

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

Amendment No. 1 to  
Form S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

CHROMOCELL THERAPEUTICS CORPORATION

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

2836  
(Primary Standard Industrial  
Classification Code Number)

86-3335449  
(I.R.S. Employer  
Identification Number)

4400 Route 9 South, Suite 1000  
Freehold, NJ 07728  
732-514-2636

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Christian Kopfli  
Chief Executive Officer  
4400 Route 9 South, Suite 1000  
Freehold, NJ 07728  
Tel. No.: 732-514-2636

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

Copies to:

David E. Danovitch, Esq.  
Aaron M. Schleicher, Esq.  
Sullivan & Worcester LLP  
1633 Broadway  
New York, NY 10019  
(212) 660-3060

M. Ali Panjwani, Esq.  
Pryor Cashman LLP  
7 Times Square  
New York, NY 10036  
(212) 421-4100

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer

Accelerated filer   
Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Exchange Act.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

**EXPLANATORY NOTE**

This Amendment No. 1 to the Registration Statement on Form S-1 (File No. 333-269188) is filed solely to amend Item 16 of Part II thereof and to file certain exhibits thereto. This Amendment No. 1 does not modify any provision of the preliminary prospectus contained in Part I. Accordingly, the preliminary prospectus has been omitted.

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## PART II

### INFORMATION NOT REQUIRED IN THE PROSPECTUS

#### Item 13. Other Expenses of Issuance and Distribution

The following table sets forth the costs and expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the sale of our securities being registered. All amounts are estimates except for the Securities and Exchange Commission ("SEC") registration fee, the Financial Industry Regulatory Authority, Inc. ("FINRA") filing fee and the Nasdaq Capital Market ("Nasdaq") listing fee.

	<b>Amount Paid or to be Paid</b>
SEC registration fee	\$ *
FINRA filing fee	*
Nasdaq listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent and registrar fees and expenses	*
Miscellaneous expenses	*
Total	<u>\$ *</u>

\* To be provided by amendment.

#### Item 14. Indemnification of Directors and Officers.

We are incorporated under the laws of the State of Delaware. Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

As permitted by the DGCL, our certificate of incorporation and bylaws to be in effect upon the closing of the offering of Units provide that: (i) we are required to indemnify our directors and officers to the fullest extent permitted by the DGCL; (ii) we may, in our discretion, indemnify our employees and agents as set forth in the DGCL; (iii) we are required, upon satisfaction of certain conditions, to advance all expenses incurred by our directors and officers in connection with certain legal proceedings; (iv) the rights conferred in the bylaws are not exclusive; and (v) we are authorized to enter into indemnification agreements with our directors, officers, employees and agents.

We intend to enter into indemnification agreements with our directors and executive officers that require us to indemnify them against expenses, judgments, fines, settlements and other amounts that any such person becomes legally obligated to pay (including with respect to a derivative action) in connection with any proceeding, whether actual or threatened, to which such person may be made a party by reason of the fact that such person is or was a director or officer of us or any of our affiliates, provided such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, our best interests. We maintain a directors' and officers' liability insurance policy. The policy insures directors and officers against unindemnified losses arising from certain wrongful acts in their capacities as directors and officers and reimburses us for those losses for which we have lawfully indemnified the directors and officers. The policy contains various exclusions.

In addition, the underwriting agreement for the offering of Units to be filed as Exhibit 1.1 to this Registration Statement provides for indemnification by the underwriters of us and our officers and directors for certain liabilities arising under the Securities Act of 1933, as amended (the "Securities Act") or otherwise.

#### **Item 15. Recent Sales of Unregistered Securities.**

Pursuant to that certain Contribution Agreement entered into with Chromocell Holdings, we issued to Chromocell Holdings 10,000,000 shares of Common Stock and 600,000 shares of Series A Convertible Preferred Stock.

On January 10, 2023, pursuant to the Chromocell Therapeutics Corporation 2023 Equity Incentive Plan, we granted: (a) options to purchase up to an aggregate of 1,275,000 shares of Common Stock to employees and directors and (b) 150,000 restricted stock units to employees.

The offers and sales of the above securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder, or Rule 701 promulgated under Section 3(b) of the Securities Act, as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the above securities represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof.

#### **Item 16. Exhibits and Financial Statement Schedules.**

##### ***(a) Exhibits.***

We have filed the exhibits listed on the accompanying Exhibit Index of this registration statement, which Exhibit Index is incorporated herein by reference.

##### ***(b) Financial Statement Schedules.***

All other schedules have been omitted because the information required to be presented in them is not applicable or is shown in the financial statements or notes.

#### **Item 17. Undertakings.**

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

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

The undersigned Registrant hereby undertakes that:

- 1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

- 2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## EXHIBIT INDEX

Exhibit No.	Description
1.1***	Form of Underwriting Agreement
<a href="#">2.1*</a>	<a href="#">Contribution Agreement</a>
<a href="#">3.1*</a>	<a href="#">Certificate of Incorporation, as currently in effect</a>
<a href="#">3.2*</a>	<a href="#">Certificate of Designation of Series A Convertible Preferred Stock, as currently in effect</a>
<a href="#">3.3*</a>	<a href="#">Form of Certificate of Incorporation to be effective upon the closing of the offering of Units</a>
<a href="#">3.4*</a>	<a href="#">Bylaws, as currently in effect</a>
<a href="#">3.5*</a>	<a href="#">Form of Bylaws to be effective upon the closing of the offering of Units</a>
4.1***	Form of Common Stock Certificate
4.2***	Form of Warrant
4.3***	Form of Representative's Warrant
4.4***	Form of Advisor Warrant
4.5***	Form of Warrant Agent Agreement
<a href="#">4.6*</a>	<a href="#">Investor Promissory Note Issued by the Company</a>
<a href="#">4.7*</a>	<a href="#">Director Promissory Note Issued by the Company</a>
5.1***	Opinion of Sullivan & Worcester LLP
<a href="#">10.1*</a>	<a href="#">Chromocell Therapeutics Corporation 2023 Equity Incentive Plan</a>
<a href="#">10.2*</a>	<a href="#">Employment Agreement (Christian Kopfli)</a>
<a href="#">10.3*</a>	<a href="#">Consulting Agreement (Francis Knuettel II)</a>
<a href="#">23.1**</a>	<a href="#">Consent of Marcum LLP, independent registered public accounting firm</a>
23.2***	Consent of Sullivan & Worcester LLP (included in Exhibit 5.1)
<a href="#">24.1**</a>	<a href="#">Power of Attorney (included on signature page to previously filed registration statement)</a>
<a href="#">107**</a>	<a href="#">Filing Fee Table</a>

\* Filed herewith.

\*\* Previously filed.

\*\*\* To be filed by amendment.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of North Brunswick, State of New Jersey, on January 20, 2023.

### CHROMOCELL THERAPEUTICS CORPORATION

By: /s/ Christian Kopfli

Name: Christian Kopfli

Title: President, Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ Christian Kopfli</u> Christian Kopfli	Director, President and Chief Executive Officer (Principal Executive Officer)	January 20, 2023
* <u>Francis Knuettel II</u>	Chief Financial Officer, Chief Strategy Officer, Treasurer and Secretary (Principal Financial Officer and Principal Accounting Officer)	January 20, 2023
* <u>Ezra Friedberg</u>	Director	January 20, 2023
* <u>Todd Davis</u>	Director	January 20, 2023
* <u>Richard Malamut</u>	Director	January 20, 2023
*By: <u>/s/ Christian Kopfli</u> Christian Kopfli Attorney-in-Fact		

**CONTRIBUTION AGREEMENT**

This CONTRIBUTION AGREEMENT (this “Agreement”) is made as of August 10, 2022, effective as of July 12, 2022 (the “Effective Date”) between Chromocell Corporation, a Delaware corporation (“Chromocell Holding” or “Contributor”) and Chromocell Therapeutics Corporation, a Delaware corporation (the “Company” or “Recipient”). Chromocell Holding and the Company are collectively referred to herein as the “Parties.” Defined terms used in this Agreement which are not elsewhere defined are defined in Section E(xii) hereof.

**RECITALS**

**WHEREAS**, Chromocell Holding is a biotechnology company with expertise in the development and manufacture of human therapeutic small molecule compounds using Chromovert® Technology and other technology, and owns certain patents and “Know How” and other technology (as defined herein) relating to Nav1.7 Inhibitors and Chromovert® Technology for the development of FDA regulated prescription drugs (collectively, the “Intellectual Property Rights”);

**WHEREAS**, Chromocell Holding desires to contribute the Intellectual Property Rights to the Company, and the Company desires to acquire the Intellectual Property Rights from Chromocell Holding, on the terms and subject to the conditions set forth in this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the Parties agree as follows:

**A. Transactions and Agreements**

i. **Transferred Assets**. Chromocell Holding hereby agrees to contribute, convey, transfer, assign and deliver to the Company, and the Company agrees to accept from Chromocell Holding, all right, title and interest that Chromocell Holding possesses and has the right to transfer, in each case, in certain Intellectual Property Rights and certain other assets set forth on Schedule A attached hereto (collectively, the “Transferred Assets”).

ii. **Issuance of Stock**. The Company shall deliver to Chromocell Holding, (a) 10,000,000 duly authorized, fully paid and nonassessable shares of common stock, par value \$0.0001 per share, of the Company (the “Common Stock”); and (b) 600,000 shares of duly authorized, fully paid and nonassessable shares of preferred stock of the Company, designated as the Company’s “Series A Convertible Preferred Stock,” with the powers, preferences, rights, qualifications, limitations and restrictions set forth in the Certificate of Designation of Series A Convertible Preferred Stock, substantially in the form attached hereto as Exhibit A (the “Preferred Stock”).

iii. **Assumption of Direct Liabilities**. Subject to, and upon the terms set forth in this Agreement and the IP Assignment and Assumption Agreement (as defined below), Recipient hereby assumes and agrees to pay, perform, or discharge when due, the Liabilities of Chromocell Holding directly attributable to the Company’s operations, as specified on Schedule B hereto.

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iv. Expense Payment. The Company hereby agrees to make a cash payment in the amount of \$597,038.31 to Chromocell Holding within three Business Days of the closing of any Qualified IPO or Non-Qualified IPO, as applicable, in respect of certain expenses set forth on Schedule C hereto.

v. Company Chromovert® Technology License Right. The Company shall have the option to license all intellectual property Chromocell Holding owns or controls as might be necessary to allow the Company to practice the Chromovert® Technology in the fields of NaV/pain. The license shall be nonexclusive, unless otherwise agreed, and the terms of the license agreement shall be negotiated between the Company and Chromocell Holding. This option and the license is granted as part of the consideration contemplated in this Agreement and the additional consideration the Company shall pay to Chromocell Holding under the license will be no more than \$1.00.

vi. IP Assignment and Assumption Agreement. On or prior to the date hereof, Chromocell Holding and the Company shall have entered into the IP Assignment and Assumption Agreement, substantially in the form attached hereto as Exhibit B (the “IP Assignment and Assumption Agreement”).

**B. Representations and Warranties**

i. Representations and Warranties of the Parties. Each Party makes the following representations and warranties to each other Party:

- (1) It is duly formed or organized, as the case may be, is validly existing and in good standing under the laws of the state of its organization or formation, as the case may be, and has all company powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which would not, individually or in the aggregate, have a material adverse effect on it.
- (2) It is duly qualified to do business as a foreign company and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not, individually or in the aggregate, have a material adverse effect on it.
- (3) The execution, delivery and performance by it of this Agreement, the performance of its obligations hereunder, and the consummation of the transactions contemplated hereby are within its company powers and have been duly authorized by all necessary action. This Agreement has been duly and validly executed and delivered by it and is a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights generally or by general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

- (4) The execution and delivery of this Agreement and the performance by it of its obligations under this Agreement and the transactions contemplated hereby require no action by or in respect of, or filing with, any governmental body agency, official or authority, except for the filing of one or more IP Assignment and Assumption Agreements with the United States Patent and Trademark Office and other institutions and offices with similar functions in foreign jurisdictions.
- (5) The execution and delivery by it of this Agreement and the consummation by it of the transactions contemplated hereby and performance of its obligations under this Agreement do not and will not (i) violate its organization or governance documents, (ii) violate any applicable law, rule, regulation, judgment, injunction, order or decree, (iii) require any consent or other action by any person, constitute a default under, result in a violation of, conflict with, or give rise to any right of termination, cancellation or acceleration of any right or obligation of it, or to a loss of any benefit to which it is entitled under any provision of any agreement or other instrument binding upon it, or any license, franchise, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or business of it, or (iv) result in the creation or imposition of any Lien on any asset of it; *provided, however*, that clauses (ii) and (iii) are limited to circumstances and events that would have a material adverse effect. A "Lien" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of such property or asset.

ii. Additional Representations and Warranties of Chromocell Holding. Chromocell Holding makes the following representations and warranties to the Company:

- (1) As of the time of the execution and delivery of this Agreement, it owns all right, title and interest in and to the Intellectual Property Rights and other Transferred Assets set forth on Schedule A and which are subject to the Assignment and Assumption Agreement, which when transferred hereby are free of all Liens, and has the rights to use, all Intellectual Property Rights it purports to have or has rights to use, which, in the aggregate for Chromocell Holding constitutes all Intellectual Property Rights necessary or required for use in connection with Chromocell Holding's therapeutics business as presently conducted. Chromocell Holding has not received any notice (written or otherwise) that any of the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement, and no event has occurred that permits, or would permit after notice or passage of time or both, the revocation, suspension or termination of such rights. Chromocell Holding has not received any notice of a claim, nor has such a claim been threatened or could reasonably be expected to be made, Chromocell Holding does not otherwise have any knowledge that any slogan or other advertising device, product, process, method, substance or other Intellectual Property Rights or goods or services bearing or using any Intellectual Property Right presently contemplated to be sold by or employed by Intellectual Property Right of it violates or infringes upon the rights of any person. The granted patents included within such Intellectual Property Rights are, to the best knowledge of Chromocell Holding, enforceable and there is no existing infringement by or Lien possessed by another person of any of the Intellectual Property Rights. Chromocell Holding has taken reasonable security measures to protect the secrecy, confidentiality and value of all of its intellectual properties. Chromocell Holding has no Intellectual Property Right registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those set forth on Schedule A, or has granted any licenses with respect thereto other than as set forth on Schedule A. Schedule A also sets forth all contractual obligations or other arrangements of Chromocell Holding as in effect on the date hereof pursuant to which Chromocell Holding has a license or other right to use any Intellectual Property owned by another person and the dates of the expiration of such contractual obligations or other arrangements (collectively, together with such contractual obligations or other arrangements as may be entered into by Chromocell Holding after the date hereof, the "License Agreements"). All License Agreements and related rights are in full force and effect, no default or event of default exists with respect thereto in respect of the obligations of licensor or with respect to any royalty or other payment obligations of Chromocell Holding with respect to manufacturing standards, quality control or specifications and Chromocell Holding is in compliance with the terms thereof in all material respects and no owner, licensor or other party thereto has sent any notice of termination or its intention to terminate such license or rights.
- (2) Chromocell Holding acknowledges that the securities are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the securities may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended, or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable. Chromocell Holding is able to bear the economic risk of holding the securities for an indefinite period (including total loss of its investment) and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment.

**C. Covenants**

i. Further Assurances. If, at any time after the Effective Date, any further action is necessary to carry out the purposes of this Agreement, the Parties hereto will take such lawful action, including signing such additional documentation, as is reasonably requested by any other Party to fully carry out the transactions contemplated by this Agreement. To this end, Chromocell Holding shall assign all of its rights, title, and interest in, to, and under any agreements with respect to its drug candidates relative to its therapeutics business whether or not such candidates are part of the manufacturing process as well as contribute any revenues collected in connection therewith.

ii. Post-Closing Litigation Cooperation. At all times from and after the Effective Date, the Parties will use their commercially reasonable efforts to make available to the other, upon reasonable written request, its, and its subsidiaries', officers, directors, employees, and agents as witnesses or for providing litigation assistance (such as cooperating in a factual background investigation) to the extent that (a) such persons may reasonably be required in connection with the prosecution or defense of any Action in which the requesting Party may from time to time be involved and (b) there is no conflict in the Action between the Parties. A Party providing witness or litigation services to the other Party under this Section will be entitled to receive from the recipient of such services, upon the presentation of invoices therefore, payments for amounts relating to disbursements and other out-of-pocket expenses (which shall be deemed to exclude the costs of salaries and benefits of employees who are witnesses), that are reasonably incurred in providing such witness services.

iii. Post-Closing Cost Control. Until the closing of a Qualified IPO or Non-Qualified IPO, the Company will use its reasonable best efforts to control operating expenses and other costs.

**D. Survival**

i. Survival of Covenants and Agreements. All covenants and agreements herein shall survive the Effective Date and shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties.

**E. Other Provisions**

i . Amendment and Modification. This Agreement may be amended, modified, or supplemented only by written agreement of the Company and Chromocell Holding.

ii . Waiver of Compliance: Consents. Any failure of either Party to comply with any obligation, covenant, agreement, or condition herein, to the extent legally allowed, may be waived in writing by the other, but any such waiver or failure to insist upon strict compliance with the obligation, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party to this Agreement, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section.

iii . Transfer and Sales Tax. Notwithstanding any provisions of applicable law, (a) all sales, use, and transfer taxes, and (b) all governmental charges, if any, payable as a result of the transfer of any of the Transferred Assets hereunder shall be borne by the Company. The Parties shall cooperate in timely making all filings, returns, reports and forms as necessary or appropriate to comply with the provisions of all applicable laws in connection with the payment of such transfer taxes, and shall cooperate in good faith to minimize, to the fullest extent possible under such laws, the amount of any such transfer taxes payable in connection therewith.

i v . Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall only be deemed to have been duly given (a) on the date of service if served personally on the Party to whom notice is to be given, (b) on the Business Day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service, postage prepaid and properly addressed, (c) on the date of service if sent via facsimile communication or electronic mail communication (provided that such electronic mail communication is transmitted utilizing either "html" or "pdf" format and the sender has not, within 24 hours of transmission, received an error message indicating that the transmission was not delivered to the recipient), to the Party as follows:

If to Chromocell Holding:

685 US Highway One  
North Brunswick, New Jersey  
Attn: Christian Kopfli  
Email: Christian.Kopfli@chromocell.com

If to the Company:

Chromocell Therapeutics Corporation  
685 US Highway One  
North Brunswick, New Jersey  
Attn: Christian Kopfli  
Email: Christian.Kopfli@chromocell.com

With a copy to:

Sullivan & Worcester LLP  
1633 Broadway, New York NY 10019  
Attn: David Danovitch and Aaron Schleicher  
Email: ddanovitch@sullivanlaw.com; aschleicher@sullivanlaw.com

v. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Except as set forth below, neither this Agreement nor the rights or obligations of any Party hereunder shall be assignable or transferable by such Party without the prior written consent of the other Party hereto; provided, however, that (a) the Parties shall have the right to assign any of its rights under this Agreement to any of its affiliates and to any purchaser of a material portion of its assets, so long as such Party remains liable for its obligations hereunder notwithstanding such assignment and (b) the Parties may each assign its rights hereunder for collateral security purposes to any lenders or agent of lenders or to any assignees of any such lenders or agent.

vi. Rules of Interpretation. As used in this Agreement:

- a. "including" means "including without limitation";
- b. all references to statutes are deemed to refer to such statutes as amended from time to time or as superseded by comparable successor statutory provisions.

vii. Headings; Internal References. The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not affect the interpretation hereof.

viii. Entire Agreement. This Agreement, including the Exhibits and Schedules hereto, contain the entire agreement among the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings. There are no restrictions, promises, representations, warranties (express or implied), covenants, agreements, or undertakings of the parties, other than those expressly set forth or referred to in this Agreement.

ix. Severability. If any provision hereof is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall continue in full force and effect and shall in no way be affected or invalidated.

x. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Delaware, without giving effect to any choice of law or conflicting provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the laws of any jurisdiction other than the State of Delaware to be applied.

xi. Consent to Jurisdiction. Each Party to this Agreement agrees and consents to the exclusive jurisdiction of any court sitting in New York, New York and the United States District Court for the Southern District of New York (if federal jurisdiction exists), and any applicable appellate courts, with respect to all matters relating to this Agreement and to the transactions contemplated hereby, waives all objections based on lack of venue and *forum non-conveniens* and irrevocably consents to the personal jurisdictions of all such courts.

xii. Certain Definitions.

“Action” means any action, suit, arbitration, inquiry, proceeding, or investigation by or before any court, governmental body or agency, or arbitrator.

“Business Day” means any day other than a Saturday, Sunday, United States federal holiday or a day that the Federal Reserve Bank of New York is closed.

“Chromovert® Technology” refers to Chromocell Holding’s proprietary drug discovery platform that enables the identification of rare cells ideally suited for effective high-throughput screening. Chromovert® Technology makes possible the identification of cells expressing therapeutic targets in physiologically relevant forms, resulting in the discovery of promising drug candidates.

“Know How” means technical and other information, including, but not limited to, proprietary and nonproprietary information and trade secrets, that comprises or relates to concepts, discoveries, data, designs, formulae, ideas, inventions, methods, assays, research, procedures, designs for experiments and tests and results of experimentation and testing, including results of research and development, manufacturing processes specifically related to Chromovert® Technology and all Chromocell drug candidates, and related specifications and techniques, chemical, pharmacological, toxicological, clinical, analytical, and quality control data, trial data, case report forms, data analyses, reports, manufacturing data or summaries or related information contained in submissions to and information from regulatory authorities. Know-How includes documents containing Know How, whether electronic or otherwise.

“Liabilities” means all known losses, claims, judgments, lawsuits, damages (including punitive damages), penalties, fines, liabilities (including strict liability), obligations, encumbrances, liens, taxes, costs, interest, expenses (including reasonable legal and accounting fees), defense costs, or other amounts due, whether asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, and due or to become due.

“Non-Qualified IPO” means the sale, in a firm commitment public underwritten offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, of securities of the Company, raising aggregate gross proceeds of less than \$12,000,000, following which such securities are listed on a national securities exchange registered with the Securities Exchange Commission under Section 6(a) of the Securities Exchange Act of 1934, as amended (or, alternatively, quoted on the OTC Bulletin Board or similar quotation system).

“Qualified IPO” means the sale, in a firm commitment public underwritten offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, of securities of the Company, raising aggregate gross proceeds of at least \$12,000,000, following which such securities are listed on a national securities exchange registered with the Securities Exchange Commission under Section 6(a) of the Securities Exchange Act of 1934, as amended (or, alternatively, quoted on the OTC Bulletin Board or similar quotation system).

*[Signature Page Follows]*



The Parties have executed this Agreement as of the date first written above.

**CONTRIBUTOR:**

**CHROMOCELL CORPORATION**

By: /s/ Christian Kopfli

Name: Christian Kopfli

Title: CEO

**RECIPIENT:**

**CHROMOCELL THERAPEUTICS CORPORATION**

By: /s/ Christian Kopfli

Name: Christian Kopfli

Title: CEO

Signature Page to Contribution Agreement

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**Schedule A**  
*List of Chromocell Holding Assets*

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**Schedule B**  
*List of Direct Liabilities*

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**Schedule C**  
*List of Expenses*

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Exhibit A

*Form of Certificate of Designations of Series A Convertible Preferred Stock*

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Exhibit B

*Form of IP Assignment and Assumption Agreement*

**INTELLECTUAL PROPERTY ASSIGNMENT AND ASSUMPTION AGREEMENT**

This INTELLECTUAL PROPERTY ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**IP Assignment**”), is made as of August 10, 2022, effective as of July 12, 2022, by and between Chromocell Therapeutics Corporation, a Delaware corporation (the “**Assignee**”) and Chromocell Corporation, a Delaware corporation (the “**Assignor**”) and is entered into pursuant to that certain Contribution Agreement, made as of August 10, 2022, effective as of July 12, 2022 (the “**Contribution Agreement**”), by and between the Assignee and the Assignor. Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Contribution Agreement.

**RECITALS**

WHEREAS, the Assignor has agreed to sell, and the Assignee has agreed to purchase, the Transferred Assets, effective as of the consummation of the transactions under the Contribution Agreement (the “**Closing**”), on the terms and subject to the conditions and exceptions set forth in the Contribution Agreement;

WHEREAS, the Assignor is the owner of various Intellectual Property Rights (herein defined) and Know How (herein defined) used or usable in connection with its business, including, without limitation, the specific intellectual rights and Know How set forth on Schedule A hereto (the “**Assigned IP**”); and

WHEREAS, under the terms of the Contribution Agreement, the Assignor agrees to convey, transfer and assign to the Assignee, among other assets, the Intellectual Property Rights and Know How of the Assignor, and agrees to execute and deliver IP Assignments, including, one or more IP Assignments for recording with domestic and foreign governmental authorities including, but not limited to, the US Patent and Trademark Office and the US Copyright Office.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and in the Contribution Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

1. **Definitions.** Capitalized terms not otherwise defined elsewhere in this IP Assignment or in the Contribution Agreement, shall have the meanings ascribed to them in this section:

(a) “**Know How**” means technical and other information, including, but not limited to, proprietary and non-proprietary information and trade secrets, that comprises or relates to concepts, discoveries, data, designs, formulae, ideas, inventions, methods, assays, research, procedures, designs for experiments and tests and results of experimentation and testing, including results of research and development, manufacturing processes specifically related to Chromover technology and all Chromocell drug candidates, and related specifications and techniques, chemical, pharmacological, toxicological, clinical, analytical, and quality control data, trial data, case report forms, data analyses, reports, manufacturing data or summaries or related information contained in submissions to and information from regulatory authorities. Know-How includes documents containing Know How, whether electronic or otherwise

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(b) “Intellectual Property Rights” means, collectively, all Know How, copyrights, patents, trademarks, service marks and trade names all applications for any of the foregoing, together with: (i) all inventions, processes, production methods, proprietary information, know-how and trade secrets; (ii) all licenses or user or other agreements granted with respect to any of the foregoing, in each case whether now or hereafter owned or used; (iii) all customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards, catalogs, computer and automatic machinery software and programs; (iv) all field repair data, sales data and other information relating to sales or service of products now or hereafter manufactured; (v) all accounting information and all media in which or on which any information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data; (vi) all applications for any of the foregoing and (vii) all causes of action, claims and warranties, in each case, now or hereafter owned or acquired in respect of any item listed above.

2. Assignment. The Assignor hereby irrevocably conveys, transfers and assigns to Assignee, and Assignee hereby accepts, all of the Assignor’s rights, title and interests in and to the Assigned IP recognized in any jurisdiction in the United States and/or throughout the rest of the world, together with any and all goodwill associated with any such intellectual property rights, including, without limitation, any and all Know How, patent rights, trademark rights, copyrights, moral rights, rights associated with any know-how as well as any and all economic rights related to the use or other exploitation of any of the Assigned IP.

3. Recordation and Further Actions. The Assignor authorizes the Commissioner for Patents, the Commissioner for Trademarks and the Register of Copyrights and any other domestic and foreign governmental officials to record and register this IP Assignment upon request by the Assignee. The Assignor shall take such steps and actions following the date hereof that are reasonably requested, at the Assignee’s request and expense, including the execution of any documents, files, registrations, or other similar items, to ensure that the Assigned IP is properly assigned to the Assignee, or any assignee or successor thereto. To this end, for the consideration aforesaid, Assignor hereby constitutes and appoints Assignee, its successors, and assigns, the true and lawful attorney and attorneys of Assignor, with full power of substitution, for it and in its name and stead, or otherwise, by or on behalf of and for the benefit of Assignee, its successors and assigns, upon prior notice to Assignor, to do all acts and things, as Assignee, its successors, and assigns, shall deem reasonably necessary or desirable to effectuate the transactions contemplated hereby.

In addition to the above, if, at any time after the Closing, any further action is necessary to carry out the purposes of this IP Assignment, the parties hereto will take such lawful action, including signing such additional documentation, as is reasonably requested by any other party to fully carry out the transactions contemplated by this IP Assignment. To this end, Assignor, shall assign all of its rights, title, and interest in, to, and under any agreements with respect to its drug candidates whether or not such candidates are part of the manufacturing process as well as transfer, contribute, and assign any revenues collected in connection therewith.

4. Contribution Agreement Controlling. This IP Assignment is executed and delivered pursuant to the Contribution Agreement. This IP Assignment is subject in all respects to the terms and conditions of the Contribution Agreement. Nothing contained in this IP Assignment shall be deemed to supersede, enlarge or modify any of the obligations, representations, warranties, agreements or covenants of the Assignor and Assignee contained in the Contribution Agreement. Notwithstanding anything to the contrary contained in this IP Assignment, in the event of any conflict between the terms of this IP Assignment and the terms of the Contribution Agreement, the terms of the Contribution Agreement shall control. To be free from doubt, the representations, warranties, and covenants contained in this IP Assignment are in addition to those contained in the Contribution Agreement.

5. No Third-Party Remedies. Nothing in this IP Assignment, express or implied, is intended or shall be construed to confer upon or give to any person, firm or corporation, other than the Assignee, the Assignor and their respective successors and assigns any remedy or claim hereunder, and all of the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the Assignee, the Assignor and their respective successors and assigns.

6. Successors and Assigns. This IP Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The Assignee shall be permitted to assign any and all rights under this IP Assignment without Assignor consent. The Assignee shall have the right to collaterally assign its rights under this IP Assignment to a lender for the purpose of securing the financing or a subsequent refinancing of the transactions contemplated by this IP Assignment, the Contribution Agreement, and the other transaction documents or to any buyer of the Assignee or any of Assignee's affiliates (whether by acquisition of assets, equity interests, merger, consolidation or any other manner).

7. Representations and Warranties. Assignor hereby represents, warrants, and covenants to Assignee as follows:

- (a) Assignor owns all of the right, title, and interest in and to the Assigned IP;
- (b) practicing, using, or otherwise exploiting the technology or rights protected by the Assigned IP does not infringe or violate any rights of any third party;
- (c) Assignor has had no notice and has no knowledge that practicing, using, or otherwise exploiting the technology or rights protected by the Assigned IP infringes or violates any rights of any third party;
- (d) Assignee hereby obtains clean and merchantable title to the Assigned IP, free and clear of all liens, claims, defenses, and encumbrances; and



(e) Assignor hereby agrees to forever defend the transfer of the Assigned IP transferred hereunder and title thereto unto Assignee, its successors and assigns, against every person whomsoever making any claim thereto, or to any part thereof.

8. Governing Law; Venue; Waiver of Jury Trial.

(a) This IP Assignment shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in such state without giving effect to the choice of law principles of such state that would require or permit the application of the laws of another jurisdiction.

(b) In any proceeding between any of the parties arising out of or relating to this IP Assignment or any of the transactions contemplated by this IP Assignment, each of the parties: (i) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the federal and state courts of New York, New York located in New York, New York, and (ii) agrees that all claims in respect of such action or proceeding may be heard and determined exclusively in such courts.

(c) EACH OF THE PARTIES TO THIS IP ASSIGNMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS IP ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. Counterparts. This IP Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. This IP Assignment may be executed and delivered by facsimile or email signature.

*[Signature Page Follows]*



SCHEDULE A

ASSIGNED IP

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**CERTIFICATE OF INCORPORATION  
OF  
CHROMOCELL THERAPEUTICS CORPORATION**

**FIRST:** The name of the corporation is: Chromocell Therapeutics Corporation (the “**Corporation**”).

**SECOND:** The address of the Corporation’s registered office in the State of Delaware is 1209 N Orange St., in the City of Wilmington, County of New Castle, State of Delaware, 19801, and the name of the Corporation’s registered agent at such address is The Corporation Trust Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law, as the same may be amended and supplemented from time to time (the “**DGCL**”).

**FOURTH:** The Corporation is authorized to issue Common Stock and Preferred Stock. The total number of shares of stock which the Corporation shall have authority to issue is 110,000,000 shares, which shares shall be divided into two classes consisting of:(i) one hundred million (100,000,000) shares shall be designated Common Stock, par value of \$0.0001 per share (“**Common Stock**”) and (ii) ten million (10,000,000) shares, par value of \$0.0001 per share (“**Blank Check Preferred Stock**”).

The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions of the Common Stock and the Preferred Stock shall be as follows:

**A. COMMON STOCK**

1. **Voting Rights.** Except as otherwise required by law or this Certificate of Incorporation, each holder of Common Stock shall have one vote in respect of each share of Common Stock held by him of record on the books of the Corporation for the election of directors and on all matters submitted to a vote of stockholders of the Corporation.

2. **Dividends.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends (including the rights of the holders of the series of the Blank Preferred Stock), the holders of shares of Common Stock shall be entitled to receive, when and if declared by the Board of Directors, out of the assets of the Corporation which are by law available therefor, dividends payable either in cash, in property or in shares of capital stock, subject, however, to the limitations contained in Part B below.

3. **Dissolution, Liquidation or Winding Up.** After distribution in full of the preferential amount, if any, to be distributed to the holders of series of the Blank Check Preferred Stock (in accordance with the relative preferences among such series) in the event of involuntary liquidation, distribution, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, or whatever kind available for distribution to stockholders, ratably in proportion to the number of shares of Common Stock held by them respectively.

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## B. BLANK CHECK PREFERRED STOCK

1. Issuance. Shares of Blank Check Preferred Stock may be issued from time to time in one or more series as designated by the Board of Directors, each of said series to be distinctly designated. Shares of Blank Check Preferred Stock may be issued when deemed by the Board of Directors to be necessary to protect the Corporation from an actual, threatened or potential hostile or undesired takeover or takeover attempt. All shares of any one series of the Blank Check Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers, if any, and the designations, relative preferences, participating, optional or other special rights or privileges of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

2. Authority of the Board of Directors. The Board of Directors is authorized, subject to limitations prescribed by law and the provisions of this Article FOURTH, to provide for the issuance of the shares of the Blank Check Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to fix in the resolution or resolutions providing for the issue of such stock adopted by the Board of Directors of the Corporation the voting powers, if any, and the designations, relative preferences, participating, optional or other special rights or privileges, and the qualifications, limitations or restrictions of such series, including, but without limiting the generality of the foregoing, the following: (a) The distinctive designation of, and the number of shares of the Blank Check Preferred Stock which shall constitute such series. The designation of a series of preferred stock need not include the words "preferred" or "preference" and may be designated "special" or other distinctive term. Unless otherwise provided in the resolution issuing such series, the number of shares of any series of the Blank Check Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the Board of Directors in the manner prescribed by law; (b) The rate and times at which, and the terms and conditions upon which, dividends, if any, on the Blank Check Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other classes of stock and whether such dividends shall be cumulative or non-cumulative and, if cumulative, the date from which such dividends shall be cumulative; (c) Whether the series shall be convertible into, or exchangeable for, at the option of the holders of the Blank Check Preferred Stock of such series or the Corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation, and the terms and conditions of such conversion or exchange, including provisions for the adjustment of any such conversion rate in such events as the Board of Directors shall determine; (d) Whether or not the Blank Check Preferred Stock of such series shall be subject to redemption at the option of the Corporation or the holders of such series or upon the happening of a specified event, and the redemption price or prices and the time or times at which, and the terms and conditions upon which, the Blank Check Preferred Stock of such series may be redeemed; (e) The rights, if any, of the holders of the Blank Check Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation; (f) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Blank Check Preferred Stock of such series; and (g) Subject to subparagraph 5 of Paragraph C hereof, whether such series of the Blank Check Preferred Stock shall have full, limited or no voting powers including, without limiting the generality of the foregoing, whether such series shall have the right, voting as a series by itself or together with other series of the Blank Check Preferred Stock or all series of the Blank Check Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of the Blank Check Preferred Stock or under such other circumstances and on such conditions as the Board of Directors may determine.

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C. OTHER PROVISIONS.

1. No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations (including such holders or others) and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

2. The relative powers, preferences and rights of each series of the Blank Check Preferred Stock in relation to the powers, preferences and rights of each other series of the Blank Check Preferred Stock shall, in each case, be as fixed from time to time by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in Paragraph B hereof. The consent, by class or series vote or otherwise, of the holders of such of the series of the Blank Check Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of the Blank Check Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in the resolution or resolutions as to any series of the Blank Check Preferred Stock adopted pursuant to Paragraph B hereof, the conditions, if any, under which the consent of the holders of a majority (or such greater proportion as shall be fixed therein) of the outstanding shares of such series shall be required for the issuance of any or all other series of the Blank Check Preferred Stock. Subject to the provisions of subparagraph 2 of this Paragraph C, shares of any series of the Blank Check Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors. Shares of authorized Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors. The number of authorized shares of Common Stock and of the Blank Check Preferred Stock, without a class or series vote, may be increased or decreased from time to time (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at a meeting and entitled to vote thereon.

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**FIFTH:** The Corporation is to have perpetual existence.

**SIXTH:** The Corporation's Board of Directors shall have the power to adopt, amend or repeal the bylaws of the Corporation. Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

**SEVENTH:** Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under Section 291 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under Section 279 of the DGCL, order a meeting of the creditors or class of creditors, and/or the stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or the stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders of this Corporation, as the case may be, and also on this Corporation.

**EIGHTH:** To the fullest extent permitted by law, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL or any other law of the State of Delaware is amended after the filing of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL or any such other laws of the State of Delaware as so amended. No amendment to or repeal of this Article Eighth shall adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such amendment or repeal.

**NINTH:** The Corporation shall, to the fullest extent permitted by Section 145 of the DGCL, indemnify and advance expenses to (a) its directors and officers and (b) any person who at the request of the Corporation is or was serving as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section as amended or supplemented (or any successor); provided, however, that, except with respect to proceedings to enforce rights to indemnification, the Corporation shall not indemnify any director, officer or such person in connection with a proceeding (or part thereof) initiated by such director, officer or such person unless such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The Corporation, by action of its Board of Directors, may provide indemnification or advance expenses to employees and agents of the Corporation or other persons only on such terms and conditions and to the extent determined by its Board of Directors in its sole and absolute discretion. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. No amendment to or repeal of this Article Ninth shall adversely affect any right or protection of a director, officer or such other indemnified person of the Corporation existing at the time of, or increase the liability of any director, officer or such other indemnified person of the Corporation with respect to any acts or omissions of such director, officer or such other indemnified person occurring prior to, such amendment or repeal.

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**TENTH:** Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, the Certificate of Incorporation or the Bylaws or (d) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

**ELEVENTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

Except as otherwise specifically set forth herein, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of director and in all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders.

**TWELVE:** The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

**THIRTEEN:** The name and mailing address of the incorporator are as follows:

Oyedele A. Oyediran  
Sullivan & Worcester LLP  
1633 Broadway  
32<sup>nd</sup> Floor  
New York, NY 10019

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**I, THE UNDERSIGNED**, being the incorporator, for the purpose of forming a corporation under the DGCL, do make, file and record this Certificate of Incorporation, do certify that the facts herein stated are true and, accordingly, have hereto set my hand this 19<sup>th</sup> day of March, 2021.

/s/ Oyedele A. Oyediran

Oyedele A. Oyediran, Incorporator

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**CERTIFICATE OF DESIGNATION OF  
SERIES A CONVERTIBLE PREFERRED STOCK OF  
CHROMOCELL THERAPEUTICS CORPORATION**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware (the “**DGCL**”), Chromocell Therapeutics Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the “**Corporation**”), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

WHEREAS, the Certificate of Incorporation of the Corporation (the “**Certificate of Incorporation**”) authorizes the issuance of up to 10,000,000 shares of preferred stock, par value \$0.0001 per share, of the Corporation (“**Preferred Stock**”), issuable from time to time in one or more series, and expressly authorizes the Board of Directors of the Corporation (the “**Board**”), to fix the dividend rights, dividend rate, voting rights, conversion rights, rights and terms of redemption and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board, pursuant to its authority as aforesaid, to establish and fix the number of shares to be included in a new series of Preferred Stock and the designation, rights, preferences and limitations of the shares of such new series.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby provide for a new series of Preferred Stock and does hereby in this Certificate of Designation (this “**Certificate of Designation**”) establish and fix and herein state and express the designation, rights, preferences, powers, restrictions and limitations of such new series of Preferred Stock as follows:

1. Number and Designation. There shall be a series of Preferred Stock that shall be designated as the “Series A Convertible Preferred Stock” of the Corporation (the “**Series A Preferred Stock**”) and the number of authorized Shares constituting such series shall be 700,000 Shares. The number of authorized shares of Series A Preferred Stock may from time to time be increased (but not in excess of the total number of authorized shares of Preferred Stock, less all shares of any other series of Preferred Stock authorized at the time of such increase) or decreased (but not below the number of shares of Series A Preferred Stock then outstanding). Shares of Series A Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation will be cancelled and shall revert to authorized but unissued shares of Preferred Stock undesignated as to series. The Corporation shall have the right to re-open this series and issue additional share of the Series A Preferred Stock either through public or private sales at any time and from time to time without notice to or the consent of holders of the Series A Preferred Stock. The additional shares of the Series A Preferred Stock will be deemed to form a single series with the Series A Preferred Stock issued under this Certificate of Designation. Each Share shall have a par value of \$0.0001 per share. The powers, preferences, rights, qualifications, limitations and restrictions of the Series A Preferred Stock shall be as set forth herein.
  2. Defined Terms. For purposes hereof, the following terms shall have the following meanings:
    - “**Board**” has the meaning set forth in the Recitals hereof.
    - “**Certificate of Designation**” has the meaning set forth in the Recitals hereof.
    - “**Certificate of Incorporation**” has the meaning set forth in the Recitals hereof.
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“**Common Stock**” means the common stock, par value \$0.0001 per share, of the Corporation.

“**Conversion Value**” means, with respect to any Share on any given date, \$4.37.

“**Corporation**” has the meaning set forth in the Preamble hereof.

“**DGCL**” has the meaning set forth in the Preamble hereof.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“**Holder**” means a holder of Series A Preferred Stock.

“**Liquidation**” has the meaning set forth in **Section 5**.

“**New York Courts**” has the meaning set forth in **Section 10.1**.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Preferred Stock**” has the meaning set forth in the Recitals.

“**IPO**” means the sale, in a firm commitment public underwritten offering pursuant to an effective registration statement under the Securities Act, of securities of the Corporation, following which such securities (or any component part thereof) are listed on a national securities exchange registered with the SEC under Section 6(a) of the Exchange Act (or, alternatively, quoted on the OTC Bulletin Board or similar quotation system).

“**Required Holders**” has the meaning set forth in **Section 8**.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“**Series A Preferred Stock**” has the meaning set forth in **Section 1**.

“**Share**” means a share of Series A Preferred Stock.

“**IPO Security**” means a security identical to the securities issued and sold to the public in the Company’s IPO (including, for the avoidance of doubt, any component securities thereof).

3. Dividends. Holders shall not be entitled to receive any dividends in respect of the Series A Preferred Stock.
  4. Voting Rights. Except as otherwise provided herein or as otherwise provided by the DGCL, the Series A Preferred Stock shall have no voting rights.
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5. Rank; Liquidation.

- 5.1. Rank and Liquidation. The Series A Preferred Stock shall rank (i) senior to any class or series of capital stock of the Corporation created specifically ranking by its terms junior to the Series A Preferred Stock; (ii) on parity with all of the Common Stock and any other class or series of capital stock of the Corporation created specifically ranking by its terms on parity with the Series A Preferred Stock; and (iii) junior to any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms senior to any Series A Preferred Stock, in each case, as to distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntarily or involuntarily (a “**Liquidation**”).
- 5.2. Notice. In the event of any Liquidation, the Corporation shall, within five (5) days of the date the Board approves such action, or no later than five (5) days of any stockholders’ meeting called to approve such action, or within five (5) days of the commencement of any involuntary proceeding, whichever is earlier, give each Holder written notice of the proposed action. Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the Holder upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each Holder of such material change.

6. Conversion.

6.1. Mandatory Conversion; Lock-Up.

- a) Mandatory Conversion Upon IPO. The Series A Preferred Stock shall mandatorily convert at the time of the closing of an IPO into IPO Securities as follows: simultaneously with the closing of the IPO, all of the outstanding Shares shall automatically convert into an aggregate number of IPO Securities determined by (i) multiplying the number of Shares to be converted by the Conversion Value thereof, and then (ii) dividing the value in the preceding clause (i) by 87.5% of the price at which the IPO Securities are sold to the public in the IPO. The Corporation shall provide written notice to the Holder of the mandatory conversion at least ten (10) days prior to the date of mandatory conversion. All shares of capital stock issued hereunder by the Corporation shall be duly and validly issued, fully paid and nonassessable, and free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof. Any fractional IPO Securities resulting from such determination shall be rounded up to the next whole number of IPO Securities.
- b) Lock-Up In Connection with IPO. The IPO Securities (and any component part(s) thereof) received in the mandatory conversion by the Holders shall be subject to customary lock-up provisions as requested by the underwriters of the IPO.
- 6.2. Effect of Conversion. All Shares converted as provided in this **Section 6** shall no longer be deemed outstanding as of the effective time of the applicable conversion and all rights with respect to such Shares shall immediately cease and terminate as of such time, other than the right of the holder to receive IPO Securities.
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7. Notices. Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent (a) to the Corporation, at its principal executive offices and (b) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (or at such other address for a stockholder as shall be specified in a notice given in accordance with this **Section 7**).
8. Amendment and Waiver. No provision of this Certificate of Designation may be amended, modified or waived except by an instrument in writing executed by the Corporation and the holders of at least a majority of the then outstanding Shares (the "**Required Holders**"), and any such written amendment, modification or waiver will be binding upon the Corporation and each holder of Series A Preferred Stock; *provided, further*, that no amendment, modification or waiver of the terms or relative priorities of the Series A Preferred Stock may be accomplished by the merger, consolidation or other similar transaction of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the Required Holders in accordance with this **Section 8**.
9. Miscellaneous.
- 9.1. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. All legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by this Certificate of Designation (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "**New York Courts**"). The Corporation and each holder hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. The Corporation and each holder hereby irrevocably waive personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. The Corporation and each holder hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.
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- 9.2. Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.
- 9.3. Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.
- 9.4. Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a business Day, such payment shall be made on the next succeeding business day.
- 9.5. Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

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RESOLVED FURTHER, that the Chief Executive Officer of the Corporation be and he hereby is authorized and directed to prepare and file this Certificate of Designation in accordance with the foregoing resolution and the provisions of Delaware law.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Designation this 12<sup>th</sup> of July, 2022.

CHROMOCELL THERAPEUTICS CORPORATION

By: /s/ Christian Kopfli

Name: Christian Kopfli

Title: Chief Executive Officer

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AMENDED AND RESTATED CERTIFICATE INCORPORATION

of

CHROMOCELL THERAPEUTICS CORPORATION

Chromocell Therapeutics Corporation, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

**ONE:** The name of the corporation is Chromocell Therapeutics Corporation, which was the name under which the corporation was originally incorporated. The date of the filing of its original certificate of incorporation with the Secretary of State of the State of Delaware was March 19, 2021.

**TWO:** This Amended and Restated Certificate of Incorporation, which restates, integrates and further amends the certificate of incorporation of the corporation, has been duly adopted by the corporation in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware and has been adopted by the requisite vote of the stockholders of the corporation, acting by written consent in lieu of a meeting in accordance with Section 228 of the General Corporation Law of the State of Delaware.

**THREE:** The certificate of incorporation of the corporation is hereby amended and restated in its entirety to read as follows:

I.

The name of the corporation is Chromocell Therapeutics Corporation (hereinafter called the "Corporation").

II.

The address of the registered office of the Corporation in the State of Delaware is 1209 N Orange St, in the City of Wilmington, Delaware, County of New Castle, 19801. The name of the registered agent of the Corporation in the State of Delaware at such address is Business Filings Incorporated.

III.

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized and incorporated under the General Corporation Law of the State of Delaware or any applicable successor act thereto, as the same may be amended from time to time (the "DGCL").

IV.

- (A) The total number of shares of capital stock that the Corporation is authorized to issue is [●] shares, of which (i) [●] shares shall be a class designated as common stock, par value \$0.0001 per share (the "Common Stock"), and (ii) [●] shares shall be a class designated as undesignated preferred stock, par value \$0.0001 per share (the "Preferred Stock"). Subject to the rights of the holders of any series of Preferred Stock, the number of authorized shares of any of the Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the capital stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL, and no vote of the holders of any of the Common Stock or Preferred Stock voting separately as a class shall be required therefor.
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- (B) Common Stock. The powers, preferences and relative participating, optional or other special rights, and the qualifications, limitations and restrictions of the Common Stock are as follows:
- (1) Ranking. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors of the Corporation (the "Board") upon any issuance of the Preferred Stock of any series.
  - (2) Voting. Except as otherwise provided by law or by the resolution or resolutions providing for the issue of any series of Preferred Stock, the holders of outstanding shares of Common Stock shall have the exclusive right to vote for the election and removal of directors and for all other purposes. Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation (as amended from time to time, including the terms of any Preferred Stock Designation (as defined below), this "Certificate of Incorporation") to the contrary, the holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation) or the DGCL.
  - (3) Dividends. Subject to the rights of the holders of Preferred Stock, holders of shares of Common Stock shall be entitled to receive such dividends and distributions and other distributions in cash, stock or property of the Corporation when, as and if declared thereon by the Board from time to time out of assets or funds of the Corporation legally available therefor.
  - (4) Liquidation. Subject to the rights of the holders of Preferred Stock, shares of Common Stock shall be entitled to receive the assets and funds of the Corporation available for distribution in the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary. A liquidation, dissolution or winding up of the affairs of the Corporation, as such terms are used in this Section (B)(4), shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other person or a sale, lease, exchange or conveyance of all or a part of its assets.

(C) Preferred Stock. Shares of Preferred Stock may be issued from time to time in one or more series. The Board is hereby authorized to provide by resolution or resolutions from time to time for the issuance, out of the unissued shares of Preferred Stock, of one or more series of Preferred Stock, without stockholder approval, by filing a certificate pursuant to the applicable law of the State of Delaware (the "Preferred Stock Designation"), setting forth such resolution and, with respect to each such series, establishing the number of shares to be included in such series, and fixing the voting powers, full or limited, or no voting power of the shares of such series, and the designation, preferences and relative, participating, optional or other special rights, if any, of the shares of each such series and any qualifications, limitations or restrictions thereof. The powers, designation, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations and restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. The authority of the Board with respect to each series of Preferred Stock shall include, but not be limited to, the determination of the following:

- (1) the designation of the series, which may be by distinguishing number, letter or title;
- (2) the number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding);
- (3) the amounts or rates at which dividends will be payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative;
- (4) the dates on which dividends, if any, shall be payable;
- (5) the redemption rights and price or prices, if any, for shares of the series;
- (6) the terms and amount of any sinking fund, if any, provided for the purchase or redemption of shares of the series;
- (7) the amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
- (8) whether the shares of the series shall be convertible into or exchangeable for, shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made;
- (9) restrictions on the issuance of shares of the same series or any other class or series;
- (10) the voting rights, if any, of the holders of shares of the series generally or upon specified events; and
- (11) any other powers, preferences and relative, participating, optional or other special rights of each series of Preferred Stock, and any qualifications, limitations or restrictions of such shares,

all as may be determined from time to time by the Board and stated in the resolution or resolutions providing for the issuance of such Preferred Stock.

Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law.

V.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

- (A) The management of the business and the conduct of the affairs of the Corporation shall be vested in the Board. The number of directors that shall constitute the Board shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors constituting the Board.
- (B) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, each director shall serve for a term expiring on the date of the first annual meeting of stockholders following the annual meeting of stockholders at which such director was elected; provided further, that the term of each director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, disqualification, resignation or removal.
- (C) Subject to the rights of any series of Preferred Stock that may be designated from time to time to elect additional directors under specified circumstances, neither the Board nor any individual director may be removed without cause. Subject to any limitations imposed by applicable law, any individual director or directors may be removed with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the Corporation entitled to vote generally at an election of directors, voting together as a single class.
- (D) Subject to any limitations imposed by applicable law and subject to the rights of the holders of any series of Preferred Stock that may be designated from time to time, any vacancies on the Board resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders and except as otherwise provided by applicable law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified
- (E) The Board is expressly empowered to adopt, amend or repeal the Amended and Restated Bylaws of the Corporation (the "Bylaws"). Any adoption, amendment or repeal of the Bylaws by the Board shall require the approval of a majority of the authorized number of directors. The stockholders shall also have power to adopt, amend or repeal the Bylaws; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

- (F) The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.
- (G) No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws. No action shall be taken by the stockholders of the Corporation by written consent or electronic transmission.
- (H) Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

#### VI.

- (A) The liability of a director of the Corporation for monetary damages shall be eliminated to the fullest extent under applicable law.
- (B) To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which applicable law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. If applicable law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Corporation shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.
- (C) Any repeal or modification of this Article VI shall only be prospective and shall not affect the rights or protections or increase the liability of any director under this Article VII in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

#### VII.

- (A) Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) and any appellate court therefrom shall be the sole and exclusive forum for the following claims or causes of action under the Delaware statutory or common law: (i) any derivative claim or cause of action brought on behalf of the Corporation; (ii) any claim or cause of action for breach of a fiduciary duty owed by any current or former director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders; (iii) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, arising out of or pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws (as each may be amended from time to time); (iv) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of this Certificate of Incorporation or the Bylaws (as each may be amended from time to time, including any right, obligation or remedy thereunder); (v) any claim or cause of action as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; and (vi) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation governed by the internal-affairs doctrine or otherwise related to the Corporation's internal affairs, in all cases to the fullest extent permitted by law and subject to the court having personal jurisdiction over the indispensable parties named as defendants. This Section (A) of Article VII shall not apply to claims or causes of action brought to enforce a duty or liability created by the Securities Act of 1933, as amended (the "*Securities Act*"), the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction.

- (B) Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, including all causes of action asserted against any defendant named in such complaint. For the avoidance of doubt, this provision is intended to benefit and may be enforced by the Corporation, its officers and directors, the underwriters for any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.
- (C) Any person or entity holding, owning or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Certificate of Incorporation.

**VIII.**

- (A) The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in Section (B) of this Article VIII, and all rights conferred upon the stockholders herein are granted subject to this reservation.
- (B) Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Corporation required by law or by this Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock that may be designated from time to time, subject to the rights of the holders of any series of Preferred Stock, the affirmative vote of the holders of at least 66 <sup>2</sup>/<sub>3</sub>% of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to waive, alter, amend or repeal (whether by merger, consolidation or otherwise) Articles V, VI, VII and VIII of this Certificate of Incorporation.

\* \* \* \*

**FOUR:** This Certificate of Incorporation has been duly adopted and approved by the Board of Directors and by written consent of the stockholders in accordance with Sections 228, 242 and 245 of the DGCL and written notice of such action has been given as provided in section 228 of the DGCL.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation as of this [●] day of [●], 2023.

CHROMOCELL THERAPEUTICS CORPORATION

By: \_\_\_\_\_  
Name: Christian Kopfli  
Title: President

**BYLAWS  
OF  
CHROMOCELL THERAPEUTICS CORPORATION**

*A Delaware corporation*

(Adopted as of May 5, 2021)

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**BYLAWS  
OF  
CHROMOCELL THERAPEUTICS CORPORATION**

*A Delaware corporation*

**ARTICLE 1  
OFFICES**

**Section 1.1. Registered Office.** The address of the registered office of the Corporation in Delaware shall be 1209 N Orange St., in the City of Wilmington, County of New Castle, State of Delaware, 19801. The registered agent at such address in charge thereof shall be The Corporation Trust Company, all of which shall be subject to change from time to time as permitted by law.

**Section 1.2. Other Offices.** The Corporation may also have an office or offices or place or places of business within or without the State of Delaware as the Board of Directors (the "Board") may from time to time designate.

**Section 1.3. Books and Records.** The books and records of the corporation may be kept at the Corporation's headquarters 685 US Highway One, North Brunswick, New Jersey, or at such other locations outside the State of Delaware as may from time to time be designated by the Board.

**ARTICLE 2  
MEETINGS OF STOCKHOLDERS**

**Section 2.1. Annual Meeting.** The annual meeting of the stockholders shall be held at the principal place of business of the Corporation or at such other place within or outside of Delaware (or may not be held at any place, but may instead be held solely by means of remote communication if so decided by the Board in its sole discretion), on such date and at such time as shall be determined from time to time by the Board, for the purpose of electing directors and for transacting other proper business.

**Section 2.2. Special Meetings.** Subject to the rights of the holders of any outstanding series of the preferred stock of the Corporation ("Preferred Stock"), special meetings of stockholders of the Corporation may be called by the Chairman of the Board, the Chief Executive Officer, by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board or by the Chairman of the Board or the Chief Executive Officer at the request in writing of the stockholders owning at least twenty-five percent (25%) in amount of the entire capital stock of the Corporation issued and outstanding and entitled to vote. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication. For purpose of these Bylaws, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships.

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**Section 2.3. Notice of Stockholder Business and Nominations.**

*(a) Annual Meetings of Stockholders.*

(1) At an annual meeting of stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting of stockholders, nominations of persons for election to the Board of the Corporation and the proposal of other business must be brought (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board or any committee thereof, or (C) by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.3(a) is delivered to the Secretary of the Corporation and on the record date for the determination of stockholders entitled to vote at the annual meeting, who is entitled to vote at the meeting, and who complies with the notice procedures set forth in this Section 2.3(a). For the avoidance of doubt, clause (C) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the Corporation's notice of meeting of stockholders an proxy statement under Rule 14a-8 of the Exchange Act) before an annual meeting of stockholders.

(2) For any nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of paragraph (a)(1) of this Section 2.3, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation at the Corporation's principal executive offices, and any such proposed business (other than the nominations of persons for election to the Board) must constitute a proper matter for stockholder action at such meeting. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day, nor earlier than the close of business on the one hundred twentieth (120th) day, prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced or delayed by more than thirty (30) days prior to such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (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 the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth (A) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of such nominee, (ii) the principal occupation or employment of such nominee, (iii) the class or series and number of shares of stock that are owned beneficially and of record by such nominee as well as any derivative or synthetic instrument, convertible security, put, option, stock appreciation right, swap or similar contract, agreement, arrangement or understanding the value of or return on which is based on or linked to the value of or return on any shares of stock, (iv) a description of any agreement, arrangement, or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such nominee, whether or not such instrument or right shall be subject to settlement in underlying shares of stock, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such nominee with respect to securities of the Corporation, (v) all information relating to such nominee that is required to be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, and (vi) such nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (B) as to any other business that the stockholder proposes to bring before the meeting, (i) a brief description of the business desired to be brought before the meeting, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment), (iii) the reasons for conducting such business at the meeting, and (iv) any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and any beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class or series and number of shares of stock that are owned beneficially and of record by such stockholder and such beneficial owner as well as any derivative or synthetic instrument, convertible security, put, option, stock appreciation right, swap or similar contract, agreement, arrangement or understanding the value of or return on which is based on or linked to the value of or return on any shares of stock, (iii) a description of any agreement, arrangement, or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including, in the case of a nomination, the nominee, (iv) a description of any agreement, arrangement, or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of stock, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of the Corporation, (v) a representation that the stockholder is a holder of record of stock entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group that intends (I) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the outstanding stock required to approve or adopt the proposal or elect the nominee and/or (II) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination, and (vii) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) At the request of the Board, any person nominated by a stockholder for election or reelection as a director must furnish to the Secretary of the Corporation (A) that information required to be set forth in the stockholder's notice of nomination of such person as a director as of a date subsequent to the date on which the notice of such person's nomination was given and (B) 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 or audit committee financial expert of the corporation under applicable law, securities exchange rule or regulation, or any publicly-disclosed corporate governance guideline or committee charter of the Corporation and (C) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee; in the absence of the furnishing of such information if requested, such stockholder's nomination shall not be considered in proper form pursuant to this Section 2.3.

(4) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 2.3 to the contrary, in the event that the number of directors to be elected to the Board of the Corporation at the annual meeting is increased effective after the time period for which nominations would otherwise be due under paragraph (a)(2) of this Section 2.3, and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 2.3 shall also be considered timely, but only with respect to nominees for the additional directorships, 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 tenth (10th) day following the day on which such public announcement is first made by the Corporation.

*(b) Special Meetings of Stockholders.*

(1) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (A) by or at the direction of the Board or any committee thereof or (B) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.3(b) is delivered to the Secretary of the Corporation and on the record date for the determination of stockholders entitled to vote at the special meeting, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 2.3(b).

(2) In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder delivers a notice in the form as is required by paragraph (a)(2) of this Section 2.3 to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (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 to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) *General.*

(1) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 2.3 shall be eligible to be elected at an annual or special meeting of stockholders to serve as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.3. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (A) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.3, and (B) if any proposed nomination or business was not made or proposed in compliance with this Section 2.3, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.3, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.3, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) A stockholder providing written notice required by this Section 2.3 shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is ten (10) business days prior to the meeting and, in the event of any adjournment or postponement thereof, ten (10) business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 2.3(c)(2), such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 2.3(c)(2), such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, five (5) business days prior to such adjourned or postponed meeting.

(3) For purposes of this Section 2.3, “public announcement” shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press, or other national news service, 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.

(4) Notwithstanding the foregoing provisions of this Section 2.3, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.3; provided, however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.3, and compliance with this Section 2.3 shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the last sentence of (a)(1), business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 2.3 shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals or nominations in the Corporation’s proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act, or (B) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the certificate of incorporation

**Section 2.4. Notice of Meetings.** Notice of all stockholders’ meetings shall be given in writing by the Secretary or another officer of the Corporation authorized to give such notice, or (b) in case of a special meeting duly requested by stockholders pursuant to Section 2.2 and for which the Secretary has refused to give notice, by the stockholders entitled to call such meeting. Notice of any stockholders’ meeting shall state the date and hour when and the place where it is to be held, if any (or, the means of remote communication, if any, by which stockholders may be deemed to be present in person and vote at such meeting), the record date for determining the stockholders entitled to vote at such meeting if such date is different from the record date for determining the stockholders entitled to notice of such meeting, and, in the case of a special meeting, the purpose or purposes for which such meeting is called. Subject to Section 7.3, and unless otherwise required by law, not more than sixty (60) nor less than ten (10) days prior to any such meeting, such notice shall be given to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, directed by United States mail, postage prepaid, to such stockholder’s address as it appears upon the records of the Corporation. Such notice may also be given by electronic mail or other electronic transmission in the manner provided in Section 232 of DGCL. An affidavit of the secretary or assistant secretary or of the transfer agent of the Company that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

**Section 2.5. Record Date.** The Board may fix a date, which date shall not precede the date upon which the resolution fixing such date is adopted by the Board and shall not be more than sixty (60) nor less than ten (10) days preceding any meeting of stockholders, as the record date for the determination of the stockholders entitled to notice of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of such meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which such meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.5 at the adjourned meeting. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

**Section 2.6. List of Stockholders.** The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares of stock registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting, during ordinary business hours, at the principal place of business of the Corporation. A list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place, if any, of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to vote in person or by proxy at any meeting of stockholders.

**Section 2.7. Voting.** Except as may be otherwise required by law, the Certificate of Incorporation, or these Bylaws, (a) every stockholder of record shall be entitled to one (1) vote for each share of stock held of record by such stockholder on the record date for determining the stockholders entitled to vote or act by written consent; (b) in all matters other than a contested election of directors, the affirmative vote of the majority of shares of stock present in person or represented by proxy at a stockholders' meeting having a quorum and entitled to vote on the subject matter shall be the act of the stockholders; and (c) in a contested election of directors, directors shall be elected by a plurality of the votes of the shares of stock present in person or represented by proxy at a stockholders' meeting having a quorum and entitled to vote on the election of directors. No stockholder will be permitted to cumulate votes at any election of directors.



**Section 2.8. Consent Procedure.** Unless otherwise provided by the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding 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 entitled to vote thereon were present and voted, and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this section and the DGCL to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

**Section 2.9. Proxies.** At any meeting of the stockholders, any stockholder entitled to vote thereat may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by transmission permitted by law filed in accordance with the procedure established for the meeting, but no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person.

**Section 2.10. Quorum.** Except as may be otherwise required by law or the Certificate of Incorporation, at any meeting of the stockholders, the presence in person or by proxy of the holders of record of shares of stock that would constitute a majority of the votes if all the issued and outstanding shares of stock entitled to vote at such meeting were present and voted shall be necessary to constitute a quorum; provided, however, that, where a separate vote by a class or series of stock is required, a quorum shall consist of the presence in person or by proxy of the holders of record of shares of stock that would constitute a majority of the votes of such class or series if all issued and outstanding shares of stock of such class or series entitled to vote at such meeting were present and voted. In the absence of a quorum and until a quorum is secured, either the chairman of the meeting or a majority of the votes cast at the meeting by stockholders who are present in person or by proxy may adjourn the meeting, from time to time, without further notice if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken. No business shall be transacted at any such adjourned meeting except such as might have been lawfully transacted at the original meeting.

**Section 2.11. Adjournment.** Any meeting of stockholders may be adjourned at the meeting from time to time, either by the chairman of the meeting, for an announced proper purpose, or by the stockholders, for any purpose, to reconvene at a later time and at the same or some other place, if any, and by the same or other means of remote communication, if any, and, unless otherwise required by law, notice need not be given of any such adjourned meeting if the time and place, if any, or the means of remote communication, if any, thereof are announced at the meeting at which the adjournment is taken. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with the DGCL and section 2.5 herein and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting. No business shall be transacted at any such adjourned meeting except such as might have been lawfully transacted at the original meeting.

**Section 2.12. Organization of Meetings.** Meetings of stockholders shall be presided over by the chairman of the meeting, who shall be one of the following, here listed in the order of preference: (a) the Chairman of the Board; or (b) in the Chairman's absence, the Chief Executive Officer; or (c) in the Chief Executive Officer's absence, the President; or (d) in the President's absence, a Vice President; or (e) in the absence of the foregoing officers, a chairman chosen by the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in such officer's absence, the chairman of the meeting shall appoint a secretary of the meeting.

**Section 2.13. Conduct of Meetings.** Subject to and to the extent permitted by law, the Board may adopt by resolution such rules and regulations for the conduct of meetings of stockholders as it shall deem appropriate. Except to the extent inconsistent with law or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations, and procedures, and to do all such acts, as in the judgment of such chairman are appropriate for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting and announcement of the date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at 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 stockholders, their duly authorized proxies, or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; (e) limitations on the time allotted to questions or comments by participants; and (f) appointment of inspectors of election and other voting procedures, including those procedures set out in Section 231 of the DGCL. Unless and to the extent determined otherwise by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

**Section 2.14. Joint Owners Of Stock.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in Section 217(b) of the DGCL. If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

**Section 2.15 Place of Meeting.** The Board of Directors may designate the place of meeting for any meeting of the stockholders. If no designation is made by the Board of Directors, the place of meeting shall be the principal office of the Corporation.

### **ARTICLE 3 BOARD OF DIRECTORS**

**Section 3.1. Number.** Except as may be otherwise provided in the Certificate of Incorporation and subject to the rights of holders of any series of Preferred Stock, the entire Board shall consist of one (1) or more directors, the total number thereof shall be authorized first by the incorporator of the Corporation and thereafter from time to time solely by resolution of the Board. Each director shall serve until his or her successor is duly elected and qualified or until his or her death, resignation, disqualification or removal. Directors need not be stockholders of the Corporation.

**Section 3.2. Resignations and Vacancies.**

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation; provided, however, that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the director. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Acceptance of such resignation shall not be necessary to make it effective. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, when one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

(b) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, and except as otherwise provided in the DGCL, vacancies occurring on the Board for any reason and newly created directorships resulting from an increase in the authorized number of directors shall be filled only by vote of a majority of the remaining members of the Board, although less than a quorum, or by a sole remaining director, at any meeting of the Board. A person so elected by the Board to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been assigned by the Board and until his or her successor shall be duly elected and qualified, or until such director's earlier death, resignation, or removal.

**Section 3.3. Meetings.** The Board may by resolution provide for regular meetings to be held at such times and places as it may determine, and such meetings may be held without further notice. Special meetings of the Board may be called by the Chairman, the Chief Executive Officer, the President, or by not less than a majority of the directors then in office. Subject to Section 7.3, notice of the time and place of such meeting shall be given by or at the direction of the person or persons calling the meeting, and shall be delivered personally, telephoned, or sent by electronic mail or facsimile, to each director at least twenty-four (24) hours prior to the time of the meeting, or sent by generally recognized overnight courier or First Class United States mail, postage prepaid, to each director at such director's address as shown on the records of the Corporation, in which case such notice shall be deposited in the United States mail no later than the fourth (4th) business day preceding the day of the meeting. Unless otherwise specified in the notice of a special meeting, any and all business may be transacted at such meeting. Meetings of the Board, both regular and special, may be held either within or outside the State of Delaware. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the board of directors, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

**Section 3.4. Action Without a Meeting.** Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all the directors or all members of the committee, as the case may be, consent thereto in writing or by electronic transmission, and such writings or electronic transmissions are filed with the minutes of proceedings of the Board or committee, as the case may be.

**Section 3.5. Quorum.** At any meeting of the Board, the presence of a majority of the directors then in office, shall be necessary to constitute a quorum for the transaction of business. Notwithstanding the foregoing, if at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time without further notice if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken.

**Section 3.6. Vote Necessary to Act and Participation by Conference Telephone.** The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, except as may otherwise be provided by law, the Certificate of Incorporation, or these Bylaws. Participation in a meeting by conference telephone or similar means by which all participating directors can hear each other shall constitute presence in person at such meeting.

**Section 3.7 Fees and Compensation of Directors.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have the authority to fix the compensation of directors.

**Section 3.8. Executive and Other Committees.**

(a) Subject to compliance with the rules and regulations of any securities exchange, with respect to which the shares of the Corporation are listed for trading, the Board may by resolution designate an Executive Committee and/or one or more other committees, each committee to consist of two (2) or more directors, except that the Executive Committee, if any, shall consist of not less than (3) directors. Any such committee, to the extent provided in such resolution or in these Bylaws, shall have and may exercise the powers and authority of the Board in the management of the business and affairs of the Corporation, except in reference to powers or authority expressly forbidden such committee by law, and may authorize the seal of the corporation to be fixed to all papers that may require it.

(b) During the intervals between meetings of the Board, the Executive Committee, unless restricted by resolution of the Board, shall possess and may exercise, under the control and direction of the Board, all of the powers of the Board in the management and control of the business of the Corporation to the fullest extent permitted by law. All action taken by the Executive Committee shall be reported to the Board at its first meeting thereafter and shall be subject to revision or rescission by the Board; provided, however, that rights of third parties shall not be affected by any such action by the Board.

(c) If any member of any such committee other than the Executive Committee is absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another director to act at the meeting in the place of any such absent or disqualified member.

(d) Any such committee shall meet at stated times or on notice to all of its own number. It shall fix its own rules of procedure. A majority shall constitute a quorum, but the affirmative vote of a majority of the whole committee shall be necessary to act in every case.

### **Section 3.9. Indemnification.**

(a) Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter, a “proceeding”), by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as such director, officer, employee, or agent, or in any other capacity while serving as such director, officer, employee, or agent, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the DGCL permitted the Corporation to provide prior to such amendment), against all expense, liability, and loss (including attorneys’ fees, judgments, fines, other expenses and losses, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to be a director, officer, employee, or agent, and shall inure to the benefit of his or her heirs, executors, and administrators; provided, however, that, except as provided in paragraph (b) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Section 3.9 shall be a contract right and shall include the right of a director or officer to be paid by the Corporation the expenses (including attorneys’ fees) incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of an undertaking, which undertaking shall itself be sufficient without the need for further evaluation of any credit aspects of the undertaking or with respect to such advancement, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined by a final, non-appealable order of a court of competent jurisdiction that such director or officer is not entitled to be indemnified under this Section 3.9 or otherwise. The Corporation is permitted to enter into indemnification agreements with its directors or officers.

(b) If a claim under Section 3.9(a) is not paid in full by the Corporation within sixty (60) days after a written claim, together with reasonable evidence as to the amount of such claim, has been received by the Corporation, except in the case of a claim for advancement of expenses (including attorneys’ fees), in which case the applicable period shall be twenty (20) days, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense, including attorneys’ fees, of prosecuting such suit. It shall be a defense to any such suit, other than a suit brought to enforce a claim for expenses (including attorneys’ fees) incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation, that the claimant has not met the standards of conduct that make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board or a committee thereof, independent legal counsel, or the stockholders) to have made a determination prior to the commencement of such suit that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including the Board or a committee thereof, independent legal counsel, or the stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the suit or create a presumption that the claimant has not met the applicable standard of conduct. In any suit brought by an indemnitee to enforce a right to indemnification or to advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to such indemnification, or to such advancement of expenses, under this Section 3.9 or otherwise shall be on the Corporation.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section 3.9 shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, or vote of stockholders or disinterested directors, or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, or agent of the Corporation or another corporation, partnership, joint venture, trust, or other enterprise against any such expense, liability, or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability, or loss under the DGCL.

(e) In the case of a claim for indemnification or advancement of expenses against the Corporation under this Section 3.9 arising out of acts, events, or circumstances for which the claimant, who was at the relevant time serving as a director, officer, employee, or agent of any other entity at the request of the Corporation, may be entitled to indemnification or advancement of expenses pursuant to such other entity's certificate of incorporation, bylaws, or other governing document, or a contractual agreement between the claimant and such entity, the claimant seeking indemnification or advancement of expenses hereunder shall first seek indemnification or advancement of expenses pursuant to any such governing document or agreement. To the extent that amounts to be paid in indemnification or advancement to a claimant hereunder are paid by such other entity, the claimant's right to indemnification and advancement of expenses hereunder shall be reduced.

**Section 3.10. Removal.** Except as may be otherwise provided in the Certificate of Incorporation and subject to the rights of holders of any series of Preferred Stock, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

**Section 3.11. Chairman.** The Board shall elect a Chairman from among the directors. The Chairman shall preside at all meetings of the Board and shall perform such other duties as may be directed by resolution of the Board or as otherwise set forth in these Bylaws.

#### **ARTICLE 4 OFFICERS**

**Section 4.1. Officers Generally.** The Corporation shall have the Chief Executive Officer, the President, the Chief Financial Officer, Chief Operating Officer, the Secretary, the Treasurer and one or more Vice Presidents, all of whom shall be chosen by the Board. The Corporation may also have one or more Assistant Secretaries, Assistant Treasurers, and other officers and agents as the Board may deem advisable, all of whom shall be chosen by the Board. The Board may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the Corporation at any one time unless specifically prohibited therefrom by law. Any officer shall be subject to removal at any time by Board and the Board may fill any vacant officer position. The officers shall have such powers and shall perform such duties, executive or otherwise, as from time to time may be assigned to them by the Board and, to the extent not so assigned, as generally pertain to their respective offices, subject to the control of the Board. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board.

#### **Section 4.2. Duties of Officers.**

(a) *Chief Executive Officer.* The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board, unless the Chairman of the Board has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the Corporation, the President shall be the chief executive officer of the Corporation and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board shall designate from time to time.

(b) *President.* The President shall preside at all meetings of the stockholders and at all meetings of the Board (if a director), unless the Chairman of the Board or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the Corporation and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board shall designate from time to time.

(c) *Chief Financial Officer.* The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board or the President. The Chief Financial Officer, subject to the order of the Board, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board or the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board or the President shall designate from time to time.



(d) *Chief Operating Officer.* The Chief Operating Officer shall preside at all meetings of the stockholders and at all meetings of the Board (if a director), unless the Chairman of the Board, the Chief Executive Officer or the President has been appointed and is present. The Chief Operating Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board, Chief Executive Officer or President shall designate from time to time.

(e) *Secretary.* The Secretary shall attend all meetings of the stockholders and of the Board and shall record all acts and proceedings thereof in the minute book of the Corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board shall designate from time to time. The President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board or the President shall designate from time to time.

(f) *Treasurer.* Unless another officer has been appointed Chief Financial Officer of the Corporation, the Treasurer shall be the chief financial officer of the Corporation and shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board, the Chief Executive Officer or the President, and, subject to the order of the Board, shall have the custody of all funds and securities of the Corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board, the Chief Executive Officer or the President shall designate from time to time.

(g) *Vice Presidents.* The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(h) *Other Officers.* Other officers of the Corporation shall have such powers and shall perform such duties as may be assigned by the Board.

**Section 4.3. Authority to Sign.** The Board may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the Corporation any corporate instrument or document, or to sign on behalf of the Corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the Corporation. All checks and drafts drawn on banks or other depositories on funds to the credit of the Corporation or in special accounts of the Corporation shall be signed by such person or persons as the Board shall authorize so to do. Unless authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 4.4. Voting Of Securities Owned By The Corporation.** All stock and other securities of other corporations owned or held by the Corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board, or, in the absence of such authorization, by the Chairman of the Board, the Chief Executive Officer, the President, or any Vice President.

## ARTICLE 5 STOCK

**Section 5.1. Certificates.** Shares of stock shall be represented by certificates, provided that the Board may provide by resolution that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of record of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman, the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Operating Officer or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, certifying the number of shares of stock owned by such holder. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

**Section 5.2. Lost, Stolen, or Destroyed Stock Certificates; Issuance of New Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**Section 5.3. Transfers.** Transfers of record of shares of stock of the Corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares. The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

**Section 5.4. Registered Stockholders.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

#### **ARTICLE 6 DIVIDENDS**

**Section 6.1. Declaration Of Dividends.** Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

**Section 6.2. Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board shall think conducive to the interests of the corporation, and the Board may modify or abolish any such reserve in the manner in which it was created.

#### **ARTICLE 7 GENERAL MATTERS**

**Section 7.1. Seal.** The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board.

**Section 7.2. Fiscal Year.** The fiscal year of the Corporation shall be determined by resolution of the Board.

**Section 7.3. Waiver of Notice of Meetings of Stockholders, Directors, and Committees.** Any waiver of notice given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, and does object, at the beginning of such meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of the Board need be specified in a waiver of notice.

**Section 7.4. Amendments to the Bylaws.** Subject to the provisions of the Certificate of Incorporation, the Board is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the Certificate of Incorporation, any amendment or modification of Section 2.2, Section 2.3, Section 2.7, Section 2.8, Section 3.1, Section 3.2, Section 3.9, Section 3.10 and this Section 7.4 shall require the affirmative vote of the holders of at least fifty percent (>50%) of the voting power of all of the then outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

**Section 7.5 Resignations.** Any director or any officer, whether elected or appointed, may resign at any time by serving written notice of such resignation on the Chairman of the Board, the Chief Executive Officer or the Secretary, or by submitting such resignation by electronic transmission (as such term is defined in the Delaware General Corporation Law), and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the Chief Executive Officer, or the Secretary or at such later date as is stated therein. No formal action shall be required of the Board of Directors or the stockholders to make any such resignation effective.

## **ARTICLE 8 CONSTRUCTION AND DEFINED TERMS**

**Section 8.1. Construction.** As appropriate in context, whenever the singular number is used in these Bylaws, the same includes the plural, and whenever the plural number is used in these Bylaws, the same includes the singular. As used in these Bylaws, each of the neuter, masculine, and feminine genders includes the other two genders. As used in these Bylaws, “include,” “includes,” and “including” shall be deemed to be followed by “without limitation”.

**Section 8.2. Defined Terms.** As used in these Bylaws,

“**Affiliates**” and “**associates**” shall have the meanings set forth in Rule 405 under the Securities Act.

“**Board**” means the board of directors of the Corporation.

“**Bylaws**” means these bylaws of the Corporation, as the same may be amended from time to time.

“**Certificate of Incorporation**” means the Certificate of Incorporation of the Corporation, as the same may be amended from time to time.

“**Common Stock**” means the common stock of the Corporation, par value \$0.0001 per share.

“**Corporation**” means Chromocell Therapeutics Corporation.

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

“**DGCL**” means the General Corporation Law of the State of Delaware, as the same may be amended from time to time.

“**Securities Act**” means the Securities Act of 1933, as amended.

## AMENDED AND RESTATED BY-LAWS

of

CHROMOCELL THERAPEUTICS CORPORATION  
(the "Corporation")Article I  
Offices

**Section 1.01. Registered Office.** The registered office of the Corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

**Section 1.02. Other Offices.** The Corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Corporation's Board of Directors (the "Board of Directors"), and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

Article II  
Corporate Seal

**Section 2.01. Corporate Seal.** The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the Corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Article III  
Stockholders' Meetings

**Section 3.01. Place of Meetings.**

(a) Meetings of the stockholders of the Corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (the "DGCL").

**Section 3.02. Annual Meetings.**

(a) The annual meeting of the stockholders of the Corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the Corporation's notice of meeting of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in Section 3.02(b) of these Second Amended and Restated Bylaws (the "Bylaws"), who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 3.02. The number of nominees a stockholder may nominate for election at an annual meeting of stockholders (or in the case of a stockholder giving notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such meeting. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the Corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "1934 Act")) before an annual meeting of stockholders.

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(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting.

(i) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 3.02(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the Corporation on a timely basis as set forth in Section 3.02(b)(iii) of these Bylaws and must update and supplement such written notice on a timely basis as set forth in Section 3.02(c) of these Bylaws. Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee; (2) the principal occupation or employment of such nominee; (3) the class and number of shares of each class of capital stock of the Corporation which are owned of record and beneficially by such nominee; (4) the date or dates on which such shares were acquired and the investment intent of such acquisition; (5) with respect to each nominee for election or re-election to the Board of Directors, include a completed and signed questionnaire, representation and agreement required by Section 3.02(e) of these Bylaws; and (6) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 3.02(b)(iv) of these Bylaws. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

(ii) Other than proposals sought to be included in the Corporation's proxy materials pursuant to Rule 14(a)-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 3.02(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the Corporation on a timely basis as set forth in Section 3.02(b)(iii) of these Bylaws, and must update and supplement such written notice on a timely basis as set forth in Section 3.02(c) of these Bylaws. Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the Corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 3.02(b)(iv) of these Bylaws.

(iii) To be timely, the written notice required by Section 3.02(b)(i) or Section 3.02(b)(ii) of these Bylaws must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that, subject to the last sentence of this Section 3.02(b)(iii), in the event that the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 60 days after the anniversary of the preceding year's annual meeting, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so received no earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting and the 10th day following the day on which notice of the date of such annual meeting was mailed or public announcement of the date of such meeting is first made, whichever first occurs. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(iv) The written notice required by Section 3.02(b)(i) or Section 3.02(b)(ii) of these Bylaws shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "Proponent" and collectively, the "Proponents"): (A) the name and address of each Proponent, as they appear on the Corporation's books; (B) the class, series and number of shares of the Corporation that are owned beneficially and of record by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the Corporation entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 3.02(b)(i) of these Bylaws) or to propose the business that is specified in the notice (with respect to a notice under Section 3.02(b)(ii) of these Bylaws); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of holders of the Corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 3.02(b)(i) of these Bylaws) or to carry such proposal (with respect to a notice under Section 3.02(b)(ii) of these Bylaws); (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous 12-month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.



For purposes of Sections 3.02 and 3.03 of these Bylaws, a “Derivative Transaction” means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

- A. the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the Corporation;
- B. which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the Corporation;
- C. the effect or intent of which is to mitigate loss, manage risk or benefit from security value or price changes; or
- D. which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the Corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the Corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

(c) A stockholder providing written notice required by Section 3.02(b)(i) or (ii) of these Bylaws shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five business days prior to the meeting and, in the event of any adjournment or postponement thereof, five business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 3.02(c), such update and supplement shall be received by 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 an update and supplement pursuant to clause (ii) of this Section 3.02(c), such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than two business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two business days prior to such adjourned or postponed meeting.

(d) To be eligible to be a nominee for election or re-election as a director of the Corporation pursuant to a nomination under clause (iii) of Section 3.02(a) of these Bylaws, such proposed nominee or a person on such proposed nominee’s behalf must deliver (in accordance with the time periods prescribed for delivery of notice under Section 3.02(b)(iii) or 3.02(d) of these Bylaws, as applicable) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such proposed nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (i) is not and will not become a party to (A) 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 in the questionnaire or (B) 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; (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been disclosed therein; and (iii) 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 publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(e) A person shall not be eligible for election or re-election as a director unless the person is nominated either in accordance with clause (ii) of Section 3.02(a) of these Bylaws, or in accordance with clause (iii) of Section 3.02(a) of these Bylaws. Except as otherwise required by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Section 3.02(b)(iv)(D) and 3.02(b)(iv)(E) of these Bylaws, to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

(f) Notwithstanding the foregoing provisions of this Section 3.02, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; provided, however, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 3.02(a)(iii) of these Bylaws.

(g) For purposes of Sections 3.02 and 3.03 of these Bylaws,

(i) "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service 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 1934 Act; and

(ii) "affiliates" and "associates" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the "1933 Act").

### **Section 3.03. Special Meetings.**

(a) Special meetings of the stockholders of the Corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

(b) The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.04 of these Bylaws. No business may be transacted at such special meeting otherwise than specified in the notice of meeting.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who is a stockholder of record at the time of giving notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers written notice to the Secretary of the Corporation setting forth the information required by Section 3.02(b)(i) of these Bylaws. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if written notice setting forth the information required by Section 3.02(b)(i) of these Bylaws shall be received by the Secretary at the principal executive offices of the Corporation no earlier than the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such meeting and the 10th day following the day on which notice of the date of such special meeting was mailed or 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, whichever first occurs. The stockholder shall also update and supplement such information as required under Section 3.02(c) of these Bylaws. The number of nominees a stockholder may nominate for election at a special meeting shall not exceed the number of directors to be elected at such meeting. In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(d) Notwithstanding the foregoing provisions of this Section 3.03, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 3.03. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; provided, however, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 3.03(c) of these Bylaws.

**Section 3.04. Notice of Meetings.** Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. If sent via electronic transmission, notice is deemed given as of the sending time recorded at the time of transmission. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

**Section 3.05. Quorum.** At all meetings of stockholders, except where otherwise provided by statute or by the Corporation's Amended and Restated Certificate of Incorporation ("Certificate of Incorporation"), or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

**Section 3.06. Adjournment and Notice of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 3.07. Voting Rights.** Each stockholder shall have one vote upon the matter in question for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided by law or by the Certificate of Incorporation. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the Corporation on the record date, as provided in Section 3.09 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three years from its date of creation unless the proxy provides for a longer period.

**Section 3.08. Joint Owners of Stock.** If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one votes, his act binds all; (b) if more than one votes, the act of the majority so voting binds all; or (c) if more than one votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of clause (c) of this Section 3.08 shall be a majority or even-split in interest.

**Section 3.09. List of Stockholders.** The Secretary shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting), arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

**Section 3.10. Action Without Meeting.** No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or electronic transmission.

**Section 3.11. Organization.**

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the Corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the Corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

**Article IV**  
**Directors**

**Section 4.01. Powers.** The business of the Corporation shall be managed by or under the direction of a Board of Directors who may exercise all the powers of the Corporation except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board until the vacancy is filled.

**Section 4.02. Number and Qualification.** Unless otherwise provided in the Certificate of Incorporation or in these Bylaws, the number of directors which shall constitute the whole board shall be determined from time to time by resolution of the Board of Directors. Directors need not be stockholders. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

**Section 4.03. Vacancies; Reduction of Board.** Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, a majority of the directors then in office, although less than a quorum, or a sole remaining Director, may fill vacancies in the Board of Directors occurring for any reason and newly created directorships resulting from any increase in the authorized number of directors. In lieu of filling any vacancy, the Board of Directors may reduce the number of directors.

**Section 4.04. Tenure.** Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, directors shall hold office until their successors are elected and qualified or until their earlier resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

**Section 4.05. Removal.** Subject to the rights of any series of Preferred Stock to elect additional directors under specified circumstances, neither the Board of Directors nor any individual director may be removed without cause. Subject to any limitation imposed by law, any individual director or directors may be removed with cause by the affirmative vote of the holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally at an election of directors.

**Section 4.06. Meetings.**

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the Chief Executive Officer or a majority of the authorized number of directors.

(c) Meetings by Electronic Communications Equipment Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be given orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least 24 hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, charges prepaid, at least three days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

**Section 4.07. Quorum and Voting.**

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Article XI of these Bylaws for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

**Section 4.08. Action Without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 4.09. Fees and Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

**Section 4.10. Committees.**

(a) The Board of Directors may, from time to time, appoint such committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the power or authority in reference to the following: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval or (ii) adopting, amending or repealing any provision of these Bylaws.

(b) The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of Section 4.10(a), may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(c) Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but in the absence of such rules its business shall be conducted so far as possible in the same manner as is provided in these Bylaws for the Board of Directors. All members of such committees shall hold their committee offices at the pleasure of the Board of Directors, and the Board of Directors may abolish any committee at any time.

**Section 4.11. Duties of Chairman of the Board of Directors.** The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.



**Section 4.12. Organization.** At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Chief Executive Officer (if a director), or, if the Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary or other officer or director directed to do so by the Chairman, shall act as secretary of the meeting.

**Section 4.13. Emergency Bylaws.** In the event of any emergency, disaster, catastrophe or other similar emergency condition of a type described in Section 1100(a) of the DGCL (an "Emergency"), notwithstanding any different or conflicting provisions in the Certificate of Incorporation or these Bylaws, during an Emergency:

(a) Notice. A meeting of the Board of Directors, the Executive Committee or any other committee appointed pursuant to Section 4.10 may be called by any directors, the Chairman of the Board, the Chief Executive Officer, the President or the Secretary by any such means as, in the judgment of the person calling the meeting, may be feasible at the time, and notice of any such meeting of the Board of Directors, the Executive Committee or any other committee appointed pursuant to Section 4.10 may be given, in the judgment of the person calling the meeting, only to such directors as it may be feasible to reach at the time and by such means as may be feasible at the time. Such notice shall be given at such time in advance of the meeting as, in the judgement of the person calling the meeting, circumstances permit.

(b) Quorum. The director or directors in attendance at a meeting called in accordance with Section 4.13(a) shall constitute a quorum.

(c) Liability. No officer, director or employee acting in accordance with this Section 4.13 shall be liable except for willful misconduct. No amendment, repeal or change to this Section 4.13 shall modify the prior sentence with regard to actions taken prior to the time of such amendment, repeal or change.

## **Article V Officers**

**Section 5.01. Officers Designated.** The officers of the Corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the Corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the Corporation shall be fixed by or in the manner designated by the Board of Directors.

**Section 5.02. Tenure and Duties of Officers.**

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors unless the Chairman of the Board of Directors has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the Corporation, the President shall be the Chief Executive Officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors unless the Chairman of the Board of Directors or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the Corporation, the President shall be the Chief Executive Officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the Corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(g) **Duties of Treasurer.** Unless another officer has been appointed Chief Financial Officer of the Corporation, the Treasurer shall be the chief financial officer of the Corporation and shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**Section 5.03. Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**Section 5.04. Salaries.** Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

**Section 5.05. Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract with the resigning officer.

**Section 5.06. Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

#### **Article VI** **Execution of Corporate Instruments and Voting of Securities Owned by the Corporation**

**Section 6.01. Execution of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the Corporation any corporate instrument or document, or to sign on behalf of the Corporation the corporate name without limitation, or to enter into contracts on behalf of the Corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the Corporation. All checks and drafts drawn on banks or other depositories on funds to the credit of the Corporation or in special accounts of the Corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do. Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 6.02. Voting of Securities Owned by the Corporation.** All stock and other securities of other corporations owned or held by the Corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

## **Article VII Shares of Stock**

### **Section 7.01. Form and Execution of Certificates.**

(a) The shares of the Corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock of the Corporation, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman of the Board of Directors, the Chief Executive Officer, or the President or any Vice President and by the Chief Financial Officer, Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the Corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

(b) Each certificate for shares of stock of the Corporation that are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these Bylaws, applicable securities laws or any agreement among any number of stockholders or among such holders and the Corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

(c) If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each certificate representing shares of such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests a copy of the full text of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

**Section 7.02. Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The Corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the Corporation in such manner as it shall require or to give the Corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**Section 7.03. Transfers.**

(a) Transfers of record of shares of stock of the Corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

**Section 7.04. Fixing Record Dates.**

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 7.05. Registered Stockholders.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

**Article VIII**  
**Other Securities of the Corporation**

**Section 8.01. Execution of Other Securities.** All bonds, debentures and other corporate securities of the Corporation, other than stock certificates (covered in Section 7.01 of these Bylaws), may be signed by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the Corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the Corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the Corporation.

**Article IX**  
**Dividends**

**Section 9.01. Declaration of Dividends.** Dividends upon the stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purposes as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

**Article X**  
**Fiscal Year**

**Section 10.01. Fiscal Year.** The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

**Article XI**  
**Indemnification**

**Section 11.01. Indemnification of Directors, Officers, Employees and Other Agents.**

- (a) Directors and Officers. The Corporation shall indemnify its directors and officers to the extent not prohibited by the DGCL or any other applicable law.
- (b) Employees and Other Agents. The Corporation shall have power to indemnify its employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person (except for officers) or other persons as the Board of Directors shall determine.
- (c) Expenses. The Corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 11.01 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section 11.01, no advance shall be made by the Corporation to an officer of the Corporation (except by reason of the fact that such officer is or was a director of the Corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation.

- (d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Section 11.01 shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and the director or officer. If a claim is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the Corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the Corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the Corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the Corporation) for advances, the Corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because the director or officer has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Section 11.01 or otherwise shall be on the Corporation.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding office. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or officer, or, if applicable, employee or other agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the Corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 11.01.

(h) Amendments. Any repeal or modification of this Section 11.01 shall only be prospective (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Indemnitees on a retroactive basis than permitted prior thereto) and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the Corporation in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision; provided however, that amendments or repeals of this Article XI shall require the affirmative vote of the stockholders holding at least 66.7% of the voting power of all outstanding shares of capital stock of the Corporation.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Section 11.01 that shall not have been invalidated, or by any other applicable law. If this Section 11.01 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the Corporation shall indemnify each director and officer to the full extent under any other applicable law.



(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(i) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, ERISA excise taxes, penalties, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term “Corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 11.01 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a “director,” “officer,” “employee,” or “agent” of the Corporation shall include, without limitation, situations where such person is serving at the request of the Corporation as, respectively, a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to “other enterprises” shall include employee benefit plans.

(vi) References to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan.

(vii) References to “servicing at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Section 11.01.

(k) Severability. If any provision or provisions of this Article XI shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article XI shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article XI (including, without limitation, each such portion of this Article XI containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

**Article XII**  
**Notices**

**Section 12.01. Notices.**

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 3.04 of these Bylaws. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by U.S. mail or nationally recognized overnight courier, or by facsimile, telegraph or telex, or by electronic mail or other electronic means.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws, or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the Corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the Corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under the DGCL, any notice given under the provisions of the DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the Corporation within 60 days of having been given notice by the Corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the Corporation.

**Article XIII  
Amendments**

**Section 13.01. Amendments.** Subject to the limitations set forth in Section 11.01(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

**Article XIV  
Miscellaneous Provisions**

**Section 14.01. Forum.**

(a) Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) and any appellate court therefrom shall be the sole and exclusive forum for the following claims or causes of action under the Delaware statutory or common law: (i) any derivative claim or cause of action brought on behalf of the Corporation; (ii) any claim or cause of action for breach of a fiduciary duty owed by any current or former director, officer or other employee of the Corporation, to the Corporation or the Corporation's stockholders; (iii) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, arising out of or pursuant to any provision of the DGCL, the Certificate of Incorporation or the Bylaws of the Corporation (as each may be amended from time to time); (iv) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the Bylaws of the Corporation (as each may be amended from time to time, including any right, obligation, or remedy thereunder); (v) any claim or cause of action as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; and (vi) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, governed by the internal-affairs doctrine or otherwise related to the Corporation's internal affairs, in all cases to the fullest extent permitted by law and subject to the court having personal jurisdiction over the indispensable parties named as defendants. This Section 14.01 shall not apply to claims or causes of action brought to enforce a duty or liability created by the 1933 Act, the 1934 Act, or any other claim for which the federal courts have exclusive or concurrent jurisdiction.

(b) Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the 1934 Act, or the rules and regulations thereunder, including all causes of action asserted against any defendant named in such complaint, and the federal district courts of the United States of America shall have concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the 1933 Act or the rules and regulations thereunder. For the avoidance of doubt, this provision is intended to benefit and may be enforced by the Corporation, its officers and directors, the underwriters for any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.

(c) Any person or entity holding, owning or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of these Bylaws.

**Section 14.02. Transactions with Interested Parties.** No contract or transaction between the Corporation and one or more of the directors or officers of the Corporation, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of the directors or officers of the Corporation are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or a committee of the Board of Directors which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

(a) the material facts as to such relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(b) the material facts as to such relationship or interest as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee of the Board of Directors, or the stockholders.

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

**Section 14.03. Resident Agent.** The Board of Directors may appoint a resident agent upon whom legal process may be served in any action or proceeding against the Corporation.

**Section 14.04. Certificate of Incorporation.** All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended and in effect from time to time.

**Section 14.05. Corporate Records.** The original or attested copies of the Certificate of Incorporation, Bylaws and records of all meetings of the incorporators, stockholders and the Board of Directors and the stock and transfer records, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, shall be kept at the principal office of the Corporation, at the office of its counsel, or at an office of its transfer agent.

**Section 14.06. Waiver of Notice.** Whenever notice is required to be given under any provision of these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or alter the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting needs to be specified in any written waiver or any waiver by electronic transmission.

**Section 14.07. Inconsistent Provisions.** In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the DGCL or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

## CHROMOCELL THERAPEUTICS CORPORATION

## Promissory Note

Face Amount: \$450,000.00  
Purchase Price: \$300,000.00

February 4, 2022  
New York, NY

FOR VALUE RECEIVED, the undersigned Chromocell Therapeutics Corporation, a Delaware corporation (the "Borrower"), promises to pay to the order of 3i, LP, its successors or assigns (the "Lender"), FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000) (the "Face Amount") by February 3, 2023 (the "Maturity Date") as provided herein or on such earlier date as this Note is required or permitted to be repaid as provided hereunder.

Section 1. Maturity; Interest. The Face Amount shall be repaid in cash at the Maturity Date; provided, that this Note may be prepaid in whole or in part at any time and from time-to-time upon three (3) prior business days' written notice, without penalty. This Note shall not bear interest except as contemplated in Section 4 below.

Section 2. Repayment. Repayment of the Note may occur as follows: (a) Upon the closing of an underwritten offering of securities resulting in at least \$15 million in gross proceeds to Borrower, Borrower shall repay, in cash, one hundred percent (100%) of the aggregate principal balance and interest due on this Note outstanding as of the date of repayment. So long as no Event of Default has occurred, such repayment shall satisfy Borrower's obligations pursuant to this Note in full and this Note shall be of no further force and effect. (b) At the Lender's sole election, the Lender shall have the right but not the obligation to subscribe to the underwritten offering of securities referenced in Section 2(a) by presenting this Note in whole or in part to purchase such securities as legal tender therefore.

Section 3. Transferability. This Note and any of the rights granted hereunder are freely transferable or assigned by Lender, in whole or in part, in its sole discretion; provided, there is notice to the Borrower.

Section 4. Event of Default.

(a) In the event that any one of the following events shall occur (whatever the reason and whether it shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body), it shall be deemed an Event of Default:

(i) Any default in the payment of the principal of, interest on or other charges in respect of this Note, or any other note issued by the Borrower for the benefit of the Lender or any other creditor, as and when the same shall become due and payable;

(ii) Borrower shall fail to observe or perform any other material covenant, agreement or warranty contained in, or otherwise commit any breach or default of any provision of this Note or any other agreement between the Borrower and the Lender or any other creditor;

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(iii) There shall be a breach of any of the representations and warranties set forth in this Note or any transaction document executed contemporaneously herewith; or

(iv) Borrower, shall commence, or there shall be commenced against Borrower any applicable bankruptcy or insolvency laws as now or hereafter in effect or any successor thereto, or Borrower commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to Borrower or there is commenced against Borrower any such bankruptcy, insolvency or other proceeding which remains undismissed for a period of sixty (60) days; or Borrower is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or Borrower suffers any appointment of any custodian, private or court appointed receiver or the like for it or any substantial part of its property which continues undischarged or unstayed for a period of sixty (60) days; or Borrower makes a general assignment for the benefit of creditors; or Borrower shall fail to pay or shall state that it is unable to pay or shall be liable to pay, its debts as they become due or by any act or failure to act expressly indicate its consent to, approval of or acquiescence in any of the foregoing; or any corporate or other action is taken by the Borrower for the purpose of effecting any of the foregoing.

(b) Upon the occurrence of an Event of Default, the Lender shall give the Borrower notice of such occurrence, at which time the Borrower shall have five (5) business days from receipt of such notice to pay the outstanding amount of the Note in full. In the event that full payment is not made upon the expiry of the five (5) day period, a default penalty equal to two percent (2%) of the Face Amount per month during the period of Default (the "Default Penalty"). Lender may then, at its sole discretion declare the entire then outstanding Face Amount of this Note and the Default Penalty immediately due and payable (a "Default Declaration"), in which event the Lender may, at its sole discretion take any action it deems necessary to recover amounts due under this Note.

(c) Upon the occurrence of an Event of Default, the Lender shall be entitled to receive, in addition to the Face Amount of the Note and the Default Penalty, the Lender shall be entitled to recover all of its costs, fees (including without limitation, reasonable attorney's fees and disbursements), and expenses relating collection and enforcement Note, including all costs and expenses incurred by it in enforcing its rights under the Note and any transaction document entered into contemporaneously herewith.

(d) The failure of Lender to exercise any of its rights hereunder in any particular instance shall not constitute a waiver of the same or of any other right in that or any subsequent instance with respect to Lender or any subsequent holder. **BORROWER ACKNOWLEDGES THAT THE LOAN EVIDENCED BY THIS NOTE IS A COMMERCIAL TRANSACTION. BORROWER FURTHER WAIVES DILIGENCE, DEMAND, PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT, PROTEST AND NOTICE OF PROTEST, AND NOTICE OF ANY RENEWALS OR EXTENSIONS OF THIS NOTE. BORROWER ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY, WITHOUT DURESS AND ONLY AFTER CONSIDERATION OF RAMIFICATION THIS WAIVER WITH ITS ATTORNEYS.** Lender may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. The remedies available to the Lender upon the occurrence of an Event of Default shall be cumulative.

Section 5. Notices. Any and all notices, service of process or other communications or deliveries required or permitted to be given or made pursuant to any of the provisions of this Note shall be deemed to have been duly given or made for all purposes when hand delivered or sent by certified or registered mail, return receipt requested and postage prepaid, overnight mail or courier as follows:

If to Lender, at:

3i, LP  
140 Broadway FL 38  
New York, NY 10005  
Attn: Maier Tarlow, Manager

*Or such other address as may be given to the Borrower from time to time*

If to Borrower, at:

Chromocell Therapeutics Corporation  
671 US 1  
New Brunswick Township, NJ 08902  
Attn: Christian Kopfli, CEO

*Or such other address as may be given to the Lender from time to time*

Section 6. Usury. This Note is hereby expressly limited so that in no event whatsoever, whether by reason of acceleration of maturity of the loan evidenced hereby or otherwise, shall the amount paid or agreed to be paid to the Lender hereunder for the loan, use, forbearance or detention of money exceed that permissible under applicable law. If at any time the performance of any provision of this Note or of any other agreement or instrument entered into in connection with this Note involves a payment exceeding the limit of the interest that may be validly charged for the loan, use, forbearance or detention of money under applicable law, then automatically and retroactively, ipso facto, the obligation to be performed shall be reduced to such limit, it being the specific intent of the Borrower and the Lender that all payments under this Note are to be credited first to interest as permitted by law, but not in excess of (i) the agreed rate of interest set forth herein or therein or (ii) that permitted by law, whichever is the lesser, and the balance toward the reduction of principal. The provision of this Section 6 shall never be superseded or waived and shall control every other provision of this Note and all other agreements and instruments between the Borrower and the Lender entered into in connection with this Note. To the extent permitted by applicable law, Borrower waives any right to assert the defense of usury.



Section 7. Governing Law; Waiver of Jury Trial. This Note and the provisions hereof are to be construed according to and are governed by the laws of the State of Delaware, without regard to principles of conflicts of laws thereof. Borrower agrees that the New York State Supreme Court located in the County of New York, State of New York shall have exclusive jurisdiction in connection with any dispute concerning or arising out of this Note or otherwise relating to the parties relationship. In any action, lawsuit or proceeding brought to enforce or interpret the provisions of this Note and/or arising out of or relating to any dispute between the parties, Lender shall be entitled to recover all of its costs and expenses relating collection and enforcement of this Note (including without limitation, reasonable attorney's fees and disbursements) in addition to any other relief to which Lender may be entitled and all costs of collection, including any legal fees associated with this Note will be paid by the Borrower. Each party agrees that any process or notice to be served or delivered in connection with any action, lawsuit or proceeding brought hereunder may be accomplished in accordance with the notice provisions set forth above or as otherwise provided by applicable law. **BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATING TO THIS NOTE.**

Section 8. Successors and Assigns. Subject to applicable laws, this Note and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors of Borrower and the successors and assigns of Lender.

Section 9. Amendment. This Note may be modified or amended or the provisions hereof waived only with the written consent of Lender and Borrower.

Section 10. Severability. Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Note.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be duly authorized officer and/or such individual borrower as of the date first above indicated.

Chromocell Therapeutics Corporation

By: /s/ Christian Kopfli

Name: Christian Kopfli

Title: Chief Executive Officer

## CHROMOCELL THERAPEUTICS CORPORATION

## Promissory Note

Face Amount: \$175,000.00  
Purchase Price: \$100,000.00

December 6, 2022  
New York, NY

FOR VALUE RECEIVED, the undersigned Chromocell Therapeutics Corporation, a Delaware corporation (the "Borrower"), promises to pay to the order of Todd Davis, its successors or assigns (the "Lender"), ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000) (the "Face Amount") by December 31, 2023 (the "Maturity Date") as provided herein or on such earlier date as this Note is required or permitted to be repaid as provided hereunder.

Section 1. Maturity; Interest. The Face Amount shall be repaid in cash at the Maturity Date; provided, that this Note may be prepaid in whole or in part at any time and from time-to-time upon three (3) prior business days' written notice, without penalty. This Note shall not bear interest except as contemplated in Section 4 below.

Section 2. Repayment. Repayment of the Note in cash may occur as follows: (a) upon the Maturity Date, or, if earlier to occur, (b) upon the closing of an underwritten offering of securities resulting in at least \$15 million in gross proceeds to Borrower, Borrower shall repay, in cash, one hundred percent (100%) of the Face Amount and interest due on this Note outstanding as of the date of repayment. So long as no Event of Default has occurred, such repayment shall satisfy Borrower's obligations pursuant to this Note in full, and this Note shall be of no further force and effect. At the Lender's sole election, the Lender shall have the right but not the obligation to subscribe to the underwritten offering of securities referenced in this Section 2 by presenting this Note in whole or in part to purchase such securities as legal tender therefor on a dollar-for-dollar basis based on the offering price of such securities to the public as set forth in the applicable registration statement.

Section 3. Transferability. This Note and any of the rights granted hereunder are freely transferable or assigned by Lender, in whole or in part, in its sole discretion; provided, there is notice to the Borrower.

Section 4. Event of Default.

(a) In the event that any one of the following events shall occur (whatever the reason and whether it shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body), it shall be deemed an Event of Default:

(i) Any default in the payment of the principal of, interest on or other charges in respect of this Note, as and when the same shall become due and payable;

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(ii) Borrower shall fail to observe or perform any other material covenant, agreement or warranty contained in, or otherwise commit any breach or default of any provision of this Note;

(iii) There shall be a breach of any of the representations and warranties set forth in this Note or any transaction document executed contemporaneously herewith; or

(iv) Borrower, shall commence, or there shall be commenced against Borrower any applicable bankruptcy or insolvency laws as now or hereafter in effect or any successor thereto, or Borrower commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to Borrower or there is commenced against Borrower any such bankruptcy, insolvency or other proceeding which remains undismissed for a period of sixty (60) days; or Borrower is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or Borrower suffers any appointment of any custodian, private or court appointed receiver or the like for it or any substantial part of its property which continues undischarged or unstayed for a period of sixty (60) days; or Borrower makes a general assignment for the benefit of creditors; or Borrower shall fail to pay or shall state that it is unable to pay or shall be liable to pay, its debts as they become due or by any act or failure to act expressly indicate its consent to, approval of or acquiescence in any of the foregoing; or any corporate or other action is taken by the Borrower for the purpose of effecting any of the foregoing.

(b) Upon the occurrence of an Event of Default, the Lender shall give the Borrower notice of such occurrence, at which time the Borrower shall have five (5) business days from receipt of such notice to pay the outstanding amount of the Note in full. In the event that full payment is not made upon the expiry of the five (5) day period, a default penalty equal to two percent (2%) of the Face Amount per month during the period of Default (the “Default Penalty”). Lender may then, at its sole discretion declare the entire then outstanding Face Amount of this Note and the Default Penalty immediately due and payable (a “Default Declaration”), in which event the Lender may, at its sole discretion take any action it deems necessary to recover amounts due under this Note.

(c) Upon the occurrence of an Event of Default, the Lender shall be entitled to receive, in addition to the Face Amount of the Note and the Default Penalty, the Lender shall be entitled to recover all of its costs, fees (including without limitation, reasonable attorney’s fees and disbursements), and expenses relating collection and enforcement Note, including all costs and expenses incurred by it in enforcing its rights under the Note and any transaction document entered into contemporaneously herewith.

(d) The failure of Lender to exercise any of its rights hereunder in any particular instance shall not constitute a waiver of the same or of any other right in that or any subsequent instance with respect to Lender or any subsequent holder. **BORROWER ACKNOWLEDGES THAT THE LOAN EVIDENCED BY THIS NOTE IS A COMMERCIAL TRANSACTION. BORROWER FURTHER WAIVES DILIGENCE, DEMAND, PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT, PROTEST AND NOTICE OF PROTEST, AND NOTICE OF ANY RENEWALS OR EXTENSIONS OF THIS NOTE. BORROWER ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY, WITHOUT DURESS AND ONLY AFTER CONSIDERATION OF RAMIFICATION THIS WAIVER WITH ITS ATTORNEYS.** Lender may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. The remedies available to the Lender upon the occurrence of an Event of Default shall be cumulative.

Section 5. Notices. Any and all notices, service of process or other communications or deliveries required or permitted to be given or made pursuant to any of the provisions of this Note shall be deemed to have been duly given or made for all purposes when hand delivered or sent by certified or registered mail, return receipt requested and postage prepaid, overnight mail or courier as follows:

If to Lender, at:

Todd Davis  
122 Lighthouse Drive  
Jupiter, FL 33469

*Or such other address as may be given to the Borrower from time to time*

If to Borrower, at:

Chromocell Therapeutics Corporation  
4400 Route 9 South, Suite 1000  
Freehold, New Jersey, 07728  
Attn: Christian Kopfli, CEO

*Or such other address as may be given to the Lender from time to time*

Section 6. Usury. This Note is hereby expressly limited so that in no event whatsoever, whether by reason of acceleration of maturity of the loan evidenced hereby or otherwise, shall the amount paid or agreed to be paid to the Lender hereunder for the loan, use, forbearance or detention of money exceed that permissible under applicable law. If at any time the performance of any provision of this Note or of any other agreement or instrument entered into in connection with this Note involves a payment exceeding the limit of the interest that may be validly charged for the loan, use, forbearance or detention of money under applicable law, then automatically and retroactively, ipso facto, the obligation to be performed shall be reduced to such limit, it being the specific intent of the Borrower and the Lender that all payments under this Note are to be credited first to interest as permitted by law, but not in excess of (i) the agreed rate of interest set forth herein or therein or (ii) that permitted by law, whichever is the lesser, and the balance toward the reduction of principal. The provision of this Section 6 shall never be superseded or waived and shall control every other provision of this Note and all other agreements and instruments between the Borrower and the Lender entered into in connection with this Note. To the extent permitted by applicable law, Borrower waives any right to assert the defense of usury.

Section 7. Governing Law; Waiver of Jury Trial. This Note and the provisions hereof are to be construed according to and are governed by the laws of the State of Delaware, without regard to principles of conflicts of laws thereof. Borrower agrees that the New York State Supreme Court located in the County of New York, State of New York shall have exclusive jurisdiction in connection with any dispute concerning or arising out of this Note or otherwise relating to the parties relationship. In any action, lawsuit or proceeding brought to enforce or interpret the provisions of this Note and/or arising out of or relating to any dispute between the parties, Lender shall be entitled to recover all of its costs and expenses relating collection and enforcement of this Note (including without limitation, reasonable attorney's fees and disbursements) in addition to any other relief to which Lender may be entitled and all costs of collection, including any legal fees associated with this Note will be paid by the Borrower. Each party agrees that any process or notice to be served or delivered in connection with any action, lawsuit or proceeding brought hereunder may be accomplished in accordance with the notice provisions set forth above or as otherwise provided by applicable law. **BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATING TO THIS NOTE.**

Section 8. Successors and Assigns. Subject to applicable laws, this Note and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors of Borrower and the successors and assigns of Lender.

Section 9. Amendment. This Note may be modified or amended or the provisions hereof waived only with the written consent of Lender and Borrower.

Section 10. Severability. Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Note.

*SIGNATURE PAGE TO FOLLOW*

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be duly authorized officer and/or such individual borrower as of the date first above indicated.

Chromocell Therapeutics Corporation

By: /s/ Christian Kopfli

Name: Christian Kopfli

Title: Chief Executive Officer

CHROMOCELL THERAPEUTICS CORPORATION  
2023 EQUITY INCENTIVE PLAN

## 1. PURPOSE

The purpose of this 2023 Equity Incentive Plan (the “Plan”) is to encourage key employees, directors, and consultants of Chromocell Therapeutics Corporation (the “Company”) and its Subsidiaries (as defined below) to continue their association with the Company by providing favorable opportunities for them to participate in the ownership of the Company and its Subsidiaries and in its future growth through the granting of equity ownership opportunities and incentives based on the Company’s Common Stock (as defined below) that are intended to align their interests with those of the Company’s stockholders (“Awards”). Each person who is granted an Award under the Plan is deemed a “Participant.”

The term “Subsidiary” as used in the Plan means a corporation, company, partnership or other form of business organization of which the Company owns, directly or indirectly through an unbroken chain of ownership, fifty percent or more of the total combined voting power of all classes of stock or other form of equity ownership or has a significant financial interest, as determined by the Committee (as defined below).

## 2. ADMINISTRATION OF THE PLAN

The Plan shall be administered by the Board of Directors of the Company (the “Board”) or, in the discretion of the Board, a committee or subcommittee of the Board (the “Committee”), appointed by the Board and composed of at least two members of the Board. In the event that a vacancy on the Committee occurs on account of the resignation of a member or the removal of a member by vote of the Board, a successor member shall be appointed by vote of the Board. All references in the Plan to the “Committee” shall be understood to refer to the Committee or the Board, whoever shall administer the Plan.

For so long as Section 16 of the Securities Exchange Act of 1934, as amended and in effect from time to time (the “Exchange Act”), is applicable to the Company, each member of the Committee shall be a “non-employee director” or the equivalent within the meaning of Rule 16b-3 under the Exchange Act.

The Committee shall select one of its members as Chairman and shall hold meetings at such times and places as it may determine. A majority of the Committee shall constitute a quorum, and acts of the Committee at which a quorum is present, or acts reduced to or approved in writing by all the members of the Committee, shall be the valid acts of the Committee. The Committee shall have the authority to adopt, amend, and rescind such rules and regulations as, in its opinion, may be advisable in the administration of the Plan. All questions of interpretation and application of such rules and regulations of the Plan and of Awards granted hereunder shall be subject to the determination of the Committee, which shall be final and binding.



The Committee shall select Participants and determine the terms and conditions of all Awards. The terms of each Award need not be identical, and the Committee need not treat Participants uniformly.

With respect to persons subject to Section 16 of the Exchange Act (“Insiders”), transactions under the Plan are intended to comply with all applicable conditions of Rule 16b-3 or its successor under the Exchange Act. To the extent any provision of the Plan or action by the Committee fails to so comply, it shall be deemed to be modified so as to be in compliance with such Rule or, if such modification is not possible, it shall be deemed to be null and void, to the extent permitted by law and deemed advisable by the Committee.

The Plan shall be administered in such a manner as to permit those options to acquire Common Stock (“Options”) granted hereunder and specially designated under Section 5 as incentive stock options as described in Section 422 (“ISOs”) of the Internal Revenue Code of 1986, as amended (the “Code”), to qualify as such but the Company shall have no liability to a Participant, or any other party, if an Option (or any part thereof) that is intended to be an ISO is not an ISO or if the Company converts an ISO to a nonstatutory (or nonqualified) stock option (an “NSO”).

### 3. STOCK SUBJECT TO THE PLAN

The total number of shares of the Company’s Common Stock, \$0.0001 par value per share (“Common Stock”), that may be subject to an Award under the Plan shall be 3,000,000, from either authorized but unissued shares or treasury shares. Shares of Common Stock underlying Awards that fail to settle, vest or be fully exercised prior to expiration or other termination shall again become available for grant under the terms of the Plan.

Each reference to a number of shares of Common Stock in this Section 3 shall be subject to adjustment in accordance with the provisions of Section 11.

### 4. ELIGIBILITY

The persons who shall be eligible for Awards under the Plan shall be key employees, directors, and other persons who render services of special importance to the management, operation or development of the Company or a Subsidiary, and who have contributed or may be expected to contribute materially to the success of the Company or a Subsidiary. ISOs shall not be granted to any person who is not an employee of the Company or a Subsidiary described in Section 424(e) or Section 424(f) of the Code (an “ISO Subsidiary”).

### 5. TERMS AND CONDITIONS OF OPTIONS

(a) In General. The Committee may grant Awards in the form of Options. Every Option shall be evidenced by an Option agreement in such form as the Committee shall approve from time to time, specifying the number of shares of Common Stock that may be purchased pursuant to the Option, the time or times at which the Option shall become exercisable in whole or in part, whether the Option is intended to be an ISO or an NSO, and such other terms and conditions as the Committee shall approve, and containing or incorporating by reference the terms and conditions set forth in this Section 5.

(b) Duration. The duration of each Option shall be as specified by the Committee in its discretion; *provided, however*, that no ISO shall expire later than ten years from its date of grant, and no ISO granted to an employee who owns (directly or under the attribution rules of Section 424(d) of the Code) stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or any ISO Subsidiary shall expire later than five years from its date of grant.

(c) Exercise Price. The exercise price of each Option shall be not less than the Fair Market Value (as defined below) of Common Stock on the date the Option is granted; *provided, however*, that the exercise price with respect to an ISO granted to an employee who at the time of grant owns (directly or under the attribution rules of Section 424(d) of the Code) stock representing more than ten percent the voting power of all classes of stock of the Company or any ISO Subsidiary shall be at least 110 percent of the Fair Market Value of the Common Stock on the date of grant of the ISO.

For purposes of the Plan and except as may be otherwise explicitly provided in the Plan or in any Award agreement, the Fair Market Value of a share of Common Stock at any particular date shall be determined according to the following rules:

(i) If Common Stock is at the time listed or admitted to trading on any Trading Market, then Fair Market Value shall mean the Closing Price for the Common Stock on such date. The "Closing Price" on any date shall mean the last sale price for the Common Stock, regular way, or, in case no such sale takes place on that day, the average of the closing bid and asked prices, regular way, for the Common Stock, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading with a Trading Market; or

(ii) If the Common Stock is not at the time listed or admitted to trading with a Trading Market, then Fair Market Value shall be determined in good faith by the Board, which may take into consideration (1) the price paid for the Common Stock in the most recent trade of a substantial number of shares known to the Board to have occurred at arm's length between willing and knowledgeable investors, (2) an appraisal by an independent party or (3) any other method of valuation undertaken in good faith by the Board, or some or all of the above as the Board shall in its discretion elect.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American; the Nasdaq Capital Market; the Nasdaq Global Market; the Nasdaq Global Select Market; the New York Stock Exchange; or the OTCQB or OTCQX markets maintained by The OTC Markets Group (or any successors to any of the foregoing).

(d) Method of Exercise. Options may be exercised by delivery to the Company of a notice of exercise in a form, which may be electronic, approved by the Committee, together with payment in full in the manner specified in Section 5(e) of the exercise price for the number of shares for which the Option is exercised. Shares of Common Stock subject to the Option will be delivered by the Company as soon as practicable following exercise and payment of the exercise price. If the Participant fails to pay for or to accept delivery of all or any part of the number of shares specified in the notice upon tender of delivery thereof, the right to exercise the Option with respect to those shares shall be terminated, unless the Committee otherwise agrees.

(e) Payment Upon Exercise. Common Stock purchased upon the exercise of an Option granted under the Plan shall be paid for as follows:

(i) In cash or by check, payable to the order of the Company;

(ii) By payment in cash or by check, payable to the order of the Company, of the par value of the Common Stock to be acquired and by payment of the balance of the exercise price in whole or in part by delivery of the Participant's recourse promissory note, in a form specified by the Committee and to the extent consistent with applicable law, secured by the Common Stock acquired upon exercise of the Option and such other security as the Committee may require;

(iii) Except as may otherwise be provided in the applicable Option agreement or approved by the Committee, in its sole discretion, by (1) delivery of an irrevocable and unconditional undertaking by a creditworthy broker to deliver promptly to the Company sufficient funds to pay the exercise price and any required tax withholding or (2) delivery by the Participant to the Company of a copy of irrevocable and unconditional instructions to a creditworthy broker to deliver promptly to the Company cash or a check sufficient to pay the exercise price and any required tax withholding;

(iv) By delivery (either by actual delivery or attestation) of shares of Common Stock owned by the Participant valued at their Fair Market Value, provided (1) the method of payment is then permitted under applicable law, (2) the Common Stock, if acquired directly from the Company, was owned by the Participant for a minimum period of time, if any, as may be established by the Committee in its sole discretion, and (3) the Common Stock is not subject to any repurchase, forfeiture, unfulfilled vesting or other similar requirements;

(v) In the case of an NSO, by delivery of a notice of "net exercise" to the Company, as a result of which the Participant would receive (1) the number of shares underlying the portion of the Option being exercised less (2) such number of shares as is equal to (A) the aggregate exercise price for the portion of the Option being exercised divided by (B) the value of the Common Stock on the date of exercise and, at the election of the Participant, less (3) such number of shares as is equal in value to the withholding obligation (if any) provided in Section 13(e);

(vi) To the extent permitted by applicable law and provided for in the applicable Option agreement or approved by the Committee in its sole discretion, by payment of such other lawful consideration as the Committee may determine; or

(vii) By any combination of the above permitted forms of payment.

(f) Vesting. An Option may be exercised so long as it is vested and outstanding from time to time, in whole or in part, in the manner and subject to the conditions, including any performance related conditions, that the Committee in its discretion may provide in the Option agreement.

(g) Companion SAR. Options may be awarded in combination with stock appreciation rights (or "SARs"), and such an Award may provide that the Options will not be exercisable unless the related SARs are forfeited.

(h) Notice of ISO Stock Disposition. The Participant must notify the Company promptly in the event that he sells, transfers, exchanges or otherwise disposes of any shares of Common Stock issued upon exercise of an ISO before the later of (i) the second anniversary of the date of grant of the ISO and (ii) the first anniversary of the date the shares were issued upon his exercise of the ISO.

(i) Effect of Cessation of Employment or Service Relationship. The Committee shall determine in its discretion and specify in each Option agreement the effect, if any, of the termination of the Participant's employment or other service relationship upon the exercisability of the Option.

(j) Transferability of Options. An Option shall not be assignable or transferable by the Participant except by will or by the laws of descent and distribution. During the life of the Participant, an Option shall be exercisable only by him, by a conservator or guardian duly appointed for him by reason of his incapacity or by the person appointed by the Participant in a durable power of attorney acceptable to the Company's counsel. Notwithstanding the preceding sentences of this Section 5(j), the Committee may in its discretion permit the Participant of an NSO to transfer the NSO to a member of the Immediate Family (as defined below) of the Participant, to a trust solely for the benefit of the Participant and the Participant's Immediate Family or to a partnership or limited liability company whose only partners or members are the Participant and members of the Participant's Immediate Family. "Immediate Family" shall mean, with respect to any Participant, the Participant's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, and shall include adoptive relationships.

(k) No Rights as Shareholder. A Participant shall have no rights as a shareholder with respect to any shares covered by an Option until becoming the record holder of the shares. No adjustment shall be made for dividends or other rights for which the record date is earlier than the date the certificate is issued, other than as required or permitted pursuant to Section 11.

6. STOCK APPRECIATION RIGHTS

(a) In General. The Committee may grant Awards in the form of SARs, separately or in combination with Options. Every SAR shall be evidenced by an SAR agreement in such form as the Committee shall approve from time to time, specifying the number of shares of Common Stock to which the SAR relates, the time or times at which the SAR shall become exercisable in whole or in part, and such other terms and conditions as the Committee shall approve, and containing or incorporating by reference the terms and conditions set forth in this Section 6.

Upon exercise of an SAR, the Participant shall be entitled to receive from the Company an amount equal to the excess of the Fair Market Value, on the exercise date, of the number of shares of Common Stock as to which the SAR is exercised over the exercise price for those shares under a related Option, or if there is no related Option, over the measurement price stated in the SAR agreement. The amount payable by the Company upon exercise of an SAR shall be paid in the form of cash or other property (including Common Stock of the Company), as provided in the SAR agreement.

(b) Duration. The duration of an SAR shall be as specified by the Committee in its discretion *provided, however*, that no SAR will be granted with a term in excess of ten years.

(c) Measurement Price. The measurement price of each SAR shall be not less than the Fair Market Value of Common Stock on the date the SAR is granted.

(d) Method of Exercise. SARs may be exercised by delivery to the Company of a notice of exercise in a form, which may be electronic, approved by the Committee, together with payment in full in the manner specified in Section 5(e) of the measurement price for the number of shares for which the SAR is exercised. Settlement of the SAR shall be made as soon as practicable following exercise and payment of the measurement price. If the Participant fails to pay for or to accept delivery of all or any part of the number of shares specified in the notice upon tender of delivery thereof, the right to exercise the SAR with respect to those shares shall be terminated, unless the Committee otherwise agrees.

(e) Companion Option. An SAR granted in connection with an Option may be exercised only to the extent of the surrender of the related Option, and to the extent of the exercise of the related Option the SAR shall terminate. Shares of Common Stock covered by an Option that terminates upon the exercise of a related SAR shall cease to be available under the Plan.

7. STOCK AWARDS

(a) Types of Stock Awards.

(i) Restricted Stock and Restricted Stock Units. The Committee may grant Awards in the form of shares of Common Stock, with or without restrictions (with restrictions, "Restricted Stock"), and/or Restricted Stock Units (together, and including Performance Shares and Performance Share Units, each as defined below, "Stock Awards"). Restricted Stock Units are a right to receive shares of Common Stock (or their then Fair Market Value) at a specified future time. Restrictions on Restricted Stock may include the right of the Company to repurchase all or part of the shares at their issue price or other stated or formula price (or to require forfeiture of the shares if issued at no cost) from the Participant in the event that conditions specified by the Committee in the applicable Award agreement are not satisfied prior to the end of the applicable restriction period or periods established by the Committee for the Stock Award.

(ii) Performance Stock and Performance Share Units. The Committee may grant or award shares of Common Stock in the form of Performance Shares and/or Performance Share Units. A Performance Share is an award of shares of Restricted Stock, the vesting of which is based on the satisfaction of applicable Performance Goals (as defined below). A Performance Share Unit is a right to receive shares of Common Stock (or their then Fair Market Value) at a specified future time and based on the satisfaction of applicable Performance Goals.

(iii) Form of Payment. Restricted Stock Units and Performance Share Units shall be paid in cash, shares of Common Stock or a combination of cash and shares of Common Stock as the Committee, in its sole discretion, shall determine at the grant date and as shall be set forth in the applicable Award agreement.

(b) Procedures Relating to Stock Awards. A Restricted Stock agreement, Restricted Stock Unit agreement, Performance Share agreement or Performance Share Unit agreement shall evidence the applicable Award and shall contain such terms and conditions as the Committee shall provide.

A holder of a Stock Award without restrictions, Restricted Stock or Performance Shares shall, subject to the terms of any applicable agreement, have all of the rights of a stockholder of the Company, including the right to vote the shares and (except as provided below) the right to receive any dividends. Certificates representing Restricted Stock or Performance Shares shall be imprinted with a legend to the effect that the shares represented may not be sold, exchanged, transferred, pledged, hypothecated or otherwise disposed of except in accordance with the terms of the applicable agreement. (If shares of Restricted Stock or Performance Shares are held in book entry form, statements evidencing those shares shall include a similar legend.) The Participant shall be required to deposit any stock certificates with an escrow agent designated by the Committee, together with a stock power or other instrument of transfer appropriately endorsed in blank. With respect to such shares, the Committee shall provide that dividends will not be paid with respect to unvested Restricted Stock or Performance Shares until the time (if at all) the Restricted Stock or Performance Shares vest, and the Company will retain such dividends and pay them to the Participant upon vesting.

Except as otherwise provided in this Section 7, Restricted Stock and Performance Shares shall become freely transferable by the Participant after all conditions and restrictions applicable to the shares have been satisfied or lapse (including satisfaction of any applicable tax withholding obligations).

(c) Additional Matters Relating to Restricted Stock Units and Performance Share Units

(i) Delivery. Provided the Participant's employment or service relationship has not terminated as of the end of the applicable Performance Period (as defined below) or at a later date determined by the Committee at the time of grant and set forth in the applicable agreement, a delivery of shares of Common Stock or payment of cash as settlement of a Restricted Stock Unit or Performance Share Unit Award shall occur as soon as administratively practicable following the written determination of the Committee of the satisfaction of the applicable Performance Goals, but in no event later than the fifteenth day of the third month following the close of the year in which the Performance Period ends or, if later, the close of the year specified by the Committee in the applicable agreement. The Committee may, in its sole discretion and at the time of grant, provide for the further deferral of payment in an applicable agreement.

In the case of an Award of Restricted Stock Units not subject to Performance Goals, a delivery of shares of Common Stock or payment of cash as settlement of the Restricted Stock Unit shall occur as of the date specified in the applicable agreement, but in no event later than the fifteenth day of the third month following the close of the year in which vesting under the applicable agreement occurs.

(ii) Dividend Equivalents for Restricted Stock Units and Performance Share Units With respect to each Restricted Stock Unit and Performance Share Unit, the Committee may grant a Dividend Equivalent Unit to any Participant upon such terms and conditions as it may establish. Each Dividend Equivalent Unit will entitle the Participant, at the time of the settlement of the Award, to an additional payment equal to the dividends the Participant would have received if the Participant had been the actual record owner of the underlying Common Stock on each dividend record date prior to settlement. The Dividend Equivalent Unit may be settled in cash, additional shares of Common Stock or a combination thereof.

(d) Restrictions Relating to Stock Awards

(i) In General. The Committee may, in its sole discretion, impose such conditions and/or restrictions on any Stock Award pursuant to this Section 7 as it may deem advisable including, without limitation, a requirement that a Participant pay a stipulated purchase price for each share of Common Stock awarded or underlying a Stock Award, restrictions based upon the achievement of specific Performance Goals, time-based restrictions on vesting, either in lieu of or following the attainment of any Performance Goals, or holding requirements or sale restrictions placed on the Common Stock upon vesting of any Stock Award.

(ii) Satisfaction of Performance Goals. After the applicable period (the "Performance Period") during which the Performance Goals must be met in order to determine the payout and/or vesting of Performance Shares or Performance Share Units has ended, restrictions on Performance Shares will lapse and delivery or payment with respect to Performance Share Units shall be made, in each case based on the partial or full satisfaction of the Performance Goals and any other applicable requirements of the Award. The Committee may, at the time the Performance Shares or Performance Share Units are granted, provide that additional Performance Shares or Performance Share Units may be awarded in the event the applicable Performance Goals are exceeded. The minimum duration of a Performance Period shall be one year, but may be longer, as determined by the Committee at the time the Stock Award is granted.



(iii) Committee Determination. The extent to which Performance Goals are met will be determined solely by the Committee, which determination will establish the amount of Performance Shares and/or Performance Share Units that will be paid out to the Participant and the extent to which any restrictions will lapse.

(e) Definition of Performance Goals. Before twenty-five percent of the Performance Period has elapsed (or within ninety days of a grant date, if earlier), the Committee shall establish the criteria for Performance Goals. Such criteria may be based on any one or more business criteria measured in the aggregate or on a per share basis, as specified by the Committee.

The Committee shall make any adjustments necessary to eliminate the effect on the stated Performance Goals unusual or extraordinary items that could not be reasonably anticipated.

If the Performance Goals are not fully achieved, the Committee may provide in the applicable agreement that less than 100 percent of an Award may be payable but in no event shall the amount of any such Award be increased after it has been established and after twenty-five percent of the Performance Period has elapsed (or more than ninety days from the grant date, if earlier).

(f) Effect of Cessation of Employment or Service Relationship. Each agreement underlying a Stock Award shall set forth the extent to which the Participant shall have the right to retain the Award following termination of the Participant's employment or other service relationship with the Company. Whether any such right shall apply to a particular Award shall be determined in the sole discretion of the Committee.

#### 8. OTHER STOCK-BASED AWARDS

(a) In General. The Committee may grant Awards of other types of equity-based or equity-related awards not otherwise described by the terms of this Plan to Participants in such amounts and upon such terms as the Committee may determine ("Other Awards"). Other Awards may involve the transfer of actual shares of Common Stock to Participants, a payment in cash or a combination of shares and cash.

(b) Procedures Relating to Other Awards. Each Other Award pursuant to this Section 8 shall provide for the payment of a specific amount or range of shares of Common Stock, as determined by the Committee. The Committee may, in its sole discretion, provide that an Other Award pursuant to this Section 8 shall be contingent on the satisfaction of Performance Goals, as provided for in Section 7(c). If the Committee exercises its sole discretion to establish Performance Goals, the number and/or value of Other Awards issued pursuant to this Section 8 will be paid out to the Participant based on the extent to which the Performance Goals are met, all in accordance with Section 7(c).

The Committee shall determine whether an agreement is necessary to evidence an Other Award and any Other Award agreement shall contain such terms and conditions as the Committee shall provide in its sole discretion including, without limitation, a requirement that a Participant pay a stipulated purchase price for each share of Common Stock awarded or underlying an Other Award, restrictions based upon the achievement of specific Performance Goals, time-based restrictions on vesting, either in lieu of or following the attainment of any Performance Goals, or holding requirements or sale restrictions placed on the Common Stock upon vesting of an Other Award.

(c) Delivery of Awards. Provided the Participant's employment or service relationship has not terminated as of the end of the applicable Performance Period, or at a later date as determined by the Committee at the time of grant and set forth in the applicable agreement, a delivery of shares of Common Stock or payment of cash as settlement of an Award pursuant to this Section 8 shall occur upon the written determination of the Committee of the satisfaction of the applicable Performance Goals, but in no event later than the fifteenth day of the third month following the close of the year in which the Performance Period ends or, if later, the close of the year specified by the Committee in the applicable agreement. The Committee may, in its sole discretion and at the time of grant, provide for the further deferral of payment in an applicable agreement.

(d) Effect of Cessation of Employment or Service Relationship. Each Agreement underlying an Other Award pursuant to this Section 8 shall set forth the extent to which the Participant shall have the right to retain the Other Award following termination of the Participant's employment or other service relationship with the Company. Whether any such right shall apply to a particular Other Award shall be determined in the sole discretion of the Committee.

#### 9. AWARDS VOIDABLE

If a person to whom an Award under the Plan has been made fails to execute and deliver to the Committee a related Award agreement within thirty days after it is submitted to him or her, the Award shall be voidable by the Committee at its election, without further notice to the Participant.

#### 10. REQUIREMENTS OF LAW

The Company shall not be required to transfer any Common Stock or to sell or issue any shares upon the exercise or settlement of any Award if the issuance of the shares will result in a violation by the Participant or the Company of any provisions of any law, statute or regulation of any governmental authority. Specifically, in connection with the Securities Act of 1933, as amended (the "Securities Act"), upon the transfer of Common Stock or the exercise of any Option or SAR the Company shall not be required to issue shares unless the Board has received evidence satisfactory to it to the effect that the Participant will not transfer the shares except pursuant to a registration statement in effect under the Securities Act or unless an opinion of counsel satisfactory to the Company has been received by the Company to the effect that such registration is not required. Any determination in this connection by the Board shall be conclusive. The Company shall not be obligated to take any other affirmative action in order to cause the transfer of Common Stock or to sell or issue any shares upon the exercise or settlement of any Award to comply with any law or regulations of any governmental authority, including, without limitation, the Securities Act or applicable state securities laws.

#### 11. CHANGES IN CAPITAL STRUCTURE AND CERTAIN OTHER EVENTS

(a) Changes in Capitalization. In the event of any stock split, reverse stock split, stock dividend, recapitalization, combination of shares, reclassification of shares, spin-off or other similar change in capitalization or event, or any dividend or distribution to holders of Common Stock other than an ordinary cash dividend, (i) the number and class of securities available under the Plan, (ii) the share counting rules set forth in Section 3, (iii) the number and class of securities and exercise price per share of each outstanding Option, (iv) the share and per-share provisions and the measurement price of each outstanding SAR, (v) the number of shares subject to and the repurchase price per share (if any) subject to each outstanding Stock Award, and (vi) the share and per-share-related provisions and the purchase price, if any, of each outstanding Other Award, shall be equitably adjusted (or substituted Awards may be made, if applicable) as the Committee, in its sole discretion, deems appropriate. Without limiting the generality of the foregoing, in the event the Company effects a split of the Common Stock by means of a stock dividend or effects another stock dividend for which an adjustment is made pursuant to this Section 11, and the exercise price of and the number of shares subject to an outstanding Option or SAR are adjusted as of the date of the distribution of the dividend (rather than as of the record date for such dividend), then a Participant who exercises an Option or SAR between the record date and the distribution date for the stock dividend shall be entitled to receive, on the distribution date, the stock dividend with respect to the shares of Common Stock acquired upon the Option or SAR exercise, notwithstanding the fact that such shares were not outstanding as of the close of business on the record date for such stock dividend. Any such adjustment pursuant to this Section 11(a) made by the Committee shall be conclusive and binding upon all affected persons, including the Company and all Participants.

If while Options, SARs or Stock Awards remain outstanding under the Plan the Company merges or consolidates with a wholly-owned subsidiary for the purpose of reincorporating itself under the laws of another jurisdiction or for any other reason, the Participants will be entitled to acquire shares of Common Stock of the surviving company upon the same terms and conditions as were in effect immediately prior to such merger or consolidation (unless such merger or consolidation involves a change in the number of shares or the capitalization of the Company, in which case proportional adjustments shall be made as provided above) and the Plan, unless otherwise rescinded by the Board, will remain the Plan of the surviving company.

(b) Reorganization Events.

(i) Definition. A “Reorganization Event” shall mean: (1) any merger or consolidation of the Company with or into another entity as a result of which all of the Common Stock of the Company is converted into or exchanged for the right to receive cash, securities or other property or is cancelled; (2) any transfer or disposition of all of the Common Stock of the Company for cash, securities or other property pursuant to a share exchange or other transaction; (3) any sale or disposition of all or substantially all of the assets of the Company; or (4) any liquidation or dissolution of the Company.

(ii) Consequences of a Reorganization Event on Awards Other than Restricted Stock or Performance Shares

(1) In connection with a Reorganization Event, the Committee may take any one or more of the following actions as to all or any (or any portion of) outstanding Awards other than Restricted Stock or Performance Shares on such terms as the Committee determines (except to the extent specifically provided otherwise in an applicable Award agreement or another agreement between the Company and the Participant): (A) provide that the Awards shall be assumed, or substantially equivalent Awards shall be substituted, by the acquiring or succeeding entity or an affiliate thereof; (B) upon notice to a Participant, provide that all of the Participant’s unvested and/or unexercised Awards will terminate immediately prior to the consummation of the Reorganization Event unless exercised by the Participant (to the extent then exercisable) within a specified period following the date of such notice; (C) provide that outstanding Awards shall become exercisable, realizable or deliverable, or restrictions applicable to an Award shall lapse, in whole or in part prior to or upon the Reorganization Event; (D) in the event of a Reorganization Event under the terms of which holders of Common Stock will receive upon consummation thereof a cash payment for each share surrendered in the Reorganization Event (the “Acquisition Price”), make or provide for a cash payment to Participants with respect to each Award held by a Participant equal to (I) the number of shares of Common Stock subject to the vested portion of the Award (after giving effect to any acceleration of vesting that occurs upon or immediately prior to such Reorganization Event) multiplied by (II) the excess, if any, of (Y) the Acquisition Price over (Z) the exercise, measurement or purchase price of the Award and any applicable tax withholdings, in exchange for the termination of such Award; (E) provide that, in connection with a liquidation or dissolution of the Company, Awards shall convert into the right to receive liquidation proceeds (if applicable, net of the exercise, measurement or purchase price thereof and any applicable tax withholdings); and (F) any combination of the foregoing. In taking any of the actions permitted under this Section 11(b)(ii), the Committee shall not be obligated by the Plan to treat all Awards, all Awards held by a Participant or all Awards of the same type identically and any adjustment pursuant to this Section 11(b) made by the Committee shall be conclusive and binding upon all affected persons, including the Company and all Participants.

(2) Notwithstanding the terms of Section 11(b)(ii)(1), in the case of outstanding Restricted Stock Units or Performance Share Units that are subject to Section 409A of the Code: (A) if the applicable agreement provides that the Restricted Stock Units or Performance Share Units shall be settled upon a change in control event within the meaning of Treasury Regulation Section 1.409A-3(i)(5), and the Reorganization Event constitutes such a change in control event, then no assumption or substitution shall be permitted pursuant to Section 11(b)(ii)(1)(A) and the Restricted Stock Units or Performance Share Units shall instead be settled in accordance with the terms of the applicable agreement; and (B) the Committee may only undertake the actions set forth in clauses (C), (D) or (E) of Section 11(b)(ii)(1) if the action is permitted or required by Section 409A of the Code and if the Reorganization Event is not a change in control event as so defined or such action is not permitted or required by Section 409A of the Code, and the acquiring or succeeding entity or an affiliate thereof does not assume or substitute the Restricted Stock Units or Performance Share Units pursuant to clause (A) of Section 11(b)(ii)(1), then the unvested Restricted Stock Units or Performance Share Units shall terminate immediately prior to the consummation of the Reorganization Event without any payment in exchange therefor.

(3) For purposes of Section 11(b)(ii)(1)(A), an Award (other than Restricted Stock or Performance Shares) shall be considered assumed if, following consummation of the Reorganization Event, the Award confers the right to purchase or receive pursuant to the terms of the Award, for each share of Common Stock subject to the Award immediately prior to the consummation of the Reorganization Event, the consideration (whether cash, securities or other property) received as a result of the Reorganization Event by holders of Common Stock for each share of Common Stock held immediately prior to the consummation of the Reorganization Event (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Common Stock); *provided, however*, that if the consideration received as a result of the Reorganization Event is not solely common stock of the acquiring or succeeding entity or an affiliate thereof, the Company may, with the consent of the acquiring or succeeding entity or an affiliate thereof, provide for the consideration to be received upon the exercise or settlement of the Award to consist solely of the number of shares of common stock of the acquiring or succeeding entity or an affiliate thereof that the Committee determined to be equivalent in value (as of the date of such determination or another date specified by the Committee) to the per share consideration received by holders of outstanding shares of Common Stock as a result of the Reorganization Event.

(c) Consequences of a Reorganization Event on Restricted Stock or Performance Shares Upon the occurrence of a Reorganization Event other than a liquidation or dissolution of the Company, the repurchase and other rights of the Company with respect to outstanding Restricted Stock or Performance Shares shall inure to the benefit of the Company's successor and shall, unless the Committee determines otherwise, apply to the cash, securities or other property that the Common Stock was converted into or exchanged for pursuant to such Reorganization Event in the same manner and to the same extent as they applied to the Restricted Stock or Performance Shares; *provided, however*, that the Committee may provide for termination or deemed satisfaction of repurchase or other rights under the agreement evidencing any Restricted Stock, Performance Shares or any other agreement between a Participant and the Company, either initially or by amendment. Upon the occurrence of a Reorganization Event involving the liquidation or dissolution of the Company, except to the extent specifically provided to the contrary in the instrument evidencing any Restricted Stock, Performance Shares or any other agreement between a Participant and the Company, all restrictions and conditions on all Restricted Stock then outstanding shall automatically be deemed terminated or satisfied.

## 12. FORFEITURE FOR DISHONESTY

Notwithstanding anything to the contrary in the Plan, if the Board determines, either before or after the end of the employment or service relationship and after full consideration of the facts presented on behalf of the Company, its Subsidiaries and a Participant, that the Participant has (a) been engaged in fraud, embezzlement, theft, commission of a felony or proven (by a third party) dishonesty in the course of his or her employment or other service relationship with the Company and its Subsidiaries that damaged the Company and its Subsidiaries, (b) has disclosed trade secrets or other proprietary information of the Company and its Subsidiaries or (c) has breached the terms of any employment or other agreements with the Company and its Subsidiaries:

(a) The Participant shall forfeit all unexercised Awards and all exercised Awards to the extent that stock certificates, cash or other property, as applicable, have not yet been delivered; and

(b) The Company shall have the right to repurchase all or any part of the shares of Common Stock acquired by the Participant upon the earlier exercise of any Award at a price equal to the amount paid to the Company upon exercise, increased by an amount equal to the interest that would have accrued in the period between the date of exercise and the date of such repurchase upon a debt in the amount of the exercise price, at the prime rate(s) announced from time to time during such period in the Federal Reserve Statistical Release Selected Interest Rates and decreased by any cash dividends received.

The decision of the Board as to the cause of a Participant's discharge and the damage done to the Company shall be final, binding and conclusive. No decision of the Board, however, shall affect in any manner the finality of the discharge of a Participant by the Company.

13. MISCELLANEOUS

(a) Transferability of Awards. Except as otherwise provided herein, Awards shall not be sold, assigned, transferred, pledged or otherwise encumbered by the person to whom they are granted, either voluntarily or by operation of law, except by will or the laws of descent and distribution and, during the life of the Participant, shall be exercisable only by the Participant.

(b) Documentation. Each Award shall be evidenced in such form (written, electronic or otherwise) as the Committee shall determine. Each Award may contain terms and conditions in addition to those set forth in the Plan.

(c) No Guarantee of Employment or Continuation of Service Relationship. Neither the Plan nor any Award agreement shall give an employee or other service provider the right to continue in the employment of or to continue to provide services to the Company or a Subsidiary, or give the Company or a Subsidiary the right to require continued employment or services.

(d) Rounding Conventions. The Committee may, in its sole discretion and taking into account any requirements of the Code, including without limitations Sections 422 through 424 and 409A of the Code, determine the effect of vesting, stock dividend, and any other adjustments on shares and any cash amount payable hereunder, and may provide that no fractional shares will be issued (rounding up or down as determined by the Committee) and that cash amounts be rounded down to the nearest whole cent.

(e) Tax Withholding. To the extent required by law, the Company (or a Subsidiary) shall withhold or cause to be withheld income and other taxes with respect to any income recognized by a Participant by reason of the exercise, vesting or settlement of an Award, and as a condition to the receipt of any Award the Participant shall agree that if the amount payable to him or her by the Company and any Subsidiary in the ordinary course is insufficient to pay such taxes, then he or she shall upon the request of the Company pay to the Company an amount sufficient to satisfy its tax withholding obligations.

Without limiting the foregoing, the Committee may in its discretion permit any Participant's withholding obligation to be paid in whole or in part in the form of shares of Common Stock by withholding from the shares to be issued or by accepting delivery from the Participant of shares already owned by him or her; *provided, however*, that payment of withholding obligation in the form of shares shall not be made with respect to an amount in excess of the minimum required withholding. If payment of withholding taxes is made in whole or in part in shares of Common Stock, the Participant shall deliver to the Company certificates registered in his or her name representing shares of Common Stock legally and beneficially owned by him or her, fully vested and free of all liens, claims, and encumbrances of every kind, duly endorsed or accompanied by stock powers duly endorsed by the record holder of the shares represented by such certificates.

If the Participant is subject to Section 16(a) of the Exchange Act, his or her ability to pay any withholding obligation in the form of shares of Common Stock shall be subject to any additional restrictions as may be necessary to avoid any transaction that might give rise to liability under Section 16(b) of the Exchange Act.

(f) Use of Proceeds. The proceeds from the sale of Common Stock pursuant to Awards shall constitute general funds of the Company.

(g) Awards to Non-United States Persons. Awards may be made to Participants who are foreign nationals or employed outside the United States on such terms and conditions different from those specified in the Plan as the Committee considers necessary or advisable to achieve the purposes of the Plan or to comply with applicable laws. The Board shall have the right to amend the Plan, consistent with its authority to amend the Plan as set forth in Section 14, to obtain favorable tax treatment for Participants or for any other reason the Board considers necessary or advisable to achieve the purposes of the Plan or to comply with applicable laws, and any such amendments shall be evidenced by an Addendum or Subplan to the Plan. The Board may delegate this authority to the Committee.

(h) Governing Law. The granting of Awards and the issuance of Common Stock under the Plan shall be subject to all applicable laws and regulations and to such approvals by any governmental agency or national securities exchanges as may be required. To the extent not preempted by Federal law, the Plan and all agreements hereunder shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

(i) Compliance with Section 409A. It is the intention of the Company that no payment or entitlement pursuant to this Plan will give rise to any adverse tax consequences to any person pursuant to Section 409A of the Code. The Committee shall interpret and apply the Plan to that end, and shall not give effect to any provision therein in a manner that reasonably could be expected to give rise to adverse tax consequences under Section 409A.



14. EFFECTIVE DATE, DURATION, AMENDMENT AND TERMINATION OF PLAN

The Plan shall be effective as of January 10, 2023 if, and only if, the holders of a majority of the outstanding shares of capital stock present, or represented, and entitled to vote thereon (voting as a single class) at a duly held meeting of the shareholders of the Company approve the Plan within twelve months on or after such date. If so approved by the shareholders, the Committee may grant Awards under the Plan from time to time until the close of business on January 9, 2033. The Board may at any time amend the Plan; *provided, however*, that without approval of the Company's shareholders there shall be no: (a) increase in the total number of shares covered by the Plan, except by operation of the provisions of Section 11, or the aggregate number of shares of Common Stock that may be issued to any single person; (b) change in the class of persons eligible to receive Awards under the Plan; or (c) other change in the Plan that requires shareholder approval under applicable law. Except as otherwise provided in the Plan or an Award agreement, no amendment shall adversely affect outstanding Awards without the consent of the Participant. The Plan may be terminated at any time by action of the Board, but any such termination will not terminate Awards then outstanding, without the consent of the Participant.

**CHROMOCELL THERAPEUTICS CORPORATION  
EMPLOYMENT AGREEMENT**

This Employment Agreement (the “Agreement”) is made and entered into this 9<sup>th</sup> day of January, 2023 (the “Effective Date”) by and between Chromocell Therapeutics Corporation (“CTC” or the “Company”) and Christian Kopfli, an individual who resides at 44 Gramercy Park North, New York City, NY (“Executive”). Collectively, the Company and Executive may be referred to herein as the “Parties” or each individually as a “Party.”

**RECITALS**

**WHEREAS**, the Company desires to continue the employment of Executive and Executive desires and is ready, willing and able to be employed by the Company; and

**WHEREAS**, this Agreement clarifies the mutual expectations of the continuing engagement between Executive and the Company.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the Parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows.

1. **Term.** The Company shall employ Executive and Executive accepts full time employment as Chief Executive Officer on the terms and conditions set forth herein. As of the effective date of this Agreement, Executive also serves as Vice-Chairman of CTC’s Board of Directors (the “Board”).

Executive’s employment under this Agreement shall be for an unspecified term (the “Term”) on an “at will” basis. Nothing in the Company’s policies, actions or this Agreement shall be construed to alter the “at will” nature of Executive’s status with the Company, and Executive understands that the Company may terminate Executive’s employment at any time for any reason or for no reason, provided that it is not terminated in violation of state or federal law.

At the beginning of the Term, the Company acknowledges and agrees to Executive’s hybrid remote work arrangement wherein Executive is primarily working from his residence. Company and Executive will agree on a definitive arrangement aligned with the schedules of other Senior Executives of the Company within six months after the IPO (as defined below).

2. **Duties and Responsibilities.** During the Term of this Agreement, Executive shall devote substantially all of his time, energy and skills to the business of the Company. He shall perform his duties as the Board may require from time to time. Executive shall be subject to the duly-issued instructions of the Board regardless of whether he supported each such instruction in his capacity as a Board member. Executive shall work faithfully and to the best of his ability and efforts promoting the business interests of the Company. Executive will discharge his duties at all times in accordance with any and all policies of the Company and will report to, and be subject to the direction of, the Board.

Executive shall not engage in any other business duties or pursuit whatsoever, or directly or indirectly render any services of a business, commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Board except for: (a) boards of directors of private companies and not-for-profit organizations on which Executive currently serves; and (b) other boards of directors to which Executive shall not devote on average more than 5 hours of service per month in the aggregate. For the avoidance of doubt, effective as of the date of an IPO, Executive shall cease to serve as Chief Executive Officer of Chromocell Corporation, but he may continue to serve on the Board of Directors of Chromocell Corporation, including service as its Board chair. For purposes of this Agreement, an "IPO" shall mean the date as of which the Board approves a funded budget with appropriately established milestones subsequent to the effective date of a registration statement on Form S-1 under the Securities Act of 1933, as amended.

The expenditure of reasonable amounts of time for education, charitable or professional activities shall not be deemed a breach of this Agreement if those activities do not materially interfere with the services required under this Agreement. Furthermore, this Agreement shall not be interpreted to prohibit Executive from making passive personal investments if those activities do not materially interfere with the services required under this Agreement and if those investments do not create any conflict of interest with Executive's duties to the Company; provided, however, that Executive may invest in index funds without regard to conflicts of interest.

3. **Compensation and Benefits.**

- (a) *Base Salary.* From September 1, 2022 onward, Executive shall receive a salary (the "Salary") of \$22,916.67 each month, \$5,000.00 per month (but not less than \$1,125.00 per week) of which shall be paid immediately in cash and the balance of which shall be accrued. The amount paid in cash will be subject to deductions for federal, state and local income and employment taxes and other withholdings as required by law. Any amount accrued will (1) be payable at the earliest of (i) 3 days after the IPO, (ii) upon the sale of the Company or (iii) upon liquidation of the Company or (2) become immediately due upon the declaration, voluntary or involuntary, of a bankruptcy action and paid at the time or times permitted by a bankruptcy court and pursuant to a plan termination within the meaning of Treasury Regulation Section 1.409A-3(j)(4)(ix). Company acknowledges that accrued Salary shall be paid in preference to other outstanding liabilities with respect to items (1)(iii) and (2) in the preceding sentence.

Executive's Salary shall be reviewed annually and may be adjusted by the Board in its sole discretion. Within 120 days after the IPO, the Board will retain the services of a compensation consultant to review and assess Executive's compensation package. The Board will consider making adjustments based on the report by the compensation consultant.

Except as otherwise provided above, Executive's Salary shall be paid in accordance with the Company's regular payroll practices and applicable law in effect from time to time.

- (b) *Equity Grant(s)*. As soon as practicable on or after the Effective Date, Executive shall receive an option to acquire 200,000 shares of Company's Common Stock that will vest as follows: 20,000 shares will vest as of October 1, 2022; with 20,000 shares vesting each 3-month anniversary thereafter. The option shall have an exercise price equal to the fair market value of the Company's Common Stock on the date of grant and shall expire on the 10<sup>th</sup> anniversary of the date of grant.
- (c) *Bonus*. Effective for 2023, each January the Board shall, in concert with Executive, establish Company aggregate and Executive performance goals and objectives (the "Goals") for the year. Full achievement of the Goals will result in additional compensation for the year of no less than 50% of the Executive's annualized Salary (the "Bonus"). Each year, any Bonus shall be paid no later than the March 15 following the end of the applicable year. The Board shall, in its sole discretion, determine the final amount payable as Bonus based upon results and performance relative to the Goals, together with such other and further factors as the Board deems relevant. The extent to which performance and other objectives are met will be determined by the Board in its sole discretion and good faith. The Board may increase the Bonus in recognition of performance in excess of performance objectives and any Bonus for 2022 shall be solely at the Board's discretion. Except as otherwise provided in Section 6, no Bonus shall be earned for a year unless the Executive remains employed through the date of payment.
- (d) *Benefits*. Executive shall participate in benefits offered to the Company's other executives. The Company retains the right to modify, in its sole discretion and from time to time, the Company's benefits.
- (e) *Leave/Absence*. Executive shall be entitled to unlimited paid time off, subject to the Company's policy as from time to time amended in its discretion.
- (f) *Out-of-Pocket Expenses*. The Company shall reimburse Executive for all reasonable "out-of-pocket" expenses incurred by Executive in the conduct of the Company's business. Such reimbursement shall be in accordance with applicable policies and procedures.

4. **Compliance with Laws and Policies**. As a Company employee, Executive agrees that he must act in conformity with the law at all times, without exception. Executive will abide by the Company rules, regulations and policies as in effect from time to time, including, but not limited to, any of those uploaded to the "Corporate Governance" section of the Company's website.

5. **D&O Insurance**. The Company will undertake commercially reasonable efforts to bind a policy for directors and officers ("D&O") insurance at the time of an IPO. The Company anticipates standard D&O coverage but cannot make any guarantees until the IPO is completed and the market for coverage has been explored. Any D&O coverage acquired by the Company shall include Executive.

6. **Termination.**

- (a) *Termination for Cause.* If the Agreement is terminated by Company for “Cause” (as defined below) or the Executive terminates other than for Good Reason (as defined below), then (1) the Company shall compensate Executive with a pro rata portion of the Salary (but for the avoidance of doubt not including any Bonus) due for the month in which services are terminated and (2) Executive shall not be entitled to any further compensation for services.
- (b) *Other Termination.* The provisions of this Section 6(b) apply in the event of a termination of this Agreement other than pursuant to Section 6(a) including by Executive for Good Reason. No amount payable under this Section 6(b) shall be paid unless Executive shall execute, deliver and not revoke the Company’s standard release of claims agreement within 60 days of such termination of services, attached hereto as Exhibit A. If the 60-day period referenced in the preceding sentence spans two taxable years, payment shall only commence in the second taxable year.
- (1) The Company will continue payment of Salary at the rate in effect immediately prior to the termination of the Agreement for a period of six months.
  - (2) If and only if the target for any Bonus has been set for the applicable year of termination of services, Executive shall be entitled to receive 50% of the Executive’s annualized Salary, prorated using a 365-day year from January 1 of the year of termination and through the date of termination. Any amount payable pursuant to this Section 6(b)(2) shall be paid no earlier than January 1 nor later than March 15 of the year following the year of termination.
  - (3) Time-based vesting with respect to any outstanding equity awards shall be accelerated by treating the vesting schedule as of the date of termination as the schedule as of such date plus an additional six months of service.
- (c) *Suspension of Payment.* Notwithstanding anything herein to the contrary, if Executive is in material violation of any provision of this Section 6 or Section 7 below, the Company shall have no obligation to make payment(s) under Section 6(b) of this Agreement if the Company has determined in good faith that such a violation(s) has occurred or is occurring. If it is later established through a judicial proceeding that no such violation occurred, the Company shall agree to pay to Executive any such amount withheld from or not paid during such period to the extent consistent with Section 409A (“Section 409A”) of the Internal Revenue Code (the “Code”).

- (d) *No Mitigation.* Executive will be under no obligation to mitigate damages by seeking other employment or service relationships, and there will be no offset against the amounts due Executive under this Agreement, except as specifically provided in Section 6(c) above or for any other claims that the Company may have against Executive and to the extent consistent with Section 409A.
- (e) *Definitions.* For purposes of this Agreement:
- (1) “Cause” means any of the following with respect to Executive: (i) engaging in any acts of fraud, theft or embezzlement involving the Company; (ii) conviction, including any plea of guilty or nolo contendere, of any felony crime that is relevant to Executive’s position(s) with the Company; and (iii) material violation of this Agreement, which is materially damaging to the reputation or business of the Company; provided, however, that prior to terminating Executive for Cause, the Board must, if possible under the given circumstances, first (A) provide notice to Executive specifying in reasonable detail the condition giving rise to Cause for termination no later than the 10<sup>th</sup> day following the occurrence of that condition, (B) provide Executive a period of 20 days to remedy the condition, if subject to remedy, and so specify in the notice and (C) terminate the employment or service relationship for Cause within 10 days following the expiration of the period to remedy if the Executive fails to remedy the condition.
  - (2) “Good Reason” means any of the following with respect to Executive: (i) an involuntary material reduction in Salary; (ii) an involuntary material diminution in authority, duties or responsibilities; (iii) the failure of the Company to obtain or maintain D&O coverage, as described in Section 5; or (iv) the Company’s breach of a material provision of this Agreement, provided, however, that prior to Executive terminating for Good Reason, Executive must, if possible under the given circumstances, first (A) provide notice to the Company specifying in reasonable detail the condition giving rise to termination for Good Reason no later than the 10<sup>th</sup> day following the occurrence of that condition, (B) provide the Company a period of 30 days to remedy the condition, if subject to remedy, and so specify in the notice and (C) terminate the employment or service relationship for Good Reason within 10 days following the expiration of the period to remedy if the Company fails to remedy the condition.
7. **Restrictive Covenants.** The Parties hereby agree as follows.
- (a) *Client of the Company.* For purposes hereof, the term “Client” shall mean any Client of the Company: (1) to whom the Company or any officer, director, member, employee, contractor, affiliate, representative or agent of the Company provided any services or products of any kind; or (2) entities with whom the Company conducts business, including but not limited manufacturers, distributors, firms or marketers of any kind prior to or during the Term.

- (b) *Non-Solicitation.* During the Term of this Agreement and for a period of 12 months after the termination of this Agreement for any reason, whether voluntary or involuntary, Executive shall not on Executive's own behalf or on the behalf of any other person, entity or other third party, directly or indirectly: (1) cause any person to leave their employment with the Company (other than terminating subordinate employees or employees in the course of his duties for the Company); (2) hire, employ or otherwise engage any individual or entity who is an employee, independent contractor or agent of the Company, or solicit or contact any such individual or entity to quit or change such individual's or entity's relationship with the Company; (3) contact, call upon or solicit any of the Clients of the Company for the purpose of (i) providing any services to such entity or (ii) diverting or encouraging such entities or Clients of the Company to discontinue, in whole or in part, all or any portion of their relationship with, and services or products received from the Company; or (4) hire, employ or otherwise engage any individual or entity who is or was, an employee, independent contractor, representative or agent of the Company. Item (4) in the preceding sentence shall not restrict Executive from hiring, employing or otherwise engaging any individual or entity who is or was an employee, independent contractor, representative or agent of the Company so long as the hiring or engagement by Executive does not interfere with that person or entity's service to Company.
- (c) *Proprietary Information.* Executive will have access to information of the Company that the Company considers sensitive, proprietary and/or otherwise confidential (the "Proprietary Information"). Proprietary Information includes, without limitation, trade secrets and similarly protected proprietary, secret and/or confidential information about the Company's business that is not generally known by others with whom the Company competes or does business, or with whom it plans to compete or do business, and any and all information, publicly known in whole or in part or not, which, if disclosed by the Company, would assist in competition against them, including but not limited to (1) the products, services, technical data, methods, processes, know-how, developments, inventions and formulae of the Company, (2) the development, research, testing, marketing and financial activities and strategic plans of the Company, (3) their costs and sources of supply, (4) the identity and special needs of the Clients and prospective clients, customers and portfolio companies of the Company and (5) the vendors, suppliers and other organizations with whom the Company has business relationships and the nature and substance of those relationships. Proprietary Information also includes any confidential or proprietary information that the Company may receive or has received from Clients, prospective clients or business partners with any understanding, express or implied, that the information would not be disclosed. Executive's own compensation does not constitute Proprietary Information. Executive will maintain the confidentiality of all Proprietary Information both before and after the Term except as otherwise specifically instructed by the Company.

- (d) *Non-Competition.* To protect the Company's trade secrets, goodwill and Proprietary Information, Executive agrees that, during the Term of this Agreement and for a period of 12 months after the termination of this Agreement for any reason, whether voluntary or involuntary, Executive shall not directly or indirectly engage (whether such engagement is as an employee, consultant, proprietor, partner, director or otherwise) in any business that competes against the Company by owning, licensing, developing, marketing, manufacturing, producing, selling or distributing products, technologies, therapies or services in any way related to the therapeutic business of the Company, including all patents, pre-clinical and Phase I study results and data, and trade secrets related to the CC8464 compound, transferred by Chromocell Corporation to the Company. It is agreed that ownership of no more than 1% of the outstanding voting stock of a publicly traded corporation shall not constitute a violation of this provision.
- (e) *Reasonable Restrictions.* Executive agrees that the limitations as to time, geographic area and scope of activity to be restricted pursuant to this Agreement are reasonable and are not greater than necessary to protect the goodwill or other business interests of the Company. Executive further agrees that such interests are worthy of protection and that the scope of activity to be restrained as detailed herein is reasonable and is not greater than the hardship Executive may experience by complying with its terms. Executive expressly waives the right to protest the reasonableness of the restrictions contained within this Section 7.

8. **Remedy for Breach.** Executive acknowledges that each Party would be irreparably injured by a violation of this Agreement and agrees that the other Party shall be entitled to an injunction restraining the other Party from any actual or threatened breach of the provisions contained herein or to any other appropriate equitable remedy without any bond or other security being required. The Parties further consent to court enforcement of the specific language of this Agreement. Unless expressly provided otherwise, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

9. **Miscellaneous Provisions.**

- (a) *Governing Law.* This Agreement and the interpretations hereof, shall be governed exclusively by its terms and by the laws of the State of New York, without reference to its principles of conflicts of laws.
- (b) *Withholding.* All amounts payable as compensation shall be subject to deductions for taxes and other withholdings as required by law.



- (c) *Section 409A.* It is the intention of the Parties that no payment or entitlement pursuant to this Agreement will give rise to any adverse tax consequences to any person pursuant to Section 409A and this Agreement shall be interpreted, applied and, to the minimum extent necessary, amended to achieve that intention. It is further intended that payments hereunder satisfy, to the greatest extent possible, the exemption from the application of Section 409A provided under Treasury Regulation Section 1.409A-1(b)(4) (as a “short-term deferral”). To the extent (1) any payments or benefits to which Executive becomes entitled under this Agreement, or under any agreement or plan referenced herein, constitute deferred compensation subject to Section 409A that are payable on “separation from service” (as defined under Section 409A) and (2) Executive is deemed at the time of termination of employment to be a “specified employee” under Section 409A, then such payments shall not be made or commence until the earlier of (i) the date that is immediately following the expiration of the six-month period measured from the date of Executive’s “separation from service” (as defined under Section 409A) from the Company or (ii) the date of Executive’s death following such separation from service. Upon the expiration of the applicable deferral period, any payments that would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this provision shall be paid to Executive (or his estate or legal representative, as applicable) in one lump sum (without interest). Each installment of any payments provided hereunder shall constitute separate “payments” for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii). Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement is determined to be subject to Section 409A, the amount of any such reimbursement or benefit in one calendar year shall not affect any reimbursement or benefit in any other taxable year, in no event shall any such reimbursement or benefit be provided after the last day of the calendar year following the calendar year in which Executive incurred such expense and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit. Any payments to be made under this Agreement upon a termination of employment will only be made upon a “separation from service” (as defined under Section 409A).
- (d) *Notice.* Except as otherwise specified herein, any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if sent by registered mail to the Company at its principal offices or to Executive at the last address provided by Executive in writing with the Company, or via email with read-receipt obtained from the other Party. Either Party may change the relevant address by notifying the other Party of such change in writing at any time. Any such notice shall be effective when received.
- (e) *Survival and Severability.* Provisions of this Agreement, which by their nature and/or terms extend beyond the termination of this Agreement shall continue in effect after termination of this Agreement, regardless of the reason, and whether such termination is voluntary or involuntary. If any provision of this Agreement (or portion thereof) is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision (or portion thereof) of this Agreement that can be given effect without the invalid provision. In such event, all Parties agree that the court making such determination shall have the power to alter or amend such provision so that it shall be enforceable to the maximum extent permitted by law.

- (f) *Waiver of Rights.* Failure or omission by the Company at any time to enforce or require strict or timely compliance with any provision of this Agreement shall not affect or impair that provision in any way or the rights of the Company to avail itself of remedies it may have in respect to any breach of that provision. Any waiver or consent given by the Company shall be effective only as to that instance and will not be construed as a bar to or waiver of any right on any other occasion.
- (g) *Assignment and Successors.* Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party without the prior written consent of the other Party; provided, however, that the Company may, without notice to Executive, (1) assign this Agreement to any entity that acquires all or substantially all of its assets or its business that is the subject hereof or (2) assign this Agreement to any entity that is owned by the Company. The provisions of this Agreement will inure to the benefit of and be binding on the Parties and their respective representatives, successors and assigns. Nothing contained in this Agreement shall be construed, nor is intended to give any rights or benefits to any person or entity, other than to the Company and Executive.
- (h) *Counterparts and Headings.* This Agreement and any amendment hereof may be executed in any number of counterparts and by each Party on a separate counterpart, each of which, when so executed and delivered (which delivery may be via telefax or other electronic means), shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision thereof. Words of any gender used in this Agreement shall be held to include any other gender, and words in the singular shall be held to include the plural when the sense requires.
- (i) *Entire Agreement and Modification.* This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements on this matter. There are no other written or oral agreements, representations or understandings with respect to the subject matter of this Agreement. This Agreement may only be modified by the mutual written and signed agreement of both Parties hereto. No oral statement shall in any manner modify or otherwise affect the terms and conditions set forth herein.
- (j) *Disclaimer Regarding Reporting.* Nothing in this Agreement, any other agreement between the Parties or any Company policy or program prohibits Executive from reporting in good faith possible violations of law or regulations to any governmental agency or governmental entity (including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress and any agency Inspector General) or making other disclosures that are protected under state or federal whistleblower provisions or by any other state or federal law or regulation. Pursuant to the Defend Trade Secrets Act, an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (1) is made (i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Notwithstanding the provisions of Section 7 of this Agreement, Executive does not need prior authorization from the Company to make such reports or disclosures, and Executive is not required to notify the Company that Executive has made such reports or disclosures. Nothing in this Agreement is intended to conflict with the whistleblower provisions of any United States federal, state or local law or regulation, including but not limited to Rule 21F-17 of the Securities Exchange Act of 1934 or Section 1833(b) of the Defend Trade Secrets Act of 2016.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement below.

By: /s/ Christian Kopfli  
Christian Kopfli

Date: January 10, 2023

Chromocell Therapeutics Corporation

By: /s/ Ezra Friedberg

Name: Ezra Friedberg

Title: Member, Board of Directors

Date: January 10, 2023

**CHROMOCELL THERAPEUTICS CORPORATION  
CONSULTANT AGREEMENT**

This Consultant Agreement (the “Agreement”) is made and entered into this 9<sup>th</sup> day of January, 2023 (the “Effective Date”) by and between Chromocell Therapeutics Corporation (“CTC” or the “Company”) and Camden Capital LLC (“Consultant”). Collectively, the Company and Consultant may be referred to herein as the “Parties” or each individually as a “Party.”

**RECITALS**

**WHEREAS**, the Company desires to retain the services of Consultant, and Consultant agrees to provide such services utilizing Francis Knuettel II (“Knuettel”) to satisfy such obligation; and

**WHEREAS**, the Company and Knuettel had executed an agreement dated June 2, 2022 (the “Initial Agreement”) and it is the intent of the Company, Consultant and Knuettel to supersede in its entirety the Initial Agreement, which, upon the full execution and delivery of this Agreement, shall be null and void and shall no longer have any further force or effect; and

**WHEREAS**, this Agreement clarifies the mutual expectations of the continuing engagement between Consultant and the Company.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the Parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows.

1. **Term.** The Company shall retain the services of Consultant on, and Consultant hereby agrees to, the terms and conditions set forth herein. As of the Effective Date, Knuettel also serves as Company’s Chief Financial and Strategy Officer, Treasurer and Secretary, for which positions Knuettel shall not be entitled to any compensation in addition to what is set forth herein.

Consultant’s services under this Agreement shall be for an unspecified term (the “Term”). For the avoidance of doubt, Company may (a) terminate Consultant’s services, subject to the consequences described herein, at any time for any reason or for no reason, provided that such termination does not violate state or federal law and (b) request the immediate resignation of any position in Company maintained by Knuettel.

At the beginning of the Term, the Company acknowledges and agrees to Consultant’s hybrid remote work arrangement wherein Consultant is primarily working remotely. Consultant will agree on a definitive arrangement aligned with the schedules of other senior executives of the Company within six months after the IPO. For purposes of this Agreement, an “IPO” shall mean the date as of which the Board approves a funded budget with appropriately established milestones subsequent to the effective date of a registration statement on Form S-1 under the Securities Act of 1933, as amended.

2. **Duties and Responsibilities.** During the Term of this Agreement, Consultant shall perform such duties as the Chief Executive Officer of the Company (the “CEO”) and/or the Board of Directors of Company (the “Board”) may require. Consultant will discharge its duties at all times in accordance with any and all policies of the Company and applicable law.

The Parties acknowledge and agree that Consultant (and Knuettel) may contemporaneously perform services for other organizations, provided that those activities do not materially interfere with the services required under this Agreement. Furthermore, this Agreement shall not be interpreted to prohibit Consultant (or Knuettel) from making passive personal investments if those activities do not materially interfere with the services required under this Agreement and if those investments do not create any conflict of interest with Consultant’s (or Knuettel’s) duties to the Company; provided, however, that Consultant (and Knuettel) may invest in index funds without regard to conflicts of interest.

3. **Compensation and Benefits.**

- (a) *Base Fee.* From June 6, 2022 through August 31, 2022, Consultant shall accrue a consulting fee (the “Consulting Fee”) of \$10,000.00 each month. As of September 1, 2022, the Consulting Fee shall be increased to \$20,000.00 per month, \$5,000.00 per month (but not less than \$1,125.00 per week) of which shall be paid immediately in cash and the balance of which shall be accrued. Upon the close of the IPO, the Consulting Fee will thereafter be paid in cash on a monthly basis. Any amount accrued will (1) be payable at the earliest of (i) 3 days after the IPO, (ii) upon the sale of the Company or (iii) upon liquidation of the Company or (2) become immediately due upon the declaration, voluntary or involuntary, of a bankruptcy action and paid at the time or times permitted by a bankruptcy court and pursuant to a plan termination within the meaning of Treasury Regulation Section 1.409A-3(j)(4)(ix). Company acknowledges that accrued Consulting Fees shall be paid in preference to other outstanding liabilities with respect to items (1)(iii) and (2) in the preceding sentence.

Within 120 days after the IPO, the Board will retain the services of a compensation consultant to review and assess Consultant’s compensation package. The Board will consider making adjustments based on the report by the compensation consultant.

- (b) *Additional Potential Consulting Fee.* Effective for 2023, each January, the Board shall in concert with Knuettel establish Company aggregate and consultant performance goals and objectives (the “Goals”) for the year. Full achievement of the Goals will result in an additional consulting fee for the year of no less than 50% of the Consultant’s annualized Consulting Fee (the “Potential Additional Consulting Fee”). Each year, any Potential Additional Consulting Fee paid shall be paid no later than the March 15 following the end of the applicable year. The Board shall, in its sole discretion, determine the final amount payable as a Potential Additional Consulting Fee based upon results and performance relative to the Goals, together with such other and further factors as the Board deems relevant. The extent to which performance and other objectives are met will be determined by the Board in its sole discretion and good faith. The Board may increase the Potential Additional Consulting Fee in recognition of performance in excess of performance objectives and any Potential Additional Consulting Fee for 2022 shall be solely at the Board’s discretion. Except as otherwise provided in Section 6, no Potential Additional Consulting Fee shall be earned for a year unless the Consultant is still retained as such through the date of payment.

(c) *Equity Grant(s)*.

- (1) As soon as practicable after the Effective Date, Consultant shall receive an option to acquire 200,000 shares of Company's Common Stock that will vest as follows: 20,000 shares will vest as of October 1, 2022; with 20,000 shares vesting each 3-month anniversary thereafter. The option shall have an exercise price equal to the fair market value of the Company's Common Stock on the date of grant and shall expire on the 10<sup>th</sup> anniversary of the date of grant. If Consultant is terminated within 12 months following a change of control (for purposes of this agreement, the IPO will not be deemed to be a change of control), then all unvested options shall immediately vest.
- (2) As soon as practicable after the Effective Date, Consultant shall also receive an option to acquire 25,000 shares of Company's Common Stock that will be 0% vested on the date of grant and 100% vested upon the sooner of the closing of the IPO or the sale of the Company. The option shall have an exercise price equal to the fair market value of the Company's Common Stock on the date of grant and shall expire on the 10<sup>th</sup> anniversary of the date of grant.
- (3) As soon as practicable after the Effective Date, Consultant shall also receive a restricted stock unit ("RSU") award of 150,000 shares of the Company's Common Stock. The RSU shall vest one (1) day after the first trading window opens after completion of the IPO.
- (4) Consultant shall execute and deliver such agreements and instruments in connection with the above grants as required by the Company's counsel.

- (d) *Benefits.* Neither Consultant nor Knuettel shall be entitled to participate in any benefits offered to the Company's executives. The Parties may at any time have discussions about altering the Consultant's and Knuettel's relationship with the Company including, without limitation, entering into an employment agreement with benefits.

(e) *Out-of-Pocket Expenses.* The Company shall reimburse Consultant for all reasonable “out-of-pocket” expenses incurred by Consultant in the conduct of the Company’s business. Such reimbursement shall be in accordance with applicable policies and procedures.

(f) The Consultant’s entire compensation package will be reviewed by the Board no later than the Summer of 2023 provided an IPO has taken place.

4. **Compliance with Laws and Policies.** Consultant and Knuettel agree that each must act in conformity with the law at all times, without exception. Consultant and Knuettel will abide by the Company rules, regulations and policies as in effect from time to time including, but not limited to, any of those uploaded to the “Corporate Governance” section of the Company’s website.

5. **D&O Insurance.** The Company will undertake commercially reasonable efforts to bind a policy for directors and officers (“D&O”) insurance at the time of an IPO. The Company anticipates standard D&O coverage but cannot make any guarantees until the IPO is completed and the market for coverage has been explored. The Company shall undertake commercially reasonable efforts to acquire D&O coverage that includes both Consultant and Knuettel with respect to such positions with the Company as Consultant and Knuettel shall serve.

6. **Termination.**

(a) *Termination for Cause.* If the Agreement is terminated by Company for “Cause” (as defined below) or the Consultant terminates other than for Good Reason (as defined below), then (1) the Company shall compensate Consultant with a pro rata portion of the Consulting Fee (but for the avoidance of doubt not including any Potential Additional Consulting Fee) due for the month in which services are terminated and (2) Consultant shall not be entitled to any further compensation for services.

(b) *Other Termination.* The provisions of this Section 6(b) apply in the event of a termination of this Agreement other than pursuant to Section 6(a), including by Consultant for Good Reason. No amount payable under this Section 6(b) shall be paid unless each of Consultant and Knuettel execute, deliver and do not revoke the Company’s standard release of claims agreement within 60 days of such termination of services, attached hereto as Exhibit A. If the 60-day period referenced in the preceding sentence spans two taxable years, payment shall only commence in the second taxable year.

(1) The Company will continue payment of Consulting Fees at the rate in effect immediately prior to the termination of the Agreement for a period of six months.

(2) If and only if the target for any Potential Additional Consulting Fee has been set for the applicable year of termination of services, Consultant shall be entitled to receive 50% of the Consultant’s annualized Consulting Fee, prorated using a 365-day year from January 1 of the year of termination and through the date of termination. Any amount payable pursuant to this Section 6(b)(2) shall be paid no earlier than January 1 nor later than March 15 of the year following the year of termination.

- (3) Time-based vesting with respect to any outstanding equity awards shall be accelerated by treating the vesting schedule as of the date of termination as the schedule as of such date plus an additional six months of service.
- (c) *Suspension of Payment.* Notwithstanding anything herein to the contrary, if either Consultant or Knuettel is in material violation of any provision of this Section 6 or Section 7 below, the Company shall have no obligation to make payment(s) under Section 6(b) of this Agreement if the Company has determined in good faith that such a violation(s) has occurred or is occurring. If it is later established through a judicial proceeding that no such violation occurred, the Company shall agree to pay to Consultant any such amount withheld from or not paid during such period to the extent consistent with Section 409A (“Section 409A”) of the Internal Revenue Code (the “Code”).
- (d) *No Mitigation.* Consultant will be under no obligation to mitigate damages by seeking other employment or service relationships, and there will be no offset against the amounts due Consultant under this Agreement, except as specifically provided in Section 6(c) above or for any other claims that the Company may have against Consultant and to the extent consistent with Section 409A.
- (e) *Definitions.* For purposes of this Agreement:
- (1) “Cause” means any of the following with respect to Consultant or Knuettel: (i) engaging in any acts of fraud, theft or embezzlement involving the Company; (ii) conviction, including any plea of guilty or nolo contendere, of any felony crime that is relevant to Consultant’s or Knuettel’s position(s) with the Company; and (iii) material violation of this Agreement, which is materially damaging to the reputation or business of the Company; provided, however, that prior to terminating Consultant for Cause, the Board must, if possible under the given circumstances, first (A) provide notice to Consultant specifying in reasonable detail the condition giving rise to Cause for termination no later than the 10<sup>th</sup> day following the occurrence of that condition, (B) provide Consultant a period of 20 days to remedy the condition, if subject to remedy, and so specify in the notice and (C) terminate the service relationship for Cause within 10 days following the expiration of the period to remedy if the Consultant fails to remedy the condition.
- (2) “Good Reason” means any of the following with respect to Consultant or Knuettel: (i) an involuntary material reduction in Consulting Fees; (ii) an involuntary material diminution in authority, duties or responsibilities; (iii) the failure of the Company to obtain or maintain D&O coverage as to Knuettel, as described in Section 5; or (iv) the Company’s breach of a material provision of this Agreement, provided, however, that prior to Consultant terminating for Good Reason, Consultant must, if possible under the given circumstances, first (A) provide notice to the Company specifying in reasonable detail the condition giving rise to termination for Good Reason no later than the 10<sup>th</sup> day following the occurrence of that condition, (B) provide the Company a period of 30 days to remedy the condition, if subject to remedy, and so specify in the notice and (C) terminate the service relationship for Good Reason within 10 days following the expiration of the period to remedy if the Company fails to remedy the condition.



7. **Restrictive Covenants.** The Parties, including for this purpose Knuettel, hereby agree as follows.

- (a) *Client of the Company.* For purposes hereof, the term “Client” shall mean any Client of the Company: (1) to whom the Company or any officer, director, member, employee, contractor, affiliate, representative or agent of the Company provided any services or products of any kind; or (2) entities with whom the Company conducts business, including but not limited manufacturers, distributors, firms or marketers of any kind prior to or during the Term.
- (b) *Non-Solicitation.* During the Term of this Agreement and for a period of 12 months after the termination of this Agreement for any reason neither Consultant nor Knuettel, on their own behalf or on behalf of any other person, entity or other third party, directly or indirectly, shall: (1) cause any person to leave their employment with the Company (other than terminating subordinate employees or employees in the course of his duties for the Company); (2) hire, employ or otherwise engage any individual or entity who is an employee, independent contractor or agent of the Company, or solicit or contact any such individual or entity to quit or change such individual’s or entity’s relationship with the Company; (3) contact, call upon or solicit any of the Clients of the Company for the purpose of (i) providing any services to such entity or (ii) diverting or encouraging such entities or Clients of the Company to discontinue, in whole or in part, all or any portion of their relationship with, and services or products received from the Company; or (4) hire, employ or otherwise engage any individual or entity who is or was, an employee, independent contractor, representative or agent of the Company. Item (4) in the preceding sentence shall not restrict Consultant or Knuettel from hiring, employing or otherwise engaging any individual or entity who is or was, an employee, independent contractor, representative or agent of the Company so long as the hiring or engagement by Consultant or Knuettel does not interfere with that person or entity’s service to Company.

- (c) *Proprietary Information.* Consultant and Knuettel will have access to information of the Company that the Company considers sensitive, proprietary and/or otherwise confidential (the "Proprietary Information"). Proprietary Information includes, without limitation, trade secrets and similarly protected proprietary, secret and/or confidential information about the Company's business that is not generally known by others with whom the Company competes or does business, or with whom it plans to compete or do business, and any and all information, publicly known in whole or in part or not, which, if disclosed by the Company, would assist in competition against them, including but not limited to (1) the products, services, technical data, methods, processes, know-how, developments, inventions and formulae of the Company, (2) the development, research, testing, marketing and financial activities and strategic plans of the Company, (3) their costs and sources of supply, (4) the identity and special needs of the Clients and prospective clients, customers and portfolio companies of the Company and (5) the vendors, suppliers and other organizations with whom the Company has business relationships and the nature and substance of those relationships. Proprietary Information also includes any confidential or proprietary information that the Company may receive or has received from Clients, prospective clients or business partners with any understanding, express or implied, that the information would not be disclosed. Consulting Fees and other compensation to Consultant for services do not constitute Proprietary Information. Consultant will maintain the confidentiality of all Proprietary Information both before and after the Term except as otherwise specifically instructed by the Company.
- (d) *Non-Competition.* To protect the Company's trade secrets, goodwill and Proprietary Information, Consultant and Knuettel agree that, during the Term of this Agreement and for a period of 12 months after the termination of this Agreement for any reason, whether voluntary or involuntary, Consultant and Knuettel shall not directly or indirectly engage (whether such engagement is as an employee, consultant, proprietor, partner, director or otherwise) in any business that competes against the Company by owning, licensing, developing, marketing, manufacturing, producing, selling or distributing products, technologies, therapies or services in any way related to the therapeutic business of the Company, including all patents, pre-clinical and Phase I study results and data, and trade secrets related to the CC8464 compound, transferred by Chromocell Corporation to the Company. It is agreed that ownership of no more than 1% of the outstanding voting stock of a publicly traded corporation shall not constitute a violation of this provision.
- (e) *Reasonable Restrictions.* Consultant and Knuettel agree that the limitations as to time, geographic area and scope of activity to be restricted pursuant to this Agreement are reasonable and are not greater than necessary to protect the goodwill or other business interests of the Company. Consultant and Knuettel further agree that such interests are worthy of protection and that the scope of activity to be restrained as detailed herein is reasonable and is not greater than the hardship Consultant and Knuettel may experience by complying with its terms. Each of Consultant and Knuettel expressly waive the right to protest the reasonableness of the restrictions contained within this Section 7.

8. **Remedy for Breach.** The Parties acknowledge that another Party may be irreparably injured by a violation of this Agreement and agree that such other Party shall be entitled to an injunction restraining the other Party from any actual or threatened breach of the provisions contained herein or to any other appropriate equitable remedy without any bond or other security being required. Each Party further consents to court enforcement of the specific language of this Agreement. Unless expressly provided otherwise, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

9. **Miscellaneous Provisions.**

- (a) *Governing Law.* This Agreement and the interpretations hereof, shall be governed exclusively by its terms and by the laws of the State of New York, without reference to its principles of conflicts of laws.
- (b) *Withholding.* All amounts payable hereunder that are required to be subject to deduction for taxes and other withholdings shall be so subject. In the event no such withholding is made and as a result the Company incurs any liability, Consultant and Knuettel agree to fully indemnify Company for any such liability.
- (c) *Section 409A.* It is the intention of the Parties that no payment or entitlement pursuant to this Agreement will give rise to any adverse tax consequences to any person pursuant to Section 409A and this Agreement shall be interpreted, applied and, to the minimum extent necessary, amended to achieve that intention. It is further intended that payments hereunder satisfy, to the greatest extent possible, the exemption from the application of Section 409A provided under Treasury Regulation Section 1.409A-1(b)(4) (as a "short-term deferral"). To the extent (1) any payments or benefits to which Consultant becomes entitled under this Agreement, or under any agreement or plan referenced herein, constitute deferred compensation subject to Section 409A that are payable on "separation from service" (as defined under Section 409A) and (2) Consultant or Knuettel is deemed at the time of such termination to be a "specified employee" under Section 409A, then such payments shall not be made or commence until the date that is immediately following the expiration of the six-month period measured from the date of the "separation from service" (as defined under Section 409A) from the Company. Upon the expiration of the applicable deferral period, any payments that would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this provision shall be paid to Consultant in one lump sum (without interest). Each installment of any payments provided hereunder shall constitute separate "payments" for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii). Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement is determined to be subject to Section 409A, the amount of any such reimbursement or benefit in one calendar year shall not affect any reimbursement or benefit in any other taxable year, in no event shall any such reimbursement or benefit be provided after the last day of the calendar year following the calendar year in which Consultant incurred such expense and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit. Any payments to be made under this Agreement upon a termination of employment will only be made upon a "separation from service" (as defined under Section 409A).

- (d) *Notice.* Except as otherwise specified herein, any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if either sent by registered mail to the Company at its principal offices or to Consultant at the last address provided by Consultant in writing with the Company, or via email with read-receipt obtained from the other Party. Either Party may change the relevant address by notifying the other Party of such change in writing at any time. Any such notice shall be effective when received.
- (e) *Survival and Severability.* Provisions of this Agreement, which by their nature and/or terms extend beyond the termination of this Agreement shall continue in effect after termination of this Agreement, regardless of the reason, and whether such termination is voluntary or involuntary. If any provision of this Agreement (or portion thereof) is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision (or portion thereof) of this Agreement that can be given effect without the invalid provision. In such event, all Parties agree that the court making such determination shall have the power to alter or amend such provision so that it shall be enforceable to the maximum extent permitted by law.
- (f) *Waiver of Rights.* Failure or omission by any Party at any time to enforce or require strict or timely compliance with any provision of this Agreement shall not affect or impair that provision in any way or the rights of the that Party to avail itself of remedies it may have in respect to any breach of that provision. Any waiver or consent given by any Party shall be effective only as to that instance and will not be construed as a bar to or waiver of any right on any other occasion.
- (g) *Assignment and Successors.* Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party without the prior written consent of the other Party; provided, however, that the Company may, without notice to Consultant, (1) assign this Agreement to any entity that acquires all or substantially all of its assets or its business that is the subject hereof or (2) assign this Agreement to any entity that is owned by the Company. The provisions of this Agreement will inure to the benefit of and be binding on the Parties and their respective representatives, successors and assigns. Nothing contained in this Agreement shall be construed, nor is intended to give any rights or benefits to any person or entity, other than to the Company, Consultant and Knuettel.

- (h) *Counterparts and Headings.* This Agreement and any amendment hereof may be executed in any number of counterparts and by each Party on a separate counterpart, each of which, when so executed and delivered (which delivery may be via telefax or other electronic means), shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision thereof. Words of any gender used in this Agreement shall be held to include any other gender, and words in the singular shall be held to include the plural when the sense requires.
- (i) *Entire Agreement and Modification.* This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements on this matter. There are no other written or oral agreements, representations or understandings with respect to the subject matter of this Agreement. This Agreement may only be modified by the mutual written and signed agreement of both Parties hereto. No oral statement shall in any manner modify or otherwise affect the terms and conditions set forth herein.
- (j) *Disclaimer Regarding Reporting.* Nothing in this Agreement, any other agreement between the Parties or any Company policy or program prohibits Consultant and Knuettel from reporting in good faith possible violations of law or regulations to any governmental agency or governmental entity (including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress and any agency Inspector General) or making other disclosures that are protected under state or federal whistleblower provisions or by any other state or federal law or regulation. Pursuant to the Defend Trade Secrets Act, an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (1) is made (i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Notwithstanding the provisions of Section 7 of this Agreement, Consultant and Knuettel do not need prior authorization from the Company to make such reports or disclosures, and Consultant and Knuettel are not required to notify the Company that any such report or disclosure has been made. Nothing in this Agreement is intended to conflict with the whistleblower provisions of any United States federal, state or local law or regulation, including but not limited to Rule 21F-17 of the Securities Exchange Act of 1934 or Section 1833(b) of the Defend Trade Secrets Act of 2016.

IN WITNESS WHEREOF, the Parties have executed this Agreement below.

CAMDEN CAPITAL LLC

By: /s/ Francis Knuettel II  
Its: Managing Member

/s/ Francis Knuettel II  
Francis Knuettel II, in his individual capacity as to those provisions that apply to him

Chromocell Therapeutics Corporation

By: /s/ Christian Kopfli  
Name: Christian Kopfli  
Title: Chief Executive Officer

The undersigned hereby guarantees without qualification or limitation the performance of Camden Capital LLC under this Agreement. In this regard, the undersigned shall be acting as a primary obligor and not as a surety.

/s/ Francis Knuettel II  
Francis Knuettel II