

RIGEL PHARMACEUTICALS INC
Form DEFA14A
May 03, 2016

**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 ☒ X

Filed by a Party other than the Registrant ☐ O

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

RIGEL PHARMACEUTICALS, INC.

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- ☐ No fee required.
- ☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1)		Title of each class of securities to which transaction applies:
(2)		Aggregate number of securities to which transaction applies:
(3)		Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
(4)		Proposed maximum aggregate value of transaction:
(5)		Total fee paid:
- ☐ Fee paid previously with preliminary materials.
- ☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

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- (1) Amount Previously Paid:
 - (2) Form, Schedule or Registration Statement No.:
 - (3) Filing Party:
 - (4) Date Filed:
-

**SUPPLEMENT TO PROXY STATEMENT
FOR THE ANNUAL MEETING OF STOCKHOLDERS OF
RIGEL PHARMACEUTICALS, INC.
TO BE HELD ON MAY 10, 2016**

On or about March 28, 2016, Rigel Pharmaceuticals, Inc. (the **Company** or **Rigel**) made available a proxy statement (the **Proxy Statement**) to its stockholders in connection with its 2016 Annual Meeting of Stockholders (the **Annual Meeting**). The Annual Meeting will be held on Tuesday, May 10, 2016 at 10:00 a.m. local time at Rigel's executive offices, located at 1180 Veterans Boulevard, South San Francisco, California 94080. The record date for the annual meeting is March 16, 2016.

After making the Proxy Statement available to stockholders, the Company was informed by Institutional Shareholder Services (**ISS**) that ISS had issued an unfavorable recommendation on the proposal to approve the Company's 2000 Non-Employee Directors' Stock Option Plan, as amended (the **Directors' Plan**). This Supplement to the Proxy Statement (this **Supplement**) amends and supplements the Proxy Statement.

PROPOSAL 3 APPROVAL OF AMENDED 2000 NON-EMPLOYEE DIRECTORS' STOCK OPTION PLAN

Proposal 3 in the Proxy Statement requests that the Company's stockholders approve the Directors' Plan, as amended, to increase the aggregate number of shares of common stock authorized for issuance under the Directors' Plan by 350,000 shares. On May 2, 2016, the Company's Board of Directors (the **Board**) modified the proposal to amend the Directors' Plan to (i) remove the proposed increase in the number of shares of common stock authorized for issuance under the Directors' Plan and (ii) provide a maximum annual limit on non-employee director compensation.

Specifically, Section 4(a) of the Directors' Plan would be amended to read as follows:

Share Reserve. Subject to the provisions of Section 11 relating to adjustments upon changes in the Common Stock, the Common Stock that may be issued pursuant to Options shall not exceed in the aggregate 1,235,000 shares of Common Stock, which number consists of (i) 33,333 shares of Common stock initially reserved for issuance under the Plan plus (ii) 66,667 shares of Common stock approved by the Board in April 2003 and subsequently approved by the Company's stockholders plus (iii) 225,000 shares of Common Stock approved by the Board in April 2005 and subsequently approved by the Company's stockholders plus (iv) 110,000 shares of Common Stock approved by the Board in January 2007 and subsequently approved by the Company's stockholders plus (v) 100,000 shares of Common Stock approved by the Board in February 2008 and subsequently approved by the Company's stockholders plus (vi) 350,000 shares of Common Stock approved by the Board in January 2010 and subsequently approved by the Company's stockholders plus (vii) 250,000 shares of Common Stock approved by the Board in February 2011 and subsequently approved by the Company's stockholders plus (viii) 100,000 shares of Common Stock approved by the Board in February 2013 and subsequently approved by the Company's stockholders.

In addition, a new Section 6(c) would be added to the Directors' Plan to read as follows:

Limitation on Grants to Non-Employee Directors. The maximum number of shares of Common Stock subject to Options granted under the Plan or otherwise during any one calendar year to any Non-Employee Director shall not exceed the limits described in Sections 6(a) and 6(b)

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above. The maximum amount of cash compensation that may be payable by the Company to a Non-Employee Director shall not exceed \$150,000 per year. The Board may make exceptions to the cash compensation limit in the immediately preceding sentence of this Section 6(c) for individual Non-Employee Directors in extraordinary circumstances (for example, to compensate such individual for interim service in the capacity of an officer of the Company), as the Board may determine in its discretion, provided that the Non-Employee Director receiving such additional cash compensation may not participate in the decision to award such compensation.

The last sentence of Section 12(a) of the Directors Plan would be amended to read as follows:

However, except as provided in Section 11 relating to adjustments upon changes in stock, no amendment

shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy the requirements of Rule 16b-3 or any Nasdaq or securities exchange listing requirements; provided, however, that the Board may not amend Section 6 to increase the non-discretionary grants or limitations on cash compensation described therein without stockholder approval.

This elimination of the proposed increase in the number of shares of common stock authorized for awards under the Directors' Plan will reduce the potential dilutive impact of the Directors' Plan on the Company's stockholders, compared to the original proposal. In addition, the Board adopted a limit on non-employee director compensation in order to place a reasonable limit on the amount of equity and cash compensation that may be awarded to any one non-employee director during any one calendar year. In setting such a limit, the Board considered the effectiveness and reasonableness of the equity and cash compensation that we offer to our non-employee directors along with industry benchmarks in consultation with Radford (an AON Hewitt Company), its independent compensation consultant. The Company believes that such a limit allows it to stay within reasonable bounds of what the market requires in a competitive environment, while also placing meaningful restrictions on the amount of compensation that may be awarded to the Company's non-employee directors.

A copy of the Directors' Plan, as amended, is appended to this Supplement as *Appendix A*.

Except as described above, the Directors' Plan and the description thereof contained in the Proxy Statement remain unchanged. **The Board of Directors continues to recommend unanimously that the stockholders vote FOR approval of the Directors' Plan, as amended.**

VOTING PROCEDURES

Any vote FOR or AGAINST or ABSTAIN that has been previously made for Proposal 3 will be counted, respectively, as a vote FOR or AGAINST or ABSTAIN on the Directors' Plan as described above and in the Proxy Statement. If any stockholder has previously voted and would like to change his or her vote on any matter, such stockholder may revoke his or her proxy before it is voted at the Annual Meeting by submission of a proxy bearing a later date in the manner set forth in the Proxy Statement. You do not have to take any action if you have previously voted your shares on the Annual Meeting proposals and do not wish to change your vote on any proposal.

By Order of the Board of Directors

Dolly A. Vance
Corporate Secretary

South San Francisco, California

May 3, 2016

RIGEL PHARMACEUTICALS, INC.

2000 NON-EMPLOYEE DIRECTORS STOCK OPTION PLAN

ADOPTED AUGUST 18, 2000

APPROVED BY STOCKHOLDERS SEPTEMBER 11, 2000

EFFECTIVE DATE: DECEMBER 4, 2000

AMENDED AND RESTATED APRIL 24, 2003

AMENDED AND RESTATED JUNE 20, 2003

APPROVED BY STOCKHOLDERS JUNE 20, 2003

AMENDED AND RESTATED APRIL 22, 2005

APPROVED BY STOCKHOLDERS JUNE 2, 2005

AMENDED AND RESTATED JANUARY 31, 2007

APPROVED BY STOCKHOLDERS MAY 31, 2007

AMENDED AND RESTATED SEPTEMBER 18, 2007

AMENDED AND RESTATED FEBRUARY 21, 2008

APPROVED BY STOCKHOLDERS MAY 29, 2008

AMENDED AND RESTATED MAY 19, 2009

AMENDED AND RESTATED JANUARY 28, 2010

APPROVED BY STOCKHOLDERS MAY 27, 2010

AMENDED AND RESTATED JANUARY 28, 2010

APPROVED BY STOCKHOLDERS MAY 27, 2010

AMENDED AND RESTATED FEBRUARY 4, 2011

APPROVED BY STOCKHOLDERS MAY 19, 2011

AMENDED AND RESTATED FEBRUARY 8, 2013
APPROVED BY STOCKHOLDERS MAY 14, 2013

AMENDED BY THE COMPENSATION COMMITTEE FEBRUARY 27, 2014

AMENDED BY THE BOARD JANUARY 27, 2015

AMENDED BY THE COMPENSATION COMMITTEE JUNE 16, 2015

AMENDED AND RESTATED MAY 2, 2016

APPROVED BY STOCKHOLDERS MAY 10, 2016

1. PURPOSES.

(a) **Eligible Option Recipients.** The persons eligible to receive Options are the Non-Employee Directors of the Company.

(b) **Available Options.** The purpose of the Plan is to provide a means by which Non-Employee Directors may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Nonstatutory Stock Options.

(c) **General Purpose.** The Company, by means of the Plan, seeks to retain the services of its Non-Employee Directors, to secure and retain the services of new Non-Employee Directors and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

2. DEFINITIONS.

(a) **Affiliate** means, at the time of determination, any parent or subsidiary of the Company as such terms are defined in Rule 405 of the Securities Act. The Board shall have the authority to determine the time or times at which parent or subsidiary status is determined within the foregoing definition.

(b) **Annual Grant** means an Option granted annually to all Non-Employee Directors who meet the criteria specified in subsection 6(b) of the Plan.

(c) **Annual Meeting** means the annual meeting of the stockholders of the Company.

(d) **Board** means the Board of Directors of the Company.

(e) A ***Change in Control***, with respect to Options granted on or after the effective date of the Plan, will be deemed to have occurred upon the first to occur of an event set forth in any one of the following paragraphs:

(i) the acquisition (other than from the Company, by any person (as such term is defined in Section 13(c) or 14(d) of the Exchange Act of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities;

(ii) the individuals who, as of the effective date of the Plan, are members of the Board (the ***Incumbent Board***), cease for any reason to constitute at least a majority of the Board, unless the election, or nomination for election by the Company's stockholders, of any new director was approved by a vote of at least a majority of the Incumbent Board, and such new director shall, for purposes of this Plan, be considered as a member of the Incumbent Board; or

(iii) the closing of:

(1) a merger or consolidation involving the Company if the stockholders of the Company, immediately before such merger or consolidation, do not, as a result of such merger or consolidation, own, directly or indirectly, more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the corporation resulting from such merger or consolidation in substantially the same proportion as their ownership of the combined voting power of the voting securities of the Company outstanding immediately before such merger or consolidation; or

(2) a complete liquidation or dissolution of the Company or an agreement for the sale or other disposition of all or substantially all of the assets of the Company.

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities is acquired by (i) a trustee or other fiduciary holding securities under one or more employee benefit plans maintained by the Company or any of its subsidiaries or (ii) any corporation which, immediately prior to such acquisition, is owned directly or indirectly by the stockholders of the Company in the same proportion as their ownership of stock in the Company immediately prior to such acquisition.

For the avoidance of doubt, the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

Notwithstanding the foregoing or any other provision of this Plan, the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Optionholder shall supersede the foregoing definition with respect to Options subject to such agreement; *provided, however*, that if no definition of Change in Control or any analogous term is set forth in such an individual

written agreement, the foregoing definition shall apply.

(f) **Code** means the Internal Revenue Code of 1986, as amended.

(g) **Common Stock** means the common stock of the Company.

(h) **Company** means Rigel Pharmaceuticals, Inc., a Delaware corporation.

(i) **Consultant** means any person, including an advisor, (i) engaged by the Company or an Affiliate to render consulting or advisory services and who is compensated for such services or (ii) who is a member of the Board of Directors of an Affiliate. However, the term **Consultant** shall not include either Directors of the Company who are not compensated by the Company for their services as Directors or Directors of the Company who are merely paid a director's fee by the Company for their services as Directors.

(j) **Continuous Service** means that the Optionholder's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. The Optionholder's Continuous Service shall not be deemed to have terminated merely because of a change in the capacity in which the Optionholder renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Optionholder renders such service, provided that there is no interruption or termination of the Optionholder's service. For example, a change in status without interruption from a Non-Employee Director of the Company to a Consultant of an Affiliate or an Employee of the Company will not constitute an interruption of Continuous Service. The Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave.

- (k) **Director** means a member of the Board of Directors of the Company.
- (l) **Disability** means the permanent and total disability of a person within the meaning of Section 22(e)(3) of the Code.
- (m) **Employee** means any person employed by the Company or an Affiliate. Mere service as a Director or payment of a director's fee by the Company or an Affiliate shall not be sufficient to constitute employment by the Company or an Affiliate.
- (n) **Exchange Act** means the Securities Exchange Act of 1934, as amended.
- (o) **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 traded on the Nasdaq National Market or the Nasdaq SmallCap Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the last market trading day prior to the day of determination, as reported in The Wall Street Journal or such other source as the Board deems reliable.
- (ii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined in good faith by the Board.
- (p) **Initial Grant** means an Option granted to a Non-Employee Director who meets the criteria specified in subsection 6(a) of the Plan.
- (q) **IPO Date** means the effective date of the initial public offering of the Common Stock.
- (r) **Non-Employee Director** means a Director who is not an Employee.
- (s) **Nonstatutory Stock Option** means an Option not intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(t) **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.

(u) **Option** means a Nonstatutory Stock Option granted pursuant to the Plan.

(v) **Option Agreement** means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(w) **Optionholder** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(x) **Plan** means this Rigel Pharmaceuticals, Inc. 2000 Non-Employee Directors Stock Option Plan.

(y) **Rule 16b-3** means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(z) **Securities Act** means the Securities Act of 1933, as amended.

3. ADMINISTRATION.

(a) **Administration by Board.** The Board shall administer the Plan. The Board may not delegate administration of the Plan to a committee.

(b) **Powers of Board.** The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine the provisions of each Option to the extent not specified in the Plan.

(ii) To construe and interpret the Plan and Options granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in

the Plan or in any Option Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(iii) To amend the Plan or an Option as provided in Section 12.

(iv) To terminate or suspend the Plan as provided in Section 13.

(v) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company that are not in conflict with the provisions of the Plan.

(c) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

(d) Cancellation and Re-Grant of Options. Notwithstanding anything to the contrary in the Plan, neither the Board nor any Committee shall have the authority to: (i) reprice any outstanding Option under the Plan, (ii) cancel and re-grant any outstanding Option under the Plan, or (iii) effect any other action that is treated as a repricing under generally accepted accounting principles unless, in each case, the stockholders of the Company have approved such an action within twelve (12) months prior to such an event.

4. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to the provisions of Section 11 relating to adjustments upon changes in the Common Stock, the Common Stock that may be issued pursuant to Options shall not exceed in the aggregate 1,235,000 shares of Common Stock, which number consists of (i) 33,333 shares of Common stock initially reserved for issuance under the Plan plus (ii) 66,667 shares of Common stock approved by the Board in April 2003 and subsequently approved by the Company's stockholders plus (iii) 225,000 shares of Common Stock approved by the Board in April 2005 and subsequently approved by the Company's stockholders plus (iv) 110,000 shares of Common Stock approved by the Board in January 2007 and subsequently approved by the Company's stockholders plus (v) 100,000 shares of Common Stock approved by the Board in February 2008 and subsequently approved by the Company's stockholders plus (vi) 350,000 shares of Common Stock approved by the Board in January 2010 and subsequently approved by the Company's stockholders plus (vii) 250,000 shares of Common Stock approved by the Board in February 2011 and subsequently approved by the Company's stockholders plus (viii) 100,000 shares of Common Stock approved by the Board in February 2013 and subsequently approved by the Company's stockholders.

(b) Reversion of Shares to the Share Reserve. If any Option shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, the shares of Common Stock not acquired under such Option shall revert to and again become available for issuance under the Plan. If any shares subject to an Option are not delivered to an Optionholder because the Option is exercised through a reduction of shares subject to the Option (*i.e.*, net exercised), the number of shares that are not delivered to the Optionholder shall not remain available for issuance under the Plan. If any shares subject to an Option are not delivered to an Optionholder because such shares are withheld in satisfaction of the withholding of taxes incurred in connection with the exercise of an Option, the number of shares that are not delivered to the Optionholder shall not remain available for subsequent issuance under the Plan. If the exercise price of any Option is satisfied by tendering shares of Common Stock held by the Optionholder (either by actual delivery or attestation), then the number of shares so tendered shall not remain available for subsequent issuance under the Plan.

(c) Source of Shares. The shares of Common Stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

5. ELIGIBILITY.

The Options as set forth in section 6 automatically shall be granted under the Plan to all Non-Employee Directors who meet the specified criteria.

6. NON-DISCRETIONARY GRANTS.

(a) Initial Grants. Without any further action of the Board, each person who is elected or appointed for the first time to be a Non-Employee Director automatically shall, upon the date of his or her initial election or appointment to be a Non-Employee Director by the Board or stockholders of the Company, be granted an Initial Grant to purchase eighty thousand (80,000) shares of Common Stock on the terms and conditions set forth herein.

(b) Annual Grants. Without any further action of the Board, a Non-Employee Director shall be granted an Annual Grant as follows: On the day following each Annual Meeting commencing with the Annual Meeting in 2014, each person who is then a Non-Employee Director automatically shall be granted an Annual Grant to purchase forty thousand (40,000) shares of Common Stock on the terms and conditions set forth herein; *provided, however*, that if the person has not been serving as a Non-Employee Director for the entire period since the preceding Annual Meeting, then the number of shares subject to the Annual Grant shall be reduced pro rata for each full quarter prior to the date of grant during which such person did not serve as a Non-Employee Director.

(c) Limitation on Grants to Non-Employee Directors. The maximum number of shares of Common Stock subject to Options granted under the Plan or otherwise during any one calendar year to any Non-Employee Director shall not exceed the limits described in Sections 6(a) and 6(b) above. The maximum amount of cash compensation that may be payable by the Company to a Non-Employee Director shall not exceed \$150,000 per year. The Board may make exceptions to the cash compensation limit in the immediately preceding sentence of this Section 6(c) for individual Non-Employee Directors in extraordinary circumstances (for example, to compensate such individual for interim service in the capacity of an officer of the Company), as the Board may determine in its discretion, provided that the Non-Employee Director receiving such additional cash compensation may not participate in the decision to award such compensation.

7. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as required by the Plan. Each Option shall contain such additional terms and conditions, not inconsistent with the Plan, as the Board shall deem appropriate. Each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) Term. No Option shall be exercisable after the expiration of ten (10) years from the date it was granted.

(b) Exercise Price. The exercise price of each Option shall be one hundred percent (100%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

(c) Consideration. The purchase price of stock acquired pursuant to an Option may be paid, to the extent permitted by applicable statutes and regulations, in any combination of the following methods:

(i) By cash or check.

(ii) Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, by delivery to the Company of shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. Delivery for these purposes shall include delivery to the Company of the Optionholder's attestation of ownership of such shares of Common Stock in a form approved by the Company. Notwithstanding the foregoing, the Optionholder may not exercise the Option by tender to the Company of Common Stock to the extent such tender would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

(iii) Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

(iv) By a net exercise arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company shall accept a cash or other payment from the Optionholder to the extent of any remaining balance of the aggregate exercise price not satisfied by such holding back of whole shares; *provided, further, however*, that shares of Common Stock will no longer be outstanding under an Option and will not be exercisable thereafter to the extent that (i) shares are used to pay the exercise price pursuant to the net exercise, (ii) shares are delivered to the Optionholder as a result of such exercise, and (iii) shares are withheld to satisfy tax withholding obligations.

(d) Transferability. The Board may, in its sole discretion, impose such limitations on the transferability of Options as the Board shall determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options shall apply:

(i) **Restrictions on Transfer.** An Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder; *provided, however*, that the Board may, in its sole discretion, permit transfer of the Option in a manner that is not prohibited by applicable tax and securities laws upon the Optionholder's request. Except as explicitly provided herein, an Option may not be transferred for consideration.

(ii) **Domestic Relations Orders.** Notwithstanding the foregoing, an Option may be transferred pursuant to a domestic relations order.

(iii) **Beneficiary Designation.** Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company and any broker designated by the Company to effect Option exercises, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, the executor or administrator of the Optionholder's estate shall be entitled to exercise the Option and receive the Common Stock or other consideration resulting from such exercise.

(e) **Exercise Schedule.** The Option shall be exercisable as the shares of Common Stock subject to the Option vest.

(f) **Vesting Schedule.**

(i) Each Option granted as an initial grant shall vest in accordance with the schedule set forth below that results in a shorter period of full vesting:

(1) 1/36th of the shares of Common Stock subject to the Option shall vest each month after the date of grant over a period of three (3) years; or

(2) the Option shall vest in equal monthly installments after the date of grant over a period commencing on the date that the Optionholder is appointed for the first time to be a Non-Employee Director by the Board and ending on the date of the Annual Meeting at which the Optionholder is first scheduled to be considered for election to be a Non-Employee Director by the stockholders of the Company.

(ii) Each Option granted as an annual grant before the Annual Meeting in 2008 shall vest such that 1/36th of the shares of Common Stock subject to such Option shall vest each month after the date of grant over a period of three (3) years;

and each Option granted as an annual grant on or after the Annual Meeting in 2008 shall vest such that 1/12th of the shares of Common Stock subject to such Option shall vest each month after the date of grant over a period of one (1) year.

(g) Termination of Continuous Service. In the event an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise it as of the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service, or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate.

(h) Extension of Termination Date. If the exercise of the Option following the termination of the Optionholder's Continuous Service (other than upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in subsection 7(a) or (ii) the expiration of a total period of three (3) months (that need not be consecutive) after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements.

(i) Disability of Optionholder. In the event an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise it as of the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified herein, the Option shall terminate.

(j) Death of Optionholder. In the event (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death or (ii) the Optionholder dies within the three-month period after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise the Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Optionholder's death, but only

within the period ending on the earlier of (1) the date eighteen (18) months following the date of death or (2) the expiration of the term of such Option as set forth in the Option Agreement. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate.

8. COVENANTS OF THE COMPANY.

(a) Availability of Shares. During the terms of the Options, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Options.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Options and to issue and sell shares of Common Stock upon exercise of the Options; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Option or any stock issued or issuable pursuant to any such Option. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell stock upon exercise of such Options unless and until such authority is obtained.

9. USE OF PROCEEDS FROM STOCK.

Proceeds from the sale of stock pursuant to Options shall constitute general funds of the Company.

10. MISCELLANEOUS.

(a) Stockholder Rights. No Optionholder shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such Option unless and until such Optionholder has satisfied all requirements for exercise of the Option pursuant to its terms.

(b) No Service Rights. Nothing in the Plan or any instrument executed or Option granted pursuant thereto shall confer upon any Optionholder any right to continue to serve the Company as a Non-Employee Director or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as

the case may be.

(c) Investment Assurances. The Company may require an Optionholder, as a condition of exercising or acquiring stock under any Option, (i) to give written assurances satisfactory to the Company as to the Optionholder's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Option; and (ii) to give written assurances satisfactory to the Company stating that the Optionholder is acquiring the stock subject to the Option for the Optionholder's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (iii) the issuance of the shares upon the exercise or acquisition of stock under the Option has been registered under a then currently effective registration statement under the Securities Act or (iv) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.

(d) Withholding Obligations. The Optionholder may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of stock under an Option by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Optionholder by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold shares from the shares of the Common Stock otherwise issuable to the Optionholder as a result of the exercise or acquisition of stock under the Option, provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law; or (iii) delivering to the Company owned and unencumbered shares of the Common Stock.

(e) Electronic Delivery. Any reference herein to a written agreement or document shall include any agreement or document delivered electronically or posted on the Company's intranet.

11. ADJUSTMENTS UPON CHANGES IN STOCK.

(a) **Capitalization Adjustments.** If any change is made in the stock subject to the Plan, or subject to any Option, without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company), the Board shall appropriately and proportionately adjust (i) the class(es) and maximum number of securities subject both to the Plan pursuant to subsection 4(a) and to the nondiscretionary Options specified in Section 5, (ii) the class(es) and number of securities and price per share of stock subject to outstanding Options. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a transaction without receipt of consideration by the Company.)

(b) **Corporate Transaction.** In the event of (i) a sale, lease or other disposition of all or substantially all of the securities or assets of the Company, (ii) a merger or consolidation in which the Company is not the surviving corporation or (iii) a reverse merger in which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, then any surviving corporation or acquiring corporation may assume any Options outstanding under the Plan or may substitute similar Options (including an option to acquire the same consideration paid to the stockholders in the transaction described in this subsection 11(b)) for those outstanding under the Plan. In the event no surviving corporation or acquiring corporation assumes such Options or substitutes similar Options for those outstanding under the Plan, then with respect to Options held by Optionholders who are in Continuous Service immediately prior to such an event, the vesting of such Options (and the time during which such Options may be exercised) shall be accelerated in full, and the Options shall terminate if not exercised at or prior to such event. With respect to any other Options outstanding under the Plan, such Options shall terminate if not exercised prior to such event.

(c) **Change in Control.** Upon a Change in Control, all Options held by each Optionholder whose Continuous Service has not terminated immediately prior to the Change in Control shall become fully vested and exercisable immediately prior to the effectiveness of such Change in Control.

12. AMENDMENT OF THE PLAN AND OPTIONS.

(a) **Amendment of Plan.** The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 11 relating to adjustments upon changes in stock, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy the requirements of Rule 16b-3 or any Nasdaq or securities exchange listing requirements; provided, however, that the Board may not amend Section 6 to increase the non-discretionary grants or limitations on cash compensation described therein without stockholder approval.

(b) Stockholder Approval. The Board may, in its sole discretion, submit any other amendment to the Plan for stockholder approval.

(c) No Impairment of Rights. Rights under any Option granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the Optionholder and (ii) the Optionholder consents in writing.

(d) Amendment of Options. The Board at any time, and from time to time, may amend the terms of any one or more Options including, but not limited to, amendments to provide terms more favorable than previously provided in the agreement evidencing an Option, subject to any specified limits in the Plan that are not subject to Board discretion; provided, however, that the rights under any Option shall not be impaired by any such amendment unless (i) the Company requests the consent of the Optionholder and (ii) the Optionholder consents in writing.

13. TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. No Options may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan shall not impair rights and obligations under any Option granted while the Plan is in effect except with the written consent of the Optionholder.

14. EFFECTIVE DATE OF PLAN.

The Plan shall become effective on the IPO Date, but no Option shall be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

15. CHOICE OF LAW.

All questions concerning the construction, validity and interpretation of this Plan shall be governed by the law of the State of Delaware, without regard to such state's conflict of laws rules.
