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

**FORM 8-K**

**Current Report**  
**Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **October 25, 2019**

**TRANSBIOTEC, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**000-53316**  
(Commission  
File Number)

**26-0731818**  
(I.R.S. Employer  
Identification No.)

**400 N. Tustin Ave., Suite 225**  
**Santa Ana, CA 92705**  
(Address of principal executive offices) (zip code)

**(949) 285-9454**  
(Registrant's telephone number, including area code)

\_\_\_\_\_  
(Former name or former address, if changed since last report.)

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **SECTION 1 – Registrant’s Business and Operations**

### **Item 1.01 Entry into a Material Definitive Agreement.**

On October 25, 2019, we entered into an Employment Agreement with Mr. Kevin Moore to serve as our Chief Executive Officer (the “Moore Agreement”). Under the terms of the Moore Agreement, Mr. Moore will serve as our Chief Executive Officer until October 24, 2022, unless either (i) the transaction that is the subject of that certain Asset Purchase Agreement with IDTEC, LLC, a Colorado limited liability company (the “IDTEC Transaction”), has not closed by January 31, 2020, in which case Mr. Moore’s employment will terminate immediately, or (ii) he is terminated pursuant to the other termination provisions set forth in the Moore Agreement. Under the terms of the Moore Agreement, Mr. Moore will perform services for us that are customary and usual for a chief executive officer of a company, in exchange for: (i) 800,000 shares of our common stock per month until the IDTEC Transaction closes, (ii) thereafter, an annual base salary of \$213,000, (iii) sales bonuses based on the Company’s sales, and (iv) an incentive stock options under our 2019 Equity Compensation Plan to acquire 35,200,000 shares of our common stock, at an exercise price of \$0.00792, which is equal to 110% of the fair market value of our common stock on October 25, 2019, with the stock options to vest in 36 equal monthly installments of 977,777 shares during the three-year term of the Moore Agreement. The stock options have a ten year term. We will be issuing Mr. Moore a stock option agreement for the options he was issued under the Moore Agreement.

On October 25, 2019, we entered into an Employment Agreement with Mr. David Gandini to serve as our Chief Revenue Officer (the “Gandini Agreement”). Under the terms of the Gandini Agreement, Mr. Gandini will serve as our Chief Revenue Officer until October 24, 2022, unless either (i) the transaction that is the subject of that certain Asset Purchase Agreement with IDTEC, LLC, a Colorado limited liability company (the “IDTEC Transaction”), has not closed by January 31, 2020, in which case Mr. Gandini’s employment will terminate immediately, or (ii) he is terminated pursuant to the other termination provisions set forth in the Gandini Agreement. Under the terms of the Gandini Agreement, Mr. Gandini will perform services for us that are customary and usual for a chief revenue officer of a company, in exchange for: (i) an annual base salary of \$185,000, (ii) sales bonuses based on the Company’s sales, (iii) an incentive stock options under our 2019 Equity Compensation Plan to acquire 24,000,000 shares of our common stock, at an exercise price of \$0.00792, which is equal to 110% of the fair market value of our common stock on October 25, 2019, with the stock options to vest in 36 equal monthly installments of 666,666 shares during the three-year term of the Gandini Agreement, and (iv) an aggregate of 8,000,000 additional option shares (the “Pre-Vesting Option Shares”) shall vest as follows: 6,666,600 Pre-Vesting Option Shares representing the monthly vesting option shares for the ten months ended October 31, 2019, shall vest on November 1, 2019; and (ii) the remaining 1,333,400 Pre-Vesting Option Shares representing the monthly vesting option shares for the two months ended December 31, 2019 shall vest on January 1, 2020. The stock options have a ten year term. We will be issuing Mr. Gandini a stock option agreement for the options he was issued under the Gandini Agreement.

The foregoing description of the key terms of the above-agreements is qualified in its entirety by the full text of the related documents, which are filed as Exhibit 10.1 – 10.2 to this report and incorporated by reference into this Item 1.01.

## **SECTION 3 – Securities and Trading Markets**

### **Item 3.02 Unregistered Sales of Equity Securities.**

As noted in Item 1.01, pursuant to the Moore Agreement, we agreed (i) to issue Moore 800,000 shares of common stock, restricted in accordance with Rule 144, per month until we close the IDTEC Transaction, but no later than January 31, 2020 (the “Moore Shares”) and (ii) to issue Moore an option to acquire up to 32,200,000 shares of our common stock (the “Moore Options”). The issuance of the Moore Shares and the Moore Options was under our 2019 Equity Incentive Plan and was exempt from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, due to the fact Moore has been working with us in a consulting capacity for a number of months, is a sophisticated investor and familiar with our operations.

As noted in Item 1.01, pursuant to the Gandini Agreement, we issued Gandini an option to acquire up to 32,000,000 shares of our common stock. The issuance of the stock option was under our 2019 Equity Incentive Plan and was exempt from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, due to the fact Gandini has been working with us in a consulting capacity for a number of months, is a sophisticated investor and familiar with our operations.

On October 25, 2019, we issued Charles Bennington, one of our officers and directors, an option to acquire 800,000 shares of our common stock under our 2019 Equity Incentive Plan. The stock option has an exercise price of \$0.00792, which is equal to 110% of the fair market value of our common stock on October 25, 2019, with option vesting quarterly over a one year period commencing January 1, 2020. The stock option has a five year term. The issuance of the stock option was exempt from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, due to the fact Mr. Bennington is one of our officers and directors, is a sophisticated investor and familiar with our operations.

On October 25, 2019, we issued Nick Noceti, our Chief Financial Officer, an option to acquire 800,000 shares of our common stock under our 2019 Equity Incentive Plan. The stock option has an exercise price of \$0.00792, which is equal to 110% of the fair market value of our common stock on October 25, 2019, with option vesting quarterly over a two year period commencing January 1, 2020. The stock option has a five year term. The issuance of the stock option was exempt from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, due to the fact Mr. Noceti is our Chief Financial Officer, is a sophisticated investor and familiar with our operations.

On October 25, 2019, we issued Gary Graham, now one of directors, an option to acquire 800,000 shares of our common stock under our 2019 Equity Incentive Plan. The stock option has an exercise price of \$0.00792, which is equal to 110% of the fair market value of our common stock on October 25, 2019, with option vesting quarterly over a one year period commencing January 1, 2020. The stock option has a five year term. The issuance of the stock option was exempt from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, due to the fact Mr. Graham had been consulting with us for more than one year at the time of grant, is a sophisticated investor and familiar with our operations.

On October 25, 2019, we issued stock options to acquire an aggregate of 6,400,000 shares of our common stock to four non-affiliated individuals and entities that have been working with us over the last year. The stock options were issued under our 2019 Equity Incentive Plan at an exercise price of \$0.00792, which is equal to 110% of the fair market value of our common stock on October 25, 2019, with the options vesting quarterly over a two year period commencing January 1, 2020. The stock options have either a two year or five year term. The issuance of the stock option was exempt from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, due to the fact the individuals and entities have been consulting with us for months, are sophisticated investors and familiar with our operations.

## **SECTION 5 – Corporate Governance and Management**

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

(a) On October 17, 2019 and October 28, 2019, Daljit Khangura and Devadatt Mishal, respectively, submitted their resignations from our Board of Directors. According to their resignation letters, there are no disagreements with either Mr. Khangura or Dr. Mishal required to be disclosed under this Item. We will provide Mr. Khangura and Dr. Mishal with a copy of this disclosure in Item 5.02, and provide them with the opportunity to furnish us as promptly as possible with a letter addressed to us stating whether they agree with the statements made by us in this Item 5.02 and, if not, stating the respects in which either does not agree. In the event either Mr. Khangura or Dr. Mishal supplies us with such a letter we will, if required, file such letter as an exhibit to an amended Form 8-K.

(b) On October 25, 2019, Charles Bennington submitted his resignation as our Chief Executive Officer, effective with the appointment of his replacement. Mr. Bennington is continuing on as our President (our principal executive officer), our Secretary, and as a member of our Board of Directors. According to Mr. Bennington's resignation letter, there are no disagreements with Mr. Bennington required to be disclosed under this Item. We will provide Mr. Bennington with a copy of this disclosure in Item 5.02, and provide Mr. Bennington with the opportunity to furnish us as promptly as possible with a letter addressed to us stating whether he agrees with the statements made by us in response to this Item 5.02 and, if not, stating the respects in which he does not agree. In the event Mr. Bennington supplies us with such a letter we will, if required, file such letter as an exhibit to an amended Form 8-K.

(c) On October 25, 2019, our Board of Directors appointed Kevin Moore as our Chief Executive Officer. Mr. Moore will serve in this capacity until his term is complete (or extended) or a termination event occurs under the terms of the Moore Agreement.

**Kevin Moore** has served as our Chief Executive Officer since October 2019. Prior to his appointment as our Chief Executive Officer, Mr. Moore has been a private investor. From 2017 to 2019, Mr. Moore was the President of Moore Holdings, Inc. and Managing Member of Vans Silver Peaks, LLC. From 2014 to 2017, Mr. Moore was the Managing Member Vans Equipment Denver LLC, Managing Member Vans Equipment South LLC, Managing Member Vans Silver Peaks LLC and President Moore Holdings, Inc. The Vans equipment companies are heavy equipment sale and rental companies, which initially started as a "greenfield" project during the Great Recession and grew to a very successful multi-location business serving the Colorado region. Prior to 2014, Mr. Moore was the President of Moore Holdings, Inc. and Managing Member of Vans Silver Peaks, LLC. Prior to joining Van's Equipment Company, Mr. Moore was the Chief Executive Officer and owner of Summit Quality, an international quality management and sales organization which secured over \$50 million year in revenue for its clients. Prior to that endeavor, Mr. Moore was the Chief Executive Officer and owner Automotive Testing Technologies. While in this position, he lead a team that quadrupled testing revenue in four years, then successfully sold the business to a competitor. Mr. Moore is currently an active business and real estate investor through Moore Holdings Incorporated.

Mr. Moore serves on the Board of Directors for SOBRSafe, Four Seasons Golf, RDM Holdings and the Shining Stars Foundation. He also participates in the University of Colorado MBA mentorship program and established the Shining Stars Young Adult mentorship program that supports young adults' social and professional aspirations in a positive manner.

In October 2019, when Mr. Moore was appointed as our Chief Executive Officer, he was granted an incentive stock option under our 2019 Equity Compensation Plan to acquire 35,200,000 shares of our common stock, at an exercise price of \$0.00792, which is equal to 110% of the fair market value of our common stock on October 25, 2019, with the stock options to vest in 36 equal monthly installments of 977,777 shares during the three-year term of the Mr. Moore's Employment Agreement.

(d) On October 25, 2019, our Board of Directors appointed David Gandini as our Chief Revenue Officer. Mr. Gandini will serve in this capacity until his term is complete (or extended) or a termination event occurs under the terms of the Gandini Agreement.

**David Gandini** has served as our Chief Revenue Officer since October 2019. Prior to his appointment as our Chief Executive Officer, Mr. Gandini has been consulting regarding our business development since December 2018. Since September 2018, Mr. Gandini has also been a managing partner with First Capital Advisory Services, where he is responsible for capital creation, new business acquisition, business strategy and development and partnerships revenue generation. From 2014 to August 2017, Mr. Gandini was President of Alchemy Plastics, Inc., Englewood Colorado where he was responsible for US manufacturing, sales and strategic partnerships. From 2001 until 2014, when the company was acquired, Mr. Gandini served as the

President of IPS Denver, a bank card personalization and packaging entity where he managed the company and market transformations to become a leader in the U.S. secured gift market space with revenues of \$46M. Prior to his engagement at IPS, Mr. Gandini was the Chief Operations Officer at First World Communications, a major U.S. internet and Data Center provider and participated in its successful IPO in 2000 raising over \$200M. Previously, Mr. Gandini founded Pace Network Services providing carrier SS7 signaling to U.S. long distance providers and facilitated a successful exit to ICG Communications on the heels of co-founding Detroit based Digital Signal in the fiber optic long haul market sector where me managed a successful exit to SP Telecom.

Mr. Gandini graduated Michigan State University with a degree in Telecommunications. He was a scholarship NCAA Division Hockey athlete, was a member of the US Junior National Team and a US Junior All American.

In October 2019, when Mr. Gandini was appointed as our Chief Revenue Officer, he was granted an incentive stock option under our 2019 Equity Compensation Plan to acquire 32,000,000 shares of our common stock, at an exercise price of \$0.00792, which is equal to 110% of the fair market value of our common stock on October 25, 2019, with 24,000,000 of the stock options to vest in 36 equal monthly installments of 977,777 shares during

the three-year term of the Mr. Gandini's Employment Agreement., and the additional 8,000,000 option shares (the "Pre-Vesting Option Shares") vesting as follows: 6,666,600 Pre-Vesting Option Shares representing the monthly vesting option shares for the ten months ended October 31, 2019, shall vest on November 1, 2019; and (ii) the remaining 1,333,400 Pre-Vesting Option Shares representing the monthly vesting option shares for the two months ended December 31, 2019 shall vest on January 1, 2020. In addition, Mr. Gandini has an Independent Contractor Agreement with IDTEC, LLC that entitles him 1,000,000 shares of our common stock when the IDTEC Transaction closes. These shares are being transferred to him as part of the 12,000,000 shares IDTEC, LLC will receive if the IDTEC Transaction closes and are calculated after giving effect to the reverse stock split contemplated as part of the IDTEC Transaction.

(e) On November 7, 2019, our Board of Directors appointed Gary Graham to our Board of Directors. Mr. Graham will serve in this capacity until the next meeting of stockholders or until his successor has been duly elected and qualified, or until the earlier of his death, resignation or removal.

**Gary Graham** has served as a member of our Board of Directors since November 2019. Mr. Graham is currently the Executive Managing Director of First Capital Ventures, a consulting and investment firm he founded in 2005. First Capital Ventures collaborates with entrepreneurs, investors, private equity groups, venture capital funds and investment banking firms to restructure, finance and revitalize high potential, under-performing startup and re-start companies. Mr. Graham has served as Chairman, Director and Interim Chief Executive Officer of several private and public corporations.

In October 2019, Mr. Graham was granted an incentive stock option under our 2019 Equity Compensation Plan to acquire 800,000 shares of our common stock, at an exercise price of \$0.00792, which is equal to 110% of the fair market value of our common stock on October 25, 2019, with option vesting quarterly over a two year period commencing January 1, 2020. Mr. Graham received the stock option for contract business advisory services he has been providing to us.

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

Our Board of Directors approved Amended and Restated Bylaws for the Company on October 25, 2019. The Amended and Restated Bylaws replaced our original Bylaws from 2007 when we were named Imagine Media, Ltd., which had become outdated. Our Amended and Restated Bylaws became effective on October 25, 2019 and are filed as Exhibit 3.1 to this Current Report on Form 8-K.

### **SECTION 7- Regulation FD**

#### **Item 7.01 Regulation FD Disclosure.**

On November 15, 2019, we issued a press release announcing the appointment of Kevin Moore and David Gandini as executive officers and Gary Graham to our Board of Directors. A copy of the press release is furnished with this Current Report as Exhibit 99.1.

The information in this Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1 attached hereto, shall not be deemed to be "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to liability under such section, nor shall it be deemed incorporated by reference in any of our filings under the Securities Act of 1933, as amended, or the Exchange Act, regardless of any general incorporation language in such filing, unless expressly incorporated by specific reference in such filing.

### **SECTION 8 – Other Events**

#### **Item 8.01 Other Events**

As set forth in our Information Statement dated September 25, 2019, and mailed to our shareholders on October 3, 2019, on September 9, 2019 shareholders representing a majority of our outstanding common stock and voting rights approved the TransBiotech, Inc. 2019 Equity Incentive Plan, attached hereto as Exhibit 10.1. This Plan went effective on October 24, 2019 and allows our Board of Directors to issue stock grants, stock options and other equity incentive awards to our officers, directors, employees and consultants.

## **SECTION 9 – Financial Statements and Exhibits**

### **Item 9.01 Financial Statements and Exhibits**

(c) Exhibits

<a href="#"><u>3.1</u></a>	<a href="#"><u>Amended and Restated Bylaws</u></a>
<a href="#"><u>10.1</u></a>	<a href="#"><u>TransBiotech, Inc. 2019 Equity Incentive Plan</u></a>
<a href="#"><u>10.2</u></a>	<a href="#"><u>Employment Agreement with Kevin Moore dated October 25, 2019</u></a>
<a href="#"><u>10.3</u></a>	<a href="#"><u>Employment Agreement with David Gandini dated October 25, 2019</u></a>
<a href="#"><u>99.1</u></a>	<a href="#"><u>Press Release dated November 15, 2019, regarding the appointment of Kevin Moore and David Gandini as executive officers and Gary Graham to our Board of Directors</u></a>



#### SIGNATURES

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

**TransBiotec, Inc.**  
a Delaware corporation

Dated: November 18, 2019

By: /s/ Charles Bennington

Charles Bennington

Its: President

AMENDED AND RESTATED BYLAWS  
OF  
TRANSBIOTEC, INC.  
(A DELAWARE CORPORATION)

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**AMENDED AND RESTATED BYLAWS**

**OF**

**TRANSBIOTEC, INC.**  
**(A DELAWARE CORPORATION)**

**ARTICLE I**

**OFFICES**

**Section 1.1 Registered Office.** The registered office of TransBiotec, Inc. (the “Corporation”) in the State of Delaware shall be in the City of Wilmington, County of New Castle.

**Section 1.2 Other Offices.** The Corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II**

**CORPORATE SEAL**

**Section 2.1 Corporate Seal.** The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the Corporation and the inscription, “Corporate Seal Delaware.” Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**ARTICLE III**

**STOCKHOLDERS’ MEETINGS**

**Section 3.1 Place of Meetings.** Meetings of the stockholders of the Corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors and stated in the notice of meeting. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (“DGCL”).



**Section 3.2 Annual Meeting.** An annual meeting of the stockholders shall be held on such date and at such time as may be designated from time to time by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may be properly brought before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the stockholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a meeting of the stockholders as soon thereafter as conveniently may be. Failure to hold an annual meeting as required by these bylaws shall not invalidate any action taken by the Board of Directors or officers of the Corporation.

**Section 3.3 Special Meetings.**

(a) Special meetings of the stockholders of the Corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, (iii) the Board of Directors, or (iv) by the holders of shares entitled to cast not less than ten percent (10%) of the votes at the meeting and shall be held at such place, on such date, and at such time as the Board of Directors shall fix.

(b) If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the Corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than twenty (20) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4 of these Amended and Restated By-Laws. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

**Section 3.4 Notice of Meetings.** Except as otherwise provided by law or the Certificate of Incorporation, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour and purpose or purposes of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.





**Section 3.5 Quorum.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Amended and Restated By-Laws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, or by the Certificate of Incorporation or these Amended and Restated By-Laws, in all matters other than the election of directors, the affirmative vote of a majority of shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Amended and Restated By-Laws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Amended and Restated By-Laws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Amended and Restated By-Laws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

**Section 3.6 Adjournment and Notice of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 3.7 Voting Rights.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the Corporation on the record date, as provided in Section 7.4 of these Amended and Restated By-Laws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

**Section 3.8 Joint Owners of Stock.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

**Section 3.9 List of Stockholders.** The Secretary shall either prepare or cause the Corporation's transfer agent prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours at the principal place of business of the Corporation, or on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. The list shall be open to examination by any stockholder during the time of the meeting as provided by law produced and kept at the time and place of meeting during the whole time thereof and may be inspected by any stockholder who is present.





### Section 3.10 Action Without a Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

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

(c) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the Corporation as provided in Section 228(c) of the DGCL. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

(d) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the state of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested or by priority overnight package delivery service.



(e) . Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the Corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

#### **Section 3.11 Organization.**

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

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

## ARTICLE IV

### DIRECTORS

#### **Section 4.1 Number and Term of Office.**

The authorized number of directors of the Corporation shall be fixed by the Board of Directors from time to time.

Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient.

**Section 4.2 Powers.** The powers of the Corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**Section 4.3 Term of Directors.** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders for a term until the next succeeding annual meeting. Each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**Section 4.4 Vacancies.** Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this By-law in the case of the death, removal or resignation of any director.

**Section 4.5 Resignation.** Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

**Section 4.6 Removal.** Subject to any limitations imposed by applicable law, the Board of Directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the Corporation entitled to vote generally at an election of directors or (ii) without cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the Corporation, entitled to vote generally at an election of directors.

**Section 4.7 Meetings.**

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

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

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

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting, or sent in writing to each director by first class mail, postage prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

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

**Section 4.8 Quorum and Voting.**

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation or these Amended and Restated By-Laws; provided, however, at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

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

**Section 4.9 Action Without Meeting** Unless otherwise restricted by the Certificate of Incorporation or these Amended and Restated Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 4.10 Fees and Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

#### **Section 4.11 Committees.**

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the Corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors, and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Amended and Restated By-Laws.

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

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 4.11 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

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

## **ARTICLE V**

### **OFFICERS**

**Section 5.1 Officers Designated.** The officers of the Corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Chief Operating Officer, the Treasurer and the Controller, all of whom shall be elected at the annual meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the Corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the Corporation shall be fixed by or in the manner designated by the Board of Directors.

#### **Section 5.2 Tenure and Duties of Officers.**

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

(b) Duties of Chairman of the Board of Directors. The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 5.2.

(c) Duties of Chief Executive Officer. The Chief Executive Officer shall serve as the chief executive officer of the Corporation and shall have general and active management authority with respect to the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect; subject, however, to the right of the directors to delegate specific powers, except those exclusively conferred by statute on the Chief Executive Officer or President, to any other officer or officers of the Corporation. He or she shall be authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation. He or she shall be EX OFFICIO a member of all committees.

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

(e) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

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







(g) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**Section 5.3 Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**Section 5.4 Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract with the resigning officer.

**Section 5.5 Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of the directors, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

### EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**Section 6.1 Execution of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the Corporation any corporate instrument or document, or to sign on behalf of the Corporation the corporate name without limitation, or to enter into contracts on behalf of the Corporation, except where otherwise provided by law or these Amended and Restated By-Laws, and such execution or signature shall be binding upon the Corporation.

All checks and drafts drawn on banks or other depositories on funds to the credit of the Corporation or in special accounts of the Corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 6.2 Voting of Securities Owned by the Corporation.** All stock and other securities of other corporations owned or held by the Corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

## ARTICLE VII

### SHARES OF STOCK

**Section 7.1 Form and Execution of Certificates.** Certificates for the shares of stock of the Corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman of the Board of Directors, or the Chief Executive Officer or President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the Corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights, and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by law, set forth on the face or back a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or otherwise required by law or with respect to this section a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

**Section 7.2 Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The Corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the Corporation in such manner as it shall require or to give the Corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**Section 7.3 Transfers.**

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

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

**Section 7.4 Fixing Record Dates.**

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

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

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

**Section 7.5 Registered Stockholders.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE VIII

### OTHER SECURITIES OF THE CORPORATION

**Section 8.1 Execution of Other Securities.** All bonds, debentures and other corporate securities of the Corporation, other than stock certificates, may be signed by the Chairman of the Board of Directors, the Chief Executive Officer or President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the Corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the Corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the Corporation.

## ARTICLE IX

### DIVIDENDS

**Section 9.1 Declaration of Dividends.** Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

**Section 9.2 Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE X

### FISCAL YEAR

**Section 10.1 Fiscal Year.** The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

## ARTICLE XI

### INDEMNIFICATION

#### **Section 11.1 Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents**

(a) Directors and Officers. The Corporation shall indemnify its directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law; provided, however, that the Corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, provided, further, that the Corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Corporation, (iii) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under the Delaware General Corporation Law or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) Employees and Other Agents. The Corporation shall have power to indemnify its employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person as the Board of Directors shall determine.

(c) Expenses. The Corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another Corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding, provided, however, that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 11.1 or otherwise.





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

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and the director or officer. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the Corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the Corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the Corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the Corporation) for advances, the Corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

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

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

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

(h) Amendments. Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the Corporation.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law. If this Section 11.1 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the Corporation shall indemnify each director and officer to the full extent under applicable law.

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

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

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

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

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

(5) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Bylaw.

## ARTICLE XII

### NOTICES

#### Section 12.1 Notices.

(a) Notice to Stockholders. Whenever, under any provisions of these Amended and Restated By-Laws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the Corporation or its transfer agent.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), or as provided for in Section 4.7 of these Amended and Restated By-Laws. If such notice is not delivered personally, it shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

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

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

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

## **ARTICLE XIII**

### **AMENDMENTS**

**Section 13.1 Amendments.** The Board of Directors is expressly empowered to adopt, amend or repeal the Amended and Restated By-Laws of the Corporation. The stockholders shall also have power to adopt, amend or repeal the Amended and Restated By-Laws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by these Amended and Restated By-Laws, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Amended and Restated By-Laws of the Corporation by the stockholders.

## **ARTICLE XIV**

### **LOANS TO OFFICERS**

**Section 14.1 Prohibition on Loans to Officers and Directors.** The Corporation is expressly prohibited from lending money to, or guaranteeing any obligation of, any officer, Director, or other employee of the Corporation or of its subsidiaries.

**CERTIFICATE OF SECRETARY**

I hereby certify that:

I am the duly elected and acting Secretary of TransBiotech, Inc., a Delaware corporation (the "Corporation"); and

Attached hereto is a complete and accurate copy of the Amended and Restated Bylaws of the Corporation as duly adopted by the Board of Directors of the Corporation this 25<sup>th</sup> day of October 2019.

**In Witness Whereof**, I have hereunto subscribed my name as of the 25th day of October, 2019.

---

Charles Bennington, Secretary

**TRANSLBIOTEC, INC.**  
**2019 EQUITY INCENTIVE PLAN**

**ADOPTED BY THE BOARD OF DIRECTORS: SEPTEMBER 10, 2019**  
**APPROVED BY THE STOCKHOLDERS: SEPTEMBER 10, 2019**  
**EFFECTIVE DATE OF PLAN: OCTOBER 25, 2019**

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## 1. GENERAL.

**(a) 2019 Equity Incentive Plan.** The 2019 Equity Incentive Plan shall become effective after such time as it has been approved by the Board of Directors and ratified or approved by the shareholders of the Company and on the effective date listed above (the “Adoptive Date”).

**(b) Plan Purpose.** The Company, by means of the Plan, seeks to secure and retain the services of Employees, Directors and Consultants, to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and to provide a means by which such persons may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Awards.

**(c) Available Awards.** The Plan provides for the grant of the following Awards: (i) Incentive Stock Options; (ii) Nonstatutory Stock Options; (iii) SARs; (iv) Restricted Stock Awards; (v) RSU Awards; (vi) Performance Awards; and (vii) Other Awards.

**(d) Adoption Date; Effective Date.** The Plan will come into existence on the Adoption Date, but no Award may be granted prior to the Effective Date.

## 2. SHARES SUBJECT TO THE PLAN.

**(a) Share Reserve.** Subject to adjustment in accordance with Section 2(c) and any adjustments as necessary to implement any Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Awards will not exceed 128,000,000 shares.

In addition, subject to any adjustments as necessary to implement any Capitalization Adjustments, such aggregate number of shares of Common Stock will automatically increase on February 1 of each fiscal year for a period of ten years commencing on February 1, 2020 and ending on (and including) February 1, 2029, in a number of shares of Common Stock equal to 5% of the total number of shares of Capital Stock outstanding on December 31 of the preceding fiscal year; provided, however that the Board may act prior to February 1 of a given fiscal year to provide that the increase for such year will be a lesser number of shares of Common Stock.

**(b) Aggregate Incentive Stock Option Limit.** Notwithstanding anything to the contrary in Section 2(a) and subject to any adjustments as necessary to implement any Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is 128,000,000 shares.

### **(c) Share Reserve Operation.**

**(i) Limit Applies to Common Stock Issued Pursuant to Awards.** For clarity, the Share Reserve is a limit on the number of shares of Common Stock that may be issued pursuant to Awards and does not limit the granting of Awards, except that the Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy its obligations to issue shares pursuant to such Awards. Shares may be issued in connection with a merger or acquisition as permitted by, as applicable, NASDAQ Listing Rule 5635(c), NYSE Listed Company Manual Section 303A.08, AMEX Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

**(ii) Actions that Do Not Constitute Issuance of Common Stock and Do Not Reduce Share Reserve.** The following actions do not result in an issuance of shares under the Plan and accordingly do not reduce the number of shares subject to the Share Reserve and available for issuance under the Plan: (a) the expiration or termination of any portion of an Award without the shares covered by such portion of the Award having been issued, (b) the settlement of any portion of an Award in cash (*i.e.*, the Participant receives cash rather than Common Stock), (c) the withholding of shares that would otherwise be issued by the Company to satisfy the exercise, strike or purchase price of an Award; (d) the withholding of shares that would otherwise be issued by the Company to satisfy a tax withholding obligation in connection with an Award.

**(iii) Reversion of Previously Issued Shares of Common Stock to Share Reserve.** The following shares of Common Stock previously issued pursuant to an Award and accordingly initially deducted from the Share Reserve will be added back to the Share Reserve and again become available for issuance under the Plan: (a) any shares that are forfeited back to or repurchased by the Company because of a failure to meet a contingency or condition required for the vesting of such shares; (b) any shares that are reacquired by the Company to satisfy the exercise, strike or purchase price of an Award; and (c) any shares that are reacquired by the Company to satisfy a tax withholding obligation in connection with an Award.



### **3. ELIGIBILITY AND LIMITATIONS.**

**(a) Eligible Award Recipients.** Subject to the terms of the Plan, Employees, Directors and Consultants are eligible to receive Awards.

**(b) Specific Award Limitations.**

**(i) Limitations on Incentive Stock Option Recipients.** Incentive Stock Options may be granted only to Employees of the Company or a “parent corporation” or “subsidiary corporation” thereof (as such terms are defined in Sections 424(e) and (f) of the Code).

**(ii) Incentive Stock Option \$100,000 Limitation.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds \$100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or

otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

**(iii) Limitations on Incentive Stock Options Granted to Ten Percent Stockholders.** A Ten Percent Stockholder may not be granted an Incentive Stock Option unless (i) the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant of such Option and (ii) the Option is not exercisable after the expiration of five years from the date of grant of such Option.

**(iv) Limitations on Nonstatutory Stock Options and SARs.** Nonstatutory Stock Options and SARs may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any “parent” of the Company (as such term is defined in Rule 405) unless the stock underlying such Awards is treated as “service recipient stock” under Section 409A because the Awards are granted pursuant to a corporate transaction (such as a spin off transaction) or unless such Awards otherwise comply with the distribution requirements of Section 409A.

**(c) Aggregate Incentive Stock Option Limit.** The aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is the number of shares specified in Section 2(b).

**(d) Non-Employee Director Compensation Limit.** The aggregate value of all compensation granted or paid, as applicable, to any individual for service as a Non-Employee Director with respect to any calendar year, including Awards granted and cash fees paid by the Company to such Non-Employee Director, will not exceed \$750,000 in total value, calculating the value of any equity awards based on the grant date fair value of such equity awards for financial reporting purposes.

#### **4. OPTIONS AND STOCK APPRECIATION RIGHTS.**

Each Option and SAR will have such terms and conditions as determined by the Board. Each Option will be designated in writing as an Incentive Stock Option or Nonstatutory Stock Option at the time of grant; *provided, however*, that if an Option is not so designated, then such Option will be a Nonstatutory Stock Option, and the shares purchased upon exercise of each type of Option will be separately accounted for. Each SAR will be denominated in shares of Common Stock equivalents. The terms and conditions of separate Options and SARs need not be identical; *provided, however*, that each Option Agreement and SAR Agreement will conform (through incorporation of provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

**(a) Term.** Subject to Section 3(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten years from the date of grant of such Award or such shorter period specified in the Award Agreement.

**(b) Exercise or Strike Price.** Subject to Section 3(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will not be less than 100% of the Fair Market Value on the date of grant of such Award. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value on the date of grant of such Award if such Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Sections 409A and, if applicable, 424(a) of the Code.

**(c) Exercise Procedure and Payment of Exercise Price for Options.** In order to exercise an Option, the Participant must provide notice of exercise to the Plan Administrator in accordance with the procedures specified in the Option Agreement or otherwise provided by the Company. The Board has the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The exercise price of an Option may be paid, to the extent permitted by Applicable Law and as determined by the Board, by one or more of the following methods of payment to the extent set forth in the Option Agreement:

(i) by cash or check, bank draft or money order payable to the Company;

(ii) pursuant to a “cashless exercise” program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the Common Stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock that are already owned by the Participant free and clear of any liens, claims, encumbrances or security interests, with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (A) at the time of exercise the Common Stock is publicly traded, (B) any remaining balance of the exercise price not satisfied by such delivery is paid by the Participant in cash or other permitted form of payment, (C) such delivery would not violate any Applicable Law or agreement restricting the redemption of the Common Stock, (D) any certificated shares are endorsed or accompanied by an executed assignment separate from certificate, and (E) such shares have been held by the Participant for any minimum period necessary to avoid adverse accounting treatment as a result of such delivery;

(iv) if the Option is a Nonstatutory Stock Option, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (A) such shares used to pay the exercise price will not be exercisable thereafter and (B) any remaining balance of the exercise price not satisfied by such net exercise is paid by the Participant in cash or other permitted form of payment; or

(v) in any other form of consideration that may be acceptable to the Board and permissible under Applicable Law.

**(d) Exercise Procedure and Payment of Appreciation Distribution for SARs.** In order to exercise any SAR, the Participant must provide notice of exercise to the Plan Administrator in accordance with the SAR Agreement. The appreciation distribution payable to a Participant upon the exercise of a SAR will not be greater than an amount equal to the excess of (i) the aggregate Fair Market Value on the date of exercise of a number of shares of Common Stock equal to the number of Common Stock equivalents that are vested and being exercised under such SAR, over (ii) the strike price of such SAR. Such appreciation distribution may be paid to the Participant in the form of Common Stock or cash (or any combination of Common Stock and cash) or in any other form of payment, as determined by the Board and specified in the SAR Agreement.

**(e) Transferability.** Options and SARs may not be transferred to third party financial institutions for value. The Board may impose such additional limitations on the transferability of an Option or SAR as it determines. In the absence of any such determination by the Board, the following

restrictions on the transferability of Options and SARs will apply, provided that except as explicitly provided herein, neither an Option nor a SAR may be transferred for consideration and *provided, further*, that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer:

**(i) Restrictions on Transfer.** An Option or SAR will not be transferable, except by will or by the laws of descent and distribution, and will be exercisable during the lifetime of the Participant only by the Participant; *provided, however*, that the Board may permit transfer of an Option or SAR in a manner that is not prohibited by applicable tax and securities laws upon the Participant's request, including to a trust if the Participant is considered to be the sole beneficial owner of such trust (as determined under Section 671 of the Code and applicable state law) while such Option or SAR is held in such trust, provided that the Participant and the trustee enter into a transfer and other agreements required by the Company.

**(ii) Domestic Relations Orders.** Notwithstanding the foregoing, subject to the execution of transfer documentation in a format acceptable to the Company and subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to a domestic relations order.

**(f) Vesting.** The Board may impose such restrictions on or conditions to the vesting and/or exercisability of an Option or SAR as determined by the Board and which may vary. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, vesting of Options and SARs will cease upon termination of the Participant's Continuous Service.

**(g) Termination of Continuous Service for Cause.** Except as explicitly otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service is terminated for Cause, the Participant's Options and SARs will terminate and be forfeited immediately upon such termination of Continuous Service, and the Participant will be prohibited from exercising any portion (including any vested portion) of such Awards on and after the date of such termination of Continuous Service and the Participant will have no further right, title or interest in such forfeited Award, the shares of Common Stock subject to the forfeited Award, or any consideration in respect of the forfeited Award.

**(h) Post-Termination Exercise Period Following Termination of Continuous Service For Reasons Other than Cause.** Subject to Section 4(i), if a Participant's Continuous Service terminates for any reason other than for Cause, the Participant may exercise his or her Option or SAR to the

extent vested, but only within the following period of time or, if applicable, such other period of time provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate; *provided, however*, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)):

(i) three months following the date of such termination if such termination is a termination without Cause (other than any termination due to the Participant's Disability or death);

(ii) 12 months following the date of such termination if such termination is due to the Participant's Disability;

(iii) 18 months following the date of such termination if such termination is due to the Participant's death; or

(iv) 18 months following the date of the Participant's death if such death occurs following the date of such termination but during the period such Award is otherwise exercisable (as provided in (i) or (ii) above).

Following the date of such termination, to the extent the Participant does not exercise such Award within the applicable Post-Termination Exercise Period (or, if earlier, prior to the expiration of the maximum term of such Award), such unexercised portion of the Award will terminate, and the Participant will have no further right, title or interest in terminated Award, the shares of Common Stock subject to the terminated Award, or any consideration in respect of the terminated Award.

**(i) Restrictions on Exercise; Extension of Exercisability.** A Participant may not exercise an Option or SAR at any time that the issuance of shares of Common Stock upon such exercise would violate Applicable Law. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service terminates for any reason other than for Cause and, at any time during the last thirty days of the applicable Post-Termination Exercise Period: (i) the exercise of the Participant's Option or SAR would be prohibited solely because the issuance of shares of Common Stock upon such exercise would violate Applicable Law, or (ii) the immediate sale of any shares of Common Stock issued upon such exercise would violate the Company's Trading Policy, then the applicable Post-Termination Exercise Period will be extended to the last day of the calendar month that commences following the date the Award would otherwise expire, with an additional extension of the exercise period to the last day of the next calendar month to apply if any of the foregoing restrictions apply at any time during such extended exercise period, generally without limitation as to the maximum permitted number of extensions; *provided, however*, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)).

**(j) Non-Exempt Employees.** No Option or SAR, whether or not vested, granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, will be first exercisable for any shares of Common Stock until at least six months following the date of grant of such Award. Notwithstanding the foregoing, in accordance with the provisions of the Worker Economic Opportunity Act, any vested portion of such Award may be exercised earlier than six months following the date of grant of such Award in the event of (i) such Participant's death or Disability, (ii) a Corporate Transaction in which such Award is not assumed, continued or substituted, (iii) a Change in Control, or (iv) such Participant's retirement (as such term may be defined in the Award Agreement or another applicable agreement or, in the absence of any such definition, in accordance with the Company's then current employment policies and guidelines). This Section 4(j) is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay.

**(k) Whole Shares.** Options and SARs may be exercised only with respect to whole shares of Common Stock or their equivalents.

## 5. AWARDS OTHER THAN OPTIONS AND STOCK APPRECIATION RIGHTS.

**(a) Restricted Stock Awards and RSU Awards.** Each Restricted Stock Award and RSU Award will have such terms and conditions as determined by the Board which need not be identical; *provided, however*, that each Restricted Stock Award Agreement and RSU Award Agreement will conform (through incorporation of the provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

### **(i) Form of Award.**

**(1) RSAs:** To the extent consistent with the Company's Bylaws, at the Board's election, shares of Common Stock subject to a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until such shares become vested or any other restrictions lapse, or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. Unless otherwise determined by the Board, a Participant will have voting and other rights as a stockholder of the Company with respect to any shares subject to a Restricted Stock Award.

**(2) RSUs:** A RSU Award represents a Participant's right to be issued on a future date the number of shares of Common Stock that is equal to the number of restricted stock units subject to the RSU Award. As a holder of a RSU Award, a Participant is an unsecured creditor of the Company with respect to the Company's unfunded obligation, if any, to issue shares of Common Stock in settlement of such Award and nothing contained in the Plan or any RSU Agreement, and no action taken pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between a Participant and the Company or an Affiliate or any other person. A Participant will not have voting or any other rights as a stockholder of the Company with respect to any RSU Award (unless and until shares are actually issued in settlement of a vested RSU Award).

### **(ii) Consideration.**

**(1) RSA:** A Restricted Stock Award may be granted in consideration for (A) cash or check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of consideration (including future services) as the Board may determine and permissible under Applicable Law.

**(2) RSU:** Unless otherwise determined by the Board at the time of grant, a RSU Award will be granted in consideration for the Participant's services to the Company or an Affiliate, such that the Participant will not be required to make any payment to the Company (other than such services) with respect to the grant or vesting of the RSU Award, or the issuance of any shares of Common Stock pursuant to the RSU Award. If, at the time of grant, the Board determines that any consideration must be paid by the Participant (in a form other than the Participant's services to the Company or an Affiliate) upon the issuance of any shares of Common Stock in settlement of the RSU Award, such consideration may be paid in any form of consideration as the Board may determine and permissible under Applicable Law.

**(iii) Vesting.** The Board may impose such restrictions on or conditions to the vesting of a Restricted Stock Award or RSU Award as determined by the Board and which may vary. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, vesting of Restricted Stock Awards and RSU Awards will cease upon termination of the Participant's Continuous Service.

**(iv) Termination of Continuous Service.** Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service terminates for any reason, (i) the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant under his or her Restricted Stock Award that have not vested as of the date of such termination as set forth in the Restricted Stock Award Agreement and (ii) any portion of his or her RSU Award that has not vested will be forfeited upon such termination and the Participant will have no further right, title or interest in the RSU Award, the shares of Common Stock issuable pursuant to the RSU Award, or any consideration in respect of the RSU Award.

**(v) Dividends and Dividend Equivalents.** Dividends or dividend equivalents may be paid or credited, as applicable, with respect to any shares of Common Stock subject to a Restricted Stock Award or RSU Award, as determined by the Board and specified in the Award Agreement).



**(vi) Settlement of RSU Awards.** A RSU Award may be settled by the issuance of shares of Common Stock or cash (or any combination thereof) or in any other form of payment, as determined by the Board and specified in the RSU Award Agreement. At the time of grant, the Board may determine to impose such restrictions or conditions that delay such delivery to a date following the vesting of the RSU Award.

**(b) Performance Awards.** With respect to any Performance Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, the other terms and conditions of such Award, and the measure of whether and to what degree such Performance Goals have been attained will be determined by the Board.

**(c) Other Awards.** Other forms of Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the

appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value at the time of grant) may be granted either alone or in addition to Awards provided for under Section 4 and the preceding provisions of this Section 5. Subject to the provisions of the Plan, the Board will have sole and complete discretion to determine the persons to whom and the time or times at which such Other Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Awards and all other terms and conditions of such Other Awards.

## **6. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.**

**(a) Capitalization Adjustments.** In the event of a Capitalization Adjustment, the Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of shares of Common Stock subject to the Plan and the maximum number of shares by which the Share Reserve may annually increase pursuant to Section 2(a), (ii) the class(es) and maximum number of shares that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 2(a), and (iii) the class(es) and number of securities and exercise price, strike price or purchase price of Common Stock subject to outstanding Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. Notwithstanding the foregoing, no fractional shares or rights for fractional shares of Common Stock shall be created in order to implement any Capitalization Adjustment. The Board shall determine an equivalent benefit for any fractional shares or fractional shares that might be created by the adjustments referred to in the preceding provisions of this Section.

**(b) Dissolution or Liquidation.** Except as otherwise provided in the Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Awards (other than Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Award is providing Continuous Service, *provided, however*, that the Board may determine to cause some or all Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

**(c) Corporate Transaction.** The following provisions will apply to Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of an Award.

**(i) Awards May Be Assumed.** In the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all Awards outstanding under the Plan or may substitute similar awards for Awards outstanding under the Plan (including but not limited to, awards to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Awards may be assigned by the Company to the successor of the Company (or the successor's parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation (or its parent) may choose to assume or continue only a portion of an Award or substitute a similar award for only a portion of an Award, or may choose to assume or continue the Awards held by some, but not all Participants. The terms of any assumption, continuation or substitution will be set by the Board.

**(ii) Awards Held by Current Participants.** In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction (referred to as the “**Current Participants**”), the vesting of such Awards (and, with respect to Options and Stock Appreciation Rights, the time when such Awards may be exercised) will be accelerated in full to a date prior to the effective time of such Corporate Transaction (contingent upon the effectiveness of the Corporate Transaction) as the Board determines (or, if the Board does not determine such a date, to the date that is five (5) days prior to the effective time of the Corporate Transaction), and such Awards will terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Awards will lapse (contingent upon the effectiveness of the Corporate Transaction). With respect to Performance Awards which will accelerate vesting in connection with a Corporate Transaction pursuant to this subsection (ii) and which Awards have multiple vesting levels depending on the level of performance, unless otherwise provided in the Award Agreement, such Performance Awards will accelerate vesting at 100% of the target level. With respect to Awards which will accelerate vesting in connection with a Corporate Transaction pursuant to this subsection (ii) and which Awards are settled in the form of a cash payment, such cash payment will be made no later than thirty (30) days following the effectiveness of the Corporate Transaction.

**(iii) Awards Held by Persons other than Current Participants.** In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by persons other than Current Participants, such Awards will terminate if not exercised (if applicable) prior to the effective time of the Corporate Transaction; *provided, however*, that any reacquisition or repurchase rights held by the Company with respect to such Awards will not terminate and may continue to be exercised notwithstanding the Corporate Transaction.

**(iv) Payment for Awards in Lieu of Exercise.** Notwithstanding the foregoing, in the event an Award will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of such Award may not exercise such Award but will receive a payment, in such form as may be determined by the Board, equal in value, at the effective time, to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Award (including, at the discretion of the Board, any unvested portion of such Award), over (B) any exercise price payable by such holder in connection with such exercise.

**(d) Appointment of Stockholder Representative.** As a condition to the receipt of an Award under this Plan, a Participant will be deemed to have agreed that the Award will be subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on the Participant’s behalf with respect to any escrow, indemnities and any contingent consideration.

**(e) No Restriction on Right to Undertake Transactions.** The grant of any Award under the Plan and the issuance of shares pursuant to any Award does not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company’s capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, rights or options to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or

affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

## **7. ADMINISTRATION.**

**(a) Administration by Board.** The Board will administer the Plan unless and until the Board delegates administration of the Plan to a Committee

or Committees, as provided in subsection (c) below.

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

(i) To determine from time to time (A) which of the persons eligible under the Plan will be granted Awards; (B) when and how each Award will be granted; (C) what type or combination of types of Award will be granted; (D) the provisions of each Award granted (which need not be identical), including the time or times when a person will be permitted to receive an issuance of Common Stock or other payment pursuant to an Award; (E) the number of shares of Common Stock or cash equivalent with respect to which an Award will be granted to each such person; (F) the Fair Market Value applicable to an Award; and (G) the terms of any Performance Award that is not valued in whole or in part by reference to, or otherwise based on, the Common Stock, including the amount of cash payment or other property that may be earned and the timing of payment.

(ii) To construe and interpret the Plan and Awards 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 Award Agreement, in a manner and to the extent it deems necessary or expedient to make the Plan or Award fully effective.

(iii) To settle all controversies regarding the Plan and Awards granted under it.

(iv) To accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest, notwithstanding the provisions in the Award Agreement stating the time at which it may first be exercised or the time during which it will vest.

(v) To prohibit the exercise of any Option, SAR or other exercisable Award during a period of up to thirty days prior to the consummation of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Common Stock or the share price of the Common Stock including any Corporate Transaction, for reasons of administrative convenience.

(vi) To suspend or terminate the Plan at any time. Suspension or termination of the Plan will not Materially Impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vii) To amend the Plan in any respect the Board deems necessary or advisable; *provided, however*, that stockholder approval will be required for any amendment to the extent required by Applicable Law. Except as provided above, rights under any Award granted before amendment of the Plan will not be Materially Impaired by any amendment of the Plan unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing.

(viii) To submit any amendment to the Plan for stockholder approval.

(ix) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however*, that, a Participant's rights under any Award will not be Materially Impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing.

(x) 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 and that are not in conflict with the provisions of the Plan or Awards.

(xi) To adopt such procedures and sub-plans as are necessary or appropriate to permit and facilitate participation in the Plan by, or take advantage of specific tax treatment for Awards granted to, Employees, Directors or Consultants who are foreign nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement to ensure or facilitate compliance with the laws of the relevant foreign jurisdiction).

(xii) To effect, at any time and from time to time, subject to the consent of any Participant whose Award is Materially Impaired by such action, (A) the reduction of the exercise price (or strike price) of any outstanding Option or SAR under the Plan; (B) the cancellation of any outstanding Option or SAR under the Plan and the grant in substitution therefor of (1) a new Option or SAR under the Plan or another equity plan of the Company covering the same or a different number of shares of Common Stock, (2) a Restricted Stock Award, (3) a RSU Award, (4) an Other Award, (5) cash and/or (6) other valuable consideration (as determined by the Board); or (C) any other action that is treated as a repricing under generally accepted accounting principles.

**(c) Delegation to Committee.**

**(i) General.** The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Committee may, at any time, abolish the subcommittee and/or revest in the Committee any powers delegated to the subcommittee. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

**(ii) Rule 16b-3 Compliance.** The Committee may consist solely of two or more Non-Employee Directors, in accordance with Rule 16b-3. In addition, the Board or the Committee, in its sole discretion, may delegate to a Committee who need not be Non-Employee Directors the authority to grant Awards to eligible persons who are not then subject to Section 16 of the Exchange Act.

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

**(e) Delegation to an Officer.** The Board or any Committee may delegate to one or more Officers the authority to do one or both of the following (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by Applicable Law, other Awards) and, to the extent permitted by Applicable Law, the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Awards granted to such Employees; *provided, however*, that the resolutions evidencing such delegation will specify the total number of shares of Common Stock that may be subject to the Awards granted by such Officer and that such Officer may not grant an Award to himself or herself. Any such Awards will be granted on the form of Award Agreement most recently approved for use by the Board or the Committee, unless otherwise provided in the resolutions approving the delegation authority. Notwithstanding anything to the contrary herein, neither the Board nor any Committee may delegate to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) the authority to determine the Fair Market Value.

**8. TAX WITHHOLDING**

**(a) Withholding Authorization.** As a condition to acceptance of any Award under the Plan, a Participant authorizes withholding from payroll and any other amounts payable to such Participant, and otherwise agree to make adequate provision for (including), any sums required to satisfy any U.S. federal, state, local and/or foreign tax or social insurance contribution withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise, vesting or settlement of such Award, as applicable. Accordingly, a Participant may not be able to exercise an Award even though the Award is vested, and the Company shall have no obligation to issue shares of Common Stock subject to an Award, unless and until such obligations are satisfied.

**(b) Satisfaction of Withholding Obligation.** To the extent permitted by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any U.S. federal, state, local and/or foreign tax or social insurance withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; (v) by allowing a Participant to effectuate a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board, or (vi) by such other method as may be set forth in the Award Agreement.

**(c) No Obligation to Notify or Minimize Taxes; No Liability to Claims.** Except as required by Applicable Law the Company has no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Award. Furthermore, the Company has no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award and will not be liable to any holder of an Award for any adverse tax consequences to such holder in connection with an Award. As a condition to accepting an Award under the Plan, each Participant (i) agrees to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from such Award or other Company compensation and (ii) acknowledges that such Participant was advised to consult with his or her own personal tax, financial and other legal advisors regarding the tax consequences of the Award and has either done so or knowingly and voluntarily declined to do so. Additionally, each Participant acknowledges any Option or SAR granted under the Plan is exempt from Section 409A only if the exercise or strike price is at least equal to the "fair market value" of the Common Stock on the date of grant as determined by the Internal Revenue Service and there is no other impermissible deferral of compensation associated with the Award. Additionally, as a condition to accepting an Option or SAR

granted under the Plan, each Participant agrees not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that such exercise price or strike price is less than the “fair market value” of the Common Stock on the date of grant as subsequently determined by the Internal Revenue Service.



**(d) Withholding Indemnification.** As a condition to accepting an Award under the Plan, in the event that the amount of the Company's and/or its Affiliate's withholding obligation in connection with such Award was greater than the amount actually withheld by the Company and/or its Affiliates, each Participant agrees to indemnify and hold the Company and/or its Affiliates harmless from any failure by the Company and/or its Affiliates to

withhold the proper amount.

## 9. MISCELLANEOUS.

**(a) Source of Shares.** The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

**(b) Use of Proceeds from Sales of Common Stock.** Proceeds from the sale of shares of Common Stock pursuant to Awards will constitute general funds of the Company.

**(c) Corporate Action Constituting Grant of Awards.** Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action approving the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

**(d) Stockholder Rights.** No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Award unless and until (i) such Participant has satisfied all requirements for exercise of the Award pursuant to its terms, if applicable, and (ii) the issuance of the Common Stock subject to such Award is reflected in the records of the Company.

**(e) No Employment or Other Service Rights.** Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or affect the right of the Company or an Affiliate to terminate at will and without regard to any future vesting opportunity that a Participant may have with respect to any Award (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 or foreign jurisdiction in which the Company or the Affiliate is incorporated, as the case may be. Further, nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award will constitute any promise or commitment by the Company or an Affiliate regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of employment or service or confer any right or benefit under the Award or the Plan unless such right or benefit has specifically accrued under the terms of the Award Agreement and/or Plan.

**(f) Change in Time Commitment.** In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Award to the Participant, the Board may determine, to the extent permitted by Applicable Law, to (i) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (ii) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

**(g) Execution of Additional Documents.** As a condition to accepting an Award under the Plan, the Participant agrees to execute any additional documents or instruments necessary or desirable, as determined in the Plan Administrator's sole discretion, to carry out the purposes or intent of the Award, or facilitate compliance with securities and/or other regulatory requirements, in each case at the Plan Administrator's request.

**(h) Electronic Delivery and Participation.** Any reference herein or in an Award Agreement to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at [www.sec.gov](http://www.sec.gov) (or any successor website thereto) or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access). By accepting any Award the Participant consents to receive documents by electronic delivery and to participate in the Plan through any on-line electronic system established and maintained by the Plan Administrator or another third party selected by the Plan Administrator. The form of delivery of any Common Stock (*e.g.*, a stock certificate or electronic entry evidencing such shares) shall be determined by the Company.

**(i) Clawback/Recovery.** All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other Applicable Law and any clawback policy that the Company otherwise adopts, to the extent applicable and permissible under Applicable Law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a Participant's right to voluntarily terminate employment upon a "resignation for good reason," or for a "constructive termination" or any similar term under any plan of or agreement with the Company.

**(j) Securities Law Compliance.** A Participant will not be issued any shares in respect of an Award unless either (i) the shares are registered under the Securities Act; or (ii) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Each Award also must comply with other Applicable Law governing the Award, and a Participant will not receive such shares if the Company determines that such receipt would not be in material compliance with Applicable Law.

**(k) Transfer or Assignment of Awards; Issued Shares.** Except as expressly provided in the Plan or the form of Award Agreement, Awards granted under the Plan may not be transferred or assigned by the Participant. After the vested shares subject to an Award have been issued, or in the case of Restricted Stock and similar awards, after the issued shares have vested, the holder of such shares is free to assign, hypothecate, donate, encumber or otherwise dispose of any interest in such shares provided that any such actions are in compliance with the provisions herein, the terms of the Trading Policy and Applicable Law.

**(l) Effect on Other Employee Benefit Plans.** The value of any Award granted under the Plan, as determined upon grant, vesting or settlement, shall not be included as compensation, earnings, salaries, or other similar terms used when calculating any Participant's benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

**(m) Deferrals.** To the extent permitted by Applicable Law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may also establish programs and procedures for deferral elections to be made by Participants. Deferrals will be made in accordance with the requirements of Section 409A.

**(n) Section 409A.** Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A, and, to the extent not so exempt, in compliance with the requirements of Section 409A. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes “deferred compensation” under Section 409A is a “specified employee” for purposes of Section 409A, no distribution or payment of any amount that is due because of a “separation from service” (as defined in Section 409A without regard to alternative definitions thereunder) will be issued or paid before the date that is six months and one day following the date of such Participant’s “separation from service” or, if earlier, the date of the Participant’s death, unless such distribution or payment can be made in a manner that complies with Section 409A, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

**(o) CHOICE OF LAW.** This Plan and any controversy arising out of or relating to this Plan shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to conflict of law principles that would result in any application of any law other than the law of the State of California.

#### **10. COVENANTS OF THE COMPANY.**

**(a) Compliance with Law.** The Company will seek to obtain from each regulatory commission or agency, as may be deemed to be necessary, having jurisdiction over the Plan such authority as may be required to grant Awards and to issue and sell shares of Common Stock upon exercise or vesting of the Awards; *provided, however*, that this undertaking will not require the Company to register under the Securities Act the Plan, any Award or any Common Stock issued or issuable pursuant to any such Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary or advisable for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise or vesting of

such Awards unless and until such authority is obtained. A Participant is not eligible for the grant of an Award or the subsequent issuance of Common Stock pursuant to the Award if such grant or issuance would be in violation of any Applicable Law.

#### **11. ADDITIONAL RULES FOR AWARDS SUBJECT TO SECTION 409A.**

**(a) Application.** Unless the provisions of this Section of the Plan are expressly superseded by the provisions in the form of Award Agreement, the provisions of this Section shall apply and shall supersede anything to the contrary set forth in the Award Agreement for a Non-Exempt Award.

**(b) Non-Exempt Awards Subject to Non-Exempt Severance Arrangements.** To the extent a Non-Exempt Award is subject to Section 409A due to application of a Non-Exempt Severance Arrangement, the following provisions of this subsection (b) apply.

**(i)** If the Non-Exempt Award vests in the ordinary course during the Participant's Continuous Service in accordance with the vesting schedule set forth in the Award Agreement, and does not accelerate vesting under the terms of a Non-Exempt Severance Arrangement, in no event will the shares be issued in respect of such Non-Exempt Award any later than the later of: (i) December 31<sup>st</sup> of the calendar year that includes the applicable vesting date, or (ii) the 60<sup>th</sup> day that follows the applicable vesting date.

**(ii)** If vesting of the Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with the Participant's Separation from Service, and such vesting acceleration provisions were in effect as of the date of grant of the Non-Exempt Award and, therefore, are part of the terms of such Non-Exempt Award as of the date of grant, then the shares will be earlier issued in settlement of such Non-Exempt Award upon the Participant's Separation from Service in accordance with the terms of the Non-Exempt Severance Arrangement, but in no event later than the 60<sup>th</sup> day that follows the date of the Participant's Separation from Service. However, if at the time the shares would otherwise be issued the Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of such Participant's Separation from Service, or, if earlier, the date of the Participant's death that occurs within such six month period.

**(iii)** If vesting of a Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with a Participant's Separation from Service, and such vesting acceleration provisions were not in effect as of the date of grant of the Non-Exempt Award and, therefore, are not a part of the terms of such Non-Exempt Award on the date of grant, then such acceleration of vesting of the Non-Exempt Award shall not accelerate the issuance date of the shares, but the shares shall instead be issued on the same schedule as set forth in the Grant Notice as if they had vested in the ordinary course during the Participant's Continuous Service, notwithstanding the vesting acceleration of the Non-Exempt Award. Such issuance schedule is intended to satisfy the requirements of payment on a specified date or pursuant to a fixed schedule, as provided under Treasury Regulations Section 1.409A-3(a)(4).

**(c) Treatment of Non-Exempt Awards Upon a Corporate Transaction for Employees and Consultants.** The provisions of this subsection (c) shall apply and shall supersede anything to the contrary set forth in the Plan with respect to the permitted treatment of any Non-Exempt Award in connection with a Corporate Transaction if the Participant was either an Employee or Consultant upon the applicable date of grant of the Non-Exempt Award.

**(i) Vested Non-Exempt Awards.** The following provisions shall apply to any Vested Non-Exempt Award in connection with a Corporate Transaction:

**(1)** If the Corporate Transaction is also a Section 409A Change in Control then the Acquiring Entity may not assume, continue or substitute the Vested Non-Exempt Award. Upon the Section 409A Change of Control the settlement of the Vested Non-Exempt Award will automatically be accelerated and the shares will be immediately issued in respect of the Vested Non-Exempt Award. Alternatively, the Company may instead provide that the Participant will receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change of Control.

**(2)** If the Corporate Transaction is not also a Section 409A Change of Control, then the Acquiring Entity must either assume, continue or substitute each Vested Non-Exempt Award. The shares to be issued in respect of the Vested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of the Fair Market Value of the shares made on the date of the Corporate Transaction.

**(ii) Unvested Non-Exempt Awards.** The following provisions shall apply to any Unvested Non-Exempt Award unless otherwise determined by the Board pursuant to subsection (e) of this Section.

**(1)** In the event of a Corporate Transaction, the Acquiring Entity shall assume, continue or substitute any Unvested Non-Exempt Award. Unless otherwise determined by the Board, any Unvested Non-Exempt Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of any Unvested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value of the shares made on the date of the Corporate Transaction.

(2) If the Acquiring Entity will not assume, substitute or continue any Unvested Non-Exempt Award in connection with a Corporate Transaction, then such Award shall automatically terminate and be forfeited upon the Corporate Transaction with no consideration payable to any Participant in respect of such forfeited Unvested Non-Exempt Award. Notwithstanding the foregoing, to the extent permitted and in compliance with the requirements of Section 409A, the Board may in its discretion determine to elect to accelerate the vesting and settlement of the Unvested Non-Exempt Award upon the Corporate Transaction, or instead substitute a cash payment equal to the Fair Market Value of such shares that would otherwise be issued to the Participant, as further provided in subsection (e)(ii) below. In the absence of such discretionary election by the Board, any Unvested Non-Exempt Award shall be forfeited without payment of any consideration to the affected Participants if the Acquiring Entity will not assume, substitute or continue the Unvested Non-Exempt Awards in connection with the Corporate Transaction.

(3) The foregoing treatment shall apply with respect to all Unvested Non-Exempt Awards upon any Corporate Transaction, and regardless of whether or not such Corporate Transaction is also a Section 409A Change of Control.

**(d) Treatment of Non-Exempt Awards Upon a Corporate Transaction for Non-Employee Directors.** The following provisions of this subsection (d) shall apply and shall supersede anything to the contrary that may be set forth in the Plan with respect to the permitted treatment of a Non-Exempt Director Award in connection with a Corporate Transaction.



(i) If the Corporate Transaction is also a Section 409A Change of Control then the Acquiring Entity may not assume, continue or substitute the Non-Exempt Director Award. Upon the Section 409A Change of Control the vesting and settlement of any Non-Exempt Director Award will automatically be accelerated and the shares will be immediately issued to the Participant in respect of the Non-Exempt Director Award. Alternatively, the Company may provide that the Participant will instead receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change of Control pursuant to the preceding provision.

(ii) If the Corporate Transaction is not also a Section 409A Change of Control, then the Acquiring Entity must either assume, continue or substitute the Non-Exempt Director Award. Unless otherwise determined by the Board, the Non-Exempt Director Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of the Non-Exempt Director Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value made on the date of the Corporate Transaction.

(e) If the RSU Award is a Non-Exempt Award, then the provisions in this Section 11(e) shall apply and supersede anything to the contrary that

may be set forth in the Plan or the Award Agreement with respect to the permitted treatment of such Non-Exempt Award:

(i) Any exercise by the Board of discretion to accelerate the vesting of a Non-Exempt Award shall not result in any acceleration of the scheduled issuance dates for the shares in respect of the Non-Exempt Award unless earlier issuance of the shares upon the applicable vesting dates would be in compliance with the requirements of Section 409A.

(ii) The Company explicitly reserves the right to earlier settle any Non-Exempt Award to the extent permitted and in compliance with the requirements of Section 409A, including pursuant to any of the exemptions available in Treasury Regulations Section 1.409A-3(j)(4)(ix).

(iii) To the extent the terms of any Non-Exempt Award provide that it will be settled upon a Change in Control or Corporate Transaction, to the extent it is required for compliance with the requirements of Section 409A, the Change in Control or Corporate Transaction event triggering settlement must also constitute a Section 409A Change of Control. To the extent the terms of a Non-Exempt Award provides that it will be settled upon a termination of employment or termination of Continuous Service, to the extent it is required for compliance with the requirements of Section 409A, the termination event triggering settlement must also constitute a Separation From Service. However, if at the time the shares would otherwise be issued to a Participant in connection with a "separation from service" such Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of the Participant's Separation From Service, or, if earlier, the date of the Participant's death that occurs within such six month period.

(iv) The provisions in this subsection (c) for delivery of the shares in respect of the settlement of a RSU Award that is a Non-Exempt Award are intended to comply with the requirements of Section 409A so that the delivery of the shares to the Participant in respect of such Non-Exempt Award will not trigger the additional tax imposed under Section 409A, and any ambiguities herein will be so interpreted.

## **12. SEVERABILITY.**

If all or any part of the Plan or any Award Agreement is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any portion of the Plan or such Award Agreement not declared to be unlawful or invalid. Any Section of the Plan or any Award Agreement (or part of such a Section) so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

### 13. TERMINATION OF THE PLAN.

The Board may suspend or terminate the Plan at any time.

No Incentive Stock Options may be granted after the tenth anniversary of the earlier of: (i) the Adoption Date, or (ii) the date the Plan is approved by the Company's stockholders.

No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

### 14. DEFINITIONS.

As used in the Plan, the following definitions apply to the capitalized terms indicated below:

(a) "**Acquiring Entity**" means the surviving or acquiring corporation (or its parent company) in connection with a Corporate Transaction.

(b) "**Adoption Date**" means the date the Plan is first approved by the Board or Compensation Committee.

(c) "**Affiliate**" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 promulgated under the Securities Act. The Board may determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(d) "**Applicable Law**" means shall mean any applicable securities, federal, state, foreign, material local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, listing rule, regulation, judicial decision, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (or under the authority of the NASDAQ Stock Market or the Financial Industry Regulatory Authority).

(e) "**Award**" means any right to receive Common Stock, cash or other property granted under the Plan (including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a RSU Award, a SAR, a Performance Award or any Other Award).

(f) "**Award Agreement**" means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award. The Award Agreement generally consists of the Grant Notice and the agreement containing the written summary of the general terms and conditions applicable to the Award and which is provided to a Participant along with the Grant Notice.

(g) "**Board**" means the Board of Directors of the Company (or its designee). Any decision or determination made by the Board shall be a decision or determination that is made in the sole discretion of the Board (or its designee), and such decision or determination shall be final and binding on all Participants.

(h) "**Capitalization Adjustment**" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(i) "**Capital Stock**" means each and every class of common stock of the Company, regardless of the number of votes per share.

(j) "**Cause**" has the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any of the following actions or events by such Participant: (i) attempted commission of, or participation in, a fraud or act of dishonesty against the Company and/or its Affiliates; (ii) material violation of any contract or agreement between the Participant and the Company and/or its Affiliates or of any statutory duty owed to the Company and/or its Affiliates or such Participant's material failure to comply with the Company's and/or its Affiliates's written policies or rules; (iii) unauthorized use or disclosure of the Company's and/or its Affiliates's confidential information or trade secrets; (iv) conviction of, or plea of "guilty" or "no contest" to a felony; (v) willful and continuing failure to perform assigned duties after receiving written notification from the Company and/or its Affiliates of the failure; (vi) gross negligence or gross misconduct; or (vii) failure to cooperate in good faith with a governmental or internal investigation of the Company and/or its Affiliates or its directors, officers or employees, if the Company requests cooperation. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause will be made by the Board with respect to Participants who are executive officers of the Company and by the Company's Chief Executive Officer with respect to Participants who are not executive officers of the Company. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

**(k) "Change in Control" or "Change of Control"** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events; provided, however, to the extent necessary to avoid adverse personal income tax consequences to the Participant in connection with an Award, also constitutes a Section 409A Change of Control:

**(i)** any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, or (C) solely because the level of Ownership held by any Exchange Act Person (the "*Subject Person*") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

**(ii)** there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

**(iii)** the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur, except for a liquidation into a parent corporation;

**(iv)** there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the members of the Board; *provided, however*, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, (A) 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, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Awards 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.

(l) "**Code**" means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(m) "**Committee**" means the Compensation Committee and any other committee of Directors to whom authority has been delegated by the Board or Compensation Committee in accordance with the Plan.

(n) "**Common Stock**" means the Class A common stock of the Company.

(o) "**Company**" means TransBiotec, Inc., a Delaware corporation.

(p) "**Compensation Committee**" means the Compensation Committee of the Board.

(q) **"Consultant"** means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

(r) **"Continuous Service"** means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service; *provided, however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director will not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law. In addition, to the extent required for exemption from or compliance with Section 409A, the determination of whether there has been a termination of Continuous Service will be made, and such term will be construed, in a manner that is consistent with the definition of "separation from service" as defined under Treasury Regulation Section 1.409A-1(h) (without regard to any alternative definition thereunder).

(s) **"Corporate Transaction"** means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(t) **"Director"** means a member of the Board.

(u) **"determine" or "determined"** means as determined by the Board or the Committee (or its designee) in its sole discretion.

(v) **"Disability"** means, with respect to a Participant, such Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Section 22(e)(3) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.



(w) "**Effective Date**" means the date that this Plan is approved by the Company's stockholders.

(x) "**Employee**" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

(y) "**Employer**" means the Company or the Affiliate of the Company that employs the Participant.

(z) "**Entity**" means a corporation, partnership, limited liability company or other entity.

(aa) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(bb) "**Exchange Act Person**" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities.

(cc) "**Fair Market Value**" means, as of any date, unless otherwise determined by the Board, the value of the Common Stock (as determined on a per share or aggregate basis, as applicable) determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value will be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(ii) If there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, or if otherwise determined by the Board, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(dd) "**Governmental Body**" means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or regulatory body, or quasi-governmental body of any nature (including any governmental division, department, administrative agency or bureau, commission, authority, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal, and for the avoidance of doubt, any Tax authority) or other body exercising similar powers or authority; or (d) self-regulatory organization (including the NASDAQ Stock Market and the Financial Industry Regulatory Authority).

(ee) "**Grant Notice**" means the notice provided to a Participant that he or she has been granted an Award under the Plan and which includes the name of the Participant, the type of Award, the date of grant of the Award, number of shares of Common Stock subject to the Award or potential cash payment right, (if any), the vesting schedule for the Award (if any) and other key terms applicable to the Award.

(ff) "**Incentive Stock Option**" means an option granted pursuant to Section 4 of the Plan that is intended to be, and qualifies as, an "incentive

stock option” within the meaning of Section 422 of the Code.

**(gg) “IPO Date”** means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

**(hh) “Materially Impair”** means any amendment to the terms of the Award that materially adversely affects the Participant’s rights under the Award. A Participant’s rights under an Award will not be deemed to have been Materially Impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant’s rights. For example, the following types of amendments to the terms of an Award do not Materially Impair the Participant’s rights under the Award: (i) imposition of reasonable restrictions on the minimum number of shares subject to an Option that may be exercised, (ii) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iii) to change the terms of an Incentive Stock Option in a manner that disqualifies, impairs or otherwise affects the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iv) to clarify the manner of exemption from, or to bring the Award into compliance with or qualify it for an exemption from, Section 409A; or (v) to comply with other Applicable Laws.

(ii) "**Non-Employee Director**" means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("**Regulation S-K**")), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(jj) "**Non-Exempt Award**" means any Award that is subject to, and not exempt from, Section 409A, including as the result of (i) a deferral of the issuance of the shares subject to the Award which is elected by the Participant or imposed by the Company, (ii) the terms of any Non-Exempt Severance Agreement.

(kk) "**Non-Exempt Director Award**" means a Non-Exempt Award granted to a Participant who was a Director but not an Employee on the applicable grant date.

(ll) **"Non-Exempt Severance Arrangement"** means a severance arrangement or other agreement between the Participant and the Company that provides for acceleration of vesting of an Award and issuance of the shares in respect of such Award upon the Participant's termination of employment or separation from service (as such term is defined in Section 409A(a)(2)(A)(i) of the Code (and without regard to any alternative definition thereunder) (**"Separation from Service"**)) and such severance benefit does not satisfy the requirements for an exemption from application of Section 409A provided under Treasury Regulations Section 1.409A-1(b)(4), 1.409A-1(b)(9) or otherwise.

(mm) **"Nonstatutory Stock Option"** means any option granted pursuant to Section 4 of the Plan that does not qualify as an Incentive Stock Option.

(nn) **"Officer"** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(oo) **"Option"** means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(pp) **"Option Agreement"** means a written agreement between the Company and the Optionholder evidencing the terms and conditions of the Option grant. The Option Agreement includes the Grant Notice for the Option and the agreement containing the written summary of the general terms and conditions applicable to the Option and which is provided to a Participant along with the Grant Notice. Each Option Agreement will be subject to the terms and conditions of the Plan.

(qq) **"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.

(rr) **"Other Award"** means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 5(c).

(ss) **"Other Award Agreement"** means a written agreement between the Company and a holder of an Other Award evidencing the terms and conditions of an Other Award grant. Each Other Award Agreement will be subject to the terms and conditions of the Plan.

(tt) **"Own," "Owned," "Owner," "Ownership"** means that a person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(uu) **"Participant"** means an Employee, Director or Consultant to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award.

(vv) "**Performance Award**" means an Award that may vest or may be exercised or a cash award that may vest or become earned and paid contingent upon the attainment during a Performance Period of certain Performance Goals and which is granted under the terms and conditions of Section 5(b) pursuant to such terms as are approved by the Board. In addition, to the extent permitted by Applicable Law and set forth in the applicable Award Agreement, the Board may determine that cash or other property may be used in payment of Performance Awards. Performance Awards that are settled in cash or other property are not required to be valued in whole or in part by reference to, or otherwise based on, the Common Stock.

(ww) "**Performance Criteria**" means the one or more criteria that the Board will select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that will be used to establish such Performance Goals may be based on any measure of performance selected by the Board.

(xx) "**Performance Goals**" means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board will appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of items that are "unusual" in nature or occur "infrequently" as determined under generally accepted accounting principles; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of common stock of the Company by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock based compensation and the award of bonuses under the Company's bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to expensed under generally accepted accounting principles; and (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Award Agreement or the written terms of a Performance Cash Award.

(yy) "**Performance Period**" means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to vesting or exercise of an Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

(zz) "**Plan**" means this TransBiotech, Inc. 2019 Equity Incentive Plan, as amended from time to time.

**(aaa) "Plan Administrator"** means the person, persons, and/or third-party administrator designated by the Company to administer the day to day operations of the Plan and the Company's other equity incentive programs.

**(bbb) "Post-Termination Exercise Period"** means the period following termination of a Participant's Continuous Service within which an Option or SAR is exercisable, as specified in Section 4(h).

**(ccc)** Not Used in this Agreement

**(ddd)** Not Used in this Agreement

**(eee) "Prospectus"** means the document containing the Plan information specified in Section 10(a) of the Securities Act.

**(fff) "Restricted Stock Award" or "RSA"** means an Award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 5(a).

**(ggg) "Restricted Stock Award Agreement"** means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. The Restricted Stock Award Agreement includes the Grant Notice for the Restricted Stock Award and the agreement containing the written summary of the general terms and conditions applicable to the Restricted Stock Award and which is provided to a Participant along with the Grant Notice. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

**(hhh) "Returning Shares"** means shares subject to outstanding stock awards granted that following the Effective Date: (A) are not issued because such stock award or any portion thereof expires or otherwise terminates without all of the shares covered by such stock award having been issued; (B) are not issued because such stock award or any portion thereof is settled in cash; (C) are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required for the vesting of such shares; (D) are withheld or reacquired to satisfy the exercise, strike or purchase price; or (E) are withheld or reacquired to satisfy a tax withholding obligation. Returning Shares of Class B common stock that become available for grant under this Plan shall convert on a one-for-one basis into shares of Common Stock.

**(iii) "RSU Award" or "RSU"** means an Award of restricted stock units representing the right to receive an issuance of shares of Common Stock which is granted pursuant to the terms and conditions of Section 5(a).

**(jjj) "RSU Award Agreement"** means a written agreement between the Company and a holder of a RSU Award evidencing the terms and conditions of a RSU Award grant. The RSU Award Agreement includes the Grant Notice for the RSU Award and the agreement containing the written summary of the general terms and conditions applicable to the RSU Award and which is provided to a Participant along with the Grant Notice. Each RSU Award Agreement will be subject to the terms and conditions of the Plan.

**(kkk) "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.

**(lll) "Rule 405"** means Rule 405 promulgated under the Securities Act.

**(mmm) "Section 409A"** means Section 409A of the Code and the regulations and other guidance thereunder.

(nnn) "**Section 409A Change of Control**" means a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company's assets, as provided in Section 409A(a)(2)(A)(v) of the Code and Treasury Regulations Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder).

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

(ppp) "**Share Reserve**" means the number of shares available for issuance under the Plan as set forth in Section 2(a).

(qqq) "**Stock Appreciation Right**" or "**SAR**" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 4.

(rrr) "**SAR Agreement**" means a written agreement between the Company and a holder of a SAR evidencing the terms and conditions of a SAR grant. The SAR Agreement includes the Grant Notice for the SAR and the agreement containing the written summary of the general terms and conditions applicable to the SAR and which is provided to a Participant along with the Grant Notice. Each SAR Agreement will be subject to the terms and conditions of the Plan.

(sss) "**Subsidiary**" means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(ttt) "**Ten Percent Stockholder**" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

(uuu) "**Trading Policy**" means the Company's policy permitting certain individuals to sell Company shares only during certain "window" periods and/or otherwise restricts the ability of certain individuals to transfer or encumber Company shares, as in effect from time to time.

(vvv) "**Unvested Non-Exempt Award**" means the portion of any Non-Exempt Award that had not vested in accordance with its terms upon or prior to the date of any Corporate Transaction.

(www) "**Vested Non-Exempt Award**" means the portion of any Non-Exempt Award that had vested in accordance with its terms upon or prior to the date of a Corporate Transaction.



## EXECUTIVE EMPLOYMENT AGREEMENT

**This Executive Employment Agreement** including the attached Exhibit A, the Employee Proprietary Information and Inventions Agreement and Exhibit B, the 2019 Equity Incentive Plan (collectively the "Employment Agreement"), is made effective as the 25th day of October 2019 between TransBiotech, Inc., a Delaware corporation whose business address is 400 N. Tustin Ave., Suite 225, Santa Ana, CA 92705 (the "Company"), and Kevin Moore, an individual residing at 730 15<sup>th</sup> Street, Boulder, CO 80302 (the "Executive"). The Company and the Executive are sometimes hereinafter individually referred to as a "Party" or collectively as the "Parties".

## WITNESSETH:

**WHEREAS**, the Executive desires to become employed by the Company as its Chief Executive Officer; and

**WHEREAS**, the Company is willing to employ the Executive as the Company's Chief Executive Officer on the terms and conditions and for the consideration set forth in this Employment Agreement; and

**NOW, THEREFORE**, in consideration of the premises and mutual covenants hereafter set forth and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged and accepted, the Parties hereby incorporate the foregoing recitals into this Employment Agreement by reference and hereby agree as follows:

**1. Employment.** The Company hereby employs the Executive and the Executive hereby agrees to enter the employ of the Company as its Chief Executive Officer commencing on the execution of this Employment Agreement (the "Effective Date") for a term of three years (the "Employment Period"). Provided, however, that solely in the event that the Company has not purchased designated assets of IDTEC, LLC, a Colorado limited liability company in exchange for 12,000,000 shares (after giving effect to the planned reverse stock split related to the close of the asset purchase agreement) of the Company's Common Stock, \$0.001 par value per share on or before January 31, 2020 (the "Premature Termination Date"), this Employment Agreement shall automatically terminate and be of no further force and effect without notice to the Executive and only the Premature Termination Options defined in Section 4.D. shall vest and be exercisable by the Executive. The Executive shall, in the performance of his duties, be at all times subject to the direction, supervision and authority of the Company's Board of Directors (the "Board"), and should he be so elected, as the Company's Executive Chairman, to David J. Gandini.

**2. No Breach of Obligation.** The Executive represents and warrants to the Company that the Executive possesses the requisite skill and experience and is ready, willing and able to perform those duties attendant to the position for which the Executive has been hired and which the Executive shall perform during the Employment Period. The Executive further represents that the Executive's entry into the Employment Agreement does not constitute a breach of any agreement with any other person, firm or corporation, nor does any prior agreement between the Executive and any person, firm or corporation contain any restriction or impediment to the ability of the Executive to perform those duties for which the Executive was hired or which may be reasonably expected of the Executive.

**3. Services and Board Membership.** During the Employment Period, the Executive shall perform to the best of the Executive's ability the following services and duties in such manner and at such times as the Chairman and/or the Board may direct, the following being included by way of example and not by way of limitation: (i) Co-manage with the Chairman the transition of the Company's executive management between the date of this Agreement and the Effective Date of the Change of Control Events; (ii) co-manage with the Chairman the interviewing and employment of such executive officers including a Chief Financial Officer and such personnel as shall be in the best interests of the Company and its stockholders; (iii) co-manage with the Chairman the relocation of the principal executive offices of the Company to a mutually agreed upon shared office space by November 15, 2019; (iv) co-manage with the Chairman the creation of all mutually agreed upon legal documents supporting the Company's business; (v) in cooperation with the Chairman establishing the initial manufacturing process and related vendors to support the Company's 2020 budget; (vi) create and drive the implementation of the Device's initial and ongoing product development plan milestones, objectives and evolution, etc; (vii) formulate and implement strategic relationships required to commercialize the Device's improvements, modifications, evolution, intellectual property, software and technologies; (viii) in cooperation with the Chairman oversee and develop the Company's operations, including engineering, marketing and sales, etc.; (ix) assist in executing the Company's capital formation plan and act as a spokesperson to the investment community, other capital sources, and external media to reach the broadest possible audiences; (x) provide leadership in managing the Company's progress in attaining revenue and profitability objectives and revising objectives and plans responsive to current and anticipated financial, economic and industry market conditions; (xi) develop and propose to the Board the Company's employment, human resources benefits, and other personnel policies; (xii) support the creation and formation of investor relations and public relations in cooperation with First Capital Ventures, LLC; and (xiii) performing such other duties as shall reasonably be assigned to the Executive by the Company's Chairman and/or Board. The foregoing is hereinafter collectively referred to as the "Services")

A. Performance of the Services. The Executive's performance of the Services shall be conducted at the locations reasonably required by the Company's business needs within or outside of the State of Colorado. Excluding any periods of vacation and other time off to which the Executive is entitled as provided herein, the Executive covenants and agrees to devote such percentage of the Executive's full time and attention to the performance of the Services and the business and affairs of the Company as the Executive and the Chairman deem necessary in his considered business judgment to perform such responsibilities. It shall not be a violation of this Employment Agreement for the Executive: (a) to serve on academic, corporate, civic, charitable, governmental, non-profit or religious boards or committees of such other entities; (b) participate in political activities and fundraising; and (c) manage personal investments, so long as, in each case, such activities do not create any conflicts of interest with the business of the Company or interfere with the performance of the Services as an employee of the Company in accordance with this Employment Agreement.

B. Board Membership. During the Employment Period, the Executive may be nominated and elected to the Company's Board, which position he agrees to accept should he be so nominated and elected.

**4. Compensation, Stock Grant and Repayment of Outstanding Obligations to the Executive.**

A. Annual Base Salary. Commencing on the Effective Date, and for three consecutive months, the Executive agrees to accept 800,000 unregistered shares of the Company's Common Stock (the "Salary Shares") in lieu of payment of his \$213,000.00 annual base salary of (the "Annual Base Salary"). Each of the 800,000 share payments shall be valued at 110% of the mean between the opening and closing price of the Company's common stock in the over-the-counter market on the date the 800,000 shares were issued to the Executive. Commencing on the fourth month after the Effective Date, the Executive shall receive his Annual Base Salary subject to applicable withholding taxes and other payroll deductions and payable in accordance

with the Company's generally applicable payroll practices and policies. The Executive's Annual Base Salary shall be reviewed during the 4th quarter of each year of the Employment Period by the Company's Compensation Committee or if no such committee exists by the entire Board with the Executive not participating, with the objective of determining the subsequent year's Annual Base Salary for the Executive; provided that the Company shall be under no obligation to increase the Annual Base Salary.

B. Sales and Marketing Compensation. In addition to the Executive's Services, and until otherwise mandated by the Company's Board, the Executive and David J. Gandini, the Company's Chief Revenue Officer (collectively the "Sales Team"), will serve as the Company's interim sales and marketing department and shall perform all of the services customarily attendant upon a Chief Sales and Marketing Officer (the "Sales Services"). Solely in this regard, and in addition to the compensation and benefits set forth in Paragraphs C through K of this Section 4, the Sales Team will receive as its sole compensation for the Sales Services an amount equal to three (3%) percent (the "Sales Commission") of the gross revenue generated by the Sales

Services less any allowances or returns (the "Gross Revenue") on an order-by-order or purchase order-by purchase order-basis (each an "Order"). The Sales Commission shall be paid quarterly for the longer of three years from the first Order or as long as an Order continues to generate Gross Revenue. The Sales Commissions shall be subject to applicable withholding taxes and other payroll deductions and be payable in accordance with the Company's generally applicable payment practices and policies. The Executive and David J. Gandini shall split the Sales Commissions equally.

C. Bonus Plan and Participation. Within 60 days following the Effective Date, the Company will establish an annual bonus plan for the Executive with the objective of attaining an annual bonus up to a maximum of 50% of the Executive's prior year's Annual Base Salary (the "Annual Bonus Plan"). The components and objectives of the Executive's Annual Bonus Plan and the amount of the Annual Bonus related thereto will be determined the Compensation Committee of the Board, or if no such committee exists, by the entire Board with the Executive not participating. The Executive's Annual Bonus Plan may include sales, financial, operational or other milestones to be accomplished within specified timeframes. Except for the Executive's first Annual Bonus, the Executive's Annual Bonus for the second and third years of the Employment Period, if any, under the Annual Bonus Plan will be determined at the end of each of the Company's fiscal years during the Employment Period and shall be paid prior to the end of the first quarter of the following fiscal year.

D. Incentive Stock Options. Commencing on the date of the first meeting of the Company's Board of Directors following both the Effective Date, the Executive shall be granted ten-year Incentive Stock Options (the "Options") under the 2019 Equity Incentive Plan (the "Plan") to purchase 35,200,000 shares of the Company's Common Stock, \$0.001 par value per share (the "Option Shares") at an exercise price equal to 110% of the fair market value of the Option Shares on the Option Grant Date (the Option Exercise Price"). The Option Shares will vest in 36 equal monthly installments of 977,777 Option Shares during the three-year term of this Employment Agreement in accordance with the terms and conditions of the Plan (the "Monthly Vesting Option Shares"). Notwithstanding the foregoing, and only in the event that this Employment Agreement is prematurely terminated as a result of the Company's failure to purchase designated assets of IDTEC, LLC, a Colorado limited liability company in exchange for 12,000,000 shares (after giving effect to the planned reverse stock split related to the close of the asset purchase agreement) of the Company's Common Stock, \$0.001 par value per share on or before January 31, 2020, only the Options that shall have vested prior to January 31, 2020 shall vest and be exercisable by the Executive (the "Premature Termination Options"). A copy of the Plan is hereby acknowledged and accepted by the Executive.

E. Accelerated Option Vesting.

1. *Computation*. In addition to the Monthly Vesting Option Shares, an additional 7,040,000 Option Shares (the "Milestone Option Shares") shall vest on the Company's achievement of each of the four milestones (the "Milestones") set forth in Section 2. E. 2. below. Upon the Executive's achievement of any of the Milestones during the Term, the 7,040,000 Milestone Option Shares shall be deducted from the 35,200,000 Maximum Option Shares which shall be divided by the number of months remaining in the three-year Term of this Employment Agreement.

2. *The Milestones:* (i) the delivery of a commercially viable SOBRSafe Alcohol Detection Device (the "Device") by March 31, 2020; and/or (ii) certification of manufacturing/assembly capability of a minimum of 25,000 Devices in two separate locations in the United States by July 31, 2020; and/or (iii) the generation of U.S. Device gross sales in excess of \$2,000,000 for the calendar year ending December 31, 2020 or have a monthly \$166,600 by December 31, 2020; and/or (iv) the generation of non-US Device gross sales in excess of \$2,000,000 for the calendar year ending December 31, 2020 or have a monthly \$166,600 run rate by December 31, 2020 through direct customers and/or distribution channels.

F. Change of Control Option Vesting. In the event of a Change of Control of the Company as that phrase is defined in the next sentence, all Option Shares shall vest and be exercisable in accordance with their terms and conditions. As used in this Employment Agreement, the phrase "Change of Control" shall be deemed to mean any of the following occurring after the Effective Date: (i) the Company consolidates with, amalgamates or merges with or into, another business entity or any business entity consolidates with, or amalgamates or merges with or into the Company; (ii) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the Company's assets (determined, if applicable, on a consolidated basis) to any individual, firm, entity or group other than pursuant to a transaction in which individuals that beneficially owned directly or indirectly, voting shares representing a majority of the total voting power of the Company; (iii) the adoption of a plan the consummation of which would result in the liquidation or dissolution of the Company; and (iv) the acquisition, directly or indirectly, by any individual, firm, entity or group of beneficial ownership of more than 50% of the aggregate voting power of the Company's voting securities.

G. Executive Benefits. The Executive shall be offered the opportunity to participate on the same basis as other executive officers of Company in all of the Company's employee benefit plans and programs, including improvements or modifications of such plans and programs. Nothing in this Employment Agreement shall be construed as limiting or restricting any benefit to the Executive under any pension, profit-sharing or similar retirement plan, or under any group life or group health or accident or other plan of the Company, for the benefit of its employees generally or a group of them, now or hereafter in existence.

H. Expenses. The Executive shall be entitled to receive prompt reimbursement for all out-of-pocket expenses incurred by the Executive in connection with the performance of the Services in accordance with the Company's expense reimbursement policies. Monthly expense reports shall be submitted to the Chairman for approval.

I. Paid Time Off ("PTO"). The Company will adopt and implement a PTO policy and plan (the "PTO Plan") prior to December 31, 2019 for its employees. The PTO Plan shall include a listing of categories such as personal, sick, and vacation days absent time and related number of days within each category for all employees including the Executive. Modification of the PTO Plan will require the approval of the Company's Board prior to implementation. No cash compensation will be paid for any days which exceed the PTO schedule adopted by the Board.

J. Termination Severance. The Executive shall be entitled to the severance payments ("Severance") indicated and defined in Section 5. D.3.) (c),

Section 5. D. 4.) (c) and Section 5. D. 5.) (b) of this Employment Agreement below.

K. Consent to Insurance. The Executive covenants and agrees to be the subject of a key man insurance policy on his life (the "Key Man Policy"); and consents to such medical tests as may be required to secure the Key Man Policy. The Executive acknowledges and accepts that the Company: (i) shall be the owner and beneficiary of the Key Man Policy; (ii) shall be solely responsible for paying the premiums thereon; and (iii) shall be entitled to determine the face amount of the Key Man Policy in the discretion of the Company's Board of Directors.

**5. Termination of the Agreement by the Company and Cessation of Services by the Executive.**

A. Death of the Executive. The Employment Period shall terminate automatically upon Executive's death.

B. Termination by the Company. The Company may terminate the Employment Period, as follows:

*1). On the Premature Termination Date;*



2). *Without Cause*. The Company may terminate the Employment Period for any reason upon at least 90 days' prior written notice to the Executive;

3). *By Disability*. In the event the Executive becomes permanently disabled or incapacitated, the Company may terminate the Employment Period. The term "permanently disabled or incapacitated" means any ailment or condition which prevents the Executive from actively carrying out the Executive's duties hereunder for the Company for a continuous period of at least 90 days as determined by a physician selected by the Board (the "Disability Date"); and

4). *For Cause*. The Company may terminate the Employment Period for "Cause," upon at least three (3) days' prior written notice to the Executive. "For Cause" shall mean:

(a) The commission by Executive in connection with the Executive's employment of any material act of dishonesty, fraud or misrepresentation;

(b) Conviction or plea of nolo contendere of the Executive for a felony;

(c) Executive's willful misconduct that causes material economic harm to the Company or that brings substantial discredit to the Company's reputation;

(d) Executive's breach of a material provision of the Executive's Employment Agreement, which breach is not cured by the Executive within 30 days after the Company gives written notice of the breach to the Executive; and

(e) Violation of any material fiduciary duty owed to the Company.

C. Termination by the Executive. The Executive may terminate the Employment Period, as follows:

1). *Without Good Reason*. The Executive may terminate the Employment Period for any reason upon at least 90 days' prior written notice to the Company;

2). *For Good Reason*. The Executive may terminate the Employment Period for "Good Reason," after at least 30 days' prior written notice to the Company specifying the "Good Reason" and following the Company's right to cure the alleged Good Reason breach within 30 days. Good Reason shall mean:

(a) The reduction of Executive's Annual Base Salary without the Executive's consent;

(b) The failure by the Company to pay any amount owed to the Executive under this Employment Agreement when due; and

(c) Any material change in the Executive's title, responsibilities or authority that is not consistent with that customarily associated with the position of Chief Executive Officer.

D. Consequences of Termination of the Employment Period

1). *Death of the Executive.* If the Employment Period terminates as a result of the Executive's death, then:

(a) The Company shall pay the Executive's Annual Base Salary through the date of the Executive's death. In addition, and at the end of the fiscal year in which the Executive shall have died, the Company shall pay a pro rata portion of any bonus to which the Executive shall have earned under the Executive's Annual Bonus Plan through the date of the Executive's death pursuant to Subsection A of this Section 5 in accordance with their respective terms; and

(b) All Option Shares that have vested as of the date of death shall remain vested, and all Option Shares that would have vested during the 90-day period immediately following the Executive's death shall also automatically vest, and the ISO shall be exercisable for all such vested Initial and Subsequent Option Shares.

2). *By the Company for Cause.* If the Company terminates the Employment Period for Cause, then:

(a) The Company shall pay the Executive's Annual Base Salary through the date of termination pursuant to Subsection B of this Section 5 in accordance with its terms; and

(b) All Option Shares that have vested as of the date of termination shall remain vested and exercisable in accordance with the Plan.

3). *By the Company for the Executive's Disability.* If the Company terminates the Employment Period for Disability of the Executive, then:

(a) The Company shall pay the Executive's Annual Base Salary through the Disability Date pursuant to Subsection B of this Section 5 in accordance with its terms; and

(b) All Option Shares that have vested as of the Disability Date shall remain vested and exercisable in accordance with the Plan; and

(c) The Executive shall be entitled to receive the Severance defined in Section 5. D. 4.) (c) below through the Disability Date.

4). *By the Executive for Good Reason.* If the Executive terminates the Employment Period for Good Reason, then:

(a) The Company shall pay the Executive's Annual Base Salary through the date of termination pursuant to Subsection C of this Section 5 in accordance with its terms;

(b) The Option Shares that have vested as of the date of termination shall remain vested and exercisable in accordance with the Plan; and

(c) The Executive shall be entitled to receive a severance payment (the “Severance”) equal to the following number of months of the Executive’s Annual Base Salary depending upon the date of termination and payable within 30 days of the Executive’s termination: (i) during the first 12 months of the Employment Period, eight (8) weeks’ Severance; and (ii) at any time during the remainder of the Employment Period, twelve (12) weeks’ Severance.

5). *By the Company* without *Cause*. If the Company terminates the Employment Period without Cause, then:

(a) The Company shall pay the Executive's Annual Base Salary through the date of termination; and

(b) The Executive shall be entitled to receive a Severance payment equal to the following number of months of the Executive's Annual Base Salary depending upon the date of termination and payable within 30 days of the Executive's termination: (i) during the first 12 months of the Employment Period, eight (8) weeks' Severance; and (ii) at any time during the remainder of the Employment Period, twelve (12) weeks' Severance; and

(c) The Company shall continue to pay its portion of Executive's health insurance premium in the same manner as during the Employment Period for a period of 90 days immediately following the date of termination of the Employment Period; and

(d) All Option Shares earned through the date of termination all immediately become fully vested, and the Initial and Subsequent shall be exercisable for all such vested Option Shares in accordance with the Plan.

## **6. Representations, Warranties and Covenants.**

A. Representations, Warranties and Covenants of the Executive. By virtue of the Executive's execution hereof, and in order to induce the Company to enter into this Employment Agreement, the Executive hereby represents and warrants to and covenants with the Company as follows:

(1) He is not presently actively engaged in any business, employment or venture which is or may be in conflict with the business of the Company;

(2) He has full power and authority to enter this Employment Agreement, to enter into and to otherwise perform this Employment Agreement in the time and manner contemplated;

(3) He agrees to submit to a medical examination as may be required for the Company to obtain "key man" insurance coverage, provided that such medical examination is at the Company's expense;

(4) He has the experience, skill and knowledge to perform the services expected of him hereunder;

(5) The Executive is not the subject of any threatened or filed litigation not disclosed to the Company prior to the execution of this Employment Agreement;

(6) The Executive's compliance with the terms and conditions of this Employment Agreement in the time and manner contemplated herein will not conflict with any instrument or agreement pertaining to the transaction contemplated herein; and will not conflict in, result in a breach of, or constitute a default under any instrument to which he is a party;

(7) The Executive acknowledges that Severance shall only be paid in the event the Company terminates the Employment Period without Cause, due to the Executive's Disability, or the Executive terminates the Employment Period with Good Reason;

(8) The Executive has been advised, and by the execution of this Employment Agreement, accepts and acknowledges that none of the Option Shares shall have been registered under the Securities Act of 1933, as amended (the "Securities Act") or under any state securities law; and that in granting the Option Shares to the Executive, the Company is relying upon an exemption from registration based upon the Executive's investment representations. In this regard, the Executive hereby represents and warrants to the Company that: (a) he is acquiring the Salary Shares and the Option Shares for investment purposes and without a view to the transfer or resale thereof; (b) he is a sophisticated investor familiar with the operations of the Company; (c) in the event he exercises the Option Shares he will hold them for such period of time as shall be required by the Securities Act or as otherwise required or permitted by law; (d) any sale of the Salary Shares and/or the Option Shares will be accomplished only in accordance with the Securities Act and the rules and regulations of the Securities and Exchange Commission adopted thereunder; and (e) all certificates representing the Salary Shares and the Option Shares will bear a standard form or restrictive legend and be the subject of standard stop transfer orders on the transfer records of the Company or its transfer agent; and

(9) The Executive acknowledges and accepts that all certificates representing the Salary Shares and/or the Option Shares may be the subject of a lock up from the date the Company becomes publicly owned as may be required by the Company's underwriter(s).

**B. Representations, Warranties and Covenants of the Company.** By virtue of its execution of this Employment Agreement, the Company hereby represents and warrants to and covenants with the Executive as follows:

(1) The Company has full power, right and authority to execute and perform this Employment Agreement in the time and manner contemplated and all corporate action required to be taken by the Company to authorize and execute this Employment Agreement has been taken prior to the delivery hereof;

(2) All requisite legal action required by the Company to cause the due execution and delivery of this Employment Agreement has been taken by the Company;

(3) As of the date of this Employment Agreement, the Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full power and authority to conduct its business;

(4) The person executing this Employment Agreement on behalf of the Company has been duly authorized to execute this Employment Agreement;

(5) The Option Shares issuable upon the Executive's exercise of the Initial and Subsequent Stock Options shall be when issued, duly and validly issued, fully paid and non-assessable;

(6) The Company agrees that the Annual Base Salary, payments under the Annual Bonus Plan and Severance, and all other payments due to the Executive shall constitute a wage claim under the laws of the State of Delaware; and

(7) The Company shall reserve the Option Shares for issuance upon the Executive's exercise of the Option; and

(8) The Company is not the subject of any litigation not disclosed to the Executive prior to the execution of this Employment Agreement.

**7. Proprietary Information and Inventions.**

Exhibit "A" annexed hereto and hereby incorporated herein by reference, sets forth the terms and conditions of the agreement of the Parties



concerning proprietary information and inventions.

#### **8. Successors.**

This Employment Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Employment Agreement shall inure to the benefit of and be enforceable by the Executive's estate, heirs and legal representatives. This Employment Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Employment Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Employment Agreement, "Company" shall mean the Company and any successor to its business and/or assets by operation of law, or otherwise.

#### **9. Indemnification.**

If the Executive is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (herein a "proceeding"), by reason of the fact that he is or was an employee (which term includes officer, director, agent and any other capacity) of the Company or is or was serving at the request of the Company as an employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as an employee or agent or in any other capacity while serving as an employee or agent, Executive shall be indemnified and held harmless by the Company to the fullest extent authorized by applicable law, against all expense, liability and loss (including, but not limited to, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) incurred or suffered by Executive in connection therewith. In addition, such indemnification shall continue as to the Executive after he has ceased to be a director, officer, employee or agent and shall inure to the benefit of the Executive's heir, executors, and administrators for the applicable statute of limitations; provided, however, that the Company shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by the Executive (other than a proceeding to enforce this paragraph 9. only if such proceeding (or part thereof) was authorized directly or indirectly by the Company's Board. The right to indemnification conferred in this paragraph shall be a contract right and shall include the right to be, promptly upon request, paid by the Company the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the General Corporation Law of the State of Delaware requires the payment of such expenses incurred by an employee in his capacity as an employee (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, payment shall be made only upon delivery to the Company of an undertaking, by or on behalf of the Executive, to repay all amounts so advanced if it shall ultimately be determined that Executive is not entitled to be indemnified under this paragraph or otherwise.

#### **10 Non-Competition, Non-Disparagement and Non-Solicitation.**

A. Non-Competition. During the Employment Period and for twenty-four (24) months after the termination of this Employment Period, the Executive agrees that he will not, within Colorado or California, directly or indirectly, individually or on behalf of any other person, in any capacity whatsoever, carry on or engage in any business or undertaking that competes with the business or intended businesses of the Company.

**B. Non-Disparagement.** The Company and the Executive each shall refrain from publishing any oral or written statements about the other, any of their subsidiaries or affiliates, or any of such individuals' or entities' officers, employees, shareholders, agents or representatives, that are slanderous, libelous, or defamatory; or that constitute a misappropriation of the name or likeness of the Executive or the Company, any of their affiliates, or any of such individual's or entities' or their officers, employees, shareholders, agents, or representatives. A violation or threatened violation of this prohibition may be enjoined by the courts. The rights afforded under this provision are in addition to any and all rights and remedies otherwise afforded by law.

**C. Non-Solicitation.** As part of the consideration for the compensation and benefits to be paid to the Executive thereunder, in keeping with the Executive's Services and as a fiduciary, and in order to protect the Company's interest in the trade secrets of the Company, and as an additional incentive for the Company to enter into this Employment Agreement, the Executive covenants and agrees that the Executive will not, directly or indirectly, for the Executive for others, knowingly induce any employee of the Company or any of its affiliates to terminate his or her employment with the Company or its affiliates, or knowingly hire or assist in the hiring of any such employee by any person, association, or entity not affiliated with the Company. The obligations in this Section 10C shall extend during the Employment Period and for three years after the expiration or termination of the Employment Period. The Executive acknowledges that money damages would not be sufficient remedy for any breach of this Section 10C by the Executive, and the Company shall be entitled to specific performance and injunctive relief as remedies for such breach or any threatened breach. Such remedies shall not be deemed the exclusive remedies for a breach, but shall be in addition to all remedies available at law or in equity to the Company, including, without limitation, the recovery of damages from the Executive and his agents involved in such breach.

## **11. Miscellaneous.**

**A. Governing Law.** The interpretation and enforcement of this Employment Agreement, and the rights, obligations and remedies of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to conflict of law principles.

**B. Notices.** All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other Party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

### **IF TO THE EXECUTIVE:**

Kevin Moore  
885 Arapahoe Avenue  
Boulder, CO 80302

### **IF TO THE COMPANY:**

TransBiotech, Inc.  
Attn. CEO  
400 N. Tustin Ave., Suite 225  
Santa Ana, CA 92705

Or to such other name or address as either Party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

C. Severability. In the event that any provision of this Employment Agreement is held to be illegal, invalid or unenforceable, then such illegality, invalidity or enforceability shall not affect the other terms and provisions of this Employment Agreement which shall remain in full force and effect.

D. Withholding. The Company may withhold from any amounts payable under this Employment Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

E. Waiver. The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Employment Agreement or the failure to assert any right the Executive or the Company may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Employment Agreement.

F. Code Section 409A. Notwithstanding anything in this Employment Agreement or any other plan or agreement to the contrary, to the extent subject thereto, all deferred payments or benefits provided to the Executive shall comply with all applicable provisions of Section 409A of the Internal Revenue Code of 1986, as amended (and any related regulations or guidance).

G. Entire Agreement. Each of the Parties hereby agrees that this Employment Agreement (i) supersedes any prior conversations or negotiation between them with respect to the subject matter of this Employment Agreement, (ii) is intended to and does contain and embody herein all of the understandings and agreements, both written or oral, of the Parties hereby with respect to the subject matter of this Employment Agreement and (iii) that there exists no oral agreement or understanding, express or implied liability, whereby the absolute, final and unconditional character and nature of this Employment Agreement shall be in any way invalidated, empowered or affected. There are no representations, warranties or covenants other than those set forth herein.

H. Headings. The section headings herein are inserted for the convenience of the parties only and are not to be construed as part of the terms of this Employment Agreement or to be taken into account in the construction or interpretation of this Employment Agreement.

I. Amendment and Modification. This Employment Agreement may be amended, modified or supplemented only by written agreement of the Parties hereto, which agreement shall have been duly authorized and approved by the Company and the Executive.

J. Prohibition Against Assignment. The Executive agrees on behalf of himself and any other person or persons claiming any benefits under him by virtue of this Employment Agreement, and the Company agrees for itself and its successors and assigns, that this Employment Agreement and the rights, interests, and benefits hereunder shall not be assigned, transferred, pledged or hypothecated in any way by the Executive or by the Company without the prior express written consent of the other Party. Any attempted assignment, transfer, pledge or hypothecation, or other disposition of this Employment Agreement or of such rights, interests and benefits contrary to the foregoing provisions shall be null and void and without effect and shall be deemed to be a material breach of this Employment Agreement.

K. Additional Instruments. Each Party shall from time to time, at the request of the other Party, execute, acknowledge and deliver to the other Party any and all further instruments that may be reasonably required to give full effect and force to the provisions of this Employment Agreement.

L. Originals. This Employment Agreement may be executed in counterparts each of which so executed shall be deemed an original and constitute one and the same agreement

M. Address of Parties. Each Party shall at all times keep the other informed of its principal place of business or residence if different from that stated herein, and shall promptly notify the other of any change, giving the address of the new principal place of business or residence.

N. Alternative Dispute Resolution (ADR). The Parties shall attempt to resolve any dispute that may arise in connection with this Employment Agreement through a process of mediation administered by JAMS (Arbitration, Mediation and ADR Services) or through selection of an agreed upon private individual outside of JAMS, with the mediation to be held in Denver County in the State of Colorado, unless the Parties agree on another venue. The Parties shall first attempt to settle the dispute by participating in at least ten (10) hours of mediation at the offices of the ADR Provider (or at another location if mutually agreed). The complaining Party must notify the other Party that a dispute exists. A designated individual mediator will be either agreed upon or if no agreement is reached, then selected within ten (10) days of notice according to JAMS' rules and procedures to conduct the mediation; provided that the mediator must not have any conflict of interest. The mediation will be held as soon as practicably possible. The mediation will be a nonbinding conference between the Parties conducted in accordance with the applicable rules and procedures of the mediator. Any mediation expenses shall be borne equally by the Executive and the Company. Neither of the Party shall initiate any litigation or an arbitration proceeding with respect to any dispute until the aforesaid mediation of the dispute is complete. Any mediation will be considered complete: (i) if the Parties enter into an agreement to resolve the dispute; (ii) with respect to the Party submitting the dispute to mediation, if the other Party fails to appear at or participate in a reasonably scheduled mediation conference; or (iii) if the dispute is not resolved within ten (10) days after the mediation is completed. If any dispute remains between the Parties after the mediation is complete, then either Party may commence legal proceedings to resolve such dispute. Any litigation of a dispute must be initiated within one (1) year from the date on which either Party first provided written notice to the other of the existence of the dispute, and any Party who fails to commence litigation within the one-year period shall be deemed to have waived any of its affirmative rights and claims in connection with the dispute and shall be barred from asserting its rights and claims at any time thereafter. Litigation shall be deemed commenced by a Party when the Party serves a complaint on the other Party with respect to the dispute.

**IN WITNESS WHEREOF**, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused this Employment Agreement to be executed in its name on its behalf, all effective as of the 25th day of October 2019.

**TRANSBIOTEC, INC.**

By: \_\_\_\_\_  
Charles Bennington, President

**THE EXECUTIVE:**

\_\_\_\_\_  
Kevin Moore







## EXHIBIT "A"

### EMPLOYEE PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT

In consideration of my employment or continued employment by TransBiotech, Inc., a Delaware corporation (the "*Company*"), and the compensation now and hereafter paid to me, I hereby agree as follows:

#### 1. NONDISCLOSURE

**1.1 Recognition of Company's Rights; Nondisclosure.** At all times during my employment and thereafter (and for purposes of this agreement (the "Agreement"), any reference to any period of employment shall also include any other provision of services to the Company, directly or indirectly), I will hold in strictest confidence and will not disclose, use, lecture upon or publish any of the Company's Proprietary Information (defined below), except as such disclosure, use or publication may be required in connection with my work for the Company, or unless the Executive Chairman of the Company expressly authorizes such in writing. I will obtain Company's written approval before publishing or submitting for publication any material (written, verbal, or otherwise) that relates to my work at Company and/or incorporates any Proprietary Information. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company and its successors and assigns.

**1.2 Proprietary Information.** The term "*Proprietary Information*" shall mean any and all confidential and/or proprietary knowledge, data or information of the Company. By way of illustration but not limitation, "*Proprietary Information*" includes (a) trade secrets, inventions, mask works, ideas, samples, procedures and formulations for producing any such samples, media and/or processes, data, formulae, methods, software, source and object codes, programs, other works of authorship, know-how, improvements, discoveries, developments, developmental or experimental work, designs, and techniques (hereinafter collectively referred to as "*Inventions*"); (b) information regarding the operation of the Company, products, services, plans for research and development, marketing and business plans, budgets, accounts, financial statements, licenses, licensors, licensees, contracts, prices and costs, suppliers, and current or potential customers; (c) information regarding the skills, tasks and compensation of Company's employees, contractors, and any other service providers of Company; and (d) the existence of any business discussions, negotiations, or agreements between Company and any third party.

**1.3 Third Party Information.** I understand, in addition, that the Company has received and in the future will receive from third parties confidential or proprietary information ("*Third Party Information*") subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. During the term of my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by the Executive Chairman of the Company in writing.

**1.4 No Improper Use of Information of Prior Employers and Others.** During my employment by the Company I will not improperly use or disclose any confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto the premises of the Company any unpublished documents or any property belonging to any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person. I will use in the performance of my duties only information which is generally known and used by persons with training and experience comparable to my own, which is common knowledge in the industry or otherwise legally in the public domain, or which is otherwise provided or developed by the Company.

## 2. ASSIGNMENT OF INVENTIONS.

**2.1 Proprietary Rights.** The term “*Proprietary Rights*” shall mean all trade secrets, know-how, patents, patent rights, copyrights, trademarks, service marks, logos, domain names, mask work and any and all other intellectual property rights throughout the world.

**2.2 Prior Inventions.** I represent that there are no Prior Inventions. If, in the course of my employment with the Company, I incorporate a Prior Invention into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sub-licensees) to make, have made, modify, use and sell such Prior Invention. Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company’s prior written consent. **2.2.1 Prior Items of Commercial Value.** I represent that there are no Prior Items. If, in the course of my employment with the Company, I incorporate a Prior Item into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sub-licensees) to make, have made, modify, use and sell such Prior Item. Notwithstanding the foregoing, I covenant and agree that I will not incorporate, or permit to be incorporated, Prior Items in any Company Inventions without the Company’s prior written consent.

**2.3 Assignment of Inventions.** Subject to Sections 2.4, and 2.6, I hereby assign and agree to assign in the future (when any such Inventions or Proprietary Rights are first reduced to practice or first fixed in a tangible medium, as applicable) to the Company all my right, title and interest in and to any and all Inventions (and all Proprietary Rights with respect thereto) whether or not patentable or registrable under copyright or similar statutes, made or conceived or reduced to practice or learned by me, either alone or jointly with others, during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are hereinafter referred to as “*Company Inventions*.”

**2.3.1 Assignment of Prior Items.** I hereby assign to the Company all my right, title and interest in any and all Prior Items for which I have specified my wish to grant such right, title and interest in such Prior Items to the Company in **Schedule B**.

**2.4 Non-assignable Inventions.** This Agreement does not apply to an Invention which qualifies fully as a non-assignable Invention under applicable law.

**2.5 Obligation to Keep Company Informed.** During the period of my employment and for one year months after termination of my employment with the Company, I covenant and agree that I will promptly disclose to the Company fully and in writing all Inventions authored, conceived or reduced to practice by me, either alone or jointly with others. In addition, I covenant and agree that I will promptly disclose to the Company all patent applications filed by me or on my behalf within a year after termination of employment. At the time of each such disclosure, I covenant and agree that I will advise the Company in writing of any Inventions that I believe fully qualify for protection under applicable law; and I will at that time provide to the Company in writing all evidence necessary to substantiate that belief. The Company will keep in confidence and will not use for any purpose or disclose to third parties without my consent any confidential information disclosed in writing to the Company pursuant to this Agreement relating to Inventions that qualify fully for protection under the applicable law. I covenant and agree that I will preserve the confidentiality of any Invention that does not fully qualify for protection under applicable law.

**2.6 Government or Third Party.** I also covenant and agree that I agree to assign all my right, title and interest in and to any particular Company Invention to a third party, including without limitation the United States, as directed by the Company.

**2.7 Works for Hire.** I acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by copyright are "works made for hire," pursuant to United States Copyright Act (17 U.S.C., Section 101).

**2.8 Enforcement of Proprietary Rights.** I covenant and agree that I will assist the Company in every proper way to obtain, and from time to time enforce, United States and foreign Proprietary Rights relating to Company Inventions in any and all countries. To that end I will covenant and agree that I execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Proprietary Rights and the assignment thereof. In addition, I will covenant and agree that I execute, verify and deliver assignments of such Proprietary Rights to the Company or its designee. My obligation to assist the Company with respect to Proprietary Rights relating to such Company Inventions in any and all countries shall continue beyond the termination of my employment, but the Company shall compensate me at a reasonable rate after my termination for the time actually spent by me at the Company's request on such assistance.

In the event the Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions or assignments specified in the preceding paragraph or in paragraph 2.3.1, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and in my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph and paragraph 2.3.1 with the same legal force and effect as if executed by me. I hereby waive and quitclaim to the Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Proprietary Rights assigned hereunder to the Company.

**3. RECORDS.** I covenant and agree that I to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that may be required by the Company) of all Proprietary Information developed by me and all Inventions made by me during the period of my employment at the Company, which records shall be available to and remain the sole property of the Company at all times.

**4. ADDITIONAL ACTIVITIES.** I covenant and agree that during the period of my employment by the Company I will not, without the Company's express written consent, engage in any employment or business activity which is competitive with, or would otherwise conflict with, my employment by the Company. I covenant and agree further that for the period of my employment by the Company and for one (1) year after the date of termination of my employment by the Company I will not, either directly or through others, solicit or attempt to solicit any employee, independent contractor or consultant of the company to terminate his or her relationship with the Company in order to become an employee, consultant or independent contractor to or for any other person or entity.

**5. NO CONFLICTING OBLIGATION.** I represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I agree I covenant and agree that I will not enter into, any agreement either written or oral in conflict herewith.

**6. NON-COMPETITION/NON-SOLICITATION.** I covenant and agree that I will not at any time during employment with the Company and for one (1) year following termination of employment with the Company, however such termination is effected, engage in any of the following actions:

**6.1** Directly or indirectly work or otherwise perform services in the United States of America (whether as an officer, director, stockholder, partner, associate, employee, consultant, owner, agent, creditor, or other capacity) for any person or entity which in any way competes with the business of the Company; competition with the Company shall include, but not be limited to, any business which engages in the development, building, implementation, promotion or sales of robots for the security industry;

**6.2** Solicit any employees, independent contractors, or consultants of the Company to leave the Company for other employment or for any other reason;

**6.3** Hire or assist any other person or entity in hiring any employee, independent contractor, or consultant of the Company to engage in competition with the Company; or

**6.4** Solicit or attempt to take away from the Company any of the customers served by the Company at any time within two (2) years prior to termination of my employment with the Company, seek to cause any such customers to refrain from doing business with the Company, or assist any other person or entity in so doing.

## **7. REASONABLENESS OF RESTRICTIONS.**

**7.1** I agree that I have read this entire Agreement and understand it. I agree that this Agreement does not prevent me from earning a living or pursuing my career. I agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by the Company's legitimate business interests. I represent and agree that I am entering into this Agreement freely and with knowledge of its contents with the intent to be bound by the Agreement and the restrictions contained in it.

**7.2** In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, I and the Company agree that the court shall read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.

**7.3** If the court declines to enforce this Agreement in the manner provided in subsection 7.2, I and the Company agree that this Agreement will be automatically modified to provide the Company with the maximum protection of its business interests allowed by law and I agree to be bound by this Agreement as modified.

**8. RETURN OF COMPANY DOCUMENTS.** I covenant and agree that when I leave the employ of the Company, I will deliver to the Company any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Company Inventions, Third Party Information or Proprietary Information of the Company. I further covenant and agree that I any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. Prior to leaving, I will cooperate with the Company in completing and signing the Company's termination statement.

**9. LEGAL AND EQUITABLE REMEDIES.** Because my services are personal and unique and because I may have access to and become acquainted with the Proprietary Information of the Company, the Company shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for a

breach of this Agreement.

**10. NOTICES.** All notices required or permitted hereunder shall be in writing and shall be effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, and if not during normal business hours of the recipient, then on the next business day, (iii) five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the other party hereto at such party's address hereinafter set forth on the signature page hereof, or at such other address as such party may designate by ten (10) days advance written notice to the other party hereto.

**11. NOTIFICATION OF NEW EMPLOYER.** In the event that I leave the employ of the Company, I hereby consent to the notification of my new employer of my rights and obligations under this Agreement.

## **12. GENERAL PROVISIONS.**

**12.1 Governing Law; Consent to Personal Jurisdiction.** This Agreement will be governed by and construed according to the laws of the State of Colorado, as such laws are applied to agreements entered into and to be performed entirely within Colorado.

**12.2 Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

**12.3 Successors and Assigns.** This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

**12.4 Survival.** The provisions of this Agreement shall survive the termination of my employment and the assignment of this Agreement by the Company to any successor in interest or other assignee.

**12.5 Employment.** I agree and understand that nothing in this Agreement shall confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause.

**12.6 Waiver.** No waiver by the Company of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement shall be construed as a waiver of any other right. The Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

**12.7** "I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF."

**12.8 Entire Agreement.** The obligations pursuant to Sections 1 and 2 of this Agreement shall apply to any time during which I was previously employed, or am in the future employed, by the Company as a consultant if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof except for any employment contract signed by myself and the Company containing provisions restricting the use of confidential information. Except for the foregoing, this Agreement supersedes and merges all prior discussions between us with respect to the subject matter hereto, including, but not limited to, any prior agreement between the Company and me with respect to the assignment of proprietary information to the Company. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

This Agreement shall be effective as of the first day of my employment with the Company, namely.

**I have read this Agreement carefully and understand its terms. I have completely filled out Exhibit A this Agreement.**

\_\_\_\_\_  
Kevin Moore

**Accepted and Agreed to:**

**TransBiotec, inc.**

By: \_\_\_\_\_  
Charles Bennington, President

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**Exhibit “B”**  
**2019 Equity Incentive Plan**

## EXECUTIVE EMPLOYMENT AGREEMENT

**This Executive Employment Agreement** including the attached Exhibit A, the Employee Proprietary Information and Inventions Agreement and Exhibit B, the 2019 Equity Incentive Plan (collectively the "Employment Agreement"), is made effective as the 25th day of October 2019 between TransBiotech, Inc., a Delaware corporation whose business address is 400 N. Tustin Ave., Suite 225, Santa Ana, CA 92705 (the "Company"), and David J. Gandini, an individual residing at 39 Falcon Hills Drive, Highlands Ranch, CO 80126 (the "Executive"). The Company and the Executive are sometimes hereinafter individually referred to as a "Party" or collectively as the "Parties".

## WITNESSETH:

**WHEREAS**, the Executive desires to become employed by the Company as its Chief Revenue Officer; and

**WHEREAS**, the Company is willing to employ the Executive as the Company's Chief Revenue Officer on the terms and conditions and for the consideration set forth in this Employment Agreement.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants hereafter set forth and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged and accepted, the Parties hereby incorporate the foregoing recitals into this Employment Agreement by reference and hereby agree as follows:

**1. Employment.** The Company hereby employs the Executive and the Executive hereby agrees to enter the employ of the Company as its Chief Revenue Officer commencing on the execution of this Employment Agreement (the "Effective Date") for a term of three years (the "Employment Period"). Provided, however, that solely in the event that the Company has not purchased designated assets of IDTEC, LLC, a Colorado limited liability company in exchange for 12,000,000 shares (after giving effect to the planned reverse stock split related to the close of the asset purchase agreement) of the Company's Common Stock, \$0.001 par value per share on or before January 31, 2020 (the "Premature Termination Date"), this Employment Agreement shall automatically terminate and be of no further force and effect without notice to the Executive and only the Premature Termination Options defined in Section 4.D. shall vest and be exercisable by the Executive. The Executive shall, in the performance of his duties, be at all times subject to the direction, supervision and authority of the Company's Board of Directors (the "Board").

**2. No Breach of Obligation.** The Executive represents and warrants to the Company that the Executive possesses the requisite skill and experience and is ready, willing and able to perform those duties attendant to the position for which the Executive has been hired and which the Executive shall perform during the Employment Period. The Executive further represents that the Executive's entry into the Employment Agreement does not constitute a breach of any agreement with any other person, firm or corporation, nor does any prior agreement between the Executive and any person, firm or corporation contain any restriction or impediment to the ability of the Executive to perform those duties for which the Executive was hired or which may be reasonably expected of the Executive.

### **3. Services and Board Membership.**

A. Services. During the Employment Period, the Executive shall perform to the best of the Executive's ability the following services and duties in such manner and at such times as the Board may direct; the following being included by way of example and not by way of limitation: (i) managing the Company's progress in attaining revenue and profitability objectives and revising objectives and plans responsive to current and anticipated financial, economic and industry market conditions; (ii) defining ideal buyers, selecting markets competitively and setting top-down goals and metrics; (iii) building and adapting the Company's revenue architecture that aligns with its business architecture as the business strategy and offering portfolio evolves; (iv) partnering with the Company's senior team to define differentiated offerings and go-to-market strategies; (v) developing and implementing the Company's brand and value proposition positioning that articulate the solutions and products portfolio, corporate brand message and value differentiators; (vi) defining and implementing the Company's go-to-market model including how to access customers, and influencers and organize channels and teams; (vii) craft the Company's sales and marketing strategies including programs and digital mix to maximize revenue performance from existing and prospective customers; (viii) construct, integrate and manage the Company's Revenue Systems; and should he be elected as the Company's Executive Chairman perform the following additional services: (ix) lead the formation of Board committee in accordance with applicable corporate governance standards; (x) coordinate an annual performance evaluation of the Company's Chief Revenue Officer; (xi) aid and assist the Company's Chief Revenue Officer and any Nominating Committee of the Board in recruiting Board members and key executives; (xii) periodically consulting with Board members on their roles and helping them assess their performance; (xiii) plan, preside over, and facilitate Board and Board committee meetings and partner with the CEO to ensure that Board resolutions are timely implemented; (xiv) ensure the Company's commitment to a diverse Board and staff that reflects the communities served by the Company; and (xv) performing such other duties as shall reasonably be assigned to the Executive by the Company's Chairman and/or Board. The foregoing is hereinafter collectively referred to as the "Services").

B. Performance of the Services. The Executive's performance of the Services shall be conducted at the locations reasonably required by the Company's business needs within or outside of the State of Colorado. Excluding any periods of vacation and other time off to which the Executive is entitled as provided herein, the Executive covenants and agrees to devote such percentage of the Executive's full time and attention to the performance of the Services and the business and affairs of the Company as the Executive deems necessary in his considered business judgment to perform such responsibilities. It shall not be a violation of this Employment Agreement for the Executive: (a) to serve as a member, manager or executive officer of First Capital Advisory Services, LLC, or its affiliated entities, (b) to serve on academic, corporate, civic, charitable, governmental, non-profit or religious boards or committees of such other entities; (c) participate in political activities and fundraising; and (d) manage personal investments, so long as, in each case, such activities do not create any conflicts of interest with the business of the Company or interfere with the performance of the Services as an employee of the Company in accordance with this Employment Agreement.

C. Board Membership. Following the Effective Date, the Executive may be nominated and elected as the Executive Chairman of the Company's Board, which position he agrees to accept should he be so elected.

### **4. Compensation, Stock Grant and Repayment of Outstanding Obligations to the Executive.**

A. Base Salary. Following the Effective Date, the Executive shall receive an annual base salary of \$185,000.00 (the "Annual Base Salary").

Subject to applicable withholding taxes and other payroll deductions, the Annual Base Salary shall be payable in accordance with the Company's generally applicable payroll practices and policies. The Executive's Annual Base Salary shall be reviewed during the 4th quarter of each year of the Employment Period by the Company's Compensation Committee or if no such committee exists by the entire Board with the Executive not participating, with the objective of determining the subsequent year's Annual Base Salary for the Executive; provided that the Company shall be under no obligation to increase the Annual Base Salary.

B. Sales and Marketing Compensation. In addition to the Executive's Services, and until otherwise mandated by the Company's Board, the Executive and Kevin Moore the Company's Chief Executive Officer (collectively the "Sales Team"), will serve as the Company's interim sales and marketing department and shall perform all of the services customarily attendant upon a Chief Sales and Marketing Officer (the "Sales Services"). Solely in this regard, in addition to the compensation and benefits set forth in Paragraphs C through K of this Section 4, and following the Company's first profitable quarter, the Sales Team will receive as its sole compensation for the Sales Services an amount equal to three (3%) percent (the "Sales

Commission”) of the gross revenue generated by the Sales Services less any allowances or returns (the “Gross Revenue”) on an order-by-order or purchase order-by purchase order-basis. The Sales Commission shall be paid quarterly for the three years following the Company’s first profitable quarter of Gross Revenue. The Sales Commissions shall be subject to applicable withholding taxes and other payroll deductions and be payable in accordance with the Company’s generally applicable payment practices and policies. The Executive and Kevin Moore shall split the Sales Commissions equally.

C. Bonus Plan and Participation. Within 60 days following the Effective Date after the Asset Purchase, the Company’s Board will establish an annual bonus plan for the Company’s executive officers with the objective of attaining an annual bonus up to a maximum of 50% of the Executive’s prior year’s Annual Base Salary (the “Annual Bonus Plan”). On March 31, 2020, the Company’s Board will establish the milestone’s for the Executive’s participation in the Annual Bonus Plan for the Company’s 2020 calendar year. Thereafter on March 31, 2021 and 2022, the Company’s Board will establish the milestone’s for the Executive’s participation in the Annual Bonus Plan Company’s 2021 and 2022 calendar years.

D. Incentive Stock Options. Commencing on the Effective Date (the “Option Grant Date”), the Executive shall be granted ten-year Incentive Stock Options (the “Options”) under the 2019 Equity Incentive Plan (the “Plan”) to purchase 24,000,000 shares of the Company’s Common Stock, \$0.001 par value per share (the “Maximum Option Shares”) at an exercise price equal to 110% of the fair market value of the Option Shares on the Option Grant Date (the Option Exercise Price”). The Option Shares will vest in 36 equal monthly installments of 666,666 Option Shares during the three-year term of this Employment Agreement in accordance with the terms and conditions of the Plan (the “Monthly Vesting Option Shares”). Notwithstanding the foregoing, an aggregate of 8,000,000 additional Option Shares (the “Pre-Vesting Option Shares”) shall vest as follows: 6,666,600 Pre-Vesting Option Shares representing the Monthly Vesting Option Shares for the ten months ended October 31, 2019, shall vest on November 1, 2019; and (ii) the remaining 1,333,400 Pre-Vesting Option Shares representing the Monthly Vesting Option Shares for the two months ended December 31, 2019 shall vest on January 1, 2020. Notwithstanding the foregoing, and only in the event that this Employment Agreement is prematurely terminated as a result of the Company’s failure to purchase designated assets of IDTEC, LLC, a Colorado limited liability company in exchange for 12,000,000 shares (after giving effect to the planned reverse stock split related to the close of the asset purchase agreement) of the Company’s Common Stock, \$0.001 par value per share on or before January 31, 2020, only the Options that shall have vested prior to January 31, 2020 shall vest and be exercisable by the Executive (the “Premature Termination Options”). A copy of the Plan is hereby acknowledged and accepted by the Executive.

E. Accelerated Option Vesting.

1. *Computation.* In addition to the 666,666 Monthly Vesting Option Shares and the 8,000,000 Pre-Vesting Option Shares, an additional 7,040,000 Option Shares (the “Milestone Option Shares”) shall vest on the Company’s achievement of each of the four milestones (the “Milestones”) set forth in Section 2. E. 2. Below. Upon the Executive’s achievement of any of the Milestones during the Term, the aggregate of the 666,666 Monthly Vesting Option Shares and the 6,666,600 or the 1,333,400 Pre-Vesting Option Share shall be deducted from the 24,000,000 Maximum Option Shares which shall be divided by the number of months remaining in the three-year Term of this Employment Agreement.

2. *The Milestones:* (i) the delivery of a commercially viable SOBRSafe Alcohol Detection Device (the “Device”) by March 31, 2020; and/or (ii) certification of manufacturing/assembly capability of a minimum of 25,000 Devices in two separate locations in the United States by July 31, 2020; and/or (iii) the generation of U.S. Device gross sales in excess of \$2,000,000 for the calendar year ending December 31, 2020 or have a monthly \$166,600 by December 31, 2020; and/or (iv) the generation of non-US Device gross sales in excess of \$2,000,000 for the calendar year ending December 31, 2020 or have a monthly \$166,600 run rate by December 31, 2020 through direct customers and/or distribution channels.

F. Change of Control Option Vesting. In the event of a Change of Control of the Company as that phrase is defined in the next sentence, all Option Shares shall vest and be exercisable in accordance with their terms and conditions. As used in this Employment Agreement, the phrase "Change of Control" shall be deemed to mean any of the following occurring after the Effective Date: (i) the Company consolidates with, amalgamates or merges with or into, another business entity or any business entity consolidates with, or amalgamates or merges with or into the Company; (ii) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the Company's assets (determined, if applicable, on a consolidated basis) to any individual, firm, entity or group other than pursuant to a transaction in which individuals that beneficially owned directly or indirectly, voting shares representing a majority of the total voting power of the Company; (iii) the adoption of a plan the consummation of which would result in the liquidation or dissolution of the Company; and (iv) the acquisition, directly or indirectly, by any individual, firm, entity or group of beneficial ownership of more than 50% of the aggregate voting power of the Company's voting securities.

G. Executive Benefits. The Executive shall be offered the opportunity to participate on the same basis as other executive officers of Company in all of the Company's employee benefit plans and programs, including improvements or modifications of such plans and programs. Nothing in this Employment Agreement shall be construed as limiting or restricting any benefit to the Executive under any pension, profit-sharing or similar retirement plan, or under any group life or group health or accident or other plan of the Company, for the benefit of its employees generally or a group of them, now or hereafter in existence.

H. Expenses. The Executive shall be entitled to receive prompt reimbursement for all out-of-pocket expenses incurred by the Executive in connection with the performance of the Services in accordance with the Company's expense reimbursement policies. Monthly expense reports shall be submitted to the Chairman for approval.

I. Paid Time Off ("PTO"). The Company's Board of Directors will adopt and implement a PTO policy and plan (the "PTO Plan") prior to December 31, 2019 for its employees. The PTO Plan shall include a listing of categories such as personal, sick, and vacation days absent time and related number of days within each category for all employees including the Executive. Modification of the PTO Plan will require the approval of the Company's Board prior to implementation. No cash compensation will be paid for any days which exceed the PTO schedule adopted by the Board.

J. Termination Severance. The Executive shall be entitled to the severance payments ("Severance") indicated and defined in Section 5. D.3.) (c), Section 5. D. 4.) (c) and Section 5. D. 5.) (b) of this Employment Agreement below.

K. Consent to Insurance. The Executive covenants and agrees to be the subject of a key man insurance policy on his life (the "Key Man Policy"); and consents to such medical tests as may be required to secure the Key Man Policy. The Executive acknowledges and accepts that the Company: (i) shall be the owner and beneficiary of the Key Man Policy; (ii) shall be solely responsible for paying the premiums thereon; and (iii) shall be entitled to determine the face amount of the Key Man Policy in the discretion of the Company's Board of Directors.

## 5. Termination of the Agreement by the Company and Cessation of Services by the Executive.

A. Death of the Executive. The Employment Period shall terminate automatically upon Executive's death.

B. Termination by the Company. The Company may terminate the Employment Period, as follows:

1.) *On the Premature Termination Date*;

2.) *Without Cause*. The Company may terminate the Employment Period for any reason upon at least 90 days' prior written notice to the Executive;

3.) *By Disability*. In the event the Executive becomes permanently disabled or incapacitated, the Company may terminate the Employment Period. The term "permanently disabled or incapacitated" means any ailment or condition which prevents the Executive from actively carrying out the Executive's duties hereunder for the Company for a continuous period of at least 90 days as determined by a physician selected by the Board (the "Disability Date"); and

4.) *For Cause*. The Company may terminate the Employment Period for "Cause," upon at least three (3) days' prior written notice to the Executive. "For Cause" shall mean:

(a) The commission by Executive in connection with the Executive's employment of any material act of dishonesty, fraud or misrepresentation;

(b) Conviction or plea of nolo contendere of the Executive for a felony;

(c) Executive's willful misconduct that causes material economic harm to the Company or that brings substantial discredit to the Company's reputation;

(d) Executive's breach of a material provision of the Executive's Employment Agreement, which breach is not cured by the Executive within 30 days after the Company gives written notice of the breach to the Executive; and

(e) Violation of any material fiduciary duty owed to the Company.

C. Termination by the Executive. The Executive may terminate the Employment Period, as follows:

1.) *Without Good Reason*. The Executive may terminate the Employment Period for any reason upon at least 90 days' prior written notice to the Company;

2.) *For Good Reason*. The Executive may terminate the Employment Period for "Good Reason," after at least 30 days' prior written notice to the Company specifying the "Good Reason" and following the Company's right to cure the alleged Good Reason breach within 30 days. Good Reason shall mean:

(a) The reduction of Executive's Annual Base Salary without the Executive's consent;

(b) The failure by the Company to pay any amount owed to the Executive under this Employment Agreement when due; and

(c) Any material change in the Executive's title, responsibilities or authority that is not consistent with that customarily associated with the position of Chief Revenue Officer.



D. Consequences of Termination of the Employment Period

1). *Death of the Executive.* If the Employment Period terminates as a result of the Executive's death, then:

(a) The Company shall pay the Executive's Annual Base Salary through the date of the Executive's death. In addition, and at the end of the fiscal year in which the Executive shall have died, the Company shall pay a pro rata portion of any bonus to which the Executive shall have earned under the Executive's Annual Bonus Plan through the date of the Executive's death pursuant to Subsection A of this Section 5 in accordance with their respective terms; and

(b) All Option Shares that have vested in accordance with the Plan as of the date of death shall remain vested, and all Option Shares that would have vested in accordance with the Plan during the 90-day period immediately following the Executive's death shall also automatically vest, and the Option Shares shall be exercisable for all such vested Initial and Subsequent Option Shares.

(c) All Option Shares that have vested as of the date of death shall remain vested, and all Option Shares that would have vested during the 90-day period immediately following the Executive's death shall also automatically vest, and the ISO shall be exercisable for all such vested Option Shares.

2). *By the Company for Cause.* If the Company terminates the Employment Period for Cause, then:

(a) The Company shall pay the Executive's Annual Base Salary through the date of termination pursuant to Subsection B of this Section 5 in accordance with its terms; and

(b) All Option Shares that have vested as of the date of termination shall remain vested and exercisable in accordance with the Plan.

3). *By the Company for the Executive's Disability.* If the Company terminates the Employment Period for Disability of the Executive, then:

(a) The Company shall pay the Executive's Annual Base Salary through the Disability Date pursuant to Subsection B of this Section 5 in accordance with its terms; and

(b) All Option Shares that have vested as of the Disability Date shall remain vested and exercisable in accordance with the Plan; and

(c) The Executive shall be entitled to receive a severance payment (the "Severance") equal to the following number of months of the Executive's Annual Base Salary depending upon the date of termination and payable within 30 days of the Executive's termination: (i) during the first 12 months of the Employment Period, eight (8) weeks' Severance; and (ii) at any time during the remainder of the Employment Period, twelve (12) weeks' Severance.

4). *By the Executive for Good Reason.* If the Executive terminates the Employment Period for Good Reason, then:

(a) The Company shall pay the Executive's Annual Base Salary through the date of termination pursuant to Subsection C of this Section 5 in accordance with its terms;

(b) The Option Shares that have vested in accordance with the Plan as of the date of termination shall remain vested and exercisable in accordance with the Plan; and

(c) The Executive shall be entitled to receive a severance payment (the "Severance") equal to the following number of months of the Executive's Annual Base Salary depending upon the date of termination and payable within 30 days of the Executive's termination: (i) during the first 12 months of the Employment Period, two months' Severance paid out monthly over the Severance period; and (ii) at any time during the remainder of the Employment Period, three months' Severance paid out monthly over the Severance period.



5). *By the Company without Cause.* If the Company terminates the Employment Period without Cause, then:

(a) The Company shall pay the Executive's Annual Base Salary through the date of termination; and

(b) The Executive shall be entitled to receive a Severance equal to the following number of months of the Executive's Annual Base Salary depending upon the date of termination and payable within 30 days of the Executive's termination: (i) during the first 12 months of the Employment Period, eight (8) weeks' Severance; and (ii) at any time during the remainder of the Employment Period, twelve (12) weeks' Severance.

(c) The Company shall continue to pay its portion of Executive's health insurance premium under any plan adopted by the Board in the same manner as during the Employment Period for a period of 90 days immediately following the date of termination of the Employment Period; and

(d) All Option Shares earned through the date of termination shall immediately become vested in accordance with the Plan.

#### **6. Representations, Warranties and Covenants.**

A. Representations, Warranties and Covenants of the Executive. By virtue of the Executive's execution hereof, and in order to induce the Company to enter into this Employment Agreement, the Executive hereby represents and warrants to and covenants with the Company as follows:

(a) He is not presently actively engaged in any business, employment or venture which is or may be in conflict with the business of the Company;

(b) He has full power and authority to enter this Employment Agreement, to enter into and to otherwise perform this Employment Agreement in the time and manner contemplated;

(c) He agrees to submit to a medical examination as may be required for the Company to obtain "key man" insurance coverage, provided that such medical examination is at the Company's expense;

(d) He has the experience, skill and knowledge to perform the services expected of him hereunder;

(e) The Executive is not the subject of any threatened or filed litigation not disclosed to the Company prior to the execution of this Employment Agreement;

(f) The Executive's compliance with the terms and conditions of this Employment Agreement in the time and manner contemplated herein will not conflict with any instrument or agreement pertaining to the transaction contemplated herein; and will not conflict in, result in a breach of, or constitute a default under any instrument to which he is a party;

(g) The Executive acknowledges that Severance shall only be paid in the event the Company terminates the Employment Period without Cause, due to the Executive's Disability, or the Executive terminates the Employment Period with Good Reason;

(h) The Executive has been advised, and by the execution of this Employment Agreement, accepts and acknowledges that none of the Option Shares shall have been registered under the Securities Act of 1933, as amended (the "Securities Act") or under any state securities law; and that in granting the Option Shares to the Executive, the Company is relying upon an exemption from registration based upon the Executive's investment representations. In this regard, the Executive hereby represents and warrants to the Company that: (a) he is acquiring the Option Shares for investment purposes and without a view to the transfer or resale thereof; (b) he is a sophisticated investor familiar with the operations of the Company, (c) in the event he exercises the Option Shares he will hold them for such period of time as shall be required by the Securities Act or as otherwise required or permitted by law; (d) any sale of the Option Shares will be accomplished only in accordance with the Securities Act and the rules and regulations of the Securities and Exchange Commission adopted thereunder; and (e) all certificates representing the Option Shares will bear a standard form or restrictive legend and be the subject of standard stop transfer orders on the transfer records of the Company or its transfer agent; and

(i) The Executive acknowledges and accepts that all certificates representing the Option Shares may be the subject of a lock up from the date the Company becomes publicly owned as may be required by the Company's underwriter(s).

**B. Representations, Warranties and Covenants of the Company.** By virtue of its execution of this Employment Agreement, the Company hereby represents and warrants to and covenants with the Executive as follows:

(a) The Company has full power, right and authority to execute and perform this Employment Agreement in the time and manner contemplated and all corporate action required to be taken by the Company to authorize and execute this Employment Agreement has been taken prior to the delivery hereof;

(b) All requisite legal action required by the Company to cause the due execution and delivery of this Employment Agreement has been taken by the Company;

(c) As of the date of this Employment Agreement, the Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full power and authority to conduct its business;

(d) The person executing this Employment Agreement on behalf of the Company has been duly authorized to execute this Employment Agreement;

(e) The Option Shares issuable upon the Executive's exercise of the Stock Options shall be when issued, duly and validly issued, fully paid and non-assessable;

(f) The Company agrees that the Annual Base Salary, payments under the Annual Bonus Plan and Severance, and all other payments due to the Executive shall constitute a wage claim under the laws of the State of Delaware; and

(g) The Company shall reserve the Option Shares for issuance upon the Executive's exercise of the Option; and

(h) The Company is not the subject of any litigation not disclosed to the Executive prior to the execution of this Employment Agreement.



Exhibit "A" annexed hereto and hereby incorporated herein by reference, sets forth the terms and conditions of the agreement of the Parties concerning proprietary information and inventions.

#### **8. Successors.**

This Employment Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Employment Agreement shall inure to the benefit of and be enforceable by the Executive's estate, heirs and legal representatives. This Employment Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Employment Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Employment Agreement, "Company" shall mean the Company and any successor to its business and/or assets by operation of law, or otherwise.

#### **9. Indemnification.**

If the Executive is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (herein a "proceeding"), by reason of the fact that he is or was an employee (which term includes officer, director, agent and any other capacity) of the Company or is or was serving at the request of the Company as an employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as an employee or agent or in any other capacity while serving as an employee or agent, Executive shall be indemnified and held harmless by the Company to the fullest extent authorized by applicable law, against all expense, liability and loss (including, but not limited to, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) incurred or suffered by Executive in connection therewith. In addition, such indemnification shall continue as to the Executive after he has ceased to be a director, officer, employee or agent and shall inure to the benefit of the Executive's heir, executors, and administrators for the applicable statute of limitations; provided, however, that the Company shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by the Executive (other than a proceeding to enforce this paragraph 9. only if such proceeding (or part thereof) was authorized directly or indirectly by the Company's Board. The right to indemnification conferred in this paragraph shall be a contract right and shall include the right to be, promptly upon request, paid by the Company the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the General Corporation Law of the State of Delaware requires the payment of such expenses incurred by an employee in his capacity as an employee (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, payment shall be made only upon delivery to the Company of an undertaking, by or on behalf of the Executive, to repay all amounts so advanced if it shall ultimately be determined that Executive is not entitled to be indemnified under this paragraph or otherwise.

#### **10. Non-Competition, Non-Disparagement and Non-Solicitation.**

A. Non-Competition. During the Employment Period and for twenty-four (24) months after the termination of this Employment Period, the Executive agrees that he will not, within Colorado or California, directly or indirectly, individually or on behalf of any other person, in any capacity whatsoever, carry on or engage in any business or undertaking that competes with the business or intended businesses of the Company.

B. Non-Disparagement. The Company and the Executive each shall refrain from publishing any oral or written statements about the other, any of their subsidiaries or affiliates, or any of such individuals' or entities' officers, employees, shareholders, agents or representatives, that are slanderous, libelous, or defamatory; or that constitute a misappropriation of the name or likeness of the Executive or the Company, any of their affiliates, or any of such individual's or entities' or their officers, employees, shareholders, agents, or representatives. A violation or threatened violation of this prohibition may be enjoined by the courts. The rights afforded under this provision are in addition to any and all rights and remedies otherwise afforded by law.

C. Non-Solicitation. As part of the consideration for the compensation and benefits to be paid to the Executive thereunder, in keeping with the Executive's Services and as a fiduciary, and in order to protect the Company's interest in the trade secrets of the Company, and as an additional incentive for the Company to enter into this Employment Agreement, the Executive covenants and agrees that the Executive will not, directly or indirectly, for the Executive or others, knowingly induce any employee of the Company or any of its affiliates to terminate his or her employment with the Company or its affiliates, or knowingly hire or assist in the hiring of any such employee by any person, association, or entity not affiliated with the Company. The obligations in this Section 10C shall extend during the Employment Period and for three years after the expiration or termination of the Employment Period. The Executive acknowledges that money damages would not be sufficient remedy for any breach of this Section 10C by the Executive, and the Company shall be entitled to specific performance and injunctive relief as remedies for such breach or any threatened breach. Such remedies shall not be deemed the exclusive remedies for a breach, but shall be in addition to all remedies available at law or in equity to the Company, including, without limitation, the recovery of damages from the Executive and his agents involved in such breach.

#### **11. Miscellaneous.**

A. Governing Law. The interpretation and enforcement of this Employment Agreement, and the rights, obligations and remedies of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to conflict of law principles.

B. Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other Party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

**IF TO THE EXECUTIVE:**



David J. Gandini  
39 Falcon Hills Drive  
Highlands Ranch, CO 80126

**IF TO THE COMPANY:**

TransBiotech, Inc.  
Attn. CEO  
400 N. Tustin Ave., Suite 225  
Santa Ana, CA 92705

Or to such other name or address as either Party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

C. Severability. In the event that any provision of this Employment Agreement is held to be illegal, invalid or unenforceable, then such illegality, invalidity or enforceability shall not affect the other terms and provisions of this Employment Agreement which shall remain in full force and effect.

D. Withholding. The Company may withhold from any amounts payable under this Employment Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

E. Waiver. The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Employment Agreement or the failure to assert any right the Executive or the Company may have hereunder shall not be deemed to be a waiver of such

provision or right or any other provision or right of this Employment Agreement.

F. Code Section 409A. Notwithstanding anything in this Employment Agreement or any other plan or agreement to the contrary, to the extent subject thereto, all deferred payments or benefits provided to the Executive shall comply with all applicable provisions of Section 409A of the Internal Revenue Code of 1986, as amended (and any related regulations or guidance).

G. Entire Agreement. Each of the Parties hereby agrees that this Employment Agreement (i) supersedes any prior conversations or negotiation between them with respect to the subject matter of this Employment Agreement, (ii) is intended to and does contain and embody herein all of the understandings and agreements, both written or oral, of the Parties hereby with respect to the subject matter of this Employment Agreement and (iii) that there exists no oral agreement or understanding, express or implied liability, whereby the absolute, final and unconditional character and nature of this Employment Agreement shall be in any way invalidated, empowered or affected. There are no representations, warranties or covenants other than those set forth herein.

H. Headings. The section headings herein are inserted for the convenience of the parties only and are not to be construed as part of the terms of this Employment Agreement or to be taken into account in the construction or interpretation of this Employment Agreement.

I. Amendment and Modification. This Employment Agreement may be amended, modified or supplemented only by written agreement of the Parties hereto, which agreement shall have been duly authorized and approved by the Company and the Executive.

J. Prohibition against Assignment. The Executive agrees on behalf of himself and any other person or persons claiming any benefits under him by virtue of this Employment Agreement, and the Company agrees for itself and its successors and assigns, that this Employment Agreement and the rights, interests, and benefits hereunder shall not be assigned, transferred, pledged or hypothecated in any way by the Executive or by the Company without the prior express written consent of the other Party. Any attempted assignment, transfer, pledge or hypothecation, or other disposition of this Employment Agreement or of such rights, interests and benefits contrary to the foregoing provisions shall be null and void and without effect and shall be deemed to be a material breach of this Employment Agreement.

K. Additional Instruments. Each Party shall from time to time, at the request of the other Party, execute, acknowledge and deliver to the other Party any and all further instruments that may be reasonably required to give full effect and force to the provisions of this Employment Agreement.

L. Originals. This Employment Agreement may be executed in counterparts each of which so executed shall be deemed an original and constitute one and the same agreement

M. Address of Parties. Each Party shall at all times keep the other informed of its principal place of business or residence if different from that stated herein, and shall promptly notify the other of any change, giving the address of the new principal place of business or residence.

N. Alternative Dispute Resolution (ADR). The Parties shall attempt to resolve any dispute that may arise in connection with this Employment Agreement through a process of mediation administered by JAMS (Arbitration, Mediation and ADR Services) or through selection of an agreed upon private individual outside of JAMS, with the mediation to be held in Denver County in the State of Colorado, unless the Parties agree on another venue. The Parties shall first attempt to settle the dispute by participating in at least ten (10) hours of mediation at the offices of the ADR Provider (or at another location if mutually agreed). The complaining Party must notify the other Party that a dispute exists. A designated individual mediator will be either agreed upon or if no agreement is reached, then selected within ten (10) days of notice according to JAMS' rules and procedures to conduct the mediation; provided that the mediator must not have any conflict of interest. The mediation will be held as soon as practicably possible. The mediation will be a nonbinding conference between the Parties conducted in accordance with the applicable rules and procedures of the mediator. Any mediation expenses shall be borne equally by the Executive and the Company. Neither of the Party shall initiate any litigation or an arbitration proceeding with respect to any dispute until the aforesaid mediation of the dispute is complete. Any mediation will be considered complete: (i) if the Parties enter into an agreement to resolve the dispute; (ii) with respect to the Party submitting the dispute to mediation, if the other Party fails to appear at or participate in a reasonably scheduled mediation conference; or (iii) if the dispute is not resolved within ten (10) days after the mediation is completed. If any dispute remains between the Parties after the mediation is complete, then either Party may commence legal proceedings to resolve such dispute. Any litigation of a dispute must be initiated within one (1) year from the date on which either Party first provided written notice to the other of the existence of the dispute, and any Party who fails to commence litigation within the one-year period shall be deemed to have waived any of its affirmative rights and claims in connection with the dispute and shall be barred from asserting its rights and claims at any time thereafter. Litigation shall be deemed commenced by a Party when the Party serves a complaint on the other Party with respect to the dispute.

**IN WITNESS WHEREOF**, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused this Employment Agreement to be executed in its name on its behalf, all effective as of the 25th day of October 2019.

**TRANSBIOTEC, INC.**

By: \_\_\_\_\_  
Charles Bennington, President

**THE EXECUTIVE:**

By: \_\_\_\_\_  
David J. Gandini

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**EXHIBIT "A"**

**EMPLOYEE PROPRIETARY INFORMATION  
AND INVENTIONS AGREEMENT**

In consideration of my employment or continued employment by TransBiotech, Inc., a Delaware corporation (the “*Company*”), and the compensation now and hereafter paid to me, I hereby agree as follows:

## 1. NONDISCLOSURE

**1.1 Recognition of Company’s Rights; Nondisclosure.** At all times during my employment and thereafter (and for purposes of this agreement (the “*Agreement*”), any reference to any period of employment shall also include any other provision of services to the Company, directly or indirectly), I will hold in strictest confidence and will not disclose, use, lecture upon or publish any of the Company’s Proprietary Information (defined below), except as such disclosure, use or publication may be required in connection with my work for the Company, or unless the Executive Chairman of the Company expressly authorizes such in writing. I will obtain Company’s written approval before publishing or submitting for publication any material (written, verbal, or otherwise) that relates to my work at Company and/or incorporates any Proprietary Information. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company and its successors and assigns.

**1.2 Proprietary Information.** The term “*Proprietary Information*” shall mean any and all confidential and/or proprietary knowledge, data or information of the Company. By way of illustration but not limitation, “*Proprietary Information*” includes (a) trade secrets, inventions, mask works, ideas, samples, procedures and formulations for producing any such samples, media and/or processes, data, formulae, methods, software, source and object codes, programs, other works of authorship, know-how, improvements, discoveries, developments, developmental or experimental work, designs, and techniques (hereinafter collectively referred to as “*Inventions*”); (b) information regarding the operation of the Company, products, services, plans for research and development, marketing and business plans, budgets, accounts, financial statements, licenses, licensors, licensees, contracts, prices and costs, suppliers, and current or potential customers; (c) information regarding the skills, tasks and compensation of Company’s employees, contractors, and any other service providers of Company; and (d) the existence of any business discussions, negotiations, or agreements between Company and any third party.

**1.3 Third Party Information.** I understand, in addition, that the Company has received and in the future will receive from third parties confidential or proprietary information (“*Third Party Information*”) subject to a duty on the Company’s part to maintain the confidentiality of such information and to use it only for certain limited purposes. During the term of my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by the Executive Chairman of the Company in writing.

**1.4 No Improper Use of Information of Prior Employers and Others.** During my employment by the Company I will not improperly use or disclose any confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto the premises of the Company any unpublished documents or any property belonging to any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person. I will use in the performance of my duties only information which is generally known and used by persons with training and experience comparable to my own, which is common knowledge in the industry or otherwise legally in the public domain, or which is otherwise provided or developed by the Company.

## 2. ASSIGNMENT OF INVENTIONS.

**2.1 Proprietary Rights.** The term “*Proprietary Rights*” shall mean all trade secrets, know-how, patents, patent rights, copyrights, trademarks, service marks, logos, domain names, mask work and any and all other intellectual property rights throughout the world.

**2.2 Prior Inventions.** I represent that there are no Prior Inventions. If, in the course of my employment with the Company, I incorporate a Prior Invention into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sub-licensees) to make, have made, modify, use and sell such Prior Invention. Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company’s prior written consent. **2.2.1 Prior Items of Commercial Value.** I represent that there are no Prior Items. If, in the course of my employment with the Company, I incorporate a Prior Item into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sub-licensees) to make, have made, modify, use and sell such Prior Item. Notwithstanding the foregoing, I covenant and agree that I will not incorporate, or permit to be incorporated, Prior Items in any Company Inventions without the Company’s prior written consent.

**2.3 Assignment of Inventions.** Subject to Sections 2.4, and 2.6, I hereby assign and agree to assign in the future (when any such Inventions or Proprietary Rights are first reduced to practice or first fixed in a tangible medium, as applicable) to the Company all my right, title and interest in and to any and all Inventions (and all Proprietary Rights with respect thereto) whether or not patentable or registrable under copyright or similar statutes, made or conceived or reduced to practice or learned by me, either alone or jointly with others, during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are hereinafter referred to as “*Company Inventions*.”

**2.3.1 Assignment of Prior Items.** I hereby assign to the Company all my right, title and interest in any and all Prior Items for which I have specified my wish to grant such right, title and interest in such Prior Items to the Company in **Schedule B**.

**2.4 Non-assignable Inventions.** This Agreement does not apply to an Invention which qualifies fully as a non-assignable Invention under applicable law.

**2.5 Obligation to Keep Company Informed.** During the period of my employment and for one year months after termination of my employment with the Company, I covenant and agree that I will promptly disclose to the Company fully and in writing all Inventions authored, conceived or reduced to practice by me, either alone or jointly with others. In addition, I covenant and agree that I will promptly disclose to the Company all patent applications filed by me or on my behalf within a year after termination of employment. At the time of each such disclosure, I covenant and agree that I will advise the Company in writing of any Inventions that I believe fully qualify for protection under applicable law; and I will at that time provide to the Company in writing all evidence necessary to substantiate that belief. The Company will keep in confidence and will not use for any purpose or disclose to third parties without my consent any confidential information disclosed in writing to the Company pursuant to this Agreement relating to Inventions that qualify fully for protection under the applicable law. I covenant and agree that I will preserve the confidentiality of any Invention that does not fully qualify for protection under applicable law.



**2.6 Government or Third Party.** I also covenant and agree that I agree to assign all my right, title and interest in and to any particular Company Invention to a third party, including without limitation the United States, as directed by the Company.



**2.8 Enforcement of Proprietary Rights.** I covenant and agree that I will assist the Company in every proper way to obtain, and from time to time enforce, United States and foreign Proprietary Rights relating to Company Inventions in any and all countries. To that end I will covenant and agree that I execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Proprietary Rights and the assignment thereof. In addition, I will covenant and agree that I execute, verify and deliver assignments of such Proprietary Rights to the Company or its designee. My obligation to assist the Company with respect to Proprietary Rights relating to such Company Inventions in any and all countries shall continue beyond the termination of my employment, but the Company shall compensate me at a reasonable rate after my termination for the time actually spent by me at the Company's request on such assistance.

In the event the Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions or assignments specified in the preceding paragraph or in paragraph 2.3.1, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and in my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph and paragraph 2.3.1 with the same legal force and effect as if executed by me. I hereby waive and quitclaim to the Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Proprietary Rights assigned hereunder to the Company.

**3. RECORDS.** I covenant and agree that I to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that may be required by the Company) of all Proprietary Information developed by me and all Inventions made by me during the period of my employment at the Company, which records shall be available to and remain the sole property of the Company at all times.

**4. ADDITIONAL ACTIVITIES.** I covenant and agree that during the period of my employment by the Company I will not, without the Company's express written consent, engage in any employment or business activity which is competitive with, or would otherwise conflict with, my employment by the Company. I covenant and agree further that for the period of my employment by the Company and for one (1) year after the date of termination of my employment by the Company I will not, either directly or through others, solicit or attempt to solicit any employee, independent contractor or consultant of the company to terminate his or her relationship with the Company in order to become an employee, consultant or independent contractor to or for any other person or entity.

**5. NO CONFLICTING OBLIGATION.** I represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I agree I covenant and agree that I will not enter into, any agreement either written or oral in conflict herewith.

**6. NON-COMPETITION/NON-SOLICITATION.** I covenant and agree that I will not at any time during employment with the Company and for one (1) year following termination of employment with the Company, however such termination is effected, engage in any of the following actions:

**6.1** Directly or indirectly work or otherwise perform services in the United States of America (whether as an officer, director, stockholder, partner, associate, employee, consultant, owner, agent, creditor, or other capacity) for any person or entity which in any way competes with the business of the Company; competition with the Company shall include, but not be limited to, any business which engages in the development, building, implementation, promotion or sales of robots for the security industry;

**6.2** Solicit any employees, independent contractors, or consultants of the Company to leave the Company for other employment or for any other reason;

**6.3** Hire or assist any other person or entity in hiring any employee, independent contractor, or consultant of the Company to engage in competition with the Company; or

**6.4** Solicit or attempt to take away from the Company any of the customers served by the Company at any time within two (2) years prior to termination of my employment with the Company, seek to cause any such customers to refrain from doing business with the Company, or assist any other person or entity in so doing.

**7. REASONABLENESS OF RESTRICTIONS.**

**7.1** I agree that I have read this entire Agreement and understand it. I agree that this Agreement does not prevent me from earning a living or pursuing my career. I agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by the Company's legitimate business interests. I represent and agree that I am entering into this Agreement freely and with knowledge of its contents with the intent to be bound by the Agreement and the restrictions contained in it.

**7.2** In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, I and the Company agree that the court shall read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.

**7.3** If the court declines to enforce this Agreement in the manner provided in subsection 7.2, I and the Company agree that this Agreement will be automatically modified to provide the Company with the maximum protection of its business interests allowed by law and I agree to be bound by this

**8. RETURN OF COMPANY DOCUMENTS.** I covenant and agree that when I leave the employ of the Company, I will deliver to the Company any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Company Inventions, Third Party Information or Proprietary Information of the Company. I further covenant and agree that I any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. Prior to leaving, I will cooperate with the Company in completing and signing the Company's termination statement.

**9. LEGAL AND EQUITABLE REMEDIES.** Because my services are personal and unique and because I may have access to and become acquainted with the Proprietary Information of the Company, the Company shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for a breach of this Agreement.

**10. NOTICES.** All notices required or permitted hereunder shall be in writing and shall be effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, and if not during normal business hours of the recipient, then on the next business day, (iii) five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the other party hereto at such party's address hereinafter set forth on the signature page hereof, or at such other address as such party may designate by ten (10) days advance written notice to the other party hereto.

**11. NOTIFICATION OF NEW EMPLOYER.** In the event that I leave the employ of the Company, I hereby consent to the notification of my new employer of my rights and obligations under this Agreement.

**12. GENERAL PROVISIONS.**

**12.1 Governing Law; Consent to Personal Jurisdiction.** This Agreement will be governed by and construed according to the laws of the State of Colorado, as such laws are applied to agreements entered into and to be performed entirely within Colorado.

**12.2 Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

**12.3 Successors and Assigns.** This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

**12.4 Survival.** The provisions of this Agreement shall survive the termination of my employment and the assignment of this Agreement by the Company to any successor in interest or other assignee.

**12.5 Employment.** I agree and understand that nothing in this Agreement shall confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause.

**12.6 Waiver.** No waiver by the Company of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement shall be construed as a waiver of any other right. The Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

**12.7** "I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF."

**12.8 Entire Agreement.** The obligations pursuant to Sections 1 and 2 of this Agreement shall apply to any time during which I was previously employed, or am in the future employed, by the Company as a consultant if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof except for any employment contract signed by myself and the Company containing provisions restricting the use of confidential information. Except for the foregoing, this Agreement supersedes and merges all prior discussions between us with respect to the subject matter hereto, including, but not limited to, any prior agreement between the Company and me with respect to the assignment of proprietary information to the Company. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

This Agreement shall be effective as of the first day of my employment with the Company, namely.

**I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT.**

\_\_\_\_\_  
David J. Gandini

**ACCEPTED AND AGREED TO:**

**TRANSBIOTEC, INC.**

By: \_\_\_\_\_  
Charles Bennington, President

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**Exhibit “B”**  
**2019 Equity Incentive Plan**

## TransBiotech, Inc. Announces a Seasoned Strategic New Management Team

New management team appointed to assist the Company in bringing its patented SOBRSafe® finger scan alcohol detection device and technology to market.

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NEWS PROVIDED BY

**TransBiotech, Inc.**

November 15, 2019 PT

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SANTA ANA, Calif., November 15, 2019 (IMLE-OTC), is pleased to announce the appointment of Kevin Moore to the position of Chief Executive Officer, the appointment of David J. Gandini to the position of Chief Revenue Officer and the election of Gary J. Graham as a member of our Board of Directors.

**Kevin** is accomplished entrepreneur and C-suite executive who was most recently President and owner of Van's Equipment Company initially a "greenfield" project during the Great Recession and grew to a very successful multi location business serving the Colorado region before its sale in 2017. He was previously CEO and owner of Summit Quality, an international quality management and sales organization which secured over \$50 million year in revenue for its clients. Prior to that endeavor, Kevin was CEO and owner Automotive Testing Technologies, quadrupling testing revenue in four years, then successfully selling the business to a competitor. He is currently an active business and real estate investor through Moore Holdings Incorporated. He received a Bachelor of Science degree in business from Colorado State University.

**David** has over 30 years of C-Suite experience and leadership in identifying and seizing opportunities in emerging markets, business development, team building, raising capital and revenue generation for the mutual benefit of investors, colleagues and customers. David creates effective strategic alliances, builds strong relationships and brings high energy to organizations. He received a Bachelor of Arts degree in telecommunications from Michigan State University in 1981 where he received a hockey scholarship. David played for the first US Jr. Olympic hockey team in 1976-77 in Europe.

**Gary** has over 35 years of investment and merchant banking experience, beginning his career at Smith Barney & Co. in New York where he specialized in developing financing solutions for growth companies and later working for Drexel Burnham Lambert on special project financing. He has provided financial advice to both domestic and foreign entities. He has also served as Chairman, Director and Interim Chief Executive Officer of several private corporations. Having sold his own Denver based investment banking firm, Gary developed First Capital Business Development, LLC and has spent much of the past decade providing executive management experience in operations, budgeting and capital acquisition to start-up and underperforming emerging- growth companies with highly scalable products or technologies. Drawing upon Gary's experience in mergers, acquisitions, private and public financings, joint ventures, distribution transactions, restructuring and business development, First Capital's clients have realized their operational and financial goals, as well maximized their shareholder values.

“We are pleased and excited to welcome Kevin, David and Gary to the TransBiotec management team, which will now be well-versed in technical product development, financing and related c-suite expertise affording us the opportunity to make a difference,” stated TransBiotec President Chuck Bennington.

“The potential exists for TransBiotec to prevent alcohol-related injuries and deaths in school buses, manufacturing facilities and commercial fleet vehicles and we look forward to our pilot programs we have planned for Q1 of 2020,” stated TransBiotec Chief Revenue Officer David J. Gandini.

**About TransBiotec, Inc.**

TransBiotec, Inc. has developed and patented a non-invasive alcohol sensing system ("SOBR") which includes an ignition interlock. The alcohol sensing system offers a unique solution to the national drunk driving problem that can now be applied to new markets. SOBR consists of two parts: an ethanol alcohol detection system and an ignition interlock device connected through a microprocessor. SOBR detects the ethanol alcohol level of the operator and does not allow the vehicle or equipment to start if the ethanol alcohol level is above a preset limit. In addition, random real-time monitoring also ensures that the operator cannot continue to operate a vehicle with an unsafe alcohol level. TransBioTec is currently developing a handheld application that can be applied to several different markets.

**Forward Looking Statement**

TransBiotec, Inc.'s statements in this press release that are not historical fact and that relate to future plans or events are forward-looking statements. Forward-looking statements can be identified by use of words such as "believe," "expect," "plan," "anticipate," and similar expressions. These forward-looking statements include risks associated with clinical trials, expected results, regulatory approvals, and changes in business conditions and similar events. The risks and uncertainties involved include those detailed from time to time in TransBiotec, Inc.'s filings with the Securities and Exchange Commission, including TransBiotec, Inc.'s recent Form 8-K Current Report.

SOURCE TransBiotec, Inc.

**Contact Information:**

David R. Gandini, CRO  
T: (303) 881-2871  
Email: david@sobrsafe.com

For additional information:

Please see the Company's recently filed Current Report on Form 8-K



