cash dividend, or other change in the capital structure of the Company, (y) any merger, consolidation, spin-off, spin-out, split-off, split-up, reorganization, partial or complete liquidation or other distribution of assets (other than a normal cash dividend), issuance of rights or warrants to purchase securities, or (z) any other corporate transaction or event having an effect similar to any of the foregoing. However, in the event that such transaction or event results in the distribution to the Company's stockholders of securities of another issuer, the Committee may provide with respect to any Award that includes the right to dividend equivalents that, instead of an adjustment to that Award, that holder of such Award will receive the number of securities of the other issuer that they would have been entitled to if they held the Shares underlying their Award. In addition, in the event of any such transaction or event, the Committee may provide in substitution for any or all outstanding Awards under the Plan such alternative consideration as it may in good faith determine to be equitable under the circumstances and may require in connection therewith the cancellation or surrender of all Awards so replaced. In the case of Substitute Awards, the Committee may make such adjustments, not inconsistent with the terms of the Plan, in the terms of Awards as it shall deem appropriate in order to achieve reasonable comparability or other equitable relationship between the assumed awards and the Awards granted under the Plan as so adjusted.

### 13. **Change in Control.**

13.1 **General Rule.** Except as otherwise expressly provided in an Award Agreement, if a Participant's employment is terminated by the Company or any successor entity thereto without Cause, or by a Participant for Good Reason, in either case, on or within two years after a Change in Control, (i) each Award granted to such Participant prior to such Change in Control will become fully vested (including the lapsing of all restrictions and conditions) and, as applicable, exercisable and (ii) any Shares deliverable pursuant to Restricted Stock Units will be delivered promptly (but no later than 15 days following such Participant's termination of employment), except to the extent that payment of such Award must remain payable on the date(s) provided in the Award Agreement in order to comply with Section 409A. Except as otherwise expressly provided in an Award Agreement, in the event a Participant's Awards are not assumed, substituted or replaced in connection with the Change in Control, such Participant's then outstanding Awards shall immediately vest and shall be settled in cash, Shares or a combination thereof, as determined by the Committee (except to the extent that settlement of such Awards must remain payable on the date(s) provided in the underlying Award Agreement and provisions of the Plan in order to comply with Section 409A).

13.2 **Deemed Achievement of Awards Subject to Performance Goals Upon a Change in Control.** Except as otherwise expressly provided in an Award Agreement, as of the Change in Control date, any outstanding Awards subject to satisfying a Performance Goal or Goals shall be deemed earned at the actual performance level as of the date of the Change in Control with respect to all open Performance Cycles and will cease to be subject to any further performance conditions but will continue to be subject to time-based vesting following the Change in Control in accordance with the original Performance Cycle.

13.3 **Change in Control** shall mean the earliest to occur of the following events:

(a) Any holder acquires Beneficial Ownership of any securities of the Company which generally entitles the holder thereof to vote for the election of directors of the Company (the "**Voting Securities**"), which, when added to the Voting Securities then Beneficially Owned by such holder, would result in such holder Beneficially Owning forty percent (40%) or more of the combined voting power of the Company's then outstanding Voting Securities; provided, however, that for purposes of this paragraph (a), a holder shall not be deemed to have made an acquisition of Voting Securities if such holder: (i) acquires Voting Securities as a result of a stock split, stock dividend or other corporate restructuring in which all stockholders of the class of such Voting Securities are treated on a pro rata basis; (ii) acquires the Voting Securities directly from the Company; (iii) becomes the Beneficial Owner of more than the permitted percentage of Voting Securities solely as a result of the acquisition of Voting Securities by the Company, which, by reducing the number of Voting Securities outstanding, increases the proportional number of Shares Beneficially Owned by such holder; (iv) is the Company or any corporation or other holder of which a majority of its voting power or its equity securities or equity interest is owned directly or indirectly by the Company (a "**Controlled Entity**"); or (e) acquires Voting Securities in connection with a "Non-Control Transaction" (as defined in subparagraphs (c)(i)(1)-(3) below); or

(b) The individuals who, as of July 26, 2023 are members of the Board (the "**Incumbent Board**"), cease for any reason to constitute at least two-thirds of the Incumbent Board, provided, however, that if either the election of any new director or the nomination for election of any new director was approved by a vote of more than two-thirds of the Incumbent Board, such new director shall be considered as a member of the Incumbent Board; provided further, however, that no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of either an actual or threatened "**Election Contest**" (as described in Rule 14a-11 promulgated under the Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (a "**Proxy Contest**"), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest; or

(c) The consummation of a merger, share exchange, consolidation or reorganization involving the Company (a "**Business Combination**"), unless:

- (1) the stockholders of the Company immediately before the Business Combination, own, directly or indirectly immediately following the Business Combination, at least fifty-one percent (51%) of the combined voting power of the outstanding Voting Securities of the corporation resulting from the Business Combination (the "**Surviving Corporation**"), and
- (2) the individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for the Business Combination constitute at least a majority of the members of the board of directors of the relevant Surviving Corporation, and
- (3) no holder (other than the Company, or any Controlled Entity, a trustee or other fiduciary holding securities under one or more employee benefit plans or arrangements (or any trust forming a part thereof) maintained by the Company, the Surviving Corporation or any Controlled Entity, or any Person who, immediately prior to the Business Combination, had Beneficial Ownership of forty percent (40%) or more of the then outstanding Voting Securities) has Beneficial Ownership of forty percent (40%) or more of the combined voting power of the Surviving Corporation's then outstanding voting securities (a transaction described in these subparagraphs (c)(i)(1)-(3) shall be referred to as a "**Non-Control Transaction**");

(d) Stockholder approval of a complete liquidation or dissolution of the Company; or

(e) The consummation of a sale or other disposition of all or substantially all of the assets of the Company to any holder (other than a transfer to a Controlled Entity).



Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because forty percent (40%) or more of the then outstanding Voting Securities is Beneficially Owned by (A) a trustee or other fiduciary holding securities under one or more employee benefit plans or arrangements (or any trust forming a part thereof) maintained by the Company or any Controlled Entity or (B) any corporation which, immediately prior to its acquisition of such interest, is owned directly or indirectly by the stockholders of the Company in the same proportion as their ownership of stock in the Company, immediately prior to such acquisition.

14. **Minimum Vesting.** All Awards shall be subject to a minimum vesting schedule of at least twelve months following the date of grant of the Award, provided that vesting may accelerate in connection with death, retirement, a Change in Control or other involuntary termination of employment. Notwithstanding the foregoing, up to 5% of the Shares available for grant under the Plan may be granted with a minimum vesting schedule that is shorter than that mandated in this Section 14.

15. **Withholding.**

15.1 **Tax Withholding.** The Company shall have the power and the right to deduct or withhold, or require a Participant to remit to the Company, the maximum statutory amount to satisfy federal, state, and local taxes, domestic or foreign, required by law or regulation to be withheld with respect to any taxable event arising as a result of this Plan prior to making any payments hereunder.

15.2 **Share Withholding.** With respect to withholding required upon the exercise of Options or Stock Appreciation Rights, upon the lapse of restrictions on Restricted Shares and Restricted Stock Units, or upon the achievement of performance goals related to Performance Share Awards, or any other taxable event arising as a result of an Award granted hereunder, Participants may elect, subject to the approval of the Committee, to satisfy the withholding requirement, in whole or in part, by having the Company withhold Shares having a Fair Market Value on the date the tax is to be determined equal to the maximum statutory total tax that could be imposed on the transaction. All such elections shall be irrevocable, made in writing or electronically, and signed or acknowledged electronically by the Participant, and shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

16. **Certain Terminations of Employment, Hardship and Approved Leaves of Absence.** Notwithstanding any other provision of the Plan to the contrary, in the event of a Participant's termination of employment (including by reason of death, disability or retirement) or in the event of hardship or other special circumstances, the Committee may in its sole discretion take any action that it deems to be equitable under the circumstances or in the best interests of the Company, including, without limitation, waiving or modifying any limitation or requirement with respect to any Award under the Plan. The Committee shall have the discretion to determine whether and to what extent the vesting of Awards shall be tolled during any leave of absence, paid or unpaid; provided however, that in the event of military leave, vesting shall toll during any unpaid portion of such leave, provided that, upon a Participant's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to the Award to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave. Any actions taken by the Committee shall be taken consistent with the requirements of Section 409A of the Code.

17. **Authorization of Sub-Plans.** The Committee may from time to time establish one or more sub-plans under the Plan for purposes of satisfying applicable blue sky, securities, and/or tax laws of various jurisdictions. The Committee shall establish such sub-plans by adopting supplements to the Plan containing (a) such limitations as the Committee deems necessary or desirable, and (b) such additional terms and conditions not otherwise inconsistent with the Plan as the Committee shall deem necessary or desirable. All sub-plans adopted by the Committee shall be deemed to be part of the Plan, but each sub-plan shall apply only to Participants within the affected jurisdiction and the Company shall not be required to provide copies of any sub-plans to Participants in any jurisdiction which is not the subject of such sub-plan.

## 18. *Amendments and Other Matters.*

18.1 **Plan Amendments.** The Board may amend, suspend or terminate the Plan or the Committee's authority to grant Awards under the Plan at any time. Notwithstanding the foregoing, no amendments shall be effective without approval of the Company's stockholders if (a) stockholder approval of the amendment is then required pursuant to the Code, the rules of the primary stock exchange or stock market on which the Shares are then traded, applicable U.S. state corporate laws or regulations, applicable U.S. federal laws or regulations, and the applicable laws of any foreign country or jurisdiction where Awards are, or shall be, granted under the Plan, or (b) such amendment would (i) modify Section 18.4, (ii) materially increase benefits accruing to Participants, (iii) increase the aggregate number of Shares issued or issuable under the Plan, (iv) increase any limitation set forth on the number of Shares which may be issued or the aggregate value of Awards or the per-person limits under Section 3 except as provided in Section 12, (v) modify the eligibility requirements for Participants in the Plan, or (vi) reduce the minimum Option Price and Base Price as set forth in Sections 5 and 6, respectively. Notwithstanding any other provision of the Plan to the contrary, except as provided in Section 18.8, no termination, suspension or amendment of the Plan may adversely affect any outstanding Award without the consent of the affected Participant.

18.2 **Award Deferrals.** The Committee may permit Participants to elect to defer the issuance of Shares or the settlement of Awards in cash under the Plan pursuant to such rules, procedures or programs as it may establish for purposes of the Plan. However, any Award deferrals which the Committee permits must comply with the provisions of Section 22 and the requirements of Section 409A of the Code.

18.3 **Conditional Awards.** The Committee may condition the grant of any award or combination of Awards under the Plan on the surrender or deferral by the Participant of his or her right to receive a cash bonus or other compensation otherwise payable by the Company or any Affiliate to the Participant, provided that any such grant must comply with the provisions of Section 22 and the requirements of Section 409A of the Code.

18.4 **Repricing.** The terms of outstanding Awards may not be amended to reduce the Option Price of outstanding Options or Base Price of outstanding Stock Appreciation Rights or cancel outstanding Options or Stock Appreciation Rights in exchange for cash, other Awards or Options or Stock Appreciation Rights with an Option Price or Base Price that is less than the Option Price or Base Price of the original Options or Stock Appreciation Rights without stockholder approval, provided that nothing herein shall prevent the Committee from taking any action provided for in Section 12 above.

18.5 **No Employment Rights.** Nothing in the Plan or an Award Agreement shall interfere with or limit in any way the right of the Company, its Affiliates, and/or its Subsidiaries to terminate any Participant's employment or service on the Board or to the Company at any time or for any reason not prohibited by law, nor confer upon any Participant any right to continue his employment or service as a director for any specified period of time. Neither an Award nor any benefits arising under the Plan shall constitute an employment contract with the Company, its Affiliates, and/or its Subsidiaries and, accordingly, subject to Section 18.1, the Plan and the benefits hereunder may be terminated at any time in the sole and exclusive discretion of the Committee without giving rise to any liability on the part of the Company, its Affiliates, and/or its Subsidiaries.

18.6 **Tax Qualification.** To the extent that any provision of the Plan would prevent any Option that was intended to qualify under particular provisions of the Code from so qualifying, such provision of the Plan shall be null and void with respect to such Option, provided that such provision shall remain in effect with respect to other Options, and there shall be no further effect on any provision of the Plan.

18.7 **Leave of Absence or Transfer.** A transfer between the Company and any Affiliate or between Affiliates, or a leave of absence duly authorized by the Company, shall not be deemed to be a termination of employment. Periods of time while on a duly authorized leave of absence shall be disregarded for purposes of determining whether a Participant has satisfied a Restricted Period or Performance Cycle under an Award.

18.8 **Amendments to Comply with Laws, Regulations or Rules.** Notwithstanding any other provision of the Plan or any Award Agreement to the contrary, in its sole and absolute discretion and without the consent of

any Participant, the Board may amend the Plan, and the Committee may amend any Award Agreement, to take effect retroactively or otherwise as it deems necessary or advisable for the purpose of conforming the Plan or such Award Agreement to any present or future law, regulation or rule applicable to the Plan, including, but not limited to, Section 409A of the Code.

18.9 **Tolling.** In the event a Participant is prevented from exercising an Option or the Company is unable to settle an Award due to either any trading restrictions applicable to the Company's Shares, the Participant's physical infirmity or administrative error by the Company relied upon and not caused by the Participant, then unless otherwise determined by the Committee, the length of time applicable to any such restriction, condition or event shall toll any exercise period (i) until such restriction lapses, (ii) until the Participant (or his representative) is able to exercise the Award or (iii) until such error is corrected, as applicable.

18.10 **No Duty to Inform Regarding Exercise Rights.** Neither the Company, any Affiliate, the Committee nor the Board shall have any duty to inform a Participant of the pending expiration of the period in which a Stock Appreciation right may be exercised or in which an Option may be exercised.

#### 19. **Issuance of Shares; Fractional Shares.**

19.1 **Form for Issuing Shares; Legends.** Shares may be issued on a certificated or uncertificated basis. Shares may include any legend which the Committee deems appropriate to reflect any restrictions on transfer of such Shares.

19.2 **Delivery of Title.** The Company shall have no obligation to issue or deliver evidence of title for Shares issued under the Plan prior to: (i) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and (ii) completing any registration or other qualification of the Shares under any applicable national or foreign law or ruling of any governmental body that the Company determines to be necessary or advisable.

19.3 **Inability to Obtain Authority.** The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

19.4 **Investment Representations.** The Committee may require any individual receiving Shares pursuant to an Award under the Plan to represent and warrant in writing that the individual is acquiring the Shares for investment and without any present intention to sell or distribute such Shares,

19.5 **Fractional Shares.** The Company shall not be required to issue any fractional Shares pursuant to the Plan. The Committee may provide for the elimination of fractions or for the settlement thereof in cash.

20. **Limitations Period.** Any person who believes he or she is being denied any benefit or right under the Plan may file a written claim with the Committee. Any claim must be delivered to the Committee within forty- five (45) days of the specific event giving rise to the claim. Untimely claims will not be processed and shall be deemed denied. The Committee, or its designated agent, will notify the Participant of its decision in writing as soon as administratively practicable. Claims not responded to by the Committee in writing within ninety (90) days of the date the written claim is delivered to the Committee shall be deemed denied. The Committee's decision shall be final, conclusive and binding on all persons. No lawsuit relating to the Plan may be filed before a written claim is filed with the Committee and is denied or deemed denied, and any lawsuit must be filed within one year of such denial or deemed denial or be forever barred. The venue for any lawsuit shall be Wilmington, Delaware.

21. **Governing Law.** The validity, construction and effect of the Plan and any Award hereunder will be determined in accordance with the State of Delaware except to the extent governed by applicable federal law.

#### 22. **Compliance with Section 409A.**

22.1 **In General.** The Plan is intended to be administered in a manner consistent with the requirements, where applicable, of Section 409A. For avoidance of doubt, stock options and Stock Appreciation Rights are intended to qualify for the stock rights exemptions from Section 409A. Where reasonably possible and practicable, the Plan shall be administered in a manner to avoid the imposition on Participants of immediate tax recognition and additional taxes pursuant to such Section 409A. Notwithstanding the foregoing, neither the Company nor the Committee shall have any liability to any person in the event Section 409A applies to any such Award in a manner that results in adverse tax consequences for the Participant or any of his or her transferees.

22.2 **Elective Deferrals.** No elective deferrals or re-deferrals other than in regard to Restricted Stock Units are permitted under the Plan.

22.3 **Applicable Requirements.** To the extent any of the Awards granted under the Plan are deemed “deferred compensation” and hence subject to Section 409A, the following rules shall apply to such Awards:

(a) **Mandatory Deferrals.** If the Company decides that the payment of compensation under the Plan shall be deferred within the meaning of Section 409A, then, except as provided under Treas. Reg. Section 1.409A-1(b)(4)(ii), on granting of the Award to which such compensation payment relates, the Company shall specify the date(s) at which such compensation will be paid in the Award Agreement.

(b) **Initial Deferral Elections.** For Awards of RSUs where the Committee provides the opportunity to elect the timing and form of the payment of the underlying Shares at some future time once any requirements have been satisfied, the Participant must make his or her initial deferral election for such Award in accordance with the requirements of Section 409A, i.e., within thirty (30) days of first becoming eligible to receive such award or prior to the start of the year in which the Award is granted to the Participant, in each case pursuant to the requirements of Section 409A and Treas. Reg. Section 1.409A-2.

(c) **Subsequent Deferral Elections.** To the extent the Company or Committee decides to permit compensation subject to Section 409A to be re-deferred pursuant to Treas. Reg. Section 1.409A-2(b), then the following conditions must be met: (i) such election will not take effect until at least 12 months after the date on which it is made; (ii) in the case of an election not related to a payment on account of disability, death or an unforeseeable emergency, the payment with respect to which such election is made must be deferred for a period of not less than five years from the date such payment would otherwise have been paid; and (iii) any election related to a payment at a specified time or pursuant to a fixed schedule (within the meaning of Treas. Reg. Section 1.409A-3(a)(4)) must be made not less than 12 months before the date the payment is scheduled to be paid.

(d) **Timing of Payments.** Payment(s) of compensation that is subject to Section 409A shall only be made upon an event or at a time set forth in Treas. Reg. Section 1.409A-3, i.e., the Participant’s separation from service, the Participant’s becoming disabled, the Participant’s death, at a time or a fixed schedule specified in the Plan or an Award Agreement, a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company, or the occurrence of an unforeseeable emergency.

(e) **Certain Delayed Payments.** Notwithstanding the foregoing, to the extent an amount was intended to be paid such that it would have qualified as a short-term deferral under Section 409A and the applicable regulations, then such payment is or could be delayed if the requirements of Treas. Reg. 1.409A-1(b)(4)(ii) are met.

(f) **Acceleration of Payment.** Any payment made under the Plan to which Section 409A applies may not be accelerated, except in accordance with Treas. Reg. 1.409A-3(j)(4), i.e., upon a Participant’s separation from service, the Participant becoming disabled, the Participant’s death, a change of ownership or effective control, or in the ownership of a substantial portion of the assets, or upon an unforeseeable emergency (all as detailed in Treas. Reg. Section 1.409A-3(a)).

(g) **Payments upon a Change in Control.** Notwithstanding any provision of the Plan to the contrary, to the extent an Award subject to Section 409A shall be deemed to be vested or restrictions lapse, expire or terminate upon the occurrence of a Change in Control and such Change in Control does not constitute a “change in

the ownership or effective control” or a “change in the ownership of a substantial portion of the assets” of the Company within the meaning of Section 409A(a)(2)(A)(v), then even though such Award may be deemed to be vested or restrictions lapse, expire or terminate upon the occurrence of the Change in Control or any other provision of the Plan, payment will be made, to the extent necessary to comply with the provisions of Section 409A, to the Participant on the earliest of (i) the Participant’s “separation from service” with the Company (determined in accordance with Section 409A), (ii) the date payment otherwise would have been made pursuant to the regular payment terms of the Award in the absence of any provisions in the Plan to the contrary (provided such date is permissible under Section 409A) or (iii) the Participant’s death.

(h) **Payments to Specified Employees.** Payments due to a Participant who is a “specified employee” within the meaning of Section 409A on account of the Participant’s “separation from service” with the Company (determined in accordance with Section 409A) shall be made on the date that is six months after the date of the Participant’s separation from service or, if earlier, the Participant’s date of death.

(i) **Installment Payments.** If the Award includes a “series of installment payments” (within the meaning of Section 1.409A-2(b)(2)(iii) of the Treasury Regulations), the Participant’s right to the series of installment payments will be treated as a right to a series of separate payments and not as a right to a single payment.

22.4 **Determining “Controlled Group”.** In order to determine for purposes of Section 409A whether a Participant or eligible individual is employed by a member of the Company’s controlled group of corporations under Section 414(b) of the Code (or by a member of a group of trades or businesses under common control with the Company under Section 414(c) of the Code) and, therefore, whether the Shares that are or have been purchased by or awarded under the Plan to the Participant are shares of “service recipient” stock within the meaning of Section 409A, a Participant or eligible employee of a Subsidiary shall be considered employed by the Company’s controlled group (or by a member of a group of trades or businesses under common control with the Company, as applicable). Notwithstanding the above, to the extent that the Company finds that legitimate business criteria exist within the meaning of Treas. Reg. Section 1.409A-1(b)(5)(iii)(E)(1), then, solely for purposes of this Section 22.4, “at least 50 percent” in the definition of “Subsidiary” shall instead be “at least 20 percent”.

### 23. **Transferability.**

23.1 **Transfer Restrictions.** Except as provided in Sections 23.2 and 23.3, no Award granted under the Plan shall be transferable by a Participant other than upon death by will or the laws of descent and distribution, and Options and Stock Appreciation Rights shall be exercisable during a Participant’s lifetime only by the Participant or, in the event of the Participant’s legal incapacity, by his guardian or legal representative acting in a fiduciary capacity on behalf of the Participant under state law. Any attempt to transfer an Award in violation of the Plan shall render such Award null and void.

23.2 **Limited Transfer Rights.** The Committee may expressly provide in an Award Agreement that a Participant may transfer such Award (other than an Incentive Stock Option), in whole or in part, to a Family Member, a trust for the exclusive benefit of Family Members, a partnership or other entity in which all the beneficial owners are Family Members, or any other entity affiliated with the Participant that may be approved by the Committee. Subsequent transfers of Awards shall be prohibited except in accordance with this Section 23.2. All terms and conditions of the Award, including provisions relating to the termination of the Participant’s employment or service with the Company or a Subsidiary, shall continue to apply following a transfer made in accordance with this Section 23.2.

23.3 **Additional Restrictions on Transfer.** Any Award made under the Plan may provide that all or any part of the Shares that are to be issued or transferred by the Company upon exercise, vesting or settlement shall be subject to further restrictions upon transfer.

23.4 **Domestic Relations Orders.** Notwithstanding the foregoing provisions of this Section 23.4, any Award made under the Plan may be transferred as necessary to fulfill any domestic relations order as defined in Section 414(p)(1)(B) of the Code.

24. **Forfeiture and Recoupment.** Without limiting in any way the generality of the Committee's power to specify any terms and conditions of an Award consistent with law, and for greater clarity, the Committee may specify in an Award Agreement that the Participant's rights, payments and benefits with respect to an Award, including any payment of Shares received upon exercise or in satisfaction of an Award under the Plan shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions, without limit as to time. Such events shall include, but not be limited to, failure to accept the terms of the Award Agreement, termination of service under certain or all circumstances, violation of material Company policies, misstatement of financial or other material information about the Company, fraud, misconduct, breach of noncompetition, confidentiality, nonsolicitation, noninterference, corporate property protection, or other agreements that may apply to the Participant, or other conduct by the Participant that the Committee determines is detrimental to the business or reputation of the Company and its Affiliates, including facts and circumstances discovered after termination of service. Awards granted under the Plan shall be subject to any compensation recovery policy or minimum stock holding period requirement as may be adopted or amended by the Company from time to time.

24.1 **No Constraint on Corporate Action.** Nothing in the Plan shall be construed to: (i) limit, impair, or otherwise affect the Company's or an Affiliate's or a Subsidiary's right or power to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure, or to merge or consolidate, or dissolve, liquidate, sell, or transfer all or any part of its business or assets; or, (ii) limit the right or power of the Company or an Affiliate or a Subsidiary to take any action which such entity deems to be necessary or appropriate.

25. **Effect of Disposition of Operating Unit.** If the Company or any of its Affiliates diminishes or eliminates ownership interests in any operating unit of the Company or any of its Affiliates so that such operating unit ceases to be majority owned by the Company or any of its Affiliates then, with respect to Awards held by Participants who subsequent to such event will not be Employees, the Committee may, to the extent consistent with Section 409A (if applicable), take any of the actions described in Section 13.1 with respect to a Change in Control. If the Committee takes no special action with respect to any disposition of a facility or an operating unit, then the Participant shall be deemed to have terminated his or her employment with the Company and its Subsidiaries and Affiliates and the terms and conditions of the Award Agreement and the other terms and conditions of the Plan shall control.

26. **Indemnification.** Subject to requirements of applicable state law, each individual who is or shall have been a member of the Board, or a Committee appointed by the Board, or an officer of the Company to whom authority was delegated in accordance with Section 4, shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him in connection with or resulting from any claim, action, suit, or proceeding to which he may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him in settlement thereof, with the Company's approval, or paid by him in satisfaction of any judgment in any such action, suit, or proceeding against him, provided he shall give the Company an opportunity, at its own expense, to handle and defend the same before he undertakes to handle and defend it on his own behalf, unless such loss, cost, liability, or expense is a result of his own willful misconduct or except as expressly provided by statute. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such individuals may be entitled under the Company's Certificate of Incorporation or by-laws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

27. **Non-exclusivity of the Plan.** The adoption of the Plan shall not be construed as creating any limitations on the power of the Board or Committee to adopt such other compensation arrangements as it may deem desirable for any Participant.

28. **Miscellaneous.**

28.1 **Gender and Number.** Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine, the plural shall include the singular, and the singular shall include the plural.

28.2 **Submission of Jurisdiction; Waiver of Jury Trial.** By accepting an Award, each Participant irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States of America, in each case located in the State of Delaware, for any action arising out of or relating to the Plan or any Award (and agrees not to commence any litigation relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by U.S. registered mail to the address contained in the records of the Company will be effective service of process for any litigation brought against it in any such court. By accepting an Award, each Participant irrevocably and unconditionally waives any objection to the laying of venue of any litigation arising out of Plan or Award hereunder in the courts of the State of Delaware or the United States of America, in each case located in the State of Delaware, and further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such litigation brought in any such court has been brought in an inconvenient forum. By accepting an Award, each Participant irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all rights to trial by jury in connection with any litigation arising out of or relating to the Plan or any Award hereunder.

28.3 **Severability.** In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and this Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

28.4 **Requirements of Law.** The granting of Awards and the issuance of Shares under this Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

28.5 **Waiver of Claims.** Each Participant of an Award recognizes and agrees that before being selected by the Committee to receive an Award he or she has no right to any benefits under the Plan. Accordingly, in consideration of the Participant's receipt of any Award hereunder, he or she expressly waives any right to contest the amount of any Award, the terms of any Award Agreement, any determination, action or omission hereunder or under any Award Agreement by the Committee, the Company or the Board, or any amendment to the Plan or any Award Agreement (other than an amendment to the Plan or an Award Agreement to which the Participant consent is expressly required by the express terms of an Award Agreement). Nothing contained in the Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind or a fiduciary relationship between the Company and any Participant. The Plan is not intended to be subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA).

28.6 **No Third-Party Beneficiaries.** Except as expressly provided in an Award Agreement, neither the Plan nor any Award Agreement will confer on any person other than the Company and the Participant of any Award any rights or remedies thereunder.

28.7 **Successors.** All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

28.8 **Payment Following a Participant's Death.** Any remaining vested rights or benefits under the Plan upon a Participant's death shall be paid or provided to the Participant's legal spouse or, if no such spouse survives the Participant, to the Participant's estate.

28.9 **Rights as a Stockholder.** Except as otherwise provided herein, a Participant shall have none of the rights of a stockholder with respect to Shares covered by any Award until the Participant becomes the record holder of such Shares.