

PURE BIOSCIENCE, INC.  
Form DEF 14A  
December 08, 2017

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the**

**Securities Exchange Act of 1934**

**(Amendment No. )**

Filed by the Registrant  Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under § 240.14a-12

**PURE Bioscience, Inc.**

**(Name of Registrant as Specified In Its Charter)**

**Not Applicable**

**(Name of Person(s) Filing Proxy Statement, if other than the Registrant)**

Payment of Filing Fee (Check the appropriate box):

No fee required.

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(1) Title of each class of securities to which transaction applies:

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(3) Filing Party:

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December 8, 2017

Dear Stockholder:

You are cordially invited to attend the 2018 Annual Meeting of Stockholders (the “Annual Meeting”) of PURE Bioscience, Inc. on Thursday, January 17, 2018 at 9:00 a.m. (local time). The Annual Meeting will be held at our corporate offices at 1725 Gillespie Way, El Cajon, California 92020.

We are pleased to take advantage of the rules established by the Securities and Exchange Commission (the “SEC”) that allow companies to furnish proxy materials primarily over the internet. We believe that this will allow us to promptly provide proxy materials to you, while lowering the costs of distribution and reducing the environmental impact of our Annual Meeting.

On December 8, 2017, we mailed to our stockholders (other than those who previously requested electronic or paper delivery) a Notice of Internet Availability of Proxy Materials (the “Notice”) containing instructions on how to access our proxy materials over the internet, including our Proxy Statement and Annual Report to Stockholders for the fiscal year ended July 31, 2017. The Notice also provides instructions on how to vote online or by telephone and includes instructions on how you can receive a paper copy of the proxy materials by mail. If you receive your proxy materials by mail, the Annual Report, the Notice of 2018 Annual Meeting of Stockholders, the Proxy Statement, and a proxy card will be enclosed.

The matters to be acted upon are described in the Notice of 2018 Annual Meeting of Stockholders and Proxy Statement. Following the formal business of the Annual Meeting, we will report on our operations and respond to questions from stockholders.

Whether or not you plan to attend the Annual Meeting, your vote is very important and we encourage you to vote promptly. You may vote by proxy over the internet or by telephone, or, if you received paper copies of the proxy materials by mail, you can also vote by mail by following the instructions on your proxy card. If you attend the Annual Meeting you will, of course, have the right to revoke your proxy and vote your shares in person. If you hold your shares through an account with a brokerage firm, bank or other nominee, please follow the instructions you receive from your brokerage firm, bank or other nominee to vote your shares.

We look forward to seeing you at the Annual Meeting.

Sincerely yours,

*/s/ Henry Lambert*  
**Chief Executive Officer**

**PURE BIOSCIENCE, INC.**

**NOTICE OF 2018 ANNUAL MEETING OF STOCKHOLDERS  
TO BE HELD ON January 17, 2018**

**TO OUR STOCKHOLDERS:**

Our 2018 Annual Meeting of Stockholders (the “Annual Meeting”) of PURE Bioscience, Inc. will be held at our corporate offices at 1725 Gillespie Way, El Cajon, California 92020, on January 17, 2018 at 9:00 a.m., local time, for the following purposes:

1. To elect our seven existing directors to hold office until the next annual meeting and until their respective successors are elected and qualified;
2. To ratify the appointment of Mayer Hoffman McCann P.C. as our independent registered public accounting firm for the fiscal year ending July 31, 2018;
3. To approve, on a non-binding advisory basis, the compensation of our named executive officers, during the fiscal year ended July 31, 2017;
4. To approve the PURE Bioscience, Inc. 2017 Equity Incentive Plan; and
5. To transact such other business as may properly be brought before the meeting or any adjournment or postponement thereof.

Our Board of Directors recommends a vote **FOR** each of the director nominees and **FOR** proposals 2, 3 and 4 listed above. Stockholders of record at the close of business on November 20, 2017 are entitled to notice of, and to vote on, all matters at the Annual Meeting and any reconvened meeting following any adjournments or postponements thereof. For ten days prior to the Annual Meeting, a complete list of stockholders entitled to vote at the Annual Meeting will be available for examination by any stockholder, for any purpose relating to the Annual Meeting, during ordinary business hours at our principal offices located at 1725 Gillespie Way, El Cajon, California 92020.

All stockholders are invited to attend the Annual Meeting in person. Whether or not you expect to attend the Annual Meeting, you are urged to vote or submit your proxy as soon as possible so that your shares can be voted at the Annual Meeting in accordance with your instructions. Telephone and internet voting are available. For specific instructions on voting, please refer to the instructions in the Notice of Internet Availability of Proxy Materials or the proxy card. If you hold your shares through an account with a brokerage firm, bank or other nominee, please follow the instructions you receive from them to vote your shares.

**IMPORTANT NOTICE REGARDING AVAILABILITY OF PROXY MATERIALS FOR THE ANNUAL MEETING:** Our Annual Report on Form 10-K, Notice and Proxy Statement are available electronically at [www.proxydocs.com](http://www.proxydocs.com).

By Order of the Board of Directors

*/s/ Henry Lambert*  
**Chief Executive Officer**

December 8, 2017

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**PURE BIOSCIENCE, INC.**  
**1725 Gillespie Way**  
**El Cajon, California 92020**

**PROXY STATEMENT FOR THE 2018 ANNUAL MEETING OF STOCKHOLDERS  
TO BE HELD ON January 17, 2018**

**GENERAL INFORMATION**

The accompanying proxy is solicited by the Board of Directors of PURE Bioscience, Inc. (the “Board” or “Board of Directors”) to be voted at the 2018 Annual Meeting of Stockholders (the “Meeting” or “Annual Meeting”) to be held on January 17, 2018 at our corporate offices at 1725 Gillespie Way, El Cajon, California 92020 at 9:00 a.m., local time, and any adjournments or postponements thereof. This Proxy Statement and the accompanying proxy are being made available to our stockholders on or about December 8, 2017. References in this proxy statement to “the Company,” “we,” “PURE,” “our,” and “us” are to PURE Bioscience, Inc.

In accordance with the rules of the Securities and Exchange Commission (the “SEC”), we are permitted to furnish proxy materials, including this Proxy Statement and our Annual Report for the fiscal year ended July 31, 2017 (the “Annual Report”) to stockholders by providing access to these documents through the internet instead of mailing printed copies. Most stockholders will not receive printed copies of the proxy materials unless requested. Instead, our Notice of Internet Availability of Proxy Materials provides instructions on how to access and review the proxy materials on the internet. The Notice of Internet Availability of Proxy Materials also provides instructions on how to cast your vote via the internet or by telephone. If you would like to receive a printed or email copy of our proxy materials, please follow the instructions for requesting the materials in the Notice of Internet Availability of Proxy Materials.

**Record Date**

Holders of record of our shares of Common Stock, our only class of issued and outstanding voting securities (the “Common Stock”), at the close of business on November 20, 2017 (the “Record Date”) are entitled to notice of and to vote at the Annual Meeting. On November 20, 2017, 67,931,861 shares of our Common Stock were issued and outstanding.

**Quorum**



The presence, in person or by proxy, of the holders of a majority of the outstanding shares of Common Stock entitled to vote at the Annual Meeting is necessary to constitute a quorum for the transaction of business at the Annual Meeting. Votes for and against, abstentions and “broker non-votes” will each be counted as present for purposes of determining the presence of a quorum.

The Annual Meeting may be adjourned from time to time and at any reconvened meeting, action with respect to the matters specified in this notice may be taken without further notice to stockholders except as required by applicable law and our charter documents.

### **Stockholders of Record**

You are a “stockholder of record” if your shares are registered directly in your name with our transfer agent, Transfer Online, Inc. As a stockholder of record, you have the right to grant your voting proxy directly to the proxies designated by the Company or to vote in person at the Annual Meeting. As of the record date, we had 234 holders of record.

## Shares Held in Street Name

You are deemed to beneficially own your shares in “street name” if your shares are held in an account at a brokerage firm, bank, broker-dealer, trust or other similar organization. If this is the case, you will receive a separate voting instruction form with this Proxy Statement from such organization. As the beneficial owner, you have the right to direct your broker, bank, trustee, or nominee how to vote your shares, and you are also invited to attend the Annual Meeting. If you hold your shares in street name and do not provide voting instructions to your broker, bank, trustee or nominee, your shares will not be voted on any proposals on which such party does not have discretionary authority to vote (a “broker non-vote”), as further described below under the heading “Broker Non-Votes.”

Please note that if your shares are held of record by a broker, bank, trustee or nominee and you wish to vote at the Annual Meeting, you will not be permitted to vote in person unless you first obtain a proxy issued in your name from the record holder.

## Broker Non-Votes

Broker non-votes are shares held in street name by brokers or nominees who are present in person or represented by proxy, but which are not voted on a particular matter because the brokers or nominees do not have discretionary authority with respect to that proposal and they have not received voting instructions from the beneficial owner. Under the rules that govern brokers, brokers have the discretion to vote on routine matters, but not on non-routine matters. Routine matters include the ratification of the appointment of the Company’s independent registered public accountants. The remaining proposals to be considered at the Annual Meeting are considered to be non-routine matters, including the election of directors, the non-binding advisory vote on the compensation of our named executive officers and the approval of the PURE Bioscience, Inc. 2017 Equity Incentive Plan. ***As a result, if you do not provide your broker or nominee with voting instructions on these non-routine matters your shares will not be voted on these proposals.***

## Voting Matters

Stockholders are entitled to cast one vote per share of Common Stock on each matter presented for consideration by the stockholders. A list of stockholders entitled to vote at the Annual Meeting will be available for examination by any stockholder for a proper purpose during normal business hours at the executive offices of the Company for a period of at least 10 days preceding the day of the Annual Meeting.

There are four proposals scheduled to be voted on at the Annual Meeting:

1. To elect our seven existing directors to hold office until the next annual meeting and until their respective successors are elected and qualified;
2. To ratify the appointment of Mayer Hoffman McCann P.C. as our independent registered public accounting firm for the fiscal year ending July 31, 2018;
3. To approve, on a non-binding advisory basis, the compensation of our named executive officers, during the fiscal year ended July 31, 2017; and
4. To approve the PURE Bioscience, Inc. 2017 Equity Incentive Plan, (the "Plan").

Our Board of Directors recommends a vote **FOR** each of the seven director nominees, **FOR** the ratification of the appointment of Mayer Hoffman McCann P.C., **FOR** the approval of the compensation of our named executive officers and **FOR** the approval of the PURE Bioscience, Inc. 2017 Equity Incentive Plan.

We are currently unaware of any matters to be raised at the Annual Meeting other than those referred to in this Proxy Statement. If other matters are properly presented at the Annual Meeting for consideration and you are a stockholder of record and have submitted your proxy, the persons named in your proxy will have the discretion to vote on those matters for you.

## Required Vote

Assuming a quorum is present, either in person or by proxy, the following vote is required for the proposals scheduled to be voted on at the Annual Meeting:

**Election of Directors:** Directors will be elected by a plurality of the votes, which means the seven nominees who receive the greatest number of **FOR** votes will be elected. If you hold your shares through a broker and you do not instruct the broker on how to vote on this proposal, your broker will not have authority to vote your shares. Abstentions and broker non-votes will each be counted as present for purposes of determining the presence of a quorum, but will not have any effect on the outcome of the proposal.

**Ratification of Auditors:** The ratification of the appointment of Mayer Hoffman McCann P.C. as our independent registered public accounting firm for the fiscal year ending July 31, 2017 requires that a majority of the votes cast, whether in person or represented by proxy, are voted **FOR** this proposal. Abstentions will be counted as present for purposes of determining the presence of a quorum, but will have no effect on the outcome of the vote.

**Executive Compensation:** The approval, on a non-binding advisory basis, of the compensation of our named executive officers requires that a majority of the votes cast, whether in person or represented by proxy, are voted **FOR** this proposal. Abstentions and “broker non-votes” will each be counted as present for purposes of determining the presence of a quorum, but will have no effect on the outcome of the vote.

**2017 Equity Incentive Plan:** The approval of the PURE Bioscience, Inc. 2017 Equity Incentive Plan requires a majority of the votes cast, whether in person or represented by proxy, are voted **FOR** this proposal. Abstentions and “broker non-votes” will each be counted as present for purposes of determining the presence of a quorum, but will have no effect on the outcome of the vote.

## Voting Instructions

If you are a stockholder of record, you can vote in the following ways:

**By Internet:** By following the Internet voting instructions included in the Notice of Internet Availability of Proxy Materials or by following the instructions on the proxy card at any time up until 11:59 p.m., Eastern Daylight Time, on January 16, 2018.

**By Telephone:** By following the telephone voting instructions included in the Notice of Internet Availability of Proxy Materials or by following the instructions on the proxy card at any time up until 11:59 p.m., Eastern Daylight Time, on January 16, 2018.

**By Mail:** You may vote by mail by marking, dating and signing your proxy card in accordance with the instructions on it and returning it by mail in the pre-addressed reply envelope provided with the proxy materials. The proxy card must be received prior to the Annual Meeting.

If your shares are held in street name, please follow the separate voting instructions you receive from your broker, bank, trustee or other nominee.

### **Proxies**

All shares represented by a proxy will be voted at the Annual Meeting, and where a stockholder specifies a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specification so made. If a stockholder does not indicate a choice on the proxy card, the shares will be voted in favor of the election of each of the nominees for director contained in this Proxy Statement and in favor of each of the other proposals considered at the Annual Meeting.

If your shares are held by a broker, bank or other stockholder of record, in nominee name or otherwise, exercising fiduciary powers (typically referred to as being held in “street name”), you will receive a separate voting instruction form with your proxy materials. Your broker may vote your shares on the proposal to ratify our independent auditors, but will not be permitted to vote your shares with respect to the election of directors or on any of the other proposals unless you provide instructions as to how to vote your shares. Please note that if your shares are held of record by a broker, bank or nominee and you wish to vote at the meeting, you will not be permitted to vote in person unless you first obtain a proxy issued in your name from the record holder.

### **Multiple Proxies**

If you receive more than one set of proxy materials it generally means you hold shares registered in multiple accounts. To ensure that all your shares are voted, please submit proxies or voting instructions for all of your shares.

### **Proxy Revocation Procedure**

If you are a stockholder of record, you may revoke your proxy: (i) by written notice of revocation mailed to and received by the Secretary of the Company prior to the date of the Annual Meeting, (ii) voting again via the Internet or by telephone at a later time before the closing of those voting facilities at 11:59 p.m. (Eastern) on January 16, 2018, (iii) by executing and delivering to the Secretary a proxy dated as of a later date than a previously executed and delivered proxy (provided, however, that such action must be taken prior to 11:59 p.m. (Eastern Time) on January 16, 2018), or (iv) by attending the Annual Meeting and voting in person. Attendance at the Annual Meeting will not in and of itself revoke a proxy.

### **Solicitation Costs**

The Company will bear the expenses of calling and holding the Annual Meeting and the solicitation of proxies therefor. This proxy statement and the accompanying materials, in addition to being mailed directly to stockholders, will be distributed through brokers, custodians, nominees and other like parties to beneficial owners of shares of Common Stock. The Company will pay reasonable expenses incurred in forwarding the proxy materials to the beneficial owners of shares and in obtaining the written instructions of such beneficial owners. The Company may consider the engagement of a proxy solicitation firm. Our directors, officers and employees may also solicit proxies by mail, telephone and personal contact, but they will not receive any additional compensation for these activities.

### **Voting Results**

We will announce preliminary voting results at the Annual Meeting. We will report final results in a Form 8-K report filed with the SEC.

## **GOVERNANCE OF OUR COMPANY**

### **Overview**

We are committed to maintaining high standards of business conduct and corporate governance, which we believe are fundamental to the overall success of our business, serving our stockholders well and maintaining our integrity in the marketplace. Our Corporate Governance Guidelines and Code of Business Conduct and Ethics, together with our Certificate of Incorporation, Bylaws and the charters of our Board Committees, form the basis for our corporate governance framework. As discussed below, our Board of Directors has established two standing committees to assist it in fulfilling its responsibilities to the Company and its stockholders: the Audit Committee and the Compensation Committee. The Board of Directors performs the functions typically assigned to a Nominating and Corporate Governance Committee.

### **Corporate Governance Guidelines**

Our Corporate Governance Guidelines are designed to ensure effective corporate governance of our Company. Our Corporate Governance Guidelines cover topics including, but not limited to, director qualification criteria, director responsibilities, director compensation, director orientation and continuing education, communications from stockholders to the Board, succession planning and the annual evaluations of the Board and its Committees. Our Corporate Governance Guidelines are reviewed regularly by the Board and revised when appropriate. The full text of our Corporate Governance Guidelines can be found in the “Corporate Governance” section of our website accessible at [www.purebio.com](http://www.purebio.com). A printed copy may also be obtained by any stockholder upon request to our Corporate Secretary.

### **Code of Business Conduct and Ethics**

We have adopted a Code of Business Conduct and Ethics that applies to all of our employees, officers and directors. This Code constitutes a “code of ethics” as defined by the rules of the SEC. This Code also contains “whistle blower” procedures adopted by our Audit Committee regarding the receipt, retention and treatment of complaints related to accounting, internal accounting controls or auditing matters and procedures for confidential anonymous employee complaints related to questionable accounting or auditing matters. Copies of the code may be obtained free of charge from our website, [www.purebio.com](http://www.purebio.com). Any amendments to, or waivers from, a provision of our code of ethics that applies to any of our executive officers will be posted on our website in accordance with the rules of the SEC. Other than as specifically referenced herein, the information contained on, or that can be accessed through, our website is not a part of this proxy statement.

## **Director Independence**

We are not currently listed on any national securities exchange or in an inter-dealer quotation system that has established a standard for independence. However, in evaluating the independence of our members and the composition of the committees of our Board of Directors, our Board utilizes the definition of “independence” as that term is defined by applicable listing standards of the NYSE MKT. As of the date hereof, our Board consists of seven members, four of whom are considered independent as that term is defined by applicable listing standards of the NYSE MKT. Our independent directors include: Messrs. Otis and Lee, Ms. Risi and Dr. Hagen. Dr. Theno, who passed away in June 2017, was considered independent while he served on the Board.

## **Board and Committee Attendance**

During the fiscal year ended July 31, 2017, the Board of Directors met nine times and it took action by unanimous written consent four times. During the fiscal year ended July 31, 2017 our Compensation Committee met three times and our Audit Committee met four times. Each of the directors attended 100% of the meetings of the Board of Directors.



### **Executive Sessions**

Executive sessions of our independent directors are held at each regularly scheduled meeting of our Board and at other times as necessary. The Board's policy is also to hold executive sessions without the presence of management at each regularly scheduled meeting of our Board. Our Board Committees also generally meet in executive session at the end of each committee meeting.

### **Director Attendance at Annual Meeting**

We believe the annual meeting of stockholders provides a good opportunity for our directors to hear any feedback the stockholders may share with the Company at the meeting. As a result, we encourage our directors to attend our annual meeting. We reimburse our directors for the reasonable expenses incurred by them in attending the annual meeting.

### **Executive Sessions**

Executive sessions of our independent directors are held at each regularly scheduled meeting of our Board and at other times as necessary and are chaired by the Chairman of the Board. The Board's policy is to hold executive sessions without the presence of management, including our President and Chief Executive Officer, who is the only non-independent director on the Board. Our Board Committees also generally meet in executive session at the end of each committee meeting.

### **Board Committees**

*Compensation Committee.* The Compensation Committee of the Board of Directors currently consists of Mr. Otis (Chair) and Ms. Risi. Ms. Risi was appointed to the Board and Compensation Committee on July 26, 2017 to replace Dr. David Theno who passed away in June 2017. The functions of the Compensation Committee include the approval of the compensation offered to our executive officers and recommending to the full Board of Directors the compensation to be offered to our directors, including our Chairman. The Board has determined that Mr. Otis and Ms. Risi are each an "independent director" under the listing standards of the NYSE MKT and had previously determined that Dr. Theno was also an "independent director" under the listing standards of the NYSE MKT. In addition, the members of the Compensation Committee (and Dr. Theno while he served on the Board and the Compensation Committee) qualify as a "non-employee director" for purposes of Rule 16b-3 under the Exchange Act and as an "outside director" for purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended. The Compensation Committee is governed by a written charter approved by the Board of Directors, a copy of which is available on our

website at [www.purebio.com](http://www.purebio.com).

*Audit Committee.* The Audit Committee of the Board of Directors, currently consists of Messrs. Cohee (Chair), Lee and Otis. The functions of the Audit Committee include the retention of our independent registered public accounting firm, reviewing and approving the planned scope, proposed fee arrangements and results of the Company's annual audit, reviewing the adequacy of the Company's accounting and financial controls and reviewing the independence of the Company's independent registered public accounting firm. The Board has determined that each of Messrs. Otis and Lee is an "independent director" under the listing standards of the NYSE MKT. Mr. Cohee is not independent because the Company has retained Mr. Cohee to provide financial advisory services to the Company. See "Certain Relationships and Related Transactions" for additional information regarding the Company's retention of Mr. Cohee. The Board determined that it was in the Company's and its stockholders best interests for Mr. Cohee to continue to serve on the audit committee, based on his accounting and financial expertise, until the Board adds additional independent directors. The Board of Directors has also determined that Messrs. Cohee, Lee and Otis are each an "audit committee financial expert" within the applicable definition of the SEC. The Audit Committee is governed by a written charter approved by the Board of Directors, a copy of which is available on our website at [www.purebio.com](http://www.purebio.com).

*Nominating Committee.* The Board has not established a Nominating Committee, and as a result performs the functions typically assigned to a Nominating Committee, including the identification, recruitment and nomination of candidates for the Board and its committees, determining the structure, composition and functioning of the Board and its committees including the reporting channels through which the Board receives information and the quality and timeliness of the information, developing and recommending to the Board corporate governance guidelines applicable to the Company and annually reviewing and recommending changes, as necessary or appropriate, overseeing the annual evaluation of the Board's effectiveness and performance.

## **Board and Committee Effectiveness**

The Board and each of its Committees perform an annual self-assessment to evaluate their effectiveness in fulfilling their obligations. The Board and Committee evaluations cover a wide range of topics, including, among others, the fulfillment of the Board and Committee responsibilities identified in the Corporate Governance Guidelines and charters for each Committee.

## **Board Leadership Structure**

Our Bylaws provide our Board with flexibility to combine or separate the positions of Chairman of the Board and Chief Executive Officer in accordance with its determination that utilizing one or the other structure would be in the best interests of our company. At the current time, Mr. Pfanzelter serves as our Chairman of the Board, and Mr. Lambert serves as our Chief Executive Officer. Our Board believes our leadership structure enhances the accountability of our Chief Executive Officer to the Board and encourages balanced decision making. In addition, the Board believes that this structure provides an environment in which its independent directors are fully informed, have significant input into the content of Board meetings and are able to provide objective and thoughtful oversight of management. Our Board also separated the roles in recognition of the differences in responsibilities. While our Chief Executive Officer is responsible for the day-to-day leadership of the Company and its business operations, the Chairman of the Board provides guidance to the Board, sets the agenda for Board meetings and presides over the meetings of the full Board and the meetings of the Board's non-management directors. The Board Chairman also provides performance feedback on behalf of the Board to our Chief Executive Officer. The Board intends to carefully evaluate from time to time whether our Chief Executive Officer and Chairman positions should remain separate based on what the Board believes is best for the Company and its stockholders.

## **Board Oversight of Risk**

The Board is actively involved in the oversight of risks that could affect the Company. The Board as a whole has responsibility for risk oversight of the Company's risk management policies and procedures, with reviews of certain areas being conducted by the relevant Board committee. The Board satisfies this responsibility through reports by each Committee Chair regarding the Committee's considerations and actions, as well as through regular reports directly from management responsible for oversight of particular risks within the Company. Specifically, the Board committees address the following risk areas:

The Compensation Committee is responsible for overseeing the management of risks related to the Company's executive compensation plans and arrangements.

The Audit Committee discusses with management the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures.

The Board as a whole considers risks related to regulatory and compliance matters as well as risks related to the Company's sales and marketing and research and development initiatives.

The Board encourages management to promote a corporate culture that incorporates risk management into the Company's day-to-day business operations.

### **Stockholder Recommendations for Director Nominees**

In nominating candidates for election as a director, the Board will consider a reasonable number of candidates recommended by a single stockholder who has held over 20% of PURE Bioscience Common Stock for over one year and who satisfies the notice, information and consent provisions set forth in our Bylaws and Corporate Governance Guidelines. Stockholders who wish to recommend a candidate may do so by writing to the Board of Directors in care of the Corporate Secretary, PURE Bioscience, Inc., 1725 Gillespie Way, El Cajon, California 92020. The Board will use the same evaluation process for director nominees recommended by stockholders as it uses for other director nominees. A printed copy of our Bylaws may be obtained by any stockholder upon request to our Corporate Secretary.

## **Identification and Evaluation of Director Nominees**

In evaluating nominees for membership on our Board, our Board applies the Board membership criteria set forth in our Corporate Governance Guidelines. Under these criteria, the Board takes into account many factors, including an individual's business experience and skills (including skills in core areas such as operations, management, technology, accounting and finance, strategic planning and international markets), as well as independence, judgment, knowledge of our business and industry, professional reputation, leadership, integrity and ability to represent the best interests of the Company's stockholders. In addition, the Board also considers the ability to commit sufficient time and attention to the activities of the Board, as well as the absence of any potential conflicts with the Company's interests. The Board does not assign specific weights to particular criteria and no particular criterion is necessarily applicable to all prospective nominees. The Board does not have a formal policy with respect to diversity of nominees. Rather, our Board considers Board membership criteria as a whole and seeks to achieve diversity of occupational and personal backgrounds on the Board.

Our Board regularly assesses the appropriate size of our Board, and whether any vacancies on our Board are expected due to retirement or otherwise. In the event that vacancies are anticipated, or otherwise arise, the Board will consider various potential candidates who may come to the attention of the Board through current Board members, professional search firms, stockholders or other persons. Each candidate brought to the attention of the Board, regardless of who recommended such candidate, is considered on the basis of the criteria set forth in our corporate governance guidelines. As stated above, our Board will consider candidates proposed for nomination by our significant stockholders. Stockholders may propose candidates by submitting the names and supporting information to: Corporate Secretary, PURE Bioscience, Inc., 1725 Gillespie Way, El Cajon, California 92020. Supporting information should include (a) the name and address of the candidate and the proposing stockholder, (b) a comprehensive biography of the candidate and an explanation of why the candidate is qualified to serve as a director taking into account the criteria identified in our corporate governance guidelines, (c) proof of ownership, the class and number of shares, and the length of time that the shares of our voting securities have been beneficially owned by each of the candidate and the proposing stockholder, and (d) a letter signed by the candidate stating his or her willingness to serve, if elected.

## **Communications with the Board of Directors**

The Board desires that the views of stockholders will be heard by the Board, its Committees or individual directors, as applicable, and that appropriate responses will be provided to stockholders on a timely basis. Stockholders wishing to formally communicate with the Board, any Board Committee, the independent directors as a group or any individual director may send communications directly to the Company at PURE Bioscience, Inc., 1725 Gillespie Way, El Cajon, California 92020, Attention: Corporate Secretary. All clearly marked written communications, other than unsolicited advertising or promotional materials, are logged and copied, and forwarded to the director(s) to whom the communication was addressed. Please note that the foregoing communication procedure does not apply to (i) stockholder proposals pursuant to Exchange Act Rule 14a-8 and communications made in connection with such proposals or (ii) service of process or any other notice in a legal proceeding.



**PROPOSAL ONE  
ELECTION OF DIRECTORS**

**Nominees for Director**

Our business is managed under the oversight of our Board of Directors. Our Board has nominated each of our seven (7) existing directors for re-election at the Annual Meeting, including:

<b>Name</b>	<b>Age</b>	<b>Director Since</b>	<b>Position(s) Held</b>
Dave J. Pfanzelter	64	2013	Chairman
Henry R. Lambert	66	2013	Director, Chief Executive Officer
Gary D. Cohee	71	2013	Director
William Otis	60	2013	Director
Tom Y. Lee, CPA	68	2014	Director
Janet Risi Field	57	2017	Director
Elisabeth Hagen M.D.	48	2017	Director

In addition to the information regarding our directors and skills that led our Board to conclude that the individual should serve as a director, we also believe that all of our directors have a reputation for integrity, honesty and adherence to high ethical standards. We believe they each have demonstrated business acumen and an ability to exercise sound judgment, as well as a commitment of service to our company and our Board.

The Board also believes that re-electing our incumbent directors helps to promote stability and continuity. The Board expects that each director will continue to make substantial contributions to the Company by virtue of their familiarity with, and insight into, the Company's business and the Company's business strategy.

All of the nominees have indicated a willingness to continue serving as directors, and the Company has no reason to believe that any nominee will be unavailable or unable to serve. If any of them should decline or be unable to act as a director, the proxy holders will vote for the election of any other person or persons the Board may nominate.

The following sets forth information regarding the business experience of our directors as of November 20, 2017:

**Dave J. Pfanzelter** was appointed as our Chairman on August 13, 2013. He previously served as a director of the Company from February 2013 to July 2013. Mr. Pfanzelter served as senior vice president of Kellogg Company, president of Kellogg's Specialty Channels and president of Kellogg Canada from May 2004 to May 2010, while also serving as part of the Kellogg Executive Committee and Global Leadership Team. Mr. Pfanzelter began his career in the food service industry in 1975 with Oscar Mayer Foods Corporation, serving in several key sales and marketing positions, including director of marketing and national sales manager. In 1995, he was appointed vice president of sales of Kraft Foodservice, representing the combined manufactured brands of Oscar Mayer, General Foods, and Kraft Foods. In 1998, Mr. Pfanzelter joined Keebler, serving as vice president and general manager of the food service division prior to Keebler's acquisition by Kellogg in 2001. Since 1998, Mr. Pfanzelter has been on the board of directors of Doctor's Associates, the parent company of Subway Restaurants, the nation's largest restaurant chain. In February 2012, Mr. Pfanzelter joined the Advisory Board of Wrigley Foods. He also served on the Board of the International Food Service Manufacturer's Association as chairman and member of its executive committee.

Mr. Pfanzelter's qualifications to serve as a director on our Board include his executive leadership experience with leading companies in the food service industry and his prior and current service on the boards of other companies in the food service industry.

**Henry R. Lambert** was appointed to our Board and appointed as our Chief Executive Officer on September 10, 2013. Mr. Lambert is an accomplished food industry and consumer products executive with broad management skills, including strategic planning and business development, go-to-market execution, business integration and food safety. He has over 35 years of food industry experience, having worked at such notable companies as Heublein Inc., RJ Reynolds, Nabisco, Inc. and Pinnacle Foods. Mr. Lambert has served on boards and as a member of various food industry associations, including the International Foodservice Manufacturers Association (IFMA), Institute of Food Technologists and Safe Supply of Affordable Food Everywhere (SSAFE). From 2010 through June 2013, Mr. Lambert served as General Manager of the Global Food and Water Business of Underwriter Laboratories, where he was responsible for the start-up of the company's food safety services business. From 2007 to 2010, Mr. Lambert served as Senior Vice President of Business Development, and then President, of Arrowstream Transportation, Inc., a provider of innovative supply chain management solutions to the foodservice industry whose key customers included Wendy's, Applebee's, Arby's, TGIF, Sysco, and DMA. Mr. Lambert earned his MBA in Finance from the University of Chicago, Booth School of Business, and his BA in Economics (with Honors) from Union College, Schenectady, N.Y.



Mr. Lambert's qualifications to serve as a director on our Board include his service as the Company's Chief Executive Officer, his 36 years of experience in the food industry, his executive leadership experience and his service on the boards of a number of food industry associations.

**Gary D. Cohee** was appointed to our Board on August 13, 2013. He has over 40 years of experience as an investment banker, having started his career in 1973 with Blyth, Eastman Dillon & Co. Since 2004, Mr. Cohee has served as President and CEO of PMB Securities Corp. From 2011 until 2012, Mr. Cohee served on the Advisory Board of Force Fuels, Inc. During his career in the investment banking business, Mr. Cohee worked for a number of investment banking firms, including Bateman Eichler and Paulson Investment Company. Mr. Cohee graduated from California State University-Long Beach in 1968 with a BS degree in Business Administration. He previously served as President of the Long Beach Bond Club, the Southern California Options Society and the Long Beach Century Club.

Mr. Cohee's qualifications to serve as a director on our Board include his 40 years of experience as an investment banker and providing financial advisory services and fundraising advise to public and private companies.

**William Otis** was appointed to our Board on October 8, 2013. Mr. Otis is currently the Executive Vice President of U.S. Packaged Meat Operations for Smithfield Foods. Prior to this role, he was the President and Chief Operating Officer of Patrick Cudahy, LLC and Saratoga Food Specialties. Both companies are food manufacturing companies of the John Morrell Food Group and Smithfield Foods. Mr. Otis began his career in 1980 with Oscar Mayer Foods Corporation serving in operational, finance and marketing positions. In 1995, Mr. Otis joined Patrick Cudahy, serving as Vice President of Sales and Marketing and in 2004 was promoted to President and COO. Mr. Otis also took over the President and COO role at Saratoga Food Specialties in 2012. Mr. Otis earned his Master's Degree in Business Management from the University of Wisconsin-Madison.

Mr. Otis' qualifications to serve as a director on our Board include his executive leadership experience at leading food manufacturing companies and his knowledge of food safety issues.

**Tom Y. Lee, CPA** was appointed to our Board on October 24, 2014. Mr. Lee has served as the Chairman and CEO of Swabplus, Inc., a contract manufacturer of single-dose applicator and formulation OEM products, since 2008. Mr. Lee has experience in manufacturing and selling applicator and formulation OEM products, manufacturing and distributing products in Asia and is experienced in accounting matters. Mr. Lee was formerly audit committee chairman at First Continental Bank (which merged with United Commercial Bank in 2003). Mr. Lee has been an active CPA since 1983 and earned his Master of Science in accounting from California State University Long Beach and his Bachelors in Business Administration from TamKang University in Taipei, Taiwan.

Mr. Lee's qualifications to serve as a director on our Board include his experience in manufacturing and selling applicator and formulation OEM products, his experience with manufacturing and distributing products in Asia and his accounting background and expertise as a CPA. The Board also considered Mr. Lee's commitment to the Company and its technology platform based his investments in the Company's stock.

**Janet Risi Field** was appointed to our Board on July 26, 2017. Ms. Risi currently serves as President and Chief Executive Officer of Independent Purchasing Cooperative ("IPC"), a supply chain management organization, which she founded in 1996. IPC supplies all goods and services to the international fast food company, SUBWAY®. Ms. Risi formed IPC when SUBWAY had 7,000 restaurants, and has served on the SUBWAY Strategic Planning Council, which helped oversee the growth of the brand to over 40,000+ units worldwide. IPC now manages in excess of \$5 billion annually, covering food, packaging, equipment supplies, distribution, Gift and Loyalty card sales and marketing management, and services such as technology implementation. Prior to founding IPC, Ms. Risi was a commodities buyer for Ralston Purina. Ms. Risi also serves on the board of directors for Coral Gables Trust Bank and The Florida House. Ms. Risi received a B.A. in English and a minor in Business from DePauw University.

Ms. Risi's qualifications to serve as a director on our Board include her executive leadership experience at IPC and her knowledge of food safety issues.

**Elisabeth Hagen M.D.** was appointed to our Board on November 2, 2017. Dr. Hagen's wide-ranging food safety experience includes service in various positions at the United States Department of Agriculture (USDA) beginning in 2006 and as a consultant beginning in 2014. From August 2010 until December 2013, Dr. Hagen served as the USDA Under Secretary for Food Safety where she oversaw Food Safety and Inspection Service (FSIS) policies and programs. She also served as Chief Medical Officer for the USDA, where one of her primary focuses sought ways to reduce foodborne illness. Since January 2014, Dr. Hagen has served as a consultant advising a range of companies on food safety strategy, food trends, regulatory issues and crisis management. She serves as Food Safety Advisory Board Member for Chipotle Mexican Grill, Animal Welfare Advisory Board Member for Tyson Foods, and Advisory Board Member, Food Safety, at Yum Brands. Dr. Hagen holds an M.D. from Harvard Medical School and a bachelor's degree from Saint Joseph's University. She is specialty trained in internal medicine and infectious diseases.

Dr. Hagen's qualifications to serve as a director on our Board include her executive leadership at the USDA and her consulting experience in the food safety industry, as well as her educational background.

### **Family Relationships**

There are no family relationships between any of our officers and directors.

### **Compensation Committee Interlocks and Insider Participation.**

None of the members of our Compensation Committee are or have been an officer or employee of us. During fiscal years 2017 and 2016, no member of our Compensation Committee had any relationship with us requiring disclosure under Item 404 of Regulation S-K, except as set forth above, none of our executive officers served on the Compensation Committee (or its equivalent) or board of directors of another entity any of whose executive officers served on our Compensation Committee or board of directors.

### **Vote Required and Board Recommendation**

If a quorum is present, either in person or by proxy, directors will be elected by a plurality of the votes, which means the seven nominees who receive the greatest number of **FOR** votes will be elected. If you hold your shares through a broker and you do not instruct the broker on how to vote on this proposal, your broker will not have authority to vote your shares. Abstentions and broker non-votes will each be counted as present for purposes of determining the presence of a quorum, but will not have any effect on the outcome of the proposal.

If any nominee becomes unavailable for any reason (which event is not anticipated) to serve as a director at the time of the meeting, then the shares represented by such proxy may be voted for such other person as may be determined by the proxy holders, unless a contrary instruction is indicated in the proxy.

Directors are to be elected to hold office until the next annual meeting of stockholders and until their successors are elected and qualified, or their earlier death, resignation or removal.

**THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR AND SOLICITS PROXIES IN FAVOR OF THE NOMINEES LISTED ABOVE (ITEM 1 ON THE PROXY CARD).**

**PROPOSAL TWO**

**RATIFICATION OF APPOINTMENT OF MAYER HOFFMAN MCCANN P.C. AS THE COMPANY'S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

At the Annual Meeting, our stockholders will be asked to ratify the appointment of Mayer Hoffman McCann, P.C. ("Mayer Hoffman") as our independent registered public accounting firm for the fiscal year ending July 31, 2018. Mayer Hoffman has served as the Company's independent registered public accounting firm since September 2007. Our Audit Committee is responsible for approving the engagement of Mayer Hoffman as the Company's independent registered public accounting firm for the year ending July 31, 2018. In the event our stockholders fail to ratify the appointment of Mayer Hoffman, the Audit Committee will reconsider its selection. In addition, even if our stockholders ratify the selection, the Audit Committee in its discretion may direct the appointment of a different independent registered public accounting firm at any time during the year if it believes that a change would be in the best interests of the Company and its stockholders. Mayer Hoffman McCann P.C. leases substantially all its personnel, who work under the control of Mayer Hoffman shareholders, from wholly-owned subsidiaries of CBIZ, Inc., in an alternative practice structure.

The Audit Committee meets with Mayer Hoffman on a quarterly or more frequent basis. At such times, the Audit Committee reviews the services performed by Mayer Hoffman, as well as the fees charged for such services.

A representative of Mayer Hoffman McCann P.C. is expected to be present at the Annual Meeting and will have an opportunity to make a statement if he or she desires. The representative is also expected to be available to respond to appropriate questions from stockholders.

**Fees Billed to the Company by its independent auditors during Fiscal Years 2017 and 2016.**

The following table provides information regarding the fees billed to us by Mayer Hoffman McCann P.C. in the fiscal years ended July 31, 2017 and 2016. All fees described below were approved by the Board or the Audit Committee:

	For the years ended	
	July 31	
	2017	2016
Audit Fees(1)	\$ 183,000	\$ 154,000
Tax Fees(2)	\$ 13,000	12,000
Total Fees(3)	\$ 196,000	\$ 166,000

- Audit Fees include fees for services rendered for the audit and quarterly reviews of our financial statements, (1) including our Annual Report on Form 10-K and our periodic reports, and fees incurred related to the filings of registration statements.
- (2) Tax Fees consist of amounts billed by an affiliate of our independent auditors for services in connection with the preparation of our federal and state tax returns.
- (3) There were no Audit-Related Fees or Other Fees incurred during the fiscal years ended July 31, 2017 and 2016.

### **Pre-Approval Policies and Procedures**

Our Audit Committee's policy is to pre-approve all audit and permissible non-audit services provided by our independent auditors. These services may include audit services, audit-related services, tax services and other services. Pre-approval is generally provided for up to one year and any pre-approval is detailed as to the particular service or category of services. The independent auditor and management are required to periodically report to the Audit Committee regarding the extent of services provided by the independent auditor in accordance with this pre-approval. Any proposed services not included within the list of pre-approved services or any proposed services that will cause the Company to exceed the pre-approved aggregate amount requires specific pre-approval by the Audit Committee. All audit fees and tax fees listed in the table above were approved by the Audit Committee pursuant to its pre-approval policies and procedures.

### **Interest of Certain Persons in Matters to be Acted Upon**

There are no persons who have a direct or indirect substantial interest in the matter described under Proposal 2 above.

### **Vote Required and Board Recommendation**

The ratification of the appointment of Mayer Hoffman McCann P.C. as our independent registered public accounting firm for the fiscal year ending July 31, 2018 requires a majority of the votes cast, whether in person or represented by proxy, to vote **FOR** this proposal. Abstentions will be counted as present for purposes of determining the presence of a quorum, but will have no effect on the outcome of the vote.

Submission of the appointment to stockholder approval is not required. However, if our stockholders fail to ratify the appointment, the Audit Committee will reconsider whether to retain Mayer Hoffman McCann P.C. as our independent auditor or whether to consider the selection of a different firm. Even if the appointment is ratified, the Audit Committee in its discretion may direct the appointment of a different independent auditor at any time during the fiscal year ending July 31, 2018.

**THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR THE RATIFICATION OF MAYER HOFFMAN MCCANN P.C. AS INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE COMPANY FOR THE FISCAL YEAR ENDING JULY 31, 2018 (ITEM 2 ON THE PROXY CARD).**

## **REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS**

The following is the report of the Audit Committee of the Board of Directors of PURE Bioscience, Inc. with respect to PURE Bioscience's audited financial statements for the fiscal year ended July 31, 2017, included in the Company's Annual Report on Form 10-K, filed with the SEC on October 26, 2017. The information contained in this report shall not be deemed to be "soliciting material" or to be "filed" with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the Company specifically incorporates it by reference in such filing.

The Audit Committee of the Board of Directors currently consists of three non-employee directors, including Messrs. Cohee (Chair), Lee and Otis. The Board has determined that each of Messrs. Otis and Lee is an "independent director" under the listing standards of the NYSE MKT.

The Audit Committee oversees our financial reporting process on behalf of the Board of Directors. Management has the responsibility for the financial statements and the reporting process, including internal control systems. Our independent registered public accounting firm, Mayer Hoffman McCann P.C., is responsible for expressing an opinion as to the conformity of our audited financial statements with generally accepted accounting principles.

### **Review with Management**

The Audit Committee reviewed and discussed the audited financial statements with management of the Company.

### **Review and Discussions with Independent Accountants**

The Audit Committee met with Mayer Hoffman to review the financial statements for the fiscal year ended July 31, 2017. The Audit Committee discussed with a representative of Mayer Hoffman the matters required to be discussed by Auditing Standard No. 1301, "Communicating with Audit Committees". In addition, the Audit Committee met with Mayer Hoffman, with and without management present, to discuss the overall scope of Mayer Hoffman's audit, the results of its examinations and the overall quality of the Company's financial reporting. The Audit Committee received the written disclosures and the letter from Mayer Hoffman required by Rule 3526 of the Public Company Accounting Oversight Board, Communication with Audit Committee Concerning Independence, and has discussed with Mayer Hoffman its independence, and satisfied itself as to the independence of Mayer Hoffman. .



**Conclusion**

Based on the above review, discussions, and representations received, the Audit Committee recommended to the Board of Directors that the audited financial statements for the fiscal year ended July 31, 2017 be included in the Company's Annual Report on Form 10-K filed with the SEC.

The Audit Committee of the Board of Directors:

Gary D. Cohee, Chair  
William Otis  
Tom Y. Lee

**PROPOSAL THREE**  
**ADVISORY VOTE ON EXECUTIVE COMPENSATION**

**Background**

Our Board of Directors and Compensation Committee are providing stockholders with the opportunity to cast an advisory vote on the compensation of our named executive officers. This proposal, commonly known as a “Say on Pay” proposal, gives you, as a stockholder, the opportunity to endorse or not endorse our executive compensation program and the compensation paid to our named executive officers as reported in this Proxy Statement.

The Say on Pay vote is advisory, and therefore not binding on the Compensation Committee or the Board. Although the vote is non-binding, the Compensation Committee and the Board will review the voting results, seek to determine the cause or causes of any significant negative voting, and take the voting results into consideration when making future decisions regarding executive compensation.

The Compensation Committee of the Board of Directors, which is comprised solely of independent directors, has the responsibility for evaluating and authorizing the compensation payable to our executive officers. The goal of our executive compensation program is to attract, motivate and retain executives of outstanding ability, performance and potential. To achieve this goal, the Compensation Committee has designed a package that combines competitive base pay, with incentive cash compensation conditioned on the achievement of predetermined annual performance goals and long-term equity awards. The Compensation Committee believes this package encourages employee retention and the creation of stockholder value. Our compensation program also seeks to be internally consistent with differentials commensurate with the scope of a named executive officer’s responsibilities.

**Fiscal Year 2017**

During the fiscal year ended July 31, 2017, our “named executive officers” were (i) Dave J. Pfanzelter, who serves as Chairman of the Board, (ii) Henry R. Lambert, who serves as Chief Executive Officer and (iii) Mark S. Elliott, who serves as Vice President, Finance.

**Elements of Compensation**

Consistent with the size and nature of our Company, our executive compensation program is simple, consisting of a base salary, an annual performance-based cash bonus, long-term equity awards, and eligibility to participate in employee benefit plans that we make available to all of our full-time employees, including group health plan, group term life insurance, and short- and long-term disability benefits.

Taken as a whole, the elements of our compensation package are comparable to those offered by other similarly sized companies in our industry. This allows us to compete in acquiring talent and retaining key executives. Our annual performance-based cash bonuses link executive compensation to the Company's performance and the individual achievements and performance of our executives. Likewise, equity awards align the interests of our named executive officers with those of our stockholders, thereby creating an incentive to build stockholder value and acting as a retention tool.

The Compensation Committee did not retain a compensation consultant during fiscal year 2017 given the Company's cash constraints.

Stockholders are encouraged to read the Executive Compensation section of this Proxy Statement for a more detailed discussion of our compensation program.

### **Base Salary**

Base salaries of our named executive officers depend on their job responsibilities, the market rate of compensation paid by companies in our industry for similar positions, our financial position and cash constraints, and external factors like inflation and the projected strength of the economy. The Compensation Committee reviews the base salaries of our named executive officers at least annually.

The annual base salaries of our named executive officers are reflected in the Summary Compensation Table included in this Proxy Statement.

### **Annual Performance-Based Cash Bonus**

The annual performance-based cash bonus paid to our named executive officers is determined by the Compensation Committee based on the achievement of our corporate goals, weighted by importance, as well as individual goals applicable to the named executive officer's position. Our corporate goals consist of progress on sales and regulatory approval goals for our product offerings as well as on individual goals. The individual goals of our named executive officers are based on the executive's job title and responsibilities. In addition, the Compensation Committee retains discretion to adjust the actual amount of the annual bonus based on our stock performance, our accomplishments determined on a qualitative basis, and the strength of our financial and market position at the end of the fiscal year.

Following the end of each fiscal year, the Compensation Committee is responsible for determining the bonus amount payable to the executive officer based on the Company's and the executive officer's performance against the performance metrics established by the Compensation Committee for the recently completed fiscal year.

Due to the Company's limited financial resources and the Company's performance below the operating plan approved by the Board of Directors, our named executive officers did not receive any cash bonuses for the years ended July 31, 2017 and 2016.

### **Long-Term Incentive Awards**

We grant long-term equity incentives in the form of time-based and performance-based stock options and restricted stock units (RSUs) to our executive officers. The Compensation Committee determined it was in the best interests of the Company and its stockholders to issue both stock options and RSUs to our executive officers in fiscal 2017. The Compensation Committee determined that the long-term nature of RSUs and options provides a meaningful retention incentive, while the issuance of shares upon vesting (and upon exercise with respect to options) encourages our executives to build stockholder value, thereby aligning the interests of our named executive officers with those of our stockholders. The Compensation Committee determines the size of the incentive award based on company performance and the named executive officers past and expected future performance. The Compensation Committee also considered the current stock and equity award holdings of our executive officers prior to the grants.

During the fiscal year ended July 31, 2017, the Compensation Committee authorized the issuance of 1,950,000 stock options and 700,000 RSUs to our named executive officers. Each stock option and RSU represents the right to receive one share of common stock, issuable at the time the stock option vests and the RSUs settle, as set forth in the respective stock option and RSU agreements. The breakdown is as follows:

**Henry R. Lambert Option Awards:** The Board granted Mr. Lambert an award consisting of an option to purchase two hundred thousand (200,000) shares of common stock. The option has a five-year term and vests in four quarterly installments. In addition, the Board granted Mr. Lambert an award consisting of an option to purchase four hundred thousand (400,000) shares of common stock. The option has a ten-year term and vests 25% on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

**Mark S. Elliott Option Award:** The Board granted Mr. Elliott an award consisting of an option to purchase one hundred fifty thousand (150,000) shares of common stock. The option has a five-year term and vests in four quarterly installments.

**Chairman Option Awards:** The Board granted Mr. Pfanzelter an award consisting of an option to purchase two hundred thousand (200,000) shares of common stock. The option has a five-year term and vests in four quarterly installments. In addition, the Board granted Mr. Pfanzelter an award consisting of an option to purchase one million (1,000,000) shares of common stock. The option has a ten-year term and vests 25% on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

**Henry R. Lambert RSU Award:** The Board granted Mr. Lambert an award consisting of two hundred thousand (200,000) RSUs. 25% of the RSUs vest on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

**Chairman RSU Award:** We granted Mr. Pfanzelter an award consisting of five hundred thousand (500,000) RSUs. 25% of the RSUs vest on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

## Miscellaneous

Our named executive officers are eligible to participate in employee benefit plans available to all full-time employees, including group health plan, group term life insurance, and short- and long-term disability benefits. We do not sponsor any defined benefit pension plan, nonqualified defined contribution plan, or deferred compensation plan; nor do we provide post-retirement health coverage for our named executive officers.

## Vote Required

The Board and Compensation Committee believe the Company's executive compensation program uses appropriate structures and sound pay practices that are effective in achieving the Company's core compensation objectives. Accordingly, the Board recommends that you vote in favor of the following resolution:

“RESOLVED, that the stockholders of PURE Bioscience, Inc. hereby approve, on an advisory basis, the compensation of the Company's named executive officers, as disclosed in this proxy statement, under the section entitled “Executive Compensation.”

If a quorum is present, the approval, on a non-binding advisory basis, of the compensation of our named executive officers requires that a majority of the votes cast, whether in person or represented by proxy, are voted **FOR** this proposal. Abstentions and “broker non-votes” will each be counted as present for purposes of determining the presence of a quorum, but will have no effect on the outcome of the vote.

The approval of this proposal is not a condition to the approval of any other proposals submitted to the stockholders.

**THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR THE APPROVAL, ON AN ADVISORY BASIS, OF THE COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS (ITEM 3 ON THE PROXY CARD).**

## PROPOSAL FOUR

### ADOPTION OF THE 2017 EQUITY INCENTIVE PLAN

On October 24, 2017, our Board approved the adoption of the PURE Biosciences, Inc. 2017 Equity Incentive Plan (the “Plan”), subject to stockholder approval, including the reservation of 5,000,000 shares of our common stock for issuance under the Plan. Approval of the Plan will allow us to continue to provide the appropriate equity incentives that are critical to attracting and retaining our directors, officers and key employees.

#### Key Features Designed to Protect Stockholders’ Interests

The Plan’s design reflects our commitment to strong corporate governance and our desire to preserve stockholder value as demonstrated by the following Plan features:

***Independent Administrator.*** The Compensation Committee of our Board, which is comprised solely of independent, non-employee directors, is the Plan administrator.

***No Evergreen Feature.*** The Plan expires by its terms on a specified date. In addition, the maximum number of shares available for issuance under the Plan is fixed and cannot be increased without stockholder approval.

***No Reuse of Shares.*** Shares that are surrendered to us in connection with an incentive award and shares used to pay the tax or exercise price of an award will not become available for future grant or sale under the Plan. Further, to the extent an award under the Plan is paid out in cash rather than shares, the cash payment will result in reducing the number of shares available for issuance under the Plan.

***No Discount Awards; Maximum Term Specified.*** Stock options and stock appreciation rights must have an exercise price or base price no less than the closing price of our common stock on the date the award is granted and a term no longer than ten years’ duration.

***Per-Participant Limits on Awards.*** The Plan limits the size of awards that may be granted during any one year to any one participant.

***Award Design Flexibility.*** Different kinds of awards may be granted under the Plan, giving us the flexibility to design our equity incentives to complement the other elements of compensation and to support our attainment of strategic goals.

***Performance-Based Awards.*** The Plan permits the grant of performance-based stock awards that are payable only upon the attainment of specified performance criteria.



***No Liberal Definition of Change in Control.*** The Plan's definition of a change-in-control transaction provides that any award benefits triggered by such a transaction are contingent upon the actual consummation of the transaction, not merely its approval by our Board or stockholders.

***Repricing and Reloading Prohibited.*** In addition stockholder approval will be required for any repricing, replacement, or buyout of underwater awards and no new awards will be granted automatically upon the exercise or settlement of any outstanding award.

***Ineligibility for Dividends.*** In the event the Company declares a dividend or dividend equivalent payment, participants who hold performance-based awards subject to performance goals will not be eligible to receive any dividend or dividend equivalent unless the applicable performance goals are met and the underlying award vests.

***Clawback.*** All awards granted under the Plan will be subject to any clawback or recoupment policy adopted by the Company, unless otherwise specified in the award agreement or determined by the Plan administrator in its sole discretion.

Currently, there are 560,971 shares of common stock reserved and available for issuance under our 2007 Amended and Restated Equity Incentive Plan (the “2007 Plan”).

In addition, by approving the Plan, our stockholders are approving the material terms necessary for us to grant qualified performance-based awards that are intended to be exempt from the \$1,000,000 limit on deductions for compensation paid to covered employees. These material terms are the employees eligible to receive performance-based awards, the performance criteria on which a performance goal is based, and the maximum number of shares issuable or the amount of cash payable under a performance-based award.

Currently the shares available for issuance and the number of awards outstanding under our 2007 Plan and those outstanding awards granted to service providers outside the 2007 Plan constitute approximately 8,856,000 shares of common stock, which represents 13% of our outstanding common stock as of November 20, 2017. Our directors and officers currently hold options to purchase 4,061,875 shares of common stock and RSUs for 1,650,000 shares of common stock, including awards issued pursuant to the 2007 Plan and awards outside the 2007 Plan. If the proposal is approved by our stockholders, the potential dilution to stockholders would increase by 7% to 20%.

The Company intends to grant equity awards to its eligible executive officers, directors and employees in the ordinary course of business. The Company has no specific plans for future grants of awards other than those granted in the ordinary course of business. The Company performed an analysis based on its current hiring plans and determined that, if the proposed number of shares reserved under the Plan is approved by stockholders at the 2018 Annual Meeting, the Company anticipates it will have enough shares available for future grant under the Plan to last through calendar year 2020. The Company did not retain a compensation consultant to analyze the number of shares to be added to the Plan.

If the Plan is approved by our stockholders at the 2018 Annual Meeting, it will be effective as of January 17, 2018, the date of stockholder approval.

Our Compensation Committee will have full discretion to determine the number of awards to be granted to participants under the Plan, subject to an annual limitation on the total number of awards that may be granted to any one person. No awards have been granted contingent upon stockholder approval of the Plan.

The following is a summary of the principal features of the Plan, as proposed to be adopted, but it is qualified in its entirety by reference to the full text of the Plan, which appears as Appendix A to this Proxy Statement.

### **Background and Purpose of the Plan**

We adopted the Plan to help us attract and retain the best available directors, officers and personnel for positions of substantial responsibility, to provide incentives to individuals who perform services for us, to align the interests of our directors, officers and key employees with the interests of our stockholders, and to promote the success of our business.

### **Shares Available Under the Plan and our 2007 Plan**

Currently, there are 560,971 shares of common stock reserved and available for issuance under the 2007 Plan. 5,000,000 shares of common stock will be reserved for issuance under the Plan, for an aggregate of 5,560,971 shares reserved for issuance under both plans.

If an incentive award granted under the Plan expires, terminates, is unexercised or is forfeited, the shares subject to such award will become available for further awards under the Plan. However, shares that are surrendered to us in connection with an incentive award and shares used to pay the tax or exercise price of an award will not become available for future grant or sale under the Plan. Further, to the extent an award under the Plan is paid out in cash rather than shares, the cash payment will result in reducing the number of shares available for issuance under the Plan. The maximum number of shares subject to awards that may be granted to any individual during any calendar year is 2,000,000 and the maximum aggregate amount of cash that may be paid in cash during any calendar year with respect to awards payable in cash is \$2,000,000.

The number and class of shares of our common stock subject to the Plan, the number and class of shares subject to any numerical limit in the Plan, and the number, price and class of shares subject to awards will be adjusted in the event of any change in our outstanding common stock by reason of any stock dividend, spin-off, split-up, stock split, reverse stock split, recapitalization, reclassification, merger, consolidation, liquidation, business combination or exchange of shares or similar transaction.

## **Administration**

The Compensation Committee of the Board currently administers the Plan (the “Administrator”). Subject to the terms of the Plan, the Compensation Committee has complete authority and discretion to determine the terms of awards under the Plan.

## **Eligibility and Participation**

Participation in the Plan is open to all of our employees and directors and any person (including an advisor) engaged by us to render services to the Company, as the Administrator may select from time to time. As of the date of this Proxy Statement, 5 non-employee directors and approximately 15 employees and other persons rendering services to the Company or any of its affiliates are eligible to participate in the Plan.

## **Grants**

The Plan authorizes the grant to Plan participants of incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock, restricted stock units, performance units, performance shares, and other stock or cash awards intended to comply with Section 162(m) of the Internal Revenue Code (as amended, the “Code”), as described below:

**Stock Options.** Stock options entitle the participant, upon exercise, to purchase a specified number of shares of common stock at a specified price for a specified period of time. The Administrator may grant incentive and/or non-statutory stock options under the Plan. The exercise price for each stock option shall be determined by the Administrator but shall not be less than 100% of the fair market value of our common stock on the date of grant. The “fair market value” means, if our common stock is listed on any established stock exchange or national market system (e.g., NASDAQ or NYSE MKT), the closing sales price of our common stock, or, if our common stock is regularly quoted by a recognized securities dealer, but the selling prices are not reported, the mean between the high bid and low asked prices for our common stock on the day of determination, or in the absence of an established market for our

common stock, or if our common stock is not regularly quoted or does not have sufficient trades or bid prices which would reflect our common stock's actual fair market value, the fair market value of our common stock will be determined in good faith by the Administrator upon the advice of a qualified valuation expert. As of November 30, 2017, the fair market value of a share of our common stock was \$1.05 per share.

Any stock options granted in the form of an incentive stock option will be intended to comply with the requirements of Section 422 of the Code. Only options granted to our employees can qualify for incentive stock option treatment.

Each stock option shall expire at such time as the Administrator shall determine at the time of grant. No stock option shall be exercisable later than the tenth anniversary of its grant. A stock option may be exercised in whole or in installments. A stock option may not be exercisable for a fraction of a share. Shares of common stock purchased upon the exercise of a stock option must be paid for in full at the time of exercise in cash, the cancellation of shares of common stock issuable under the stock option or such other consideration determined by the Administrator.

***Stock Appreciation Rights.*** A stock appreciation right ("SAR") is the right to receive a payment equal to the excess of the fair market value of a specified number of shares of common stock on the date the SAR is exercised over the exercise price of the SAR. The exercise price for each SAR shall not be less than 100% of the fair market value of the common stock on the date of grant, and the term of an SAR shall be no more than ten years from the date of grant. At the discretion of the Administrator, the payment upon an SAR exercise may be in cash, in shares equivalent thereof, or in some combination thereof.

Upon exercise of a SAR, the participant shall be entitled to receive payment from the Company in an amount determined by multiplying the excess of the fair market value of a share of common stock on the date of exercise over the exercise price of the SAR by the number of shares with respect to which the SAR is exercised.

***Restricted Stock and Restricted Stock Units.*** Restricted stock and restricted stock units may be awarded or sold to participants under such terms and conditions as shall be established by the Administrator. Restricted stock and restricted stock units shall be subject to such restrictions as the Administrator determines, including a prohibition against sale, assignment, transfer, pledge or hypothecation, and a requirement that the participant forfeit such shares or units in the event of termination of employment. A restricted stock unit provides a participant the right to receive payment at a future date after the lapse of restrictions or achievement of performance criteria or other conditions determined by the Administrator.

***Performance Stock.*** The Administrator shall designate the participants to whom long-term performance stock/units are to be awarded and determine the number of shares, the length of the performance period and the other vesting terms and conditions of each such award. Each award of performance stock/units shall entitle the participant to a payment in the form of shares/units of common stock upon the attainment of performance criteria and other vesting terms and conditions specified by the Administrator. The Administrator may, in its discretion, make a cash payment equal to the fair market value of shares of common stock otherwise required to be issued to a participant pursuant to a performance stock award.

All awards made under the Plan may be subject to vesting and other contingencies as determined by the Administrator and will be evidenced by agreements approved by the Administrator which set forth the terms and conditions of each award.

If performance stock/units are intended to qualify as performance-based compensation under Section 162(m) of the Code, the award must specify a predetermined amount of cash or shares that may be earned by the covered employee to the extent that one or more of the following predetermined performance criteria are attained within a predetermined performance period: (i) earnings per share; (ii) operating cash flow; (iii) operating income; (iv) profit after-tax; (v) profit before-tax; (vi) return on assets; (vii) return on equity; (viii) return on sales; (ix) revenue; (x) total shareholder return; (xi) return on capital, including but not limited to return on invested capital against a weighted average cost of capital; (xii) return on net assets; (xiii) economic value added; (xiv) market share; (xv) customer service; (xvi) customer satisfaction; (xvii) safety; (xviii) total stockholder return; (xix) free cash flow; (xx) net operating income; (xxi) operating cash flow; (xxii) return on investment; (xxiii) employee satisfaction; (xxiv) employee retention; (xxv) balance of cash, cash equivalents and marketable securities; (xxvi) product development; (xxvii) research and development expenses; (xxviii) completion of an identified special project; (xxix) completion of a joint venture or other corporate transaction; (xxx) filing of patents; (xxxi) submission and/or publication of scientific works; (xxxii) execution or expansion of strategic partnerships or relationships; or (xxxiii) such other measures as determined by the Compensation Committee consistent with the terms of the Plan.

Performance criteria may be expressed on an absolute basis or relative to a standard specified by the Compensation Committee. Performance criteria have the same meanings as used in our financial statements, or, if such terms are not used in our financial statements, they shall have the meaning applied pursuant to generally accepted accounting principles, or as used generally in our industry. Performance criteria are calculated with respect to the Company and each subsidiary corporation consolidated therewith for financial reporting purposes or such division or other business unit as may be selected by the Compensation Committee. For purposes of the Plan, the performance criteria applicable to an award of performance stock/units is calculated in accordance with generally accepted accounting principles, but prior to the accrual or payment of any award of performance stock/units for the same performance period and excluding the effect (whether positive or negative) of any change in accounting standards or any extraordinary, unusual or nonrecurring item, as determined by the Compensation Committee, occurring after the establishment of the performance criteria applicable to the award of performance stock/units. Each such adjustment, if any, is made solely for the purpose of providing a consistent basis from period to period for the calculation of performance criteria in order to prevent the dilution or enlargement of a covered employee's rights with respect to an award of performance stock/units.

Stockholder approval of the performance criteria and the maximum award amount as part of the Plan is required for the Company to fully deduct the amount or value of the performance awards, as permitted under Section 162(m) of the Internal Revenue Code of 1986, as amended (the “Code”). Section 162(m) of the Code generally limits to \$1 million the deduction available to public companies for compensation paid to its chief executive officer and the other three highest compensated officers (other than the chief financial officer) as of the end of its fiscal year (for purposes of Section 162(m), these individuals are referred to as “covered employees”). This \$1 million deduction limit does not apply, however, to “performance-based compensation” as defined under Section 162(m) of the Code.

Performance awards granted under the Plan are intended to be eligible to qualify as performance-based compensation that would be fully deductible under Section 162(m) of the Code. To so qualify, a performance award must be subject to performance criteria established by a committee or subcommittee comprised solely of two or more outside directors of the Company. In addition, the performance criteria must be disclosed to and approved by stockholders of the Company. If stockholder approval of the performance criteria is not obtained, performance awards granted under the Plan will be subject to the \$1 million deduction limit, which may result in additional cost to the Company to the extent amounts of compensation paid to covered officers are not deductible. In order to permit awards to qualify as performance-based compensation under Section 162(m) of the Code, no employee may be granted awards under the Plan in excess of 2,000,000 Shares or \$2,000,000 in each calendar year.

### **New Plan Benefits**

Awards that may be granted to eligible persons under the Plan are subject to the discretion of the Compensation Committee, so we cannot currently determine the benefits or amounts that will be received or allocated to our current named executive officers, executive officers as a group, directors who are not executive officers as a group, and employees, including all current officers who are not executive officers, as a group. Consequently, no New Plan Benefits Table is included in this Proxy Statement.

### **Duration, Amendment, and Termination**

Unless sooner terminated by the Board, the Plan will terminate ten years after its adoption by the Company’s stockholders at the 2018 Annual Meeting. The Board may amend, alter, suspend or terminate the Plan at any time or from time to time without stockholder approval or ratification, unless necessary and desirable to comply with applicable law. However, before an amendment may be made that would adversely affect a participant who has already been granted an award; the participant’s consent must be obtained.

### **Federal Income Tax Consequences**



The following is a general summary of the federal income tax treatment of stock options, which are authorized for grant under the Plan, based upon the provisions of the Code as of the date of this Proxy Statement. Non-U.S. residents should consult with their tax adviser regarding the specific tax consequences as a result of the grant of awards under the Plan in their country of origin. This summary is not intended to be exhaustive and the exact tax consequences to any award holder depend upon his or her particular circumstances and other facts. Plan participants should consult their tax advisor with respect to any state, local and non-U.S. tax considerations or relevant federal tax implications of options granted under the Plan.

***Incentive Stock Options.*** An option holder recognizes no taxable income for regular income tax purposes as a result of the grant or exercise of an incentive stock option that qualifies under Section 422 of the Code. Option holders who neither dispose of their shares within two years of the date that the option was granted or within one year following the exercise of the option, normally recognize a capital gain or loss on the sale of the shares equal to the difference, if any, between the sale price and the purchase price of the shares. If an option holder satisfies these holding periods, on the sale of the shares, we are not entitled to any deduction for federal income tax purposes. Where an option holder disposes of shares within two years after the date of grant of those options or within one year after the date of exercise (a “disqualifying disposition”), the difference between the fair market value of the shares on the exercise date and the option exercise price (which is not to exceed the gain realized on the sale, if the disposition is a transaction with respect to which a loss, if sustained, would be recognized) is taxed as ordinary income at the time of disposition. Any gain in excess of that amount is a capital gain. If a loss is recognized, there is no ordinary income, and such loss is a capital loss. Any ordinary income recognized by the option holder on the disqualifying disposition of the shares generally results in a deduction by us for federal income tax purposes.

**Non-statutory Stock Options.** Options not designated or qualifying as incentive stock options are non-statutory stock options having no special tax status. An option holder generally recognizes no taxable income as a result of the grant of the option. On the exercise of a non-statutory stock option, the option holder normally recognizes ordinary income in the amount of the difference between the option exercise price and the fair market value of the shares on the exercise date. Where the option holder is an employee, such ordinary income generally is subject to withholding of income and employment taxes. On the sale of shares acquired by the exercise of a non-statutory stock option, any gain or loss (based on the difference between the sale price and the fair market value on the exercise date), is taxed as a capital gain or loss. No tax deduction is available to us with respect to the grant of a non-statutory stock option or the sale of the stock acquired pursuant to such grant. We should generally be entitled to a deduction equal to the amount of ordinary income recognized by the option holder as a result of the exercise of a non-statutory stock option.

**Deductibility of Compensation.** The Code allows publicly held corporations to deduct compensation that is in excess of \$1 million paid to the Company's chief executive officer and or any of its three most highly compensated executive officers (other than the chief executive officer and the chief financial officer) if the compensation is payable solely based on the attainment of one or more performance criteria and where certain statutory requirements are satisfied. It is intended that compensation arising from awards granted under the Plan that are based on performance criteria, and stock options and stock appreciation rights, are to be deductible by us as qualified performance-based compensation not subject to the \$1 million limitation on deductibility under the Code. Despite this, we reserve the right to grant awards under the Plan that do not result in qualified performance-based compensation and, as such, may not entitle us to a tax deduction.

## EQUITY COMPENSATION PLAN INFORMATION

The below shows, as of November 20, 2017, information for all equity compensation plans previously approved by stockholders and for all compensation plans not previously approved by stockholders (including with respect to options and warrants).

Plan Category	Number of securities to be issued upon exercise of outstanding options,	Weighted average exercise price of outstanding options, warrants	Number of securities remaining available for future issuance under equity
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	<b>warrants and rights (a)(1)</b>	<b>and rights (b)</b>	<b>compensation plans (excluding securities reflected in column (a)) (c)</b>
Equity compensation plans approved by stockholders	3,759,843	\$ 1.29	560,971
Equity compensation plans not approved by stockholders	2,200,000	1.19	—
Total	5,959,843	\$ 1.25	560,971

(1)Includes options only and does not include 2,635,000 outstanding restricted stock units.

#### **Vote Required and Board Recommendation**

If a quorum is present, approval of the Plan requires the affirmative vote of a majority of the votes cast at the 2018 Annual Meeting. Abstentions and broker non-votes will each be counted as present for purposes of determining the presence of a quorum. Abstentions and broker non-votes will not be considered as votes cast for or against the proposal and will therefore have no effect on the outcome of the vote.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE STOCKHOLDERS VOTE TO APPROVE THE ADOPTION OF THE PURE BIOSCIENCES, INC. 2017 EQUITY INCENTIVE PLAN (ITEM 4 ON THE PROXY CARD).**

**EXECUTIVE OFFICERS****Information Regarding Our Executive Officers**

Information with respect to our current named executive officers is shown below. Since Dave Pfanzelter and Henry R. Lambert also serve as Chairman and as a member of the Board, respectively, their executive officer's biographies are set forth under "Nominees for Directors" above.

<b>Name</b>	<b>Age</b>	<b>Position(s) Held</b>	<b>Position(s) Held Since</b>
Dave Pfanzelter	64	Chairman	2013
Henry R. Lambert	66	Chief Executive Officer	2013
Mark S. Elliott	42	Vice President, Finance	2015

**Mark S. Elliott** was appointed as our Vice President, Finance on July 31, 2015. Prior to his appointment, he served as our corporate controller since May 2006, and has been responsible for managing all accounting and regulatory reporting activities and for establishing all current financial and reporting systems. Prior to joining PURE in 2004, Mr. Elliott worked in government accounting. He earned a Bachelor's of Science, Business Administration-Accountancy at California State University-San Marcos.

**EXECUTIVE COMPENSATION****Summary Compensation Table**

The following table sets forth a summary of cash and non-cash compensation awarded, earned or paid for services rendered to us during the fiscal years ended July 31, 2017 and July 31, 2016 by our named executive officers, consisting of (i) each individual serving as principal executive officer during the fiscal year ended July 31, 2017 and (ii) our other two most highly compensated officers serving during the fiscal year ended July 31, 2017.

<b>Name and Principal Position</b>	<b>Fiscal Year</b>	<b>Salary (\$)(1)</b>	<b>Bonus</b>	<b>Option Awards(\$)(2)</b>	<b>Stock Awards (\$)(3)</b>	<b>All Other Compensation (\$)(4)</b>	<b>Total Compensation (\$)</b>
Henry R. Lambert	2017	\$350,000	—	\$438,000 (5)	\$238,000(6)	\$56,000	\$1,082,000
Chief Executive Officer	2016	\$350,000	—	\$94,000 (7)	\$144,000(8)	\$54,000	\$642,000

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Mark S. Elliott	2017	\$ 182,000	—\$ 62,000	(9)	\$—	\$ —	\$ 244,000
Vice President Finance	2016	\$ 165,000	—\$ 51,000	(10)	\$—	\$ —	\$ 216,000
Dave J. Pfanzelter (11)	2017	\$ 150,000	—\$ 972,000	(12)	\$595,000(13)	\$ —	\$ 1,717,000
Chairman of the Board	2016	\$ 150,000	—\$ 94,000	(14)	\$—	\$ —	\$ 244,000

(1) Amounts reflect salary earned during the respective fiscal years.

Amounts for the years ended July 31, 2017 and 2016 reflect the grant date fair value for financial statement (2) reporting purposes with respect to stock options granted during the respective fiscal years, calculated in accordance with authoritative guidance.

Amounts for the years ended July 31, 2017 and 2016 reflect the grant date fair value for financial statement (3) reporting purposes with respect to stock awards granted during the respective fiscal years, calculated in accordance with authoritative guidance.

Represents amounts reimbursed to Mr. Lambert for housing expenses in San Diego, where the Company is (4) headquartered. Mr. Lambert maintains a permanent residence in Lake Forest, Illinois and he rents a corporate apartment in San Diego. The Company reimburses Mr. Lambert on a monthly basis for the housing expense.

- (5) Represents two awards consisting of an option to purchase two hundred thousand (200,000) shares of common stock and an option to purchase four hundred thousand (400,000) shares of common stock.
- (6) Represents an award consisting of two hundred thousand (200,000) restricted stock units (“RSUs”).
- (7) Represents an award consisting of an option to purchase two hundred thousand (200,000) shares of common stock.
- (8) Represents an award consisting of two hundred thousand (200,000) restricted stock units (“RSUs”).
- (9) Represents an award consisting of an option to purchase one hundred fifty thousand (150,000) shares of common stock.
- (10) Represents an award consisting of an option to purchase one hundred fifty thousand (150,000) shares of common stock.
- (11) Due to his service as Chairman of the Board, the Company considers Mr. Pfanzelter an executive officer.
- (12) Represents an award consisting of an option to purchase two hundred thousand (200,000) shares of common stock and an award consisting of an option to purchase one million (1,000,000) shares of common stock.
- (13) Represents an award consisting of five hundred thousand (500,000) RSUs.
- (14) Represents an award consisting of an option to purchase two hundred thousand (200,000) shares of common stock.

### **Narrative to Summary Compensation Table**

The compensation program established for the Company’s executive officers consisted of the following elements:

**Base Salary:** The base salaries of our named executive officers depend on their job responsibilities, the market rate of compensation paid by companies in our industry for similar positions, our financial position and performance, and the strength of our business. Base salaries provide a fixed means of compensation in order to attract and retain talent. The base salary of Mr. Lambert is \$350,000 per year. The base salary for Mr. Elliott was \$182,000 per year. Additionally, Mr. Pfanzelter receives \$150,000 per year for his service as Chairman of the Board.

**Performance-Based Cash Awards:** As part of the Company’s executive compensation program, our executive officers are eligible to receive performance-based cash awards. The annual performance-based cash awards are based on the executive officer’s individual performance and the Company’s actual performance compared to the corporate goals approved by the Board and the Compensation Committee. Following the end of each fiscal year, the Board and the

Compensation Committee is responsible for determining the bonus amount payable to an executive officer based on that executive officer's individual performance during the fiscal year and its determination of the Company's actual performance compared to the corporate goals established for that fiscal year. Due to the Company's limited financial resources and performance, our named executive officers did not receive any bonuses for the years ended July 31, 2017 and 2016.

***Long-Term Equity Awards:*** Equity ownership by our executive officers and key employees encourages them to create long-term value and aligns their interests with those of our stockholders. As a result, our executive compensation program provides for the issuance of stock options and restricted stock units ("RSUs").

During the fiscal year ended July 31, 2017, the Compensation Committee authorized the issuance of 1,950,000 stock options and 700,000 RSUs to our named executive officers. Each stock option and RSU represents the right to receive one share of common stock, issuable at the time the stock option vests and the RSUs settle, as set forth in the respective stock option and RSU agreements. The breakdown is as follows:

**Henry R. Lambert Option Awards:** The Board granted Mr. Lambert an award consisting of an option to purchase two hundred thousand (200,000) shares of common stock. The option has a five-year term and vests in four quarterly installments. In addition, the Board granted Mr. Lambert an award consisting of an option to purchase four hundred thousand (400,000) shares of common stock. The option has a ten-year term and vests 25% on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

**Mark S. Elliott Option Award:** The Board granted Mr. Elliott an award consisting of an option to purchase one hundred fifty thousand (150,000) shares of common stock. The option has a five-year term and vests in four quarterly installments.

**Chairman Option Awards:** The Board granted Mr. Pfanzelter an award consisting of an option to purchase two hundred thousand (200,000) shares of common stock. The option has a five-year term and vests in four quarterly installments. In addition, the Board granted Mr. Pfanzelter an award consisting of an option to purchase one million (1,000,000) shares of common stock. The option has a ten-year term and vests 25% on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

**Henry R. Lambert RSU Award:** The Board granted Mr. Lambert an award consisting of two hundred thousand (200,000) RSUs. 25% of the RSUs vest on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

**Chairman RSU Award:** The Board granted Mr. Pfanzelter an award consisting of five hundred thousand (500,000) RSUs. 25% of the RSUs vest on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

### Outstanding Equity Awards at Year-End

The following table provides a summary of all equity awards held by our named executive officers that were outstanding as of July 31, 2017.

Name	Option Awards			Option Expiration Date	Stock Awards	
	Number of Securities Underlying Unexercised Options	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)		Number of shares or Units of stock	Market Value of shares or Units of stock that have



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	(#)					<b>that</b>	not
	Exercisable					<b>have not</b>	vested
							(\$)(1)
						<b>vested(#)</b>	
Henry R. Lambert	100,000	100,000	\$ 0.88	3/22/2022	(2)	200,000	\$250,000(3)
		400,000	\$ 1.19	6/22/2027	(2)	200,000	\$250,000(5)
	200,000	—	\$ 1.05	5/27/2021	(4)	—	\$—
Mark S. Elliott	75,000	75,000	\$ 0.88	3/1/2022	(6)	—	\$—
	150,000	—	\$ 1.15	5/11/2018	(7)	—	\$—
	2,500	—	\$ 18.72	5/14/2019		—	\$—
	2,500	—	\$ 28.00	5/19/2020		—	\$—
	6,875	—	\$ 6.72	7/14/2021		—	\$—
	10,000	—	\$ 0.86	1/24/2023		—	\$—
Dave J. Pfanzelter	100,000	100,000	\$ 0.88	3/22/2022	(8)	500,000	\$625,000(9)
		1,000,000	\$ 1.19	6/22/2027	(8)	—	\$—
	200,000	—	\$ 1.05	5/27/2021	(10)	—	\$—
	40,000	—	\$ 0.73	2/6/2023		—	\$—

- (1) The market value was determined by multiplying the number of shares underlying the awards by the closing price for our common stock on July 31, 2017, which was \$1.25.

During the year ended July 31, 2017, the Board granted Mr. Lambert an award consisting of an option to purchase two hundred thousand (200,000) shares of common stock. The option has a five-year term and vests in four (2) quarterly installments. In addition, the Board granted Mr. Lambert an award consisting of an option to purchase four hundred thousand (400,000) shares of common stock. The option has a ten-year term and vests 25% on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

During the year ended July 31, 2017, the Board granted Mr. Lambert an award consisting of two hundred (3) thousand (200,000) RSUs. 25% of the RSUs vest on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

During the year ended July 31, 2016, the Board granted Mr. Lambert a five year award consisting of an option to (4) purchase two hundred thousand (200,000) shares of common stock. 33% vested on July 31, 2016; 33% vested on October 31, 2016; and 34% vested on January 31, 2017.

During the year ended July 31, 2016, the Board granted Mr. Lambert an award consisting of two hundred (5) thousand (200,000) RSUs. The RSUs vest based on performance conditions and expire on July 31, 2018. In the event of (i) a change in control of the Company, (ii) Mr. Lambert's termination without cause or resignation for good reason or (iii) Mr. Lambert's death or complete disability, in any event prior to July 31, 2018, 100% of the Performance-Based RSUs will vest.

During the year ended July 31, 2017, the Board granted Mr. Elliott an award consisting of an option to purchase (6) one hundred fifty thousand (150,000) shares of common stock. The option has a five-year term and vests in four quarterly installments.

During the year ended July 31, 2016, the Board granted Mr. Elliott a two year award consisting of an option to (7) purchase one hundred fifty thousand (150,000) shares of common stock. The options vested quarterly over a one year period.

During the year ended July 31, 2017, the Board granted Mr. Pfanzelter an award consisting of an option to purchase two hundred thousand (200,000) shares of common stock. The option has a five-year term and vests in (8) four quarterly installments. In addition, the Board granted Mr. Pfanzelter an award consisting of an option to purchase one million (1,000,000) shares of common stock. The option has a ten-year term and vests 25% on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

During the year ended July 31, 2017, the Board granted Mr. Pfanzelter an award consisting of five hundred (9) thousand (500,000) RSUs. 25% of the RSUs vest on December 31, 2018 with the remaining shares vesting in three equal annual installments thereafter.

During the year ended July 31, 2016, the Board granted Mr. Pfanzelter a five year award consisting of an option (10) to purchase two hundred thousand (200,000) shares of common stock. The options vested in three installments: 33% on July 31, 2016; 33% on October 31, 2016; and 34% on January 31, 2017.

During the year ended July 31, 2017, 150,000 of Mr. Lambert's RSUs vested. The value realized on vesting was \$188,000. In addition, during the year ended July 31, 2017, Messrs. Lambert and Pfanzelter and Mr. Elliott had

234,000 and 225,000 option awards vest, respectively. The respective value on vesting was \$27,000 and \$18,000.

**Employment Agreements; Potential Payments Upon Termination or a Change in Control for Current Executive Officers**

*Agreement with our Chief Executive Officer*

On September 10, 2013, we appointed Henry R. Lambert to serve as Chief Executive Officer and a member of the Board. The terms of Mr. Lambert's employment agreement provides that such agreement continues until termination by either the Company or Mr. Lambert. During the term of Mr. Lambert's employment agreement, he is entitled to an annual base salary, which may be increased, but not decreased, by the Board or the Compensation Committee in their discretion. The annual base salary of Mr. Lambert is \$350,000.

The employment agreement provides that, during the term of the agreement, Mr. Lambert is eligible for equity compensation grants to be awarded at the discretion of the Compensation Committee and the Board, and also provided for annual bonus targets equal to, as applicable, 50% of Mr. Lambert's current annual base salary, to be awarded at the sole discretion of the Compensation Committee and the Board. Additionally, pursuant to the terms of Mr. Lambert's employment agreement, the Board granted Mr. Lambert 500,000 RSUs, 200,000 of which subsequently expired by their terms. The award agreement for the 500,000 RSUs had provided Mr. Lambert with the right to require us to pay his state and federal withholding and other employment taxes upon the vesting and settlement of these RSUs in exchange for Mr. Lambert cancelling that number of shares of common stock having a value equal to the tax obligations we pay on his behalf. In December 2016, we entered into an RSU Cancellation Agreement with Mr. Lambert and our other officers and directors who received restricted stock unit awards (the "RSUs") in October 2013 as compensation for their continued services to us over a required vesting period. Mr. Lambert in his individual capacity, voluntarily agreed to cancel his RSUs based on his determination that cancelling the RSUs would be in the best interests of the Company and our stockholders. Mr. Lambert reached this conclusion in order to conserve our available cash resources and to reduce pressure on our stock price.

In January 2017, we entered into an amendment to Mr. Lambert's employment agreement. The employment agreement, as amended, provides for certain compensation to be paid to Mr. Lambert if his employment is terminated by the Company without Cause or terminated by the executive for Good Reason or there occurs a Change in Control of the Company. In summary, "Cause" is the commission by the executive of an act of fraud or another felony, or gross misconduct resulting in a material adverse effect on the Company; refusal by the executive to perform his or her duties under the agreement or to otherwise breach the agreement, or a violation of confidentiality, non-competition and/or non-solicitation provisions to which the Company is bound. "Good Reason" is a material reduction of the executive's base salary or target bonus percentage; a material reduction by the Company of the executive's authority, duties or responsibilities; a relocation of the Company's offices that requires an increase in the executive's one-way driving distance of more than fifty miles; or a material breach of the agreement by the Company. A "Change in Control" is the closing of the sale, transfer or other disposition of all or substantially all of the Company's assets or the exclusive license of substantially all of the intellectual property of the Company; the consummation of a merger or consolidation of the Company with or into another entity; any person (subject to certain exemptions) becomes the beneficial owner of securities of the Company representing 40% or more of the total combined voting power of the Company; or if individuals who, as of 60 days after the effective date of the agreement are members of the Board, or are nominees of such Board members, cease to constitute at least a majority of the members of the Board.

Upon any such event, Mr. Lambert would be entitled to receive, subject to Mr. Lambert's execution of a release of claims in the Company's favor, (i) a payment equal to \$1,000,000, (ii) a payment equal to 200% of his annual base salary then in effect, (iii) the acceleration of then outstanding equity awards and (iv) with respect to termination of employment, continuation of health benefits for six months. Additionally, the amendment to Mr. Lambert's employment agreement provides Mr. Lambert a tax gross-up payment in the event that any payment or distribution made to Mr. Lambert in connection with his separation from the Company or upon a change of control of the Company becomes subject to an excise tax pursuant to Section 280G and Section 4999 of the Internal Revenue Code. In addition, all equity based awards would continue to be exercisable for 12 months, but in no event beyond the maximum permitted expiration date.

The employment agreement, as amended, with Mr. Lambert also provides that the Company could, in certain circumstances and in order to avoid incurring fines or penalties under applicable law (including recently enacted federal healthcare legislation), elect to pay cash payments equivalent to the value of the monthly premiums the Company would otherwise pay to provide for the continuation of health and dental insurance for Mr. Lambert and his eligible dependents following his termination without Cause or resignation for Good Reason.

On June 22, 2017, the Board granted Mr. Lambert (i) 200,000 RSUs for Common Stock and (ii) an option to purchase 400,000 shares of Common Stock, which were granted outside the Company's 2007 Amended and Restated Equity Incentive Plan pursuant to an RSU Agreement and Option Agreement, respectively. The RSU Agreement and Option Agreement provide that 25% of the RSUs and Options vest on December 31, 2018, and the remainder vest in three equal annual installments thereafter and any unvested shares are subject to accelerated vesting in connection with a termination without Cause or resignation for Good Reason, upon grantee's death or Complete Disability or upon a Change in Control (as the terms are defined in the RSU Agreement and Option Agreement as applicable). Additionally, the RSUs settle on the earlier (i) ten years from the date of grant, (ii) 60 days after the date that the grantee's service ceases for any reason, (iii) the date of the grantee's death or Complete Disability or (iv) a Change in Control. Additionally, the RSU Agreement and the Option Agreement provide a tax gross-up payment in the event that any payment or distribution made to Mr. Lambert in connection with his separation from the Company or upon a Change in Control becomes subject to an excise tax pursuant to Section 280G and Section 4999 of the Internal Revenue Code.

The foregoing description of the employment agreement, as amended, does not purport to be complete and is qualified in its entirety by the terms and conditions of the employment agreement filed as Exhibit 10.33 to the Annual Report on Form 10-K for the year ended July 31, 2013 filed with the SEC on October 24, 2013 and Exhibit 99.1 to the Current Report on Form 8-K filed with the SEC on January 20, 2017, which are incorporated herein by reference. The foregoing description of the RSU Agreement and Option Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of such RSU Agreement and Option Agreement filed as Exhibits 99.1 and 99.2, respectively, to the Current Report on Form 8-K filed with the SEC on June 23, 2017, which are incorporated herein by reference.

#### *Agreements with our Chairman*

On August 13, 2013, we appointed Dave J. Pfanzelter to serve as Chairman of the Board. On October 23, 2013, we entered into a Chairman Agreement with Mr. Pfanzelter (the “Chairman Agreement”). The Chairman Agreement provides that Mr. Pfanzelter is to serve as Chairman of the Board, effective as of August 13, 2013, until his earlier resignation or removal. Pursuant to the Chairman Agreement, Mr. Pfanzelter is entitled to receive \$12,500 per month for his services as Chairman of the Board, payable on a quarterly basis (collectively “Chairman Compensation”). Mr. Pfanzelter is also eligible to receive annual and periodic bonuses in the discretion of the Board. Additionally, pursuant to the terms of the Chairman Agreement, the Board granted Mr. Pfanzelter 2,800,000 RSUs. Due to his service as Chairman, we consider Mr. Pfanzelter an executive officer of the Company. The award agreement for the 2,800,000 RSUs had provided Mr. Pfanzelter with the right to require us to pay his state and federal withholding and other employment taxes upon the vesting and settlement of these RSUs in exchange for Mr. Pfanzelter cancelling that number of shares of common stock having a value equal to the tax obligations we pay on his behalf. In December 2016, we entered into an RSU Cancellation Agreement with Mr. Pfanzelter and our other officers and directors who received restricted stock unit awards (the “RSUs”) in October 2013 as compensation for their continued services to us over a required vesting period. Mr. Pfanzelter in his individual capacity voluntarily agreed to cancel his RSUs based on his determination that cancelling the RSUs would be in the best interests of the Company and our stockholders. Mr. Pfanzelter reached this conclusion in order to conserve our available cash resources and to reduce pressure on our stock price.

In January 2017, we entered into an amendment to the Chairman Agreement. The Chairman Agreement, as amended, provides for certain compensation to be paid to Mr. Pfanzelter if he is removed by the Board without Cause or Mr. Pfanzelter resigns for Good Reason or there occurs a Change in Control of the Company. In summary, “Cause” is the commission by Mr. Pfanzelter of an act of fraud or another felony, or gross misconduct resulting in a material adverse effect on the Company; refusal by Mr. Pfanzelter to perform his duties under the Chairman Agreement or to otherwise breach the Chairman Agreement, or a material breach by Mr. Pfanzelter of Company policy or the Chairman Agreement or other agreements between the Company and Mr. Pfanzelter. “Good Reason” is a material reduction of Mr. Pfanzelter’s compensation; a material reduction by the Board of Mr. Pfanzelter’s authority, duties or responsibilities; or a material breach of the Chairman Agreement by the Company. A “Change in Control” is the closing of the sale, transfer or other disposition of all or substantially all of the Company’s assets or the exclusive license of substantially all of the intellectual property of the Company; the consummation of a merger or consolidation of the Company with or into another entity; any person (subject to certain exemptions) becomes the beneficial owner of securities of the Company representing 40% or more of the total combined voting power of the Company; or if individuals who, as of 60 days

after the effective date of the agreement are members of the Board, or are nominees of such Board members, cease to constitute at least a majority of the members of the Board.

Upon any such event and subject to Mr. Pfanzelter's execution of a release of claims in favor of the Company, Mr. Pfanzelter would be entitled to receive (i) a payment equal to \$3,000,000, (ii) a payment equal to 200% of his annual chairman compensation then in effect and (iii) the acceleration of then outstanding equity awards. Additionally, the amendment to the Chairman Agreement provides Mr. Pfanzelter a tax gross-up payment in the event that any payment or distribution made to Mr. Pfanzelter in connection with his separation from the Company or upon a change of control of the Company becomes subject to an excise tax pursuant to Section 280G and Section 4999 of the Internal Revenue Code. In addition, all outstanding vested stock options held by Mr. Pfanzelter at the date of such termination would continue to be exercisable for a period of up to 90 days following such termination, but in no event beyond the maximum permitted expiration date.

On June 22, 2017, the Board granted Mr. Pfanzelter (i) 500,000 RSUs for Common Stock and (ii) an option to purchase 1,000,000 shares of Common Stock, which were granted outside the Company's 2007 Amended and Restated Equity Incentive Plan pursuant to an RSU Agreement and Option Agreement respectively. The RSU Agreement and Option Agreement provide that 25% of the RSUs and Options vest on December 31, 2018, and the remainder vest in three equal annual installments thereafter and any unvested shares are subject to accelerated vesting in connection with a termination without Cause or resignation for Good Reason, upon grantee's death or Complete Disability or upon a Change in Control (as the terms are defined in the RSU Agreement and Option Agreement as applicable). Additionally, the RSUs settle on the earlier (i) ten years from the date of grant, (ii) 60 days after the date that the grantee's service ceases for any reason, (iii) the date of the grantee's death or Complete Disability or (iv) a Change in Control. Additionally, the RSU Agreement and the Option Agreement provide a tax gross-up payment in the event that any payment or distribution made to Mr. Pfanzelter in connection with his separation from the Company or upon a Change in Control becomes subject to an excise tax pursuant to Section 280G and Section 4999 of the Internal Revenue Code.

The foregoing description of the Chairman Agreement, as amended does not purport to be complete and is qualified in its entirety by the terms and conditions of such Chairman Agreement filed as Exhibit 10.35 to the Annual Report on Form 10-K for the year ended July 31, 2013 filed with the SEC on October 24, 2013 and Exhibit 99.1 to the Current Report on Form 8-K filed with the SEC on January 20, 2017, which are incorporated herein by reference. The foregoing description of the RSU Agreement and Option Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of such RSU Agreement and Option Agreement filed as Exhibits 99.1 and 99.2, respectively, to the Current Report on Form 8-K filed with the SEC on June 23, 2017, which are incorporated herein by reference.

### **Code Section 162(m) Provisions**

Section 162(m) of the U.S. Internal Revenue Code, or the Code, generally disallows a tax deduction to public companies for compensation in excess of \$1 million paid to the Chief Executive Officer or any of the four most highly compensated officers. Performance-based compensation arrangements may qualify for an exemption from the deduction limit if they satisfy various requirements under Section 162(m). Although we consider the impact of this rule when developing and implementing our executive compensation programs, we believe it is important to preserve flexibility in designing compensation programs. Accordingly, we have not adopted a policy that all compensation must qualify as deductible under Section 162(m) of the Code. While our stock options are intended to qualify as "performance-based compensation" (as defined by the Code), amounts paid under our other compensation programs may not qualify as such.



## **DIRECTOR COMPENSATION**

### **Compensation of Directors**

Our directors play a critical role in guiding our strategic direction and overseeing the management of our Company. Ongoing developments in corporate governance and financial reporting have resulted in an increased demand for such highly qualified and productive public company directors. The many responsibilities and risks and the substantial time commitment of being a director of a public company require that we provide adequate incentives for our directors' continued performance by paying compensation commensurate with our directors' workload. Our non-employee directors are compensated based upon their respective levels of Board participation and responsibilities, including service on Board committees.

Our director compensation is overseen by the Compensation Committee, which makes recommendations to our Board of Directors on the appropriate structure for our non-employee director compensation program and the appropriate amount of compensation to offer to our non-employee directors. Our Board of Directors is responsible for final approval of our non-employee director compensation program and the compensation paid to our non-employee directors. The Compensation Committee did not retain a compensation consultant to review the compensation of our directors during fiscal year 2017 given the Company's cash constraints.

### **Non-Employee Director Compensation**

For Fiscal 2017, our non-employee director compensation program consisted of: (i) annual cash retainers for Board service and for service on Board Committees and (ii) long-term equity awards granted on an annual basis to our continuing non-employee directors and upon their initial appointment to the Board for new directors. Our non-employee directors are not entitled to any Board or Board Committee meeting fees.

**Annual Cash Retainers:** Each non-employee director of the Company receives an annual cash retainer from the Company for their services as members of the Board and any committee of the Board as follows:

Each non-employee director receives an annual cash fee of \$60,000 payable for such director's service on the Board and each member of the Audit Committee and Compensation Committee receives an additional annual fee of \$4,000 and \$2,500, respectively, payable for such director's service on the committee.

The Chair of the Audit Committee receives an additional annual cash fee of \$10,000 for such Chair's service and the Chair of the Compensation Committee receives an additional annual fee of \$5,000 for such Chair's service.

Annual cash retainers are paid to each non-employee director in four equal installments on a quarterly basis. Any non-employee directors serving a portion of the year will be entitled to receive such fees on a pro rata basis based on their length of service during the year. Messrs. Lambert and Pfanzelter do not receive any additional compensation for their board service.

**Long-Term Equity Awards:** Our Board, based on the recommendation of the Compensation Committee, approves an annual long-term equity award for our non-employee directors. In the fiscal year ended July 31, 2017, the Board granted each of our non-employee directors (i) restricted stock units for 150,000 shares of Common Stock and (ii) a stock option to purchase 200,000 shares of Common Stock. (These non-employee director grants of restricted stock units and stock options vest fifty percent (50%) on the date of the 2018 Annual Meeting and fifty percent (50%) on the date of the 2019 Annual Meeting. New non-employee directors receive an initial award of (i) restricted stock units for 150,000 shares of Common Stock and (ii) a stock option to purchase 200,000 shares of Common Stock, with fifty percent (50%) of these awards vesting on the date of the next annual meeting following their appointment and the remaining fifty percent (50%) vesting on the following year's annual meeting.

**Reimbursement:** Our directors are entitled to reimbursement for their reasonable travel and lodging expenses for attending Board and Board Committee meetings.

### Director Compensation Table

The following table sets forth compensation earned in the fiscal year ended July 31, 2017 by each of our directors who are not named executive officers.

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)(1)	Option Awards (\$)(2)	All Other Compensation (\$)	Total Compensation (\$)
Gary D. Cohee	\$70,000	\$179,000	\$212,000	—	\$ 461,000
David Theno, Jr., PhD (3)	\$65,000	\$—	\$41,000	—	\$ 106,000
William Otis	\$67,000	\$179,000	\$212,000	—	\$ 458,000
Tom Y. Lee	\$64,000	\$179,000	\$212,000	—	\$ 455,000
Janet Risi Field (4)	\$—	\$—	\$—	—	\$ —

(1) Amounts for the year ended July 31, 2017 reflect the grant date fair value for financial statement reporting purposes with respect to stock options granted during the fiscal year, calculated in accordance with authoritative guidance.

(2) Amounts for the year ended July 31, 2017 reflect the grant date fair value for financial statement reporting purposes with respect to stock awards granted during the fiscal year, calculated in accordance with authoritative guidance.

(3) Dr. Theno passed away in June 2017.

(4) Ms. Risi was appointed to the Board on July 26, 2017 and did not receive any compensation for her service on the Board during the year ended July 31, 2017.

(5) Elisabeth Hagen M.D. was appointed to the Board on November 2, 2017.

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table provides information regarding the beneficial ownership of our common stock as of November 20, 2017, or the Evaluation Date, by: (i) each of our current directors, (ii) each of our named executive officers as set forth in the Executive Compensation section of this Proxy Statement, (iii) each of our current executive officers, (iv) all such directors and executive officers as a group and (v) our five percent or greater stockholders. The table is based upon information supplied by our officers, directors and principal stockholders and a review of Schedules 13D and 13G, if any, filed with the SEC. Unless otherwise indicated in the footnotes to the table and subject to community property laws where applicable, we believe that each of the stockholders named in the table has sole voting and investment power with respect to the shares indicated as beneficially owned.

Applicable percentages are based on 67,981,861 shares outstanding as of the Evaluation Date, adjusted as required by rules promulgated by the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of our common stock issuable pursuant to the exercise of stock options or warrants or settlement of restricted stock units that are either immediately exercisable or exercisable within 60 days of the Evaluation Date. These shares are deemed to be outstanding and beneficially owned by the person holding those securities for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

Name (1)	Number of		Percent	
	Shares	Beneficially	of	Common
		Owned	Stock	
David J. Pfanzelter	396,000	(2)	*	
Henry R. Lambert	639,556	(3)	*	
Mark S. Elliott	319,225	(4)	*	
Gary D. Cohee	565,643	(5)	*	
Janet Risi	14,140	(6)	*	
William Otis	181,732	(7)	*	
Tom Y. Lee	5,080,154	(8)	7.46	%
All of our named executive officers and directors as a group (7 persons)	7,196,450	(9)	10.56	%
Franchise Brands	20,799,999	(10)	29.67	%

\* Indicates less than one percent of the outstanding shares of the Company's common stock.

(1) Unless, noted below, the address for each person listed in the table is c/o PURE Bioscience, Inc., 1725 Gillespie Way, El Cajon, California 92020.

- (2) Consists of 340,000 shares of common stock subject to options currently exercisable or exercisable within 60 days of the Evaluation Date, 56,000 shares of common stock held directly by Mr. Pfanzelter.
- (3) Consists of 300,000 shares of common stock subject to options currently exercisable or exercisable within 60 days of the Evaluation Date, and 339,556 shares of common stock held directly by Mr. Lambert.
- (4) Consists of 246,875 shares of common stock subject to options currently exercisable or exercisable within 60 days of the Evaluation Date, and 72,350 shares of common stock held directly by Mr. Elliott.
- (5) Consists of 150,000 shares of common stock subject to options currently exercisable or exercisable within 60 days of the Evaluation Date, and 415,643 shares of common stock held directly by Mr. Cohee.
- (6) Consists of 14,140 shares of common stock held directly by Ms. Risi.
- (7) Consists of 150,000 shares of common stock subject to options currently exercisable or exercisable within 60 days of the Evaluation Date, and 31,732 shares of common stock held directly by Mr. Otis.

- (8) Consists of 150,000 shares of common stock subject to options currently exercisable or exercisable within 60 days of the Evaluation Date, and 4,930,154 shares of common stock held by Mr. Lee and his spouse.

- Consists of 1,336,875 shares of common stock subject to options currently exercisable or exercisable within 60 days of the Evaluation Date, and 5,859,575 shares of common stock, held by all directors and executive officers as a group.
- (9)

- Consists of 18,666,666 shares of common stock and warrants to purchase 2,133,333 shares of common stock (10) which are currently exercisable, held directly by Franchise Brands. The address for Franchise Brands is 325 Sub Way, Milford, CT 06461.

### **SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE**

Section 16(a) of the Securities Exchange Act of 1934, as amended (the “Act”), requires our executive officers and directors and persons who beneficially own more than 10% of our Common Stock to file initial reports of beneficial ownership and reports of changes in beneficial ownership with the SEC. Such persons are required by SEC regulations to furnish us with copies of all Section 16(a) forms filed by such persons.

To the Company’s knowledge, other than as described below, no person who, during the fiscal year ended July 31, 2016, was a director or officer of the Company, or beneficial owner of more than ten percent of the Company’s Common Stock (which is the only class of securities of the Company registered under Section 12 of the Act), failed to file on a timely basis reports required by Section 16 of the Act during such fiscal year.

On September 25, 2017, the Company completed the initial closing of a tender offer in which it offered to amend the terms of the outstanding warrants it had issued to investors participating in private placement financings the Company completed in August 2014 (the “2014 Warrants”), in November 2015 (the “2015 Warrants”) and in January 2017 (the “2017 Warrants”). As part of the tender offer and in order to raise funds to support its continued operations, the Company offered to reduce the respective exercise prices of the 2014, 2015 and 2017 Warrants if the holders agreed to exercise their Warrants in cash by September 25, 2017. On September 27, 2017, Mr. Lee timely filed a Form 4 Report disclosing his participation in the Company’s tender offer and the related amendment and exercise of two warrants (a 2014 Warrant and a 2015 Warrant) that he had received as an investor in the Company’s 2014 and 2015 private placement financings. On October 10, 2017, Mr. Lee filed an amendment to his Form 4 Report to report the amendment and exercise of a third warrant that occurred on September 25, 2017 (an additional 2015 Warrant) as part of the Company’s tender offer. The amendment and exercise of this additional 2015 Warrant was inadvertently omitted from the initial Form 4 Report filed by Mr Lee.

## **CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

### **Certain Relationships and Related Transactions**

Except as described below and other than Board or employment relationships and compensation resulting from those employment relationships, no director, executive officer, 5% stockholder or immediate family member of any of the foregoing, was a party to any transaction or series of transactions since August 1, 2015 (the beginning of the year ended July 31, 2016), or is to be a party to any currently proposed transaction or series of proposed transactions, in which (i) we were or are to be a participant, (ii) the amount involved exceeds the lesser of \$120,000 or one percent of the average of our total assets at fiscal year-end for the fiscal years ended July 31, 2017 and 2016, which is \$56,955, and (iii) any director, executive officer, or immediate family member of any of the foregoing had or will have a direct or indirect material interest.

### **Equity Transactions with our Directors and Officers**

Since August 1, 2015, the Company has entered into the following equity investment transactions with its directors and officers:

On November 23, 2015, we completed a second and final closing of a private placement financing. We raised \$2.0 million in this closing. Mr. Lee, together with certain of his affiliates, purchased an aggregate of 1,049,408 shares of Common Stock for \$472,000 and warrants to purchase up to 1,206,819 shares of Common Stock at an exercise price of \$0.45 per share.

On May 20, 2016, Mr. Lee and his spouse exercised an outstanding warrant for 487,115 shares of Common Stock for an aggregate exercise price of \$219,202.

On September 25, 2017, Mr. Lee and his spouse exercised warrants to purchase 694,703 shares of Common Stock for an aggregate exercise price of \$341,881 in connection with the Company's warrant tender offer to holders of the Company's warrants.

On September 25, 2017, Bill Otis exercised warrants to purchase 9,066 shares of Common Stock for an aggregate exercise price of \$5,440 in connection with the Company's warrant tender offer to holders of the Company's warrants.

On September 25, 2017, Dave Pfanzelter exercised warrants to purchase 16,000 shares of Common Stock for an aggregate exercise price of \$9,600 in connection with the Company's warrant tender offer to holders of the Company's warrants.



### **Transactions with Franchise Brands**

Franchise Brands, LLC is our largest stockholder beneficially holding approximately 30% of our Common Stock as of the date of this proxy statement. On October 23, 2015, we completed an initial closing of a private placement financing with Franchise Brands. Prior to the private placement financing, Franchise Brands beneficially held approximately 17.8% of our common stock. In the private placement financing, we issued Franchise Brands (i) an aggregate of 13,333,333 shares of the Company's Common Stock at a purchase price of \$0.45 per share, (ii) a warrant to purchase up to an aggregate of 6,666,666 shares of Common Stock with a term of five years and (iii) a warrant to purchase up to an aggregate of 8,666,666 shares of Common Stock with a term of six months and only exercisable for cash, for aggregate gross proceeds to the Company of \$6.0 million. The offer and sale of the securities to Franchise Brands was on the same terms offered to other investors in the private placement financing. On April 23, 2016, the six-month warrant issued to Franchise Brands expired unexercised and on July 19, 2016 we entered into a warrant termination agreement with Franchise Brands, LLC to terminate the five-year warrant.

## **Compensation of Our Current Directors and Executive Officers**

For information with respect to the compensation offered to our current directors and executive officers, please see the descriptions under the headings “Executive Compensation” and “Director Compensation” in this proxy statement.

## **Related Party Transaction Policy and Procedures**

Pursuant to our Related Party Transaction and Procedures, our executive officers, directors, and principal stockholders, including their immediate family members and affiliates, are prohibited from entering into a related party transaction with us without the prior consent of our Audit Committee or our independent directors. Any request for us to enter into a transaction with an executive officer, director, principal stockholder, or any of such persons’ immediate family members or affiliates, must first be presented to our Audit Committee for review, consideration and approval. In approving or rejecting the proposed agreement, our Audit Committee will consider the relevant facts and circumstances available and deemed relevant, including, but not limited, to the risks, costs and benefits to us, the terms of the transaction, the availability of other sources for comparable services or products, and, if applicable, the impact on a director’s independence. Our Audit Committee shall approve only those agreements that, in light of known circumstances, are in, or are not inconsistent with, our best interests, as our Audit Committee determines in the good faith exercise of its discretion.

## **Compensation Committee Interlocks and Insider Participation.**

None of the members of our Compensation Committee are or have been an officer or employee of us. During fiscal 2016 and 2015, no member of our Compensation Committee had any relationship with us requiring disclosure under Item 404 of Regulation S-K, except as set forth above, none of our executive officers served on the Compensation Committee (or its equivalent) or board of directors of another entity any of whose executive officers served on our Compensation Committee or board of directors.

## **OTHER MATTERS**

The management of the Company is not aware of any matter to be acted upon at the Annual Meeting other than the matters described above. However, if any other matter properly comes before the Annual Meeting, the proxy holders will vote the proxies thereon in accordance with their best judgment on such matter.

## **STOCKHOLDER PROPOSALS FOR 2019 ANNUAL MEETING**

Stockholders interested in submitting a proposal for consideration at our 2019 Annual Meeting of Stockholders must do so by sending such proposal to our Corporate Secretary at PURE Bioscience, Inc., 1725 Gillespie Way, El Cajon, California 92020, telephone (619) 596-8600. Under the SEC's proxy rules (Rule 14a-8), the deadline for submission of proposals to be included in our proxy materials for the 2018 Annual Meeting is August 10, 2018. Accordingly, in order for a stockholder proposal to be considered for inclusion in our proxy materials for the 2019 Annual Meeting, any such stockholder proposal must be received by our Corporate Secretary on or before August 10, 2018, and comply with the procedures and requirements set forth in Rule 14a-8 under the Securities Exchange Act of 1934, as well as the applicable requirements of our Bylaws. Any stockholder proposal received after August 10, 2018 will be considered untimely, and will not be included in our proxy materials. In addition, stockholders interested in submitting a proposal outside of Rule 14a-8 must properly submit such a proposal in accordance with our Bylaws.

Our Bylaws require advance notice of business to be brought before a stockholders' meeting, including nominations of persons for election as directors. Pursuant to our Bylaws, the date after which notice to the Company of a stockholder proposal submitted outside the process of Rule 14a-8 is considered timely is as follows, provided that such notice meets the information and other requirements set forth in our Bylaws:

A stockholder seeking to have a proposal included in the Company's proxy materials must deliver written notice to the Company of such proposal between June 12, 2018 and August 10, 2018, unless the date of the 2019 Annual Meeting is more than 30 days before or after the one-year anniversary of the Annual Meeting, in which case such notice must be delivered to the Company on the later of the 90th day before the date of the 2019 Annual Meeting or the 15th day following the day on which public announcement of the date of the 2019 Annual Meeting is first made.

A stockholder not seeking inclusion of a proposal in the Company's proxy materials must deliver written notice to the Company not less than 90 days before the date of the 2019 Annual Meeting.

If a stockholder that has notified the Company of its intention to present a proposal at the 2019 Annual Meeting does not appear or send a qualified representative to present his proposal at the 2019 Annual Meeting, the Company need not present the proposal for a vote at the 2019 Annual Meeting.

## HOUSEHOLDING OF ANNUAL MEETING MATERIALS

We have adopted “householding,” a procedure approved by the SEC under which stockholders who share an address will receive a single copy of the Annual Meeting materials. This procedure reduces printing costs and mailing fees, while also reducing the environmental impact of the distribution of documents related to the Annual Meeting. If you reside at the same address as another PURE Bioscience stockholder and wish to receive a separate copy of the Annual Meeting materials, you may do so by making a written or oral request to: Attn: Corporate Secretary, PURE Bioscience, Inc., 1725 Gillespie Way, El Cajon, California 92020, telephone (619) 596-8600. Upon your request, we will promptly deliver a separate copy to you. The Proxy Statement and our Annual Report are also available at [www.proxyvote.com](http://www.proxyvote.com).

Some brokers household proxy materials, delivering a single proxy statement or notice to multiple stockholders sharing an address unless contrary instructions have been received from the affected stockholders.

Once you have received notice from your broker that they will be householding materials to your address, householding will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in householding and would prefer to receive a separate proxy statement or notice, please notify your broker directly. You may also call (800) 542-1061 or write to: Household Department, Broadridge, 51 Mercedes Way, Edgewood, New York 11717, and include your name, the name of your broker or other nominee, and your account number(s). Any stockholders who share the same address and currently receive multiple copies of the Annual Meeting materials who wish to receive only one copy in the future may contact their bank, broker, or other holder of record, or PURE Bioscience at the contact information listed above, to request information about householding.

**ANNUAL REPORT**

Our Annual Report to Stockholders, which contains our Annual Report on Form 10-K for the year ended July 31, 2017 will also be made available (without exhibits), free of charge, to interested stockholders upon written request to PURE Bioscience, Inc., 1725 Gillespie Way, El Cajon, California 92020, Attention: Corporate Secretary.

BY ORDER OF THE BOARD OF DIRECTORS

By Order of the Board of Directors

*/s/ Henry R. Lambert*

December 8, 2017 Chief Executive Officer

Appendix A

**PURE BIOSCIENCE, INC.**

**2017 EQUITY INCENTIVE PLAN**

**1. Purposes of the Plan.** The purposes of this Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility;
- to provide incentives to individuals who perform services for the Company;
- to align the interests of our personnel with the interests of our stockholders; and
- to promote the success of the Company's business.

The Plan permits the grant of Incentive Stock Options, Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Units, Performance Shares and other stock or cash awards as the Administrator may determine.

**2. Definitions.** As used herein, the following definitions will apply:

- (a) “**Administrator**” means the Board or any of its Committees as will be administering the Plan, in accordance with Section 4 hereof.
  
- (b) “**Affiliate**” means any corporation or any other entity (including, but not limited to, partnerships and joint ventures) controlling, controlled by, or under common control with the Company.
  
- (c) “**Applicable Laws**” means the requirements relating to the administration of equity-based awards under U.S. federal and state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Awards are, or will be, granted under the Plan.

(d) “**Award**” means, individually or collectively, a grant under the Plan of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Units, Performance Shares and other stock or cash awards as the Administrator may determine.

(e) “**Award Agreement**” means the written or electronic agreement setting forth the terms and provisions applicable to each Award granted under the Plan. The Award Agreement is subject to the terms and conditions of the Plan.

(f) “**Board**” means the Board of Directors of the Company.

(g) “**Change in Control**” means the occurrence of any of the following events:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group (“Person”), acquires ownership of stock in the Company that, together with the stock already held by such Person, constitutes more than 50% of the total voting power of the stock of the Company; provided, however, that for purposes of this subsection (i), the acquisition of additional stock by any Person who is considered to own more than 50% of the total voting power of the stock of the Company before the acquisition will not be considered a Change in Control; or

(ii) the sale, exchange, or transfer of all or substantially all, as determined by the Board in its discretion, of the assets of the Company.

Notwithstanding the foregoing, as to any Award under the Plan that consists of deferred compensation subject to Section 409A of the Code, the definition of “Change in Control” shall be deemed modified to the extent necessary to comply with Section 409A of the Code.

For purposes of this Section 2(g), persons will be considered to be acting as a group if they are owners of a corporation or other entity that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

(h) “**Code**” means the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code herein will be a reference to any successor or amended section of the Code.

(i) “**Committee**” means a committee of Directors or of other individuals satisfying Applicable Laws appointed by the Board in accordance with Section 4 hereof.

(j) “**Common Stock**” means the common stock, par value \$0.001 per share, of the Company.

(k) “**Company**” means Organovo Holdings, Inc., a Delaware corporation, or any successor thereto.

(l) “**Consultant**” means any person, including an advisor, engaged by the Company or a Parent, Subsidiary or Affiliate to render services to the Company or a Subsidiary.

(m) “**Determination Date**” means the latest possible date that will not jeopardize the qualification of an Award granted under the Plan as “performance-based compensation” under Section 162(m) of the Code.

(n) “**Director**” means a member of the Board.

(o) “**Disability**” means permanent and total disability as defined in Section 22(e)(3) of the Code, provided that in the case of Awards other than Incentive Stock Options, the Administrator in its discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Administrator from time to time.



(p) “**Employee**” means any person, including Officers and Directors, employed by the Company or any Parent, Subsidiary or Affiliate of the Company. Neither service as a Director nor payment of a director’s fee by the Company will be sufficient to constitute “employment” by the Company.

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

(r) “**Fair Market Value**” means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, or the NYSE Market, its Fair Market Value will be the closing sales price for such stock (or if no closing sales price was reported on that date, as applicable, on the last trading date such closing sales price was reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share will be the mean between the high bid and low asked prices for the Common Stock on the day of determination (or, if no bids and asks were reported on that date, as applicable, on the last trading date such bids and asks were reported), as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock, or if such Common Stock is not regularly quoted or does not have sufficient trades or bid prices which would accurately reflect the actual Fair Market Value of the Common Stock, the Fair Market Value will be determined in good faith by the Administrator upon the advice of a qualified valuation expert.

(s) “**Fiscal Year**” means the fiscal year of the Company.

(t) “**Incentive Stock Option**” means an Option that by its terms qualifies and is otherwise intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(u) “**Nonstatutory Stock Option**” means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

(v) “**Officer**” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(w) “**Option**” means a stock option granted pursuant to Section 6 hereof.

(x) “**Parent**” means a “parent corporation,” whether now or hereafter existing, as defined in Section 424(e) of the Code.

(y) “**Participant**” means the holder of an outstanding Award.

(z) “**Performance Goals**” will have the meaning set forth in Section 11 hereof.

(aa) “**Performance Period**” means any Fiscal Year of the Company or such other period as determined by the Administrator in its sole discretion.

(bb) “**Performance Share**” means an Award denominated in Shares which may be earned in whole or in part upon attainment of Performance Goals or other vesting criteria as the Administrator may determine pursuant to Section 10 hereof.

(cc) “**Performance Unit**” means an Award which may be earned in whole or in part upon attainment of Performance Goals or other vesting criteria as the Administrator may determine and which may be settled for cash, Shares or other

securities or a combination of the foregoing pursuant to Section 10 hereof.

(dd) “**Period of Restriction**” means the period during which transfers of Shares of Restricted Stock are subject to restrictions and, therefore, the Shares are subject to a substantial risk of forfeiture. Such restrictions may be based on the passage of time, the achievement of target levels of performance, or the occurrence of other events as determined by the Administrator.

(ee) “**Plan**” means this 2017 Equity Incentive Plan.

(ff) “**Restricted Stock**” means Shares issued pursuant to an Award of Restricted Stock under Section 8 hereof, or issued pursuant to the early exercise of an Option.

(gg) “**Restricted Stock Unit**” means a bookkeeping entry representing an amount equal to the Fair Market Value of one Share, granted pursuant to Section 9 hereof. Each Restricted Stock Unit represents an unfunded and unsecured obligation of the Company.

(hh) “**Rule 16b-3**” means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(ii) “**Section 16(b)**” means Section 16(b) of the Exchange Act.

(jj) “**Service Provider**” means an Employee, Director, or Consultant.

(kk) “**Share**” means a share of the Common Stock, as adjusted in accordance with Section 15 hereof.

(ll) “**Stock Appreciation Right**” means an Award, granted alone or in connection with an Option, that pursuant to Section 7 is designated as a Stock Appreciation Right.

(mm) “**Subsidiary**” means a “subsidiary corporation,” whether now or hereafter existing, as defined in Section 424(f) of the Code.

### **3. Stock Subject to the Plan.**

(a) Subject to the provisions of Section 15 hereof, the maximum aggregate number of Shares that may be awarded and sold under the Plan is 5,000,000 Shares. The Shares may be authorized, but unissued or reacquired Common Stock.

(b) Lapsed Awards. If an Award expires or becomes unexercisable without having been exercised in full, or, with respect to Restricted Stock, Restricted Stock Units, Performance Shares or Performance Units, is forfeited to or repurchased by the Company, the unissued Shares (or for Awards other than Options and Stock Appreciation Rights, the forfeited or repurchased Shares) which were subject thereto will become available for future grant or sale under the Plan (unless the Plan has terminated). Notwithstanding the foregoing provisions of this Section 3(b), subject to adjustment provided in Section 14 hereof, the maximum number of Shares that may be issued upon the exercise of Incentive Stock Options will equal the aggregate Share number stated in Section 3(a) above, plus, to the extent allowable under Section 422 of the Code, any Shares that become available for issuance under the Plan under this Section 3(b).

(c) No Reuse. Upon exercise of a Stock Appreciation Right settled in Shares, the gross number of Shares covered by the portion of the Award so exercised will cease to be available under the Plan. Shares that have actually been issued under the Plan under any Award will not be returned to the Plan and will not become available for future distribution under the Plan; provided, however, that if unvested Shares of Restricted Stock, Restricted Stock Units, Performance Shares or Performance Units are repurchased by the Company, such Shares will be treated as lapsed Awards and will become available for future grant under the Plan. Shares withheld or tendered (actually or through attestation) to pay the tax and/or exercise price of an Award will not become available for future grant or sale under the Plan. To the extent an Award under the Plan is payable in cash rather than Shares, such cash payment will result in reducing the number of Shares available for issuance under the Plan.

(d) Share Reserve. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of the Plan.

(e) Limitation on Number of Shares Subject to Awards. Notwithstanding any provision in the Plan to the contrary, the maximum aggregate number of Shares with respect to one or more Awards that may be granted to any one person during any calendar year (measured from the date of any grant) shall be 2,000,000 Shares and the maximum aggregate amount of cash that may be paid in cash during any calendar year (measured from the date of any payment) with respect to one or more Awards payable in cash shall be \$2,000,000.

#### **4. Administration of the Plan.**

(a) Procedure.

(i) Multiple Administrative Bodies. Different Committees with respect to different groups of Service Providers may administer the Plan.

(ii) Section 162(m). To the extent that the Administrator determines it to be desirable to qualify Awards granted hereunder as “performance-based compensation” within the meaning of Section 162(m) of the Code, the Plan will be administered by a Committee of two (2) or more “outside directors” within the meaning of Section 162(m) of the Code.

(iii) Rule 16b-3. To the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder will be structured to satisfy the requirements for exemption under Rule 16b-3.

(iv) Other Administration. Other than as provided above, the Plan will be administered by (A) the Board or (B) a Committee, which committee will be constituted to satisfy Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator will have the authority, in its discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Awards may be granted hereunder;

(iii) to determine the number of Shares to be covered by each Award granted hereunder;

(iv) to approve forms of Award Agreements for use under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder;

(vi) to construe and interpret the terms of the Plan and Awards granted pursuant to the Plan;

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws or for qualifying for favorable tax treatment under applicable foreign laws;

(viii) to modify or amend each Award (subject to Section 20(c) hereof), including but not limited to the discretionary authority to extend the post-termination exercisability period of Awards, but the Administrator cannot reduce the

exercise price of an outstanding Award unless such action is approved by the Company's stockholders;

(ix) to allow Participants to satisfy withholding tax obligations in a manner described in Section 16 hereof;

(x) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award previously granted by the Administrator;

(xi) to allow a Participant to defer the receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant under an Award pursuant to such procedures as the Administrator may determine; and

(xii) to make all other determinations deemed necessary or advisable for administering the Plan.

(xiii) In addition, except in connection with a corporate transaction involving the Company (including, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination, or exchange of shares), the Administration shall not be permitted without stockholder approval to reprice outstanding Awards or to cancel or exchange an outstanding Award for cash or any other Award with an exercise price that is less than the exercise price of the original Award. For purposes of clarity, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (A) changing the terms of an Award to lower its exercise price; (B) any other action that is treated as a "repricing" under generally accepted accounting principles; and (C) repurchasing for cash or canceling Award at a time when its exercise price is greater than the Fair Market Value of the underlying stock in exchange for another Award, unless the cancellation and exchange occurs in connection with an event set forth in Section 15. Such cancellation and exchange would be considered a "repricing" regardless of whether it is treated as a "repricing" under generally accepted accounting principles and regardless of whether it is voluntary on the part of the Participant.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations, and interpretations will be final and binding on all Participants and any other holders of Awards.

(d) No Reload Awards. No Award shall contain a reload feature that results in a new Award granted automatically upon delivery of Shares to the Company in payment of the exercise price or any tax withholding obligation.

**5. Eligibility.** Nonstatutory Stock Options, Restricted Stock, Restricted Stock Units, Stock Appreciation Rights, Performance Units, Performance Shares, and such other cash or stock awards as the Administrator determines may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

## **6. Stock Options.**

(a) Limitations.

(i) Each Option will be designated in the Award Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds \$100,000 (U.S.), such Options will be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options will be taken into account in the order in which they were granted. The Fair Market Value of the Shares will be determined as of the time the Option with respect to such Shares is granted.

(ii) The Administrator will have complete discretion to determine the number of Shares subject to an Option granted to any Participant.

(b) Term of Option. The Administrator will determine the term of each Option in its sole discretion; provided, however, that the term will be no more than ten (10) years from the date of grant thereof. Moreover, in the case of an Incentive Stock Option granted to a Participant who, at the time the Incentive Stock Option is granted, owns stock representing more than 10% of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option will be five (5) years from the date of grant or such shorter term as may be provided in the Award Agreement.



(c) Option Exercise Price and Consideration.

(i) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option will be determined by the Administrator, but will be no less than 100% of the Fair Market Value per Share on the date of grant. In addition, in the case of an Incentive Stock Option granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price will be no less than 110% of the Fair Market Value per Share on the date of grant. Notwithstanding the foregoing provisions of this Section 6(c), Options may be granted with a per Share exercise price of less than 100% of the Fair Market Value per Share on the date of grant pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code.

(ii) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator will fix the period within which the Option may be exercised and will determine any conditions that must be satisfied before the Option may be exercised.

(iii) Form of Consideration. The Administrator will determine the acceptable form(s) of consideration for exercising an Option, including the method of payment, to the extent permitted by Applicable Laws. In the case of an Incentive Stock Option, the Administrator will determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of: (1) cash; (2) check; (3) promissory note, to the extent permitted by Applicable Laws, (4) other Shares, provided that such Shares have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option will be exercised and provided further that accepting such Shares will not result in any adverse accounting consequences to the Company, as the Administrator determines in its sole discretion; (5) consideration received by the Company under cashless exercise program (whether through a broker or otherwise) implemented by the Company in connection with the Plan; (6) by net exercise, (7) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws, or (8) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator will consider if acceptance of such consideration may be reasonably expected to benefit the Company.

(d) Exercise of Option.

(i) Procedure for Exercise; Rights as a Stockholder. Any Option granted hereunder will be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Award Agreement. An Option may not be exercised for a fraction of a Share.

An Option will be deemed exercised when the Company receives: (A) notice of exercise (in such form as the Administrator specifies from time to time) from the person entitled to exercise the Option, and (B) full payment for the Shares with respect to which the Option is exercised (together with any applicable withholding taxes). Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant or, if requested by the Participant, in the name of the Participant and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares subject to an Option, notwithstanding the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 15 hereof.

(ii) Termination of Relationship as a Service Provider. If a Participant ceases to be a Service Provider, other than upon the Participant's termination as the result of the Participant's death or Disability, the Participant may exercise his or her Option within such period of time as is specified in the Award Agreement to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Option will remain exercisable for three (3) months following the Participant's termination. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified by the Administrator, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iii) Disability of Participant. Unless otherwise specified in the Award Agreement, if a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant will fully vest in and have the right to exercise all of his or her outstanding Options within such period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement), provided, however, that the accelerated vesting shall only apply to Options granted to the Participant at least ninety (90) days before the Participant ceases to be a Service Provider as a result of Participant's Disability. In the absence of a specified time in the Award Agreement, the Option will remain exercisable for six (6) months following the date a Participant ceases to be a Service Provider as a result of Participant's Disability. If a Participant's Award Agreement specifically provides that Participant will not fully vest in all of the Shares covered by the Option on the date Participant ceases to be a Service Provider as a result of Participant's Disability, the Shares covered by the unvested portion of the Option will revert to the Plan. If after Participant ceases to be a Service Provider as a result of

Participant's Disability, Participant does not exercise his or her Option within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iv) Death of Participant. Unless otherwise specified in the Award Agreement, if a Participant dies while a Service Provider, the Participant's outstanding Options will fully vest and may be exercised within such period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement), by the Participant's designated beneficiary, provided such beneficiary has been designated prior to Participant's death in a form acceptable to the Administrator, provided, further, that the accelerated vesting shall only apply to Options granted to the Participant at least ninety (90) days before the Participant ceases to be a Service Provider as a result of Participant's death. If no such beneficiary has been designated by the Participant, then such Option may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the Option is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. In the absence of a specified time in the Award Agreement, the Option will remain exercisable for six (6) months following Participant's death. If a Participant's Award Agreement specifically provides that Participant will not fully vest in all of the Shares covered by the Option if Participant dies while a Service Provider, the Shares covered by the unvested portion of the Option will continue to vest in accordance with the Award Agreement. If the Option is not so exercised within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

## **7. Stock Appreciation Rights.**

(a) Grant of Stock Appreciation Rights. Subject to the terms and conditions of the Plan, a Stock Appreciation Right may be granted to Service Providers at any time and from time to time as will be determined by the Administrator, in its sole discretion.

(b) Number of Shares. The Administrator will have complete discretion to determine the number of Stock Appreciation Rights granted to any Participant.

(c) Exercise Price and Other Terms. The Administrator, subject to the provisions of the Plan, will have complete discretion to determine the terms and conditions of Stock Appreciation Rights granted under the Plan; provided, however, that the exercise price will be not less than 100% of the Fair Market Value of a Share on the date of grant.

(d) Stock Appreciation Rights Agreement. Each Stock Appreciation Right grant will be evidenced by an Award Agreement that will specify the exercise price, the term of the Stock Appreciation Right, the conditions of exercise, and such other terms and conditions as the Administrator, in its sole discretion, will determine.

(e) Expiration of Stock Appreciation Rights. A Stock Appreciation Right granted under the Plan will expire upon the date determined by the Administrator, in its sole discretion, and set forth in the Award Agreement; provided, however, that the term will be no more than ten (10) years from the date of grant thereof. Notwithstanding the foregoing, the

rules of Section 6(d) above also will apply to Stock Appreciation Rights.

(f) Payment of Stock Appreciation Right Amount. Upon exercise of a Stock Appreciation Right, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying:

(i) The difference between the Fair Market Value of a Share on the date of exercise over the exercise price; times

(ii) The number of Shares with respect to which the Stock Appreciation Right is exercised.

At the discretion of the Administrator, the payment upon Stock Appreciation Right exercise may be in cash, in Shares of equivalent value, or in some combination thereof.

(g) Death or Disability of Participant. Unless otherwise specified in the Award Agreement, if a Participant ceases to be a Service Provider as a result of the Participant's death or Disability, all of his or her outstanding Stock Appreciation Rights will fully vest and may be exercised within such period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Stock Appreciation Rights as set forth in the Award Agreement) by the Participant or the Participant's designated beneficiary, provided such beneficiary has been designated prior to Participant's death in a form acceptable to the Administrator), provided, further, that the accelerated vesting shall only apply to Stock Appreciation Rights granted to the Participant at least 90 days before the Participant ceases to be a Service Provider as a result of Participant's death or Disability. If no such beneficiary has been designated by the Participant, then such Stock Appreciate Rights may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the Stock Appreciation Right is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. In the absence of a specified time in the Award Agreement, the Stock Appreciation Rights will remain exercisable for six (6) months following the date the Participant ceases to be a Service Provider as a result of Participant's death or Disability. If the Stock Appreciation Right is not so exercised within the time specified herein, the Stock Appreciation Right will terminate.

## 8. Restricted Stock.

(a) Grant of Restricted Stock. Subject to the terms and provisions of the Plan, the Administrator, at any time and from time to time, may grant Shares of Restricted Stock to Service Providers in such amounts as the Administrator, in its sole discretion, will determine.

(b) Restricted Stock Agreement. Each Award of Restricted Stock will be evidenced by an Award Agreement that will specify the Period of Restriction, the number of Shares granted, and such other terms and conditions as the Administrator, in its sole discretion, will determine. Unless the Administrator determines otherwise, the Company as escrow agent will hold Shares of Restricted Stock until the restrictions on such Shares have lapsed.

(c) Transferability. Except as provided in this Section 8, Shares of Restricted Stock may not be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated until the end of the applicable Period of Restriction.

(d) Other Restrictions. The Administrator, in its sole discretion, may impose such other restrictions on Shares of Restricted Stock as it may deem advisable or appropriate.

(e) Removal of Restrictions. Except as otherwise provided in this Section 8, Shares of Restricted Stock covered by each Restricted Stock grant made under the Plan will be released from escrow as soon as practicable after the last day of the Period of Restriction. The Administrator, in its discretion, may accelerate the time at which any restrictions will lapse or be removed. Unless otherwise specified in the Award Agreement, if a Participant ceases to be a Service Provider as a result of the Participant's death or Disability, all restrictions on his or her outstanding Restricted Stock, other than those that are Performance Shares (see Section 10 below), will automatically lapse or be removed, provided, however, that the accelerated vesting shall only apply to Restricted Stock granted to the Participant at least 90 days before the Participant ceases to be a Service Provider as a result of Participant's death or Disability.

(f) Voting Rights. During the Period of Restriction, Service Providers holding Shares of Restricted Stock granted hereunder may exercise full voting rights with respect to those Shares, unless the Administrator determines otherwise.

(g) Dividends and Other Distributions. During the Period of Restriction, Service Providers holding Shares of Restricted Stock will be entitled to receive all dividends and other distributions paid with respect to such Shares unless otherwise provided in the Award Agreement. If any such dividends or distributions are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Shares of Restricted Stock with respect to which they were paid.

(h) Return of Restricted Stock to Company. On the date set forth in the Award Agreement, the Restricted Stock for which restrictions have not lapsed will revert to the Company and again will become available for grant under the Plan.

(i) Section 162(m) Performance Restrictions. For purposes of qualifying grants of Restricted Stock as “performance-based compensation” under Section 162(m) of the Code, the Administrator, in its discretion, may set restrictions based upon the achievement of Performance Goals. The Performance Goals will be set by the Administrator on or before the Determination Date. In granting Restricted Stock which is intended to qualify under Section 162(m) of the Code, the Administrator will follow any procedures determined by it from time to time to be necessary or appropriate to ensure qualification of the Award under Section 162(m) of the Code (e.g., in determining the Performance Goals).

## 9. Restricted Stock Units.

(a) Grant. Restricted Stock Units may be granted at any time and from time to time as determined by the Administrator. Each Restricted Stock Unit grant will be evidenced by an Award Agreement that will specify such other terms and conditions as the Administrator, in its sole discretion, will determine, including all terms, conditions, and restrictions related to the grant, the number of Restricted Stock Units and the form of payout, which, subject to Section 9(d) hereof, may be left to the discretion of the Administrator.

(b) Vesting Criteria and Other Terms. The Administrator will set vesting criteria in its discretion, which, depending on the extent to which the criteria are met, will determine the number of Restricted Stock Units that will be paid out to the Participant. After the grant of Restricted Stock Units, the Administrator, in its sole discretion, may reduce or waive any restrictions for such Restricted Stock Units. Each Award of Restricted Stock Units will be evidenced by an Award Agreement that will specify the vesting criteria, and such other terms and conditions as the Administrator, in its sole discretion will determine. The Administrator, in its discretion, may accelerate the time at which any restrictions will lapse or be removed. Unless otherwise specified in the Award Agreement, if a Participant ceases to be a Service Provider as a result of the Participant's death or Disability, all restrictions on his or her outstanding Restricted Stock Units, other than those that are Performance Units (see Section 10 below), will automatically lapse or be removed, provided, however, that the accelerated vesting shall only apply to Restricted Stock Units granted to the Participant at least 90 days before the Participant ceases to be a Service Provider as a result of Participant's death or Disability.

(c) Earning Restricted Stock Units. Upon meeting the applicable vesting criteria, the Participant will be entitled to receive a payout as specified in the Award Agreement.

(d) Form and Timing of Payment. Payment of earned Restricted Stock Units will be made as soon as practicable after the date(s) set forth in the Award Agreement. The Administrator, in its sole discretion, may pay earned Restricted Stock Units in cash, Shares, or a combination thereof. Shares represented by Restricted Stock Units that are fully paid in cash again will be available for grant under the Plan.

(e) Cancellation. On the date set forth in the Award Agreement, all unearned Restricted Stock Units will be forfeited to the Company.

(f) Section 162(m) Performance Restrictions. For purposes of qualifying grants of Restricted Stock Units as "performance-based compensation" under Section 162(m) of the Code, the Administrator, in its discretion, may set restrictions based upon the achievement of Performance Goals. The Performance Goals will be set by the Administrator on or before the Determination Date. In granting Restricted Stock Units which are intended to qualify under Section 162(m) of the Code, the Administrator will follow any procedures determined by it from time to time to



be necessary or appropriate to ensure qualification of the Award under Section 162(m) of the Code (e.g., in determining the Performance Goals).

**10. Performance Units and Performance Shares.**

(a) Grant of Performance Units/Shares. Performance Units and Performance Shares may be granted to Service Providers at any time and from time to time, as will be determined by the Administrator, in its sole discretion. The Administrator will have complete discretion in determining the number of Performance Units/Shares granted to each Participant.

(b) Value of Performance Units/Shares. Each Performance Unit will have an initial value that is established by the Administrator on or before the date of grant. Each Performance Share will have an initial value equal to the Fair Market Value of a Share on the date of grant.

(c) Performance Objectives and Other Terms. The Administrator will set performance objectives or other vesting provisions. The Administrator may set vesting criteria based upon the achievement of Company-wide, business unit, or individual goals (including, but not limited to, continued employment), or any other basis determined by the Administrator in its discretion. Each Award of Performance Units/Shares will be evidenced by an Award Agreement that will specify the Performance Period, and such other terms and conditions as the Administrator, in its sole discretion, will determine. Unless otherwise specified in the Award Agreement, if a Participant ceases to be a Service Provider as a result of the Participant's death or Disability, all Performance Goals or other vesting criteria will be deemed achieved at target levels and all other terms and conditions met), provided, however, that the accelerated vesting shall only apply to Performance Units/Shares granted to the Participant at least 90 days before the Participant ceases to be a Service Provider as a result of Participant's death or Disability.

(d) Earning of Performance Units/Shares. After the applicable Performance Period has ended, the holder of Performance Units/Shares will be entitled to receive a payout of the number of Performance Units/Shares earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding performance objectives or other vesting provisions have been achieved. After the grant of a Performance Unit/Share, the Administrator, in its sole discretion, may reduce or waive any performance objectives or other vesting provisions for such Performance Unit/Share.

(e) Form and Timing of Payment of Performance Units/Shares. Payment of earned Performance Units/Shares will be made as soon as practicable after the expiration of the applicable Performance Period. The Administrator, in its sole discretion, may pay earned Performance Units/Shares in the form of cash, in Shares (which have an aggregate Fair Market Value equal to the value of the earned Performance Units/Shares at the close of the applicable Performance Period) or in a combination thereof.

(f) Cancellation of Performance Units/Shares. On the date set forth in the Award Agreement, all unearned or unvested Performance Units/Shares will be forfeited to the Company, and again will be available for grant under the Plan.

(g) Section 162(m) Performance Restrictions. For purposes of qualifying grants of Performance Units/Shares as "performance-based compensation" under Section 162(m) of the Code, the Administrator, in its discretion, may set restrictions based upon the achievement of Performance Goals. The Performance Goals will be set by the Administrator on or before the Determination Date. In granting Performance Units/Shares which are intended to qualify under Section 162(m) of the Code, the Administrator will follow any procedures determined by it from time to time to be necessary or appropriate to ensure qualification of the Award under Section 162(m) of the Code (e.g., in determining the Performance Goals).

## **11. Performance-Based Compensation Under Code Section 162(m).**

(a) General. If the Administrator, in its discretion, decides to grant an Award intended to qualify as “performance-based compensation” under Code Section 162(m), the provisions of this Section 11 will control over any contrary provision in the Plan; provided, however, that the Administrator may in its discretion grant Awards that are not intended to qualify as “performance-based compensation” under Section 162(m) of the Code to such Participants that are based on Performance Goals or other specific criteria or goals but that do not satisfy the requirements of this Section 11.

(b) Performance Goals. The granting and/or vesting of Awards of Restricted Stock, Restricted Stock Units, Performance Shares and Performance Units and other incentives under the Plan may be made subject to the attainment of performance goals relating to one or more business criteria within the meaning of Code Section 162(m) and may provide for a targeted level or levels of achievement (“Performance Goals”) including: (i) earnings per Share; (ii) operating cash flow; (iii) operating income; (iv) profit after-tax; (v) profit before-tax; (vi) return on assets; (vii) return on equity; (viii) return on sales; (ix) revenue; and (x) total shareholder return; (xi) return on capital, including but not limited to return on invested capital against a weighted average cost of capital; (xii) return on net assets; (xiii) economic value added; (xiv) market share; (xv) customer service; (xvi) customer satisfaction; (xvii) safety; (xviii) total stockholder return; (xix) free cash flow; (xx) net operating income; (xxi) operating cash flow; (xxii) return on investment; (xxiii) employee satisfaction; (xxiv) employee retention; (xxv) balance of cash, cash equivalents and marketable securities; (xxvi) product development; (xxvii) research and development expenses; (xxviii) completion of an identified special project; (xxix) completion of a joint venture or other corporate transaction; (xxx) filing of patents; (xxxi) submission and/or publication of Scientific Works; (xxxii) execution or expansion of strategic partnerships or relationships; or (xxxiii) such other measures as determined by the Committee consistent with the terms of the Equity Incentive Plan. Any Performance Goals may be used to measure the performance of the Company as a whole or a business unit of the Company and may be measured relative to a peer group or index. The Performance Goals may differ from Participant to Participant and from Award to Award. Prior to the Determination Date, the Administrator will determine whether any significant element(s) will be included in or excluded from the calculation of any Performance Goal with respect to any Participant.

(c) Procedures. To the extent necessary to comply with the performance-based compensation provisions of Code Section 162(m), with respect to any Award granted subject to Performance Goals, within the first twenty-five percent (25%) of the Performance Period, but in no event more than ninety (90) days following the commencement of any Performance Period (or such other time as may be required or permitted by Code Section 162(m)), the Administrator will, in writing, (i) designate one or more Participants to whom an Award will be made, (ii) select the Performance Goals applicable to the Performance Period, (iii) establish the Performance Goals, and amounts of such Awards, as applicable, which may be earned for such Performance Period, and (iv) specify the relationship between Performance Goals and the amounts of such Awards, as applicable, to be earned by each Participant for such Performance Period. Following the completion of each Performance Period, the Administrator will certify in writing whether the applicable Performance Goals have been achieved for such Performance Period. In determining the amounts earned by a Participant, the Administrator will have the right to reduce or eliminate (but not to increase) the amount payable at a given level of performance to take into account additional factors that the Administrator may deem relevant to the assessment of individual or corporate performance for the Performance Period. A Participant will be eligible to receive payment pursuant to an Award for a Performance Period only if the Performance Goals for such period are achieved.

(d) Limitation on Dividends and Dividend Equivalents. Any dividend or dividend-equivalent payment paid on an Award granted under this Section 11 may be (i) reinvested in additional Shares or units, in either case, subject to the same restrictions as the underlying Award, or (ii) withheld, credited with interest at the sole discretion of the Administrator, and later paid in cash or Shares (with a Fair Market Value per Share equal to any accumulated dividends or dividend-equivalent payments) once the underlying Award vests. If an Award granted under this Section 11 is forfeited, any accumulated dividends or dividend-equivalent payments are also forfeited.

(e) Additional Limitations. Notwithstanding any other provision of the Plan, any Award which is granted to a Participant and is intended to constitute qualified performance based compensation under Code Section 162(m) will be subject to any additional limitations set forth in the Code (including any amendment to Section 162(m)) or any regulations and ruling issued thereunder that are requirements for qualification as qualified performance-based compensation as described in Section 162(m) of the Code, and the Plan will be deemed amended to the extent necessary to conform to such requirements.

**12. Compliance with Code Section 409A.** Awards will be designed and operated in such a manner that they are either exempt from the application of, or comply with, the requirements of Code Section 409A, except as otherwise determined in the sole discretion of the Administrator. The Plan and each Award Agreement under the Plan is intended to meet the requirements of Code Section 409A and will be construed and interpreted in accordance with such intent, except as otherwise determined in the sole discretion of the Administrator. To the extent that an Award or payment, or the settlement or deferral thereof, is subject to Code Section 409A the Award will be granted, paid, settled or deferred in a manner that will meet the requirements of Code Section 409A, such that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Code Section 409A.

**13. Leaves of Absence.** Unless the Administrator provides otherwise, vesting of Awards granted hereunder will be suspended during any unpaid leave of absence. A Service Provider will not cease to be an Employee in the case of (i) any leave of absence approved by the Company, or (ii) transfers between locations of the Company or between the Company, its Parent, or any Subsidiary. For purposes of Incentive Stock Options, no such leave may exceed three (3) months, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then six (6) months and one day following the commencement of such leave any Incentive Stock Option held by the Participant will cease to be treated as an Incentive Stock Option and will be treated for tax purposes as a Nonstatutory Stock Option.

**14. Transferability of Awards.** Unless determined otherwise by the Administrator, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Participant, only by the Participant. If the Administrator makes an Award transferable, such Award may only be transferred (i) by will, (ii) by the laws of descent and distribution, (iii) to a revocable trust, or (iv) as permitted by Rule 701 of the Securities Act of 1933, as amended.

**15. Adjustments; Dissolution or Liquidation; Merger or Change in Control.**

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Plan, will adjust the number and class of Shares that may be delivered under the Plan and/or the number, class, and price of Shares covered by each outstanding Award, and the numerical Share limits set forth in Sections 3, 7, 8, 9 and 10 hereof.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator will notify each Participant as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, an Award will terminate immediately prior to the consummation of such proposed action.

(c) Change in Control. In the event of a merger of the Company with or into another corporation or other entity or a Change in Control, each outstanding Award will be treated as the Administrator determines (subject to the provisions of the preceding paragraph) without a Participant's consent, including, without limitation, that (i) Awards will be assumed, or substantially equivalent Awards will be substituted, by the acquiring or succeeding corporation (the "Successor Corporation") (or an affiliate thereof) with appropriate adjustments as to the number and kind of shares and prices; (ii) upon written notice to a Participant, that the Participant's Awards will terminate upon or immediately prior to the consummation of such merger or Change in Control; (iii) outstanding Awards will vest and become exercisable, realizable, or payable, or restrictions applicable to an Award will lapse, in whole or in part prior to or upon consummation of such merger or Change in Control, and, to the extent the Administrator determines, terminate upon or immediately prior to the effectiveness of such merger or Change in Control; (iv) (A) the termination of an Award in exchange for an amount of cash and/or property, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant's rights as of the date of the occurrence of the transaction (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment), or (B) the replacement of such Award with other rights or property selected by the Administrator in its sole discretion; or (v) any combination of the foregoing. In taking any of the actions permitted under this subsection (c), the Administrator will not be obligated to

treat all Awards, all Awards held by a Participant, or all Awards of the same type, similarly.

In the event that the Successor Corporation does not assume or substitute for the Award, the Participant will fully vest in and have the right to exercise all of his or her outstanding Options and Stock Appreciation Rights, including Shares as to which such Awards would not otherwise be vested or exercisable, all restrictions on Restricted Stock will lapse, and, with respect to Restricted Stock Units, Performance Shares and Performance Units, all Performance Goals or other vesting criteria will be deemed achieved at target levels and all other terms and conditions met. In addition, if an Option or Stock Appreciation Right is not assumed or substituted for in the event of a Change in Control, the Administrator will notify the Participant in writing or electronically that the Option or Stock Appreciation Right will be fully vested and exercisable for a period of time determined by the Administrator in its sole discretion, and the Option or Stock Appreciation Right will terminate upon the expiration of such period.

For the purposes of this subsection (c), an Award will be considered assumed if, following the Change in Control, the Award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, or other securities or property) or, in the case of a Stock Appreciation Right upon the exercise of which the Administrator determines to pay cash or a Performance Share or Performance Unit which the Administrator can determine to pay in cash, the fair market value of the consideration received in the merger or Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Change in Control is not solely common stock of the Successor Corporation, the Administrator may, with the consent of the Successor Corporation, provide for the consideration to be received upon the exercise of an Option or Stock Appreciation Right or upon the payout of a Performance Share or Performance Unit, for each Share subject to such Award (or in the case of Performance Units, the number of implied shares determined by dividing the value of the Performance Units by the per share consideration received by holders of Common Stock in the Change in Control), to be solely common stock of the Successor Corporation equal in fair market value to the per share consideration received by holders of Common Stock in the Change in Control.

Notwithstanding anything in this Section 15(c) to the contrary, an Award that vests, is earned or paid-out upon the satisfaction of one or more Performance Goals will not be considered assumed if the Company or its successor modifies any of such Performance Goals without the Participant's consent; provided, however, a modification to such Performance Goals only to reflect the Successor Corporation's post-Change in Control corporate structure will not be deemed to invalidate an otherwise valid Award assumption. In the case of an Award providing for the payment of deferred compensation subject to Section 409A of the Code, any payment of such deferred compensation by reason of a Change in Control shall be made only if the Change in Control is one described in subsection (a)(2)(A)(v) of Section 409A and the guidance thereunder and shall be paid consistent with the requirements of Section 409A. If any deferred compensation that would otherwise be payable by reason of a Change in Control cannot be paid by reason of the immediately preceding sentence, it shall be paid as soon as practicable thereafter consistent with the requirements of Section 409A, as determined by the Administrator.

## **16. Tax Withholding.**

(a) Withholding Requirements. Prior to the delivery of any Shares or cash pursuant to an Award (or exercise thereof), the Company will have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, local, foreign or other taxes (including the Participant's FICA obligation) required to be withheld with respect to such Award (or exercise thereof).

(b) Withholding Arrangements. The Administrator, in its sole discretion and pursuant to such procedures as it may specify from time to time, may permit a Participant to satisfy such tax withholding obligation, in whole or in part by (without limitation) (i) paying cash, (ii) electing to have the Company withhold otherwise deliverable cash or Shares having a Fair Market Value equal to the minimum amount required to be withheld, (iii) delivering to the Company already-owned Shares having a Fair Market Value equal to the amount required to be withheld, or (iv) selling a



sufficient number of Shares otherwise deliverable to the Participant through such means as the Administrator may determine in its sole discretion (whether through a broker or otherwise) equal to the amount required to be withheld. The amount of the withholding requirement will be deemed to include any amount which the Administrator agrees may be withheld at the time the election is made, not to exceed the amount determined by using the maximum federal, state or local marginal income tax rates applicable to the Participant with respect to the Award on the date that the amount of tax to be withheld is to be determined. The Fair Market Value of the Shares to be withheld or delivered will be determined as of the date that the taxes are required to be withheld.

**17. No Effect on Employment or Service.** Neither the Plan nor any Award will confer upon a Participant any right with respect to continuing the Participant's relationship as a Service Provider with the Company, nor will they interfere in any way with the Participant's right or the Company's right to terminate such relationship at any time, with or without cause, to the extent permitted by Applicable Laws.

**18. Date of Grant.** The date of grant of an Award will be, for all purposes, the date on which the Administrator makes the determination granting such Award, or such other later date as is determined by the Administrator. Notice of the determination will be provided to each Participant within a reasonable time after the date of such grant.

**19. Term of Plan.** Subject to Section 23 hereof, the Plan will become effective upon its adoption by the Company's stockholders at the 2018 Annual Meeting of Stockholders. It will continue in effect for a term of ten (10) years unless terminated earlier under Section 20 hereof.

**20. Amendment and Termination of the Plan.**

(a) Amendment and Termination. The Administrator may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval. The Company will obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension, or termination of the Plan will impair the rights of any Participant, unless mutually agreed otherwise between the Participant and the Administrator, which agreement must be in writing and signed by the Participant and the Company. Termination of the Plan will not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination.

**21. Conditions Upon Issuance of Shares.**

(a) Legal Compliance. Shares will not be issued pursuant to the exercise of an Award unless the exercise of such Award and the issuance and delivery of such Shares will comply with Applicable Laws and will be further subject to the approval of counsel for the Company with respect to such compliance.

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

(c) Restrictive Legends. All Award Agreements and all securities of the Company issued pursuant thereto shall bear such legends regarding restrictions on transfer and such other legends as the appropriate officer of the Corporation shall determine to be necessary or advisable to comply with applicable securities and other laws.

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

**23. Stockholder Approval.** The Plan will be subject to approval by the stockholders of the Company within twelve (12) months after the date the Plan is adopted by the Board. Such stockholder approval will be obtained in the manner and to the degree required under Applicable Laws. In the event that stockholder approval is not obtained within twelve (12) months after the date the Plan is adopted by the Board, the Plan and all Awards granted hereunder shall be void ab initio and of no effect. Notwithstanding any other provisions of the Plan, no Awards shall be exercisable until the date of such stockholder approval.

**24. Notification of Election Under Section 83(b) of the Code.** If any Service Provider shall, in connection with the acquisition of Shares under the Plan, make the election permitted under Section 83(b) of the Code, such Service Provider shall notify the Company of such election within ten (10) days of filing notice of the election with the Internal Revenue Service and provide the Company with a copy thereof, in addition to any filing and a notification required pursuant to regulations issued under the authority of Section 83(b) of the Code. A Service Provider shall not be permitted to make a Section 83(b) election with respect to an Award of a Restricted Stock Unit.

**25. Notification Upon Disqualifying Disposition Under Section 421(b) of the Code.** Each Service Provider shall notify the Company of any disposition of Shares issued pursuant to the exercise of an Incentive Stock Option under the circumstances described in Section 421(b) of the Code (relating to certain disqualifying dispositions), within ten (10) days of such disposition.

**26. Choice of Law.** The Plan and all rules and determinations made and taken pursuant hereto will be governed by the laws of the State of Delaware, to the extent not preempted by federal law, and construed accordingly.

**27. Clawback or Recoupment.** Unless otherwise specified in the Award Agreement or determined in the Administrator's sole discretion, all Awards, and all Shares and cash payable under each Award, are subject to any clawback or recoupment policy adopted by the Company (including any policy required under the Dodd-Frank Wall Street Reform and Consumer Protection Act or other Applicable Laws), regardless of whether the policy is adopted after the date on which the Award is granted, vests or becomes exercisable, or is exercised or settled by issuance of Shares, payment of cash, or a combination of both.





