

[COMPANY]

**DYNAMIC STOCK PLAN**

**SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS**

The name of the plan is the [Company] Dynamic Stock Plan (the “Plan”). The purpose of the Plan is to encourage and enable the employees of [Company], a Delaware corporation (including any successor entity, the “Company”), upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business, to acquire a proprietary interest in the Company.

“Award” or “Awards,” shall mean the grant of the opportunity to earn a Stock Bonus under the Plan.

“Award Notice” means a written or electronic notice setting forth the terms and provisions applicable to an Award granted under the Plan, in the form attached hereto as Exhibit A.

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

“Code” means the Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

“Fair Market Value” of the Stock on any given date means the fair market value of the Stock determined in good faith by the Board based on the reasonable application of a reasonable valuation method not inconsistent with Section 409A of the Code. If the Stock is admitted to trade on a national securities exchange, the determination shall be made by reference to the closing price reported on such exchange. If there is no closing price for such date, the determination shall be made by reference to the last date preceding such date for which there is a closing price. If the date for which Fair Market Value is determined is the first day when trading prices for the Stock are reported on a national securities exchange, the Fair Market Value shall be the “Price to the Public” (or equivalent) set forth on the cover page for the final prospectus relating to the Company’s Initial Public Offering.

“Freeze Date” means the earliest to occur of (i) the date as of which the Company reaches the Eligibility Limit set forth in Section 4, (ii) the [fourth] anniversary of the date of the Company’s formation, (iii) the date of a Triggering Event or (iv) the closing of any significant venture capital, institutional or other equity security financing for the account of the Company (e.g., Series B financing), as determined by the Board.

“Initial Public Offering” means the consummation of the first firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act covering the offer and sale by the Company of its equity securities, as a result of or following which the Stock shall be publicly held.

“*Participant*” means one of the first [20] full-time employees hired by the Company in accordance with Section 4 hereof, who remains eligible to receive an Award under this Plan and who has received and executed an Award Notice.

“*Participant Total*” means the number of Participants under the Plan who are in a Service Relationship with the Company as of the date of a Triggering Event and are eligible to receive an Award pursuant to Section 5.

“*Person*” shall mean any individual, corporation, partnership (limited or general), limited liability company, limited liability partnership, association, trust, joint venture, unincorporated organization or any similar entity.

“*Sale Event*” means the consummation of one or more of the following events: (i) the sale of all or substantially all of the assets of the Company on a consolidated basis to an unrelated person or entity, (ii) a merger, reorganization or consolidation pursuant to which the holders of the Company’s outstanding voting power immediately prior to such transaction do not own a majority of the outstanding voting power of the surviving or resulting entity (or its ultimate parent, if applicable), (iii) the acquisition of all or a majority of the outstanding voting stock of the Company in a single transaction or a series of related transactions by a Person or group of Persons, or (iv) any other acquisition of the business of the Company, as determined by the Board; in each case, that results in the receipt by the Company and/or its stockholders of cash or liquid securities; *provided, however*, that a merger effected solely to change the Company’s domicile shall not constitute a “Sale Event.” For the avoidance of doubt, in the event that a transaction listed in (i) – (iv) above occurs but does not result in the receipt by the Company and/or its stockholders of cash or liquid securities (an “Illiquid Sale Event”), then such transaction shall not be a Sale Event for purposes of this Plan.

“*Section 409A*” means Section 409A of the Code and the regulations and other guidance promulgated thereunder.

“*Securities Act*” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“*Service Relationship*” means any relationship as a full-time employee, part-time employee, director or other key person (including consultants) of the Company or any Subsidiary or any successor entity (e.g., a Service Relationship shall be deemed to continue without interruption in the event an individual’s status changes from full-time employee to part-time employee or consultant).

“*Shares*” means shares of Stock.

“*Stock*” means the Common Stock, par value \$[\_\_\_\_\_] per share, of the Company.

“*Stock Bonus*” means a number of Shares equal to the number of Shares in the Stock Pool divided by the Participant Total.

“*Stock Pool*” means [\_\_\_\_\_] Shares, subject to adjustment as set forth in Section 3.

“*Triggering Event*” means the earlier to occur of the Company’s Initial Public Offering or a Sale Event.

**SECTION 2. ADMINISTRATION OF PLAN; BOARD AUTHORITY TO SELECT PARTICIPANTS AND DETERMINE AWARDS**

(a) Administration of Plan. The Board shall have the sole discretionary power to interpret the provisions of this Plan and make all decisions and exercise all rights of the Company with respect to the Plan. The Board shall have final authority to determine, in its sole discretion, the amount of any Stock Bonus hereunder and benefits to be paid or allocated to Participants hereunder and shall also have the exclusive discretionary authority to make all other determinations including, without limitation, the interpretation and construction of the Plan and the determination of relevant facts, regarding the entitlement to benefits hereunder and the amount of benefits to be paid from the Plan. All decisions and interpretations of the Board shall be binding on all persons, including the Company and all Participants.

(b) Award Notice. Awards under the Plan shall be evidenced by Award Notices that set forth the terms, conditions and limitations for each Award.

(c) Indemnification. Neither the Board, nor any member of either or any delegate thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and the members of the Board (and any delegate thereof) shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, reasonable attorneys’ fees) arising or resulting therefrom to the fullest extent permitted by law and/or under the Company’s governing documents, including its certificate of incorporation or bylaws, or any directors’ and officers’ liability insurance coverage which may be in effect from time to time and/or any indemnification agreement between such individual and the Company.

**SECTION 3. ADJUSTMENTS**

If, as a result of any reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in the Company’s capital stock, the outstanding Shares are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional Shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such Shares or other securities, in each case, without the receipt of consideration by the Company, or, if, as a result of any merger or consolidation, or sale of all or substantially all of the assets of the Company, the outstanding Shares are converted into or exchanged for other securities of the Company or any successor entity (or a parent or subsidiary thereof), the Board shall make an appropriate and proportionate adjustment in (i) the number of Shares in the Stock Pool and/or (ii) the number and kind of Shares or other securities subject to any then outstanding Awards under the Plan. The Board shall in any event make such adjustments as may be required by Section 25102(o) of the California Corporation Code and the rules and regulations promulgated thereunder. The adjustment by the Board shall be final, binding and conclusive. No fractional Shares shall be issued under the Plan resulting from any such adjustment, but the Board in its discretion may make a cash payment in lieu of fractional shares.

#### SECTION 4. ELIGIBILITY

Participants under the Plan will be the first [20] full-time employees of the Company who do not affirmatively opt-out of the Plan, subject to the second sentence of this Section 4 (the “Eligibility Limit”); provided, however, that Awards shall be granted only to those individuals described in Rule 701(c) of the Securities Act; provided further, however, that no individual may become a new Participant on or after the Freeze Date. If a Participant’s Service Relationship with the Company terminates for any reason prior to the Freeze Date, (i) such Participant shall forfeit all rights in any Award and to a Stock Bonus, (ii) such individual shall no longer be a Participant and (iii) such Participant shall not be counted for purposes of the Eligibility Limit set forth in the first sentence above. For the avoidance of doubt, if a Participant’s Service Relationship terminates on or following the Freeze Date and such Participant forfeits his or her rights to an Award, no change shall be made to the Eligibility Limit and no individual may become a new Participant.

#### SECTION 5. AWARDS

(a) Awards. The Board may, in its sole discretion, grant to an eligible individual under Section 4 hereof an Award under the Plan, pursuant to an Award Notice. Awards may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of.

(b) Triggering Event. On or promptly following a Triggering Event, but in no event later than March 15 of the year following the year in which the Triggering Event occurs, a Participant shall receive his or her Stock Bonus in the form of fully vested Shares, subject to such Participant’s delivery to the Company of a fully effective release of claims against the Company, its directors, officers and stockholders and their respective affiliates prior to such date.

(c) Rights as a Stockholder. A Participant shall have the rights of a stockholder only as to Shares, if any, received by such Participant in connection with a Triggering Event. A Participant shall not be deemed to have received any such Shares unless and until a Triggering Event has occurred, a Stock Bonus shall have been paid in Shares pursuant to the terms of the Plan and the Award Notice, the Company shall have issued and delivered a certificate representing the Shares to the Participant (or transferred on the records of the Company with respect to uncertificated stock), and the Participant’s name has been entered in the books of the Company as a stockholder.

(d) Forfeiture. A Participant’s right in an Award and to a Stock Bonus shall automatically terminate upon the Participant’s cessation of Service Relationship with the Company for any reason prior to the Triggering Event, and such individual shall no longer be a Participant. For the avoidance of doubt, in no event shall a Participant be entitled to receive a Stock Bonus if such Participant’s Service Relationship with the Company terminates prior to the date of the Triggering Event.

(e) Sale Event. Notwithstanding anything herein to the contrary, in the event of a Triggering Event that is a Sale Event, the Company shall have the right, but not the obligation, to make or provide that the Sale Bonus shall be paid in cash, in an amount equal to the value as

determined by the Board of the consideration payable per share of Stock pursuant to the Sale Event times the number of Shares subject to the Sale Bonus.

#### SECTION 6. TAX WITHHOLDING

(a) Payment by Participant. Each Participant shall, no later than the date as of which the value of an Award or of any Shares or other amounts received thereunder first becomes includable in the gross income of the Participant for income tax purposes, pay to the Company, or make arrangements satisfactory to the Board regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld by the Company with respect to such income. The Company and any Subsidiary shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant. The Company's obligation to deliver stock certificates (or evidence of book entry) to any Participant is subject to and conditioned on any such tax withholding obligations being satisfied by the Participant.

(b) Payment in Stock. The Company's minimum required tax withholding obligation may be satisfied, in whole or in part, by the Company withholding from Shares to be issued pursuant to an Award a number of Shares having an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the minimum withholding amount due.

#### SECTION 7. SECTION 409A.

The provisions regarding all payments to be made hereunder (including the payment of the Stock Bonus in the form of Shares) shall be interpreted in such a manner that all such payments either comply with Section 409A of the Code or are exempt from the requirements of Section 409A of the Code as "short-term deferrals" as described in Section 409A of the Code. To the extent that any amounts payable hereunder are determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code, such amounts shall be subject to such additional rules and requirements as specified by the Board from time to time in order to comply with Section 409A of the Code and the settlement of any such amounts may not be accelerated or delayed except to the extent permitted by Section 409A of the Code. The Company makes no representation or warranty and shall have no liability to any Participant or any other person if any payments under any provisions of this Plan are determined to constitute deferred compensation under Section 409A of the Code that are subject to the 20 percent tax under Section 409A of the Code.

#### SECTION 8. ADDITIONAL LIMITATION.

Anything in this Plan to the contrary notwithstanding, in the event that any compensation, payment or distribution by the Company to or for the benefit of any Participant, whether paid or payable or distributed or distributable pursuant to the terms of this Plan or otherwise (the "Parachute Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, then (a) the Bonus payable to such Participant under this Plan shall be reduced (but not below zero) to the extent necessary so that the maximum Parachute Payments shall not exceed the Threshold Amount (the "Reduction Amount"), and (b) the Company shall use reasonable efforts to satisfy the shareholder approval requirements set forth in Q/A 7 of Treasury Regulations Section 1.280G-1 with respect to such Reduction Amount, and if such requirements are satisfied

then such Reduction Amount shall become payable hereunder as if subsection (a) above had not applied thereto. For purposes of this Section, “Threshold Amount” shall mean three times the Participant’s “base amount” within the meaning of Section 280G(b)(3) of the Code and the regulations thereunder, less one dollar.

#### SECTION 9. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Board may, at any time, amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall adversely affect rights under any outstanding Award without the consent of the holder of the Award. Nothing in this Section 9 shall limit the Board’s or Board’s authority to take any action permitted pursuant to Section 3 or 5(e).

#### SECTION 10. STATUS OF PLAN

With respect to any payments in cash, Stock or other consideration not received by a Participant, a Participant shall have no rights greater than those of a general creditor of the Company.

#### SECTION 11. GENERAL PROVISIONS

(a) No Distribution; Compliance with Legal Requirements. The Board may require each person acquiring Shares pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the Shares without a view to distribution thereof. No Shares shall be issued pursuant to an Award until all applicable securities law and other legal and stock exchange or similar requirements have been satisfied. The Board may require the placing of such stop-orders and restrictive legends on certificates for Stock as it deems appropriate.

(b) Delivery of Stock Certificates. Stock certificates to Participants under the Plan shall be deemed delivered for all purposes when the Company or a stock transfer agent of the Company shall have mailed such certificates in the United States mail, addressed to the Participant, at the Participant’s last known address on file with the Company. Uncertificated Stock shall be deemed delivered for all purposes when the Company or a stock transfer agent of the Company shall have given to the Participant by electronic mail (with proof of receipt) or by United States mail, addressed to the Participant, at the Participant’s last known address on file with the Company, notice of issuance and recorded the issuance in its records (which may include electronic “book entry” records).

(c) No Employment Rights. The adoption of the Plan and the grant of Awards do not confer upon any Person any right to continued employment or Service Relationship with the Company and do not alter the “at will” nature of any Participant’s Service Relationship with the Company.

(d) Trading Policy Restrictions. Awards under the Plan shall be subject to the Company’s insider trading policy-related restrictions, terms and conditions as may be established by the Board, or in accordance with policies set by the Board, from time to time.

(e) Lock-up Agreement. Each Participant agrees, if requested by the Company and any underwriter engaged by the Company, not to sell or otherwise transfer or dispose of any Shares (including, without limitation, pursuant to Rule 144 under the Securities Act) held by him or her for such period following the effective date of any registration statement of the Company filed under the Securities Act as the Company or such underwriter shall specify reasonably and in good faith. If requested by the underwriter engaged by the Company, each Participant shall execute a separate letter reflecting the agreement set forth in this Section.

(f) Successors. Any successor to the Company shall assume, and shall be bound by the terms and conditions of, this Plan and any outstanding Awards. In the event there is an Illiquid Sale Event, the Company or its successor may not cause any Participant to cease to be eligible for a Stock Bonus with respect to a Triggering Event that occurs within the first five years following such Illiquid Sale Event.

#### SECTION 12. EFFECTIVE DATE OF PLAN

The Plan shall become effective upon adoption by the Board and shall be approved by stockholders in accordance with applicable state law and the Company's articles of incorporation and bylaws. Subject to such approval by stockholders and to the requirement that no Shares may be issued hereunder prior to such approval, Awards may be granted hereunder on and after adoption of the Plan by the Board. No grants of Awards may be made hereunder after the tenth anniversary of the earlier of the date the Plan is adopted by the Board or the date the Plan is approved by the Company's stockholders.

#### SECTION 13. GOVERNING LAW

This Plan, all Awards and any controversy arising out of or relating to this Plan and all Awards shall be governed by and construed in accordance with the [General Corporation Law of the State of Delaware] as to matters within the scope thereof, and as to all other matters shall be governed by and construed in accordance with the internal laws of [state of principal place of business], without regard to conflict of law principles that would result in the application of any law other than the law of the State of [same state].

DATE ADOPTED BY THE BOARD OF DIRECTORS: \_\_\_\_\_

DATE APPROVED BY THE STOCKHOLDERS: \_\_\_\_\_

#### **CIRCULAR 230 DISCLOSURE:**

**To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.**

[COMPANY]

\_\_\_\_\_, 201\_

[PARTICIPANT NAME]  
[ADDRESS]

Dear [PARTICIPANT]:

The Board of Directors of [Company] (the “Company”) has adopted the [Company] Dynamic Stock Plan (the “Plan”) to reward and encourage certain key employees of the Company. The Company is pleased to invite you to participate in the Plan and to offer you the opportunity to receive a bonus under the Plan in the form of shares of our common stock (the “Award”). The Company is providing this special benefit to a limited number of employees.

As described in more detail in the Plan, the Plan entitles you to a portion of a Stock Pool upon the occurrence of a Sale Event or the Company’s Initial Public Offering (the “Triggering Event”). You will share equally in the Stock Pool with the other employees participating in the Plan as of the date of the Triggering Event. As detailed in the Plan, you must be providing service to the Company on the date of the Triggering Event in order to receive any Stock Bonus.

The terms of the Plan are detailed in the copy of the Plan that has been provided to you, and those terms are incorporated in and made a part this letter. Capitalized terms that are used in this letter but are not otherwise defined herein will have the meanings ascribed to those terms in the Plan. In the event of conflict or inconsistency between the terms of this letter and the terms of the Plan, the terms of the Plan shall govern your award. This letter and the plan constitute the entire agreement between the Company and you regarding the subject matter hereof and supersede and replace any prior discussions, agreements, or arrangements.

By signing below, you acknowledge your participation in the Plan and that your Award is subject to all of the terms and conditions of the Plan and that you agree to each of the terms and conditions of the Plan.

Congratulations on being selected to participate in the Plan!

[COMPANY]

By: \_\_\_\_\_  
Name:  
Title:

AGREED TO AND ACCEPTED

\_\_\_\_\_  
[Participant Name]

GOODWIN



PROCTER