

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

PORTAGE BIOTECH INC.

(Exact Name of Registrant as Specified in Its Charter)

British Virgin Islands

(State or Other Jurisdiction of Incorporation or Organization)

Not Applicable

(I.R.S. Employer Identification No.)

Clarence Thomas Building, P.O. Box 4649

Road Town, Tortola

British Virgin Islands

(Address of Principal Executive Offices)

VG1110

(Area Code)

Portage Biotech Inc. Amended and Restated 2021 Equity Incentive Plan

(Full Title of the Plan)

Dr. Ian Walters c/o Portage Development Services, Inc.

61 Wilton Road

Westport, Connecticut 06880

(Name and Address of Agent For Service)

(203) 221-7378

(Telephone Number, Including Area Code, of Agent For Service)

With Copies to:

Steven J. Abrams, Esq.

Hogan Lovells US LLP

1735 Market Street, Suite 2300

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

Large accelerated filer ☐Non-accelerated filer ☒Accelerated filer ☐Smaller reporting company ☐Emerging growth company ☐

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

EXPLANATORY NOTE

This registration statement on Form S-8 is being filed by Portage Biotech Inc., a company registered in the British Virgin Islands (the “Registrant”), to register 2,880,992 shares of the Registrant’s ordinary shares, no par value per share (the “Ordinary Shares”), issuable under the Registrant’s Amended and Restated 2021 Equity Incentive Plan (the “2021 Plan”).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

As permitted by the rules of the Securities and Exchange Commission (the “Commission”), this registration statement on Form S-8 omits the information specified in Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the 2021 Plan covered by this registration statement as required by Rule 428(b)(1) under the Securities Act of 1933 (the “Securities Act”).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents of the Registrant filed with the Commission are incorporated by reference in this registration statement as of their respective dates:

- (a) the Registrant’s Annual Report on [Form 20-F](#) for the fiscal year ended March 31, 2023 filed with the Commission on July 31, 2023;
- (b) the Registrant’s Reports on Form 6-K filed with or furnished to the Commission on [May 1, 2023](#), [June 21, 2023](#), [August 14, 2023](#), [August 29, 2023](#), [September 8, 2023](#), [September 29, 2023](#) and [October 3, 2023](#), [November 13, 2023](#) and [November 28, 2023](#); and
- (c) the description of the Registrant’s Ordinary Shares contained in its registration statement on [Form 8-A](#) filed with the Commission on February 18, 2021, as updated by [Exhibit 2.1](#) to the Registrant’s Annual Report on Form 20-F for the fiscal year ended March 31, 2022 filed with the Commission on August 1, 2022, and any amendment or report filed for the purpose of further updating that description.

All reports and other documents filed by the Registrant after the date hereof pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”), including (i) any future annual reports on Form 20-F and (ii) any future reports on Form 6-K that are identified in such reports as being incorporated by reference in this registration statement (but only to the extent identified in such report), but prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be part hereof from the date of filing of such reports and documents, except for the documents, or portions thereof, that are “furnished” rather than filed with the Commission.

For the purposes of this registration statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

British Virgin Islands law does not limit the extent to which a company's memorandum and articles of association may provide for indemnification of officers and directors, except to the extent any such provision may be held by the British Virgin Islands courts to be contrary to public policy, such as to provide indemnification against civil fraud or the consequences of committing a crime. In addition, a company may only indemnify a person who acted honestly and in good faith and in what he or she believed to be in the best interests of the company, and in the case of criminal proceedings, the person had no reasonable cause to believe that his or her conduct was unlawful.

The Registrant's Memorandum and Articles of Association provides that the Registrant may indemnify its directors, officers, agents or its liquidator (each an "Indemnifiable Person") against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings if such Indemnifiable Person is or was a party or is threatened to be a party to proceedings by virtue of the fact he or she is or was a director, officer, agent or liquidator of the Registrant or is or was at the request of the Registrant serving as a director, officer, agent or liquidator or in another capacity for another entity. The Registrant may only indemnify an Indemnifiable Person if he or she acted honestly and in good faith with a view to the Registrant's best interests and, with respect to any criminal action, he or she must have had no reasonable cause to believe his or her conduct was unlawful.

The Registrant may purchase and maintain insurance in relation to any person who is or was a director, or who at the request of the Registrant is or was serving as a director of, or in any other capacity is or was acting for another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the Registrant has or would have had the power to indemnify the person against the liability. The Registrant currently maintains director and officer insurance.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Description
4.1	<u>Amended and Restated Memorandum of Association and Articles of Association of Portage Biotech Inc. as filed in the British Virgin Island on September 22, 2022 – Incorporated herein by reference to Exhibit 4.1 to Form 6-K filed on September 22, 2022.</u>
4.2*	<u>Portage Biotech Inc. Amended and Restated 2021 Equity Incentive Plan dated as of January 19, 2022.</u>
5.1*	<u>Opinion of Forbes Hare LLP.</u>
23.1*	<u>Consent of Marcum LLP.</u>
23.2*	<u>Consent of Forbes Hare LLP (included in Exhibit 5.1).</u>
24.1*	<u>Power of Attorney (included on signature page).</u>
107*	<u>Filing Fee Table.</u>

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Filing Fee Tables" or "Calculation of Registration Fee" table, as applicable, in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

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

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Westport, State of Connecticut, on December 1, 2023.

PORTAGE BIOTECH INC.

By: /s/ Ian Walters, MD, MBA

Name: Ian Walters, MD, MBA

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Ian Walters and Allan Shaw, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this registration statement on Form S-8 (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

Name	Title	Date
<u>/s/ Ian Walters, MD, MBA</u> Ian Walters, MD, MBA	Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)	December 1, 2023
<u>/s/ Allan Shaw</u> Allan Shaw	Chief Financial Officer (Principal Financial Officer)	December 1, 2023
<u>/s/ Joseph Ciavarella</u> Joseph Ciavarella	Chief Accounting Officer (Principal Accounting Officer)	December 1, 2023
<u>/s/ Gregory Bailey, MD</u> Gregory Bailey, MD	Director	December 1, 2023
<u>/s/ Robert Glassman, MD</u> Robert Glassman, MD	Director	December 1, 2023
<u>/s/ Linda Kozick</u> Linda Kozick	Director	December 1, 2023
<u>/s/ Jim Mellon</u> Jim Mellon	Director	December 1, 2023
<u>/s/ Steven Mintz</u> Steven Mintz	Director	December 1, 2023
<u>/s/ Mark Simon</u> Mark Simon	Director	December 1, 2023



**PORTAGE BIOTECH INC.
AMENDED AND RESTATED
2021 EQUITY INCENTIVE PLAN**

1. Purposes of the Plan.

This Plan is an amendment and restatement, effective as of the 2022 Amendment Date, of the Portage Biotech Inc. 2021 Equity Incentive Plan. The purpose of this Plan is to develop the interest of the directors, officers, employees and consultants who provide on-going services to the Company and its subsidiaries in the growth and development of the Company by providing such persons with the opportunity to acquire an equity interest in the Company or to be paid incentive compensation and to better enable the Company and its subsidiaries to attract and retain persons of desired experience and ability.

The Plan permits the grant of Incentive Stock Options, Nonstatutory Stock Options, Stock Appreciation Rights, Dividend Equivalent Rights, Restricted Stock, Restricted Stock Units and Cash-Based Incentive Awards.

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

- (a) “2022 Amendment Date” means January 19, 2022.
 - (b) “Act” means the U.S. Securities Act of 1933, as amended, and the rules and regulations thereunder.
 - (c) “Administrator” means the Board or any of its Committees as will be administering the Plan, in accordance with Section 4 of the Plan.
 - (d) “Applicable Laws” means the requirements relating to the administration of equity-based awards under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Awards are, or will be, granted under the Plan or where Shares are, or will be, granted on exercise of any such Award.
 - (e) “Award” means, individually or collectively, a grant under the Plan of Options, Stock Appreciation Rights, Dividend Equivalent Rights, Restricted Stock, Restricted Stock Units or Cash-Based Incentive Awards.
 - (f) “Award Agreement” means the written or electronic agreement setting forth the terms and provisions applicable to each Award granted under the Plan. The Award Agreement is subject to the terms and conditions of the Plan.
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(g) “Board” means the Board of Directors of the Company.

(h) “Cash-Based Incentive Award” means an Award denominated in cash that is granted under Section 10 of the Plan.

(i) “Cause” means:

(j) an unauthorized use or disclosure by the Participant of the Company’s confidential information or trade secrets that causes material harm to the Company;

(ii) a material breach by the Participant of any agreement between the Participant and the Company;

(iii) a material failure by the Participant to comply with the Company’s written policies or rules;

(iv) the Participant’s conviction of, or plea of “guilty” or “no contest” to, a felony under the laws of the United States or any State thereof;

(v) the Participant’s gross negligence or willful misconduct;

(vi) a continuing failure by the Participant to perform assigned duties after receiving written notification of such failure from the Board; or

(vii) a failure by the Participant to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested the Participant’s cooperation.

(i) “Change in Control” means:

(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 and outstanding shares immediately prior to such transaction do not own a majority of the outstanding voting power and outstanding shares or other equity interests of the resulting or successor entity (or its ultimate parent, if applicable) immediately upon completion of such transaction;

(iii) the sale of more than fifty percent of the Shares of the Company to an unrelated person, entity or group thereof acting in concert; or

(iv) any other transaction in which the owners of the Company’s outstanding voting power immediately prior to such transaction do not own at least a majority of the outstanding voting power of the Company or any successor entity immediately upon completion of the transaction other than as a result of the acquisition of securities directly from the Company.

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

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

(m) “Common Stock” means the common stock of the Company.

(n) “Company” means Portage Biotech Inc., a corporation established in the territory of the British Virgin Islands, or any successor thereto.

(o) “Consultant” means any natural person, including an advisor, engaged by the Company to render bona fide services to such entity, provided the services (i) are not in connection with the offer or sale of securities in a capital-raising transaction, and (ii) do not directly promote or maintain a market for the Company’s securities.

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

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

(r) “Dividend Equivalent Right” means an Award entitling the grantee to receive credits based on dividends that would have been paid on Shares specified in the Dividend Equivalent Right (or other Award to which it relates) if such Shares had been issued to and held by the grantee.

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

(t) “Exchange Act” means the United States Securities Exchange Act of 1934, as amended.

(u) “Exchange Program” means a program under which (i) outstanding Awards are surrendered or cancelled in exchange for Awards of the same type (which may have higher or lower exercise prices and different terms), Awards of a different type, and/or cash, (ii) Participants would have the opportunity to transfer any outstanding Awards to a financial institution or other person or entity selected by the Administrator, and/or (iii) the exercise price of an outstanding Award is reduced or increased. The Administrator will determine the terms and conditions of any Exchange Program in its sole discretion.

(v) “Fair Market Value” means the fair market value of a Share as determined by the Administrator in good faith, provided, however, that if the Shares are listed on the National Association of Securities Dealers Automated Quotation System (“NASDAQ”), Nasdaq Global Market, The New York Stock Exchange, Canadian Securities Exchange, or another national securities exchange or traded on any established market, the determination shall be made by reference to market quotations. If there are no market quotations for such date, the determination shall be made by reference to the last date preceding such date for which there are market quotations. Such determination shall be conclusive and binding on all persons

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

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

(y) “Option” means a stock option granted pursuant to the Plan.

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

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

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

(cc) “Plan” means this Portage Biotech Inc. Amended and Restated 2021 Equity Incentive Plan, as in effect from time to time.

(dd) “Qualifying Director” means a Person who is, with respect to actions intended to obtain an exemption from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 under the Exchange Act, a “non-employee director” within the meaning of Rule 16b-3 under the Exchange Act.

(ee) “Restricted Stock” means Shares issued pursuant to an Award of Restricted Stock under Section 8 of the Plan or the early exercise of an Option.

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

(gg) “Separation from Service” means a “Separation from Service” as such term is defined in the United States Treasury Regulations promulgated under Code Section 409A.

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

(ii) “Share” means a share of the Common Stock, as adjusted in accordance with Section 14 of the Plan.

(jj) “Share Limit” means the maximum aggregate number of Shares that may be issued pursuant to Awards under this Plan.

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

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

3. Share Limit.

(a) General. Subject to Section 14 of the Plan, the Share Limit shall be equal to 2,001,812, all of which may be granted pursuant to Incentive Stock Options. Notwithstanding the foregoing, in each calendar year following 2022, and taking into account the then-current business environment, the Company’s business needs and such additional factors as the Board, in its sole and absolute discretion, determines to be appropriate, the Board may determine to increase (on a cumulative basis) the then-applicable Share Limit by a number of Shares not to exceed five percent (5%) of the aggregate number of Shares then outstanding. However, any increase described in the immediately preceding sentence shall not affect the aggregate number of Shares that may be issued as Incentive Stock Options (which, for avoidance of doubt, shall at all times be equal to 2,001,812, subject to adjustment solely in accordance with Section 14 of the Plan and Code Section 424).

(b) Lapsed Awards. If an Award expires or becomes unexercisable without having been exercised in full, is surrendered pursuant to an Exchange Program, is forfeited, or is repurchased by the Company for an amount equal to the lower of (i) the Exercise Price of each Share being repurchased and (ii) the Fair Market Value of each Share being repurchased at the time the right of repurchase is exercised (such that the repurchase is effectively a forfeiture), the Shares that were subject thereto will become available for future grant or sale under the Plan (unless the Plan has terminated). With respect to Stock Appreciation Rights, only Shares actually issued pursuant to a Stock Appreciation Right will cease to be available under the Plan; all remaining Shares under Stock Appreciation Rights will remain available for future grant or sale under the Plan (unless the Plan has terminated). Shares that have actually been issued under the Plan under any Award will not be returned to the Plan and will not become available for future distribution under the Plan; except that Shares that are forfeited to the Company, including Shares that are effectively forfeited to the Company as the result of a Company repurchase, will become available for future grant under the Plan. Shares used to pay the exercise price of an Award or to satisfy the tax withholding obligations related to an Award will become available for future grant or sale under the Plan. To the extent an Award under the Plan is paid out in cash rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under the Plan. Notwithstanding the foregoing and, subject to adjustment as provided in Section 14, the maximum number of Shares that may be issued upon the exercise of Incentive Stock Options will equal the aggregate number stated in the last sentence of Section 3(a) plus, to the extent allowable under Code Section 422 and the Treasury Regulations promulgated thereunder, any Shares that become available for issuance under the Plan pursuant to Section 3(b).

(c) Share Reserve. Shares granted pursuant to Awards may consist of authorized but unissued Shares, treasury Shares or reacquired Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of the Plan.

4. Administration of the Plan.

(a) Administration of the Plan; Delegation. The Plan shall be administered by the Administrator. To the extent required to comply with the provisions of Rule 16b-3 promulgated under the Exchange Act (if the Board is not acting as the Committee under the Plan) it is intended that each member of the Committee shall, at the time such member takes any action with respect to an Award under the Plan that is intended to qualify for the exemptions provided by Rule 16b-3 promulgated under the Exchange Act be a Qualifying Director. However, the fact that a Committee member shall fail to qualify as a Qualifying Director shall not invalidate any Award granted by the Committee that is otherwise validly granted under the Plan. Subject to Applicable Law, the Board or the Committee, in its discretion, may delegate all or part of its administrative duty and authority to a committee consistent of one or more officers of the Company, including the Chief Executive Officer, other than with respect to grants to individuals who are subject to the reporting and other provisions of Section 16 of the Exchange Act or are members of a committee to which such authority is delegated.

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

- (i) to determine the Fair Market Value;
- (ii) to select the Service Providers to whom Awards may be granted hereunder; granted
- (iii) to determine the number of Shares to be covered by each Award
- (iv) to approve forms of Award Agreements for use under the Plan (which forms may, for the avoidance of doubt, be different for each Service Provider to whom Awards are proposed to be granted hereunder);
- (v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the terms and conditions of grant, the exercise price, the time or times when Awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Administrator will determine;
- (vi) to institute and determine the terms and conditions of an Exchange Program pursuant to the Plan;
- (vii) to construe and interpret the terms of the Plan and Awards granted hereunder;

- (viii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws or for qualifying for favorable tax treatment under applicable foreign laws;
- (ix) to modify or amend each Award (subject to Section 19(c) of the Plan), including but not limited to the discretionary authority to extend the post-termination exercisability period of Awards and to extend the maximum term of an Option (subject to Section 6(d));
- (x) to allow Participants to satisfy withholding tax obligations in a manner prescribed in Section 14;
- (xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award previously granted by the Administrator; and
- (xii) to make all other determinations deemed necessary or advisable for administering the Plan.

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

(d) Indemnification. Neither the Board nor the Committee 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, the Committee (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 articles or bylaws, and 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.

5. Eligibility. Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units and Dividend Equivalent Rights may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

6. Stock Options.

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

(b) Option Agreement. Each Award of an Option will be evidenced by an Award Agreement that will specify the terms and conditions of grant, the exercise price, the term of the Option, the number of Shares subject to the Option, the exercise restrictions, if any, applicable to the Option, and such other terms and conditions as the Administrator, in its sole discretion, will determine. Except as provided in Section 14(a), dividends shall not be paid with respect to Shares subject to an Option; provided, however, that the holder of an Option may be credited with Dividend Equivalent Rights with respect to the Shares subject to such Option to the extent set forth in the applicable Award Agreement or as otherwise determined by the Administrator from time to time, and subject to such terms and conditions as the Administrator may determine.

(c) Limitations. Each Option will be designated in the Award Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. Notwithstanding such designation, however, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds one hundred thousand dollars (\$100,000) (United States currency), such Options will be treated as Nonstatutory Stock Options. For purposes of this Section 6(c), Incentive Stock Options will be taken into account in the order in which they were granted, the Fair Market Value of the Shares will be determined as of the time the Option with respect to such Shares is granted, and calculation will be performed in accordance with Code Section 422 and Treasury Regulations promulgated thereunder. In addition, the qualification of Awards as Incentive Stock Options shall be subject to shareholder approval of the Plan in accordance with Section 24 hereof.

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

(e) Option Exercise Price and Consideration.

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

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

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

(f) Exercise of Option.

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

An Option will be deemed exercised when the Company receives:

(1) notice of exercise (in such form as the Administrator may specify from time to time) from the person entitled to exercise the Option, and (2) full payment for the Shares with respect to which the Option is exercised (together with applicable tax withholding). Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant or, if requested by the Participant, in the name of the Participant and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares subject to an Option, notwithstanding the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 14 of the Plan.

Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(ii) Resignation or Termination without Cause. If a Participant ceases to be a Service Provider, other than as the result of the Participant's termination for Cause or the Participant's death or Disability, the Participant may exercise his or her Option within ninety (90) days of termination, or such longer period of time as is specified in the Award Agreement or determined by the Administrator (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement) to the extent that the Option is vested on the date of termination. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified by the Administrator, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iii) Termination for Cause. If a Participant ceases to be a Service Provider as the result of the Participant's termination for Cause or the Participant's resignation in anticipation of a termination for Cause, the Participant may not exercise his or her Option following such termination or resignation. Unless otherwise provided by the Administrator, a Participant who is terminated for Cause, or who resigns in anticipation of a termination for Cause, will automatically forfeit his or her Option in its entirety (including any vested portion). Such forfeited Option will terminate and the Shares covered by the Option will revert to the Plan. Any determination of whether a Participant resigned in anticipation of a termination for Cause or a Participant's employment or service is (or is deemed to have been) terminated for Cause shall be made by the Administrator in its sole discretion, which determination shall be final and binding. If, subsequent to a Participant's termination of employment or service, it is determined by the Administrator that the Participant's employment or service could have been terminated for Cause, the Administrator may deem such Participant's employment or service to have been terminated for Cause, and any Option held by the Participant shall be subject to the treatment applicable following a termination for Cause, including under any recapture, clawback or similar policy of the Company as may be in effect from time to time.

(iv) Disability of Participant. If a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant may exercise his or her Option within one (1) year of termination, or such longer period of time as is specified in the Award Agreement or determined by the Administrator (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement) to the extent the Option is vested on the date of termination. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(v) Death of Participant. If a Participant dies while a Service Provider, the Option may be exercised within one (1) year following the Participant's death, or within such longer period of time as is specified in the Award Agreement or determined by the Administrator (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement) to the extent that the Option is vested on the date of death, by the Participant's designated beneficiary, provided such beneficiary has been designated prior to the Participant's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Participant, then such Option may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the Option is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. Unless otherwise provided by the Administrator, if at the time of death Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

7. Stock Appreciation Rights.

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

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

(c) Exercise Price and Other Terms. The per Share exercise price for the Shares that will determine the amount of the payment to be received upon exercise of a Stock Appreciation Right as set forth in Section 7(f) will be determined by the Administrator and will be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant. Otherwise, the Administrator, subject to the provisions of the Plan, will have complete discretion to determine the terms and conditions of Stock Appreciation Rights granted under the Plan.

(d) Stock Appreciation Right Agreement. Each Stock Appreciation Right grant will be evidenced by an Award Agreement that will specify the terms and conditions of grant, the exercise price, the term of the Stock Appreciation Right, the conditions of exercise, and such other terms and conditions as the Administrator, in its sole discretion, will determine. Except as provided in Section 14(a), dividends shall not be paid with respect to Shares subject to a Stock Appreciation Right; provided, however, that the holder of a Stock Appreciation Right may be credited with Dividend Equivalent Rights with respect to the Shares subject to such Stock Appreciation Right to the extent set forth in the applicable Award Agreement or as otherwise determined by the Administrator from time to time, and subject to such terms and conditions as the Administrator may determine.

(e) Expiration of Stock Appreciation Rights. A Stock Appreciation Right granted under the Plan will expire upon the date determined by the Administrator, in its sole discretion, and set forth in the Award Agreement. Notwithstanding the foregoing, the rules of Section 6(d) relating to the maximum term and Section 6(f) relating to exercise also will apply to Stock Appreciation Rights.

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

- (i) The difference between the Fair Market Value of a Share on the date of exercise over the exercise price; times
- (ii) The number of Shares with respect to which the Stock Appreciation Right is exercised.

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

8. Restricted Stock.

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

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

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

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

(e) Removal of Restrictions. Except as otherwise provided in this Section 8, Shares of Restricted Stock covered by each Restricted Stock grant made under the Plan will be released from escrow as soon as practicable after the last day of the Period of Restriction or at such other time as the Administrator may determine. The Administrator, in its discretion, may accelerate the time at which any restrictions will lapse or be removed.

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

(g) Dividends and Other Distributions. During the Period of Restriction, Service Providers holding Shares of Restricted Stock will be entitled to receive all dividends and other distributions paid with respect to such Shares, unless the Administrator provides otherwise. In addition, Service Providers holding Shares of Restricted Stock may be credited with Dividend Equivalent Rights with respect to such Shares to the extent set forth in the applicable Award Agreement or as otherwise determined by the Administrator from time to time, and subject to such terms and conditions as the Administrator may determine. If any such dividends or distributions or Dividend Equivalent Rights are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Shares of Restricted Stock with respect to which they were paid.

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

9. Restricted Stock Units.

(a) Grant. Restricted Stock Units may be granted at any time and from time to time as determined by the Administrator. After the Administrator determines that it will grant Restricted Stock Units, it will advise the Participant in an Award Agreement of the terms, conditions, and restrictions related to the grant, including the number of Restricted Stock Units.

(b) Vesting Criteria and Other Terms. The Administrator will set vesting criteria in its discretion, which, depending on the extent to which the criteria are met, will determine the number of Restricted Stock Units that will be paid out to the Participant. The Administrator may set vesting criteria based upon the achievement of Company-wide, business unit, or individual goals (including, but not limited to, continued employment or service), or any other basis determined by the Administrator in its discretion.

(c) Earning Restricted Stock Units. Upon meeting the applicable vesting criteria, the Participant will be entitled to receive a payout as determined by the Administrator. Notwithstanding the foregoing, at any time after the grant of Restricted Stock Units, the Administrator, in its sole discretion, may reduce or waive any vesting criteria that must be met to receive a payout.

(d) Form and Timing of Payment. Payment of earned Restricted Stock Units will be made as soon as practicable after the date(s) determined by the Administrator and set forth in the Award Agreement. The Administrator, in its sole discretion, may settle earned Restricted Stock Units in cash, Shares, or a combination of both.

(e) Rights as a Shareholder. A grantee shall not have any rights as a shareholder of the Company until and unless the grantee is issued Shares upon settlement of Restricted Share Units; provided, however, that the grantee may be credited with Dividend Equivalent Rights with respect to the units underlying his or her Restricted Share Units, subject to such terms and conditions as the Administrator may determine.

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

10. Cash-Based Incentive Awards; Dividend Equivalent Rights.

(a) The Administrator may grant Cash-Based Incentive Awards under the Plan. A Cash-Based Incentive Award is an Award that entitles the grantee to a payment in cash upon the attainment of specified performance goals. The Administrator shall determine the maximum duration of the Cash-Based Incentive Award, the amount of cash to which the Cash-Based Incentive Award pertains, the conditions upon which the Cash-Based Incentive Award shall become vested or payable, and such other provisions as the Administrator shall determine. Each Cash-Based Incentive Award shall specify a cash-denominated payment amount, formula or payment ranges as determined by the Administrator. Payment, if any, with respect to a Cash-Based Incentive Award shall be made in accordance with the terms of the Award and may be made in cash.

(b) The Administrator may grant Dividend Equivalent Rights under the Plan pursuant to an Award Agreement. Dividend Equivalent Rights may be granted alone or ancillary to or otherwise in respect of any other Award. A Dividend Equivalent Right shall relate to a specified number of Shares and shall entitle the holder of the Dividend Equivalent Right to a payment in an amount equal to the amount of the dividends that would have been payable to a holder of such Shares had they been outstanding and vested during the term of the Dividend Equivalent Right. Payment of a Dividend Equivalent Right may be made in cash, Shares, other securities, other Awards or other property and may be made currently or credited to an account (which shall not bear interest) for the holder and paid at such time as the Administrator shall specify in the applicable Award Agreement. Dividend Equivalent Rights shall otherwise be subject to such terms and conditions (which may include vesting and forfeiture terms, and may provide for payment in the form of reinvestment in additional Shares) as may be set out in the applicable Award Agreement.

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

12. Leaves of Absence/Transfer Between Locations. Unless the Administrator provides otherwise, vesting of Awards granted hereunder will be suspended during any unpaid leave of absence. For the purposes of the Plan, a Participant will not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company. For purposes of Incentive Stock Options, no such leave may exceed three (3) months, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then six (6) months following the first (1st) day of such leave, any Incentive Stock Option held by the Participant will cease to be treated as an Incentive Stock Option and will be treated for tax purposes as a Nonstatutory Stock Option.

13. Transfer of Awards or Shares. Unless determined otherwise by the Administrator, Awards may not be sold, pledged, assigned, hypothecated, or otherwise transferred in any manner other than by will or by the laws of descent and distribution, and may be exercised, during the lifetime of the Participant, only by the Participant (or legal representative or guardian, in the event of the Participant's incapacity).

14. Adjustments; Dissolution or Liquidation; Merger or Change in Control.

(a) Adjustments. In the event that any extraordinary cash dividend or other distribution, dividend or other distribution in kind, recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other similar corporate event or transaction or change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Plan, will adjust or substitute: (i) the number and kind of Shares or other property that may be issued under the Plan or under particular forms of Awards; (ii) the number and kind of Shares or other property subject to outstanding Awards; (iii) the exercise price, grant price or purchase price applicable to outstanding Awards; and/or (iv) other value determinations (including performance conditions) applicable to the Plan or outstanding Awards. All such adjustments shall be made in good-faith compliance with Code Sections 409A, 422 and 424, as applicable.

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

(c) Change in Control. In the event of a Change in Control, each outstanding Award will be treated as the Administrator determines (subject to the provisions of the following paragraph) without a Participant's consent. Such treatment may include, without limitation, that (i) Awards will be assumed, or substantially equivalent Awards will be substituted, by the acquiring or succeeding corporation (or an affiliate thereof) with appropriate adjustments as to the number and kind of shares and prices (in good-faith compliance with Code Sections 409A, 422 and 424, as applicable); (ii) upon written notice to a Participant, the Participant's Awards will terminate upon or immediately prior to the consummation of such Change in Control; (iii) outstanding Awards will vest and become exercisable, realizable, or payable, or restrictions applicable to an Award will lapse, in whole or in part prior to or upon consummation of such Change in Control, and, to the extent the Administrator determines, terminate upon or immediately prior to the effectiveness of such Change in Control; (iv) the termination of an Award in exchange for an amount of cash and/or property, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant's rights as of the date of the occurrence of the transaction (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment); (v) the replacement of such Award with other rights or property selected by the Administrator in its sole discretion; or (vi) any combination of the foregoing. In taking any of the actions permitted under this Section 14(c), the Administrator will not be obligated to treat all Awards similarly, including all Awards held by a Participant or all Awards of the same type.

If an Option or Stock Appreciation Right is not assumed or substituted in the event of a Change in Control, the Administrator may, in its discretion, elect to accelerate all unvested Shares subject to Options or Stock Appreciation Rights that are not assumed or substituted, and, in any event, will notify the Participant in writing or electronically that the Option or Stock Appreciation Right will be exercisable for a period of time determined by the Administrator in its sole discretion, and the Option or Stock Appreciation Right will terminate upon the expiration of such period.

For the purposes of this Section 14(c), an Award will be considered assumed if, following the Change in Control, the Award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, or other securities or property) received in the Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of an Option or Stock Appreciation Right or upon the payout of a Restricted Stock Unit, for each Share subject to such Award, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the Change in Control.

Notwithstanding anything in this Section 14(c) to the contrary, an Award that vests, is earned or paid out upon the satisfaction of one or more performance goals will not be considered assumed if the Company or its successor modifies any of such performance goals without the Participant's consent; provided, however, a modification to such performance goals only to reflect the successor corporation's post-Change in Control corporate structure will not be deemed to invalidate an otherwise valid Award assumption.

Notwithstanding anything in this Section 14(c) to the contrary, if a payment under an Award Agreement is subject to Code Section 409A and if the change in control definition contained in the Award Agreement does not comply with the definition of "change in control event" for purposes of a distribution under Code Section 409A, then any payment of an amount that is otherwise accelerated under this Section will be delayed until the earliest time that such payment would be permissible under Code Section 409A without triggering any penalties applicable under Code Section 409A.

15. Tax Withholding.

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

(b) Withholding Arrangements. The Board, in its sole discretion and pursuant to such procedures as the Administrator may specify from time to time, may permit a Participant to satisfy such tax withholding obligation, in whole or in part, by (without limitation) (i) paying cash, (ii) electing to have the Company withhold otherwise deliverable Shares having a Fair Market Value equal to the minimum statutory amount required to be withheld, (iii) delivering to the Company already-owned Shares having a Fair Market Value equal to the statutory amount required to be withheld, provided the delivery of such Shares will not result in any adverse accounting consequences, as the Administrator determines in its sole discretion, or (iv) selling a sufficient number of Shares otherwise deliverable to the Participant through such means as the Administrator may determine in its sole discretion (whether through a broker or otherwise) equal to the amount required to be withheld. The amount of the withholding requirement will be deemed to include any amount which the Administrator agrees may be withheld at the time the election is made, not to exceed the amount determined by using the maximum federal, state or local marginal income tax rates applicable to the Participant with respect to the Award on the date that the amount of tax to be withheld is to be determined. The Fair Market Value of the Shares to be withheld or delivered will be determined as of the date that the taxes are required to be withheld.

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

17. Clawback/Repayment. All Awards shall be subject to reduction, cancellation, forfeiture or recoupment to the extent necessary to comply with (i) any clawback, forfeiture or other similar policy adopted by the Board or the Committee and as in effect from time to time; and (ii) Applicable Law. Further, unless otherwise determined by the Committee, to the extent that the Participant receives any amount in excess of the amount that the Participant should otherwise have received under the terms of the Award for any reason (including, without limitation, by reason of a financial restatement, mistake in calculations or other administrative error), the Participant shall be required to repay any such excess amount to the Company.

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

19. Term of Plan. Subject to Section 23 of the Plan, the Plan will become effective upon its adoption by the Board. Unless sooner terminated under Section 20, it will continue in effect for a term of ten (10) years from the later of (a) the effective date of the Plan, or (b) the earlier of the most recent Board or stockholder approval of an increase in the number of Shares reserved for issuance under the Plan.

20. Amendment and Termination of the Plan.

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

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

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

21. Conditions Upon Issuance of Awards. Awards will not be granted unless the grant of such Award will comply with Applicable Laws. As a condition of the grant of an Award, the Company may require the person to whom such Award is granted to represent and warrant at the time of such grant that the grant to such person is permitted under Applicable Laws.

22. Conditions Upon Issuance of Shares.

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

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

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

24. Stockholder Approval. As a condition to the granting of Incentive Stock Options hereunder, the Plan must be approved by the stockholders of the Company within twelve (12) months after the 2022 Amendment Date. If such approval is not timely attained, then (a) Awards of Incentive Stock Options shall cease to be eligible for grant under the Plan, and (b) if an Award of Options designated as Incentive Stock Options was previously granted, such Options will instead be Nonstatutory Stock Options for all purposes of the Plan (and for avoidance of doubt, the Plan shall otherwise remain in full force and effect as amended on the 2022 Amendment Date). Any such stockholder approval will be obtained in the manner required under Applicable Laws.

25. Governing Law. The Plan shall be governed by and construed in accordance with the internal laws of the British Virgin Islands applicable to contracts made and performed wholly within the State of Connecticut, without giving effect to the conflict of laws provisions thereof. EACH PARTICIPANT WHO ACCEPTS AN AWARD IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION, OR OTHER PROCEEDING INSTITUTED BY OR AGAINST SUCH PARTICIPANT IN RESPECT OF THE PARTICIPANT'S RIGHTS OR OBLIGATIONS HEREUNDER.

Forbes Hare LLP
5 King's Bench Walk
Temple, London EC4Y 7DN
United Kingdom



FORBES HARE

Portage Biotech Inc.
Clarence Thomas Building,
Road Town, Tortola,
British Virgin Islands

1 December 2023

Dear Sirs

Portage Biotech Inc. (the "Company")

We have acted as counsel as to British Virgin Islands law to the Company in connection with its registration statement on Form S-8, as amended (the "**Registration Statement**"), filed on the date hereof with the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended, relating to the proposed offering of up to 2,880,992 ordinary shares, of no par value each, of the Company (the "**S-8 Shares**") issuable pursuant to the Company's Amended and Restated 2021 Equity Incentive Plan (the "**2021 Plan**"). This opinion letter is being furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement.

1. Documents Reviewed

We have reviewed originals, copies or drafts of the following documents:

- 1.1. The public records of the Company on file and available for public inspection at the Registry of Corporate Affairs in the British Virgin Islands (the "**Registry of Corporate Affairs**") on 30 November 2023 including:
 - a) the Company's Certificate of Incorporation; and
 - b) the Company's amended and restated Memorandum and Articles of Association.
- 1.2. A certificate of good standing dated 30 November 2023 issued by the Registrar of Corporate Affairs, with respect to the Company (the "**Certificate of Good Standing**").

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- 1.3. A Registered Agent's Certificate dated 30 November 2023 issued by FH Corporate Services Ltd., the Company's registered agent (the "**Registered Agent's Certificate**").
- 1.4. The records of proceedings on file with and available for inspection on 30 November 2023 at the British Virgin Islands High Court Registry.
- 1.5. The written resolutions of the board of directors of the Company passed on 30 November 2023 (the "**Resolutions**").
- 1.6. The Registration Statement.
- 1.7. The 2021 Plan.

2. Assumptions

In giving this opinion we have assumed, without further verification, the completeness and accuracy of the Registered Agent's Certificate and the Certificate of Good Standing and that the information contained in such certificates remains accurate as at the date of this opinion. We have also relied upon the following assumptions, which we have not independently verified:

- 2.1. Copy documents, conformed copies or drafts of documents provided to us are true and complete copies of, or in the final forms of, the originals.
- 2.2. All signatures, initials and seals are genuine.
- 2.3. Each Award Agreement (as defined in the 2021 Plan) is validly authorised by the Company.
- 2.4. The accuracy and completeness of all factual representations expressed in or implied by the documents we have examined.
- 2.5. The Resolutions remain in full force and effect and have not been revoked.
- 2.6. That the Company is not conducting a "regulated activity" under a "financial services enactment" as defined under the Regulatory Code, 2009 (as amended).
- 2.7. That the Company is in compliance with the British Virgin Islands Economic Substance (Companies and Limited Partnerships) Act 2018 (as amended).

- 2.8. There is nothing under any law (other than the law of the British Virgin Islands) which would or might affect the opinions hereinafter appearing. Specifically, we have made no independent investigation of the laws of the State of New York.

3. Opinion

Based upon, and subject to, the foregoing assumptions and the qualifications set out in section 4 below, and having regard to such legal considerations as we consider relevant, we are of the opinion that:

- 3.1. The Company is a company limited by shares and registered under the BVI Business Companies Act “2020 Revision”, as amended, in good standing at the Registry of Corporate Affairs and validly existing under the laws of the British Virgin Islands, and possesses the capacity to sue and be sued in its own name.
- 3.2. The Company is authorised to issue an unlimited number of shares of no par value of one single class.
- 3.3. Following effectiveness of the Registration Statement, each of the S-8 Shares, when issued in accordance with the terms of the 2021 Plan, the applicable Award Agreement (as defined in the 2021 Plan) and the Resolutions, against payment in full of the consideration, and duly registered in the Company’s register of members (shareholders), will be validly issued, fully paid and non-assessable (meaning that no further sums are payable to the Company on such S-8 Shares).

4. Qualifications

The opinions expressed above are subject to the following qualifications:

- 4.1. To maintain the Company in good standing under the laws of the British Virgin Islands, annual filing fees must be paid to the Registry of Corporate Affairs.
- 4.2. The obligations of the Company may be subject to restrictions pursuant to United Nations sanctions as implemented under the laws of the British Virgin Islands.
- 4.3. We make no comment with regard to the references to foreign statutes in the 2021 Plan.
- 4.4. This opinion is given only as to, and based on, circumstances and matters of fact existing and known to us on the date of this opinion. This opinion only relates to the laws of the British Virgin Islands which are in force on the date of this opinion.

5. Consents

In connection with the above opinion, we hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement.

This opinion may be relied upon by the addressee only. It may not be relied upon by any other person except with our prior written consent.

This opinion is limited to the matters detailed herein and is not to be read as an opinion with respect to any other matter.

Yours faithfully

/s/ Forbes Hare LLP

Forbes Hare LLP

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Portage Biotech, Inc. on Form S-8 of our report dated July 31, 2023, which includes an explanatory paragraph as to the company's ability to continue as a going concern, with respect to our audits of the consolidated financial statements of Portage Biotech, Inc. as of March 31, 2023 and 2022 and for the years ended March 31, 2023, 2022 and 2021 appearing in the Annual Report on Form 20-F of Portage Biotech, Inc. for the year ended March 31, 2023. We also consent to the reference to our firm under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ Marcum LLP

Marcum LLP
Melville, NY
November 30, 2023

Calculation of Filing Fee Table

Form S-8
(Form Type)Portage Biotech Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Ordinary Shares, no par value per share, reserved for issuance under the Portage Biotech Inc. Amended and Restated 2021 Equity Incentive Plan (Stock Option Awards)	Other	1,963,420(2)	\$ 10.53(5)	\$ 20,674,812.60(5)	0.0001476	\$ 3,051.60
Equity	Ordinary Shares, no par value per share, reserved for issuance under the Portage Biotech Inc. Amended and Restated 2021 Equity Incentive Plan (Restricted Stock Units)	Other	378,740(3)	\$ 1.43(6)	\$ 541,598.20(6)	0.0001476	\$ 79.94
Equity	Ordinary Shares, no par value per share, issuable under the Portage Biotech Inc. Amended and Restated 2021 Equity Incentive Plan	Other	538,832(4)	\$ 1.43(6)	\$ 770,529.76(6)	0.0001476	\$ 113.73
Total Offering Amounts					\$ 21,986,940.56		\$ 3,245.27
Total Fee Offsets							—
Net Fee Due							\$ 3,245.27

- (1) In accordance with Rule 416 under the Securities Act of 1933 (the “Securities Act”), this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) Represents ordinary shares, no par value per share (“Ordinary Shares”), of Portage Biotech Inc. (the “Registrant”) reserved for issuance pursuant to stock option awards (“Options”) outstanding under the Registrant’s Amended and Restated 2021 Equity Incentive Plan (the “2021 Plan”) as of the date of this registration statement, and which amount may again become available for grant and issuance under the 2021 Plan in the event the outstanding Options expire or are forfeited in accordance with their terms prior to being exercised.
- (3) Represents Ordinary Shares of the Registrant reserved for issuance pursuant to restricted stock units (“RSUs”) outstanding under the 2021 Plan as of the date of this registration statement, which amount may again become available for grant and issuance under the 2021 Plan in the event the outstanding RSUs are forfeited in accordance with their terms prior to vesting.
- (4) Represents Ordinary Shares of the Registrant available for future issuance under the 2021 Plan other than those set forth in footnotes (3) and (4) above.
- (5) Estimated in accordance with Rule 457(h) of the Securities Act solely for the purpose of calculating the registration fee based on the weighted-average exercise price for outstanding Options granted under the 2021 Plan as of the date of this registration statement.
- (6) Estimated in accordance with Rule 457(c) and Rule 457(h) of the Securities Act solely for the purpose of calculating the amount of the registration fee based on the average of the high and low prices for a share of the Registrant’s Ordinary Shares as reported on the Nasdaq Global Market on November 27, 2023, a date within five business days of the filing of this registration statement.